



CHAMBER ACTION

The Committee on Commerce recommends the following:

Committee Substitute

Remove the entire bill and insert:

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. 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,



29 | 624.476, 624.477, 625.01115, 625.121, 625.151, 625.317,
 30 | 625.325, and 626.015, F.S., to revise and conform;
 31 | amending s. 20.121,, F.S., to revise and conform;
 32 | authorizing the Division of Consumer Services to request
 33 | certain information; providing procedures and requirements
 34 | for providing such information; authorizing the division
 35 | to impose administrative penalties; requiring the division
 36 | to report certain violations; authorizing the Department
 37 | of Financial Services to adopt rules; providing
 38 | construction; creating s. 626.016, F.S.; prescribing
 39 | powers and duties of the Department of Financial Services,
 40 | Financial Services Commission, and Office of Insurance
 41 | Regulation; amending ss. 626.025, 626.112, 626.161,
 42 | 626.171, 626.181, 626.191, 626.201, 626.202, 626.211,
 43 | 626.221, 626.231, 626.241, 626.251, 626.261, 626.266,
 44 | 626.271, 626.281, 626.2815, 626.2817, 626.291, 626.292,
 45 | 626.301, 626.322, 626.361, 626.371, 626.381, 626.431,
 46 | 626.451, 626.461, 626.471, 626.511, 626.521, 626.541,
 47 | 626.551, 626.561, 626.591, 626.592, 626.601, 626.611,
 48 | 626.621, 626.631, 626.641, 626.661, 626.681, 626.691,
 49 | 626.692, 626.7315, 626.732, 626.742, 626.7451, 626.7454,
 50 | 626.7491, 626.7492, 626.752, 626.7845, 626.7851, 626.8305,
 51 | 626.8311, 626.8427, 626.8463, 626.8467, 626.847, 626.8473,
 52 | 626.8582, 626.8584, 626.859, 626.861, 626.863, 626.865,
 53 | 626.866, 626.867, 626.869, 626.8695, 626.8696, 626.8697,
 54 | 626.8698, 626.870, 626.871, 626.872, 626.873, 626.8732,
 55 | 626.8734, 626.8736, 626.8738, 626.874, 626.878, 626.88,
 56 | 626.8805, 626.8809, 626.8814, 626.884, 626.89, 626.891,



57 | 626.892, 626.894, 626.895, 626.896, 626.897, 626.898,
58 | 626.899, 626.901, 626.906, 626.907, 626.909, 626.910,
59 | 626.912, 626.914, 626.916, 626.917, 626.918, 626.919,
60 | 626.921, 626.931, 626.932, 626.936, 626.9361, 626.937,
61 | 626.938, 626.9511, 626.9541, 626.9543, 626.9545, 626.9551,
62 | 626.9561, 626.9571, 626.9581, 626.9591, 626.9601,
63 | 626.9611, 626.9621, 626.9631, 626.9641, 626.9651, 626.989,
64 | 626.9892, 626.99, 626.9911, 626.9912, 626.9913, 626.9914,
65 | 626.9915, 626.9916, 626.9919, 626.9921, 626.9922,
66 | 626.99235, 626.99245, 626.9925, 626.9926, 626.9927,
67 | 626.99272, 626.99285, 626.99295, 627.0628, 627.0629,
68 | 627.311, 627.3111, 627.351, 627.3511, 627.3513, 627.3515,
69 | 627.357, 627.4236, 627.6488, 627.6699, 627.7015, 627.745,
70 | 628.4615, 628.917, 631.021, 631.025, 631.031, 631.041,
71 | 631.042, 631.051, 631.0515, 631.061, 631.071, 631.081,
72 | 631.091, 631.111, 631.152, 631.154, 631.221, 631.231,
73 | 631.361, 631.371, 631.391, 631.392, 631.398, 631.54,
74 | 631.55, 631.56, 631.57, 631.59, 631.60, 631.62, 631.66,
75 | 631.714, 631.72, 631.722, 631.723, 631.727, 631.813,
76 | 631.814, 631.821, 631.825, 631.904, 631.911, 631.912, 631.
77 | 917, 631.918, 631.931, 634.3284, 634.430, 634.433,
78 | 636.067, 641.183, 641.185, 641.19, 641.2017, 641.2018,
79 | 641.21, 641.215, 641.22, 641.225, 641.227, 641.228,
80 | 641.23, 641.234, 641.2342, 641.25, 641.255, 641.26,
81 | 641.27, 641.28, 641.281, 641.284, 641.285, 641.29,
82 | 641.3007, 641.305, 641.31, 641.3105, 641.31071, 641.31074,
83 | 641.315, 641.3154, 641.3155, 641.316, 641.35, 641.35,
84 | 641.36, 641.365, 641.385, 641.39001, 641.3903, 641.3905,



85 | 641.3907, 641.3909, 641.3911, 641.3913, 641.3917,
 86 | 641.3922, 641.402, 641.403, 641.,405, 641.406, 641.4065,
 87 | 641.407, 641.409, 641.41, 641.412, 641.418, 641.42,
 88 | 641.421, 641.424, 641.437, 641.443, 641.444, 641.445,
 89 | 641.446, 641.447, 641.448, 641.45, 641.452, 641.453,
 90 | 641.454, 641.455, 641.457, 641.48, 641.49, 641.495,
 91 | 641.511, 641.511, 641.512, 641.52, 641.54, 641.55, 641.58,
 92 | 642.0475, 651.119, 252.62, 288.778, 288.99, 289.051,
 93 | 289.081, 289.121, 420.101, 494.00125, 494.00421 517.021,
 94 | 517.03, 517.051, 517.061, 517.07, 517.075, 517.081,
 95 | 517.082, 517.101, 517.111, 517.12, 517.1201, 517.1203,
 96 | 517.1204, 517.121, 517.131, 517.141, 517.151, 517.161,
 97 | 517.181, 517.191, 517.201, 517.2015, 517.221, 517.241,
 98 | 517.301, 517.302 517.313, 517.315, 517.32, 520.996,
 99 | 520.9965, 537.008, 537.009, 537.011, 537.013, 537.016,
 100 | 537.017, 559.725, 560.128, 560.129, 560.404, 609.05, and
 101 | 655.012, F.S., to revise and conform; protecting the
 102 | validity of certain administrative and judicial actions;
 103 | providing for substitution of parties; providing for
 104 | continuation and effect of certain certificates of
 105 | authority, forms, licenses, rates, filings, and actions;
 106 | providing for controlling effect; providing an effective
 107 | date.

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

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



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113 20.121 Department of Financial Services.--There is created
114 a Department of Financial Services.

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

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

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

121 1. The Bureau of Unclaimed Property.

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

133 (b) The Division of State Fire Marshal.

134 (c) The Division of Risk Management.

135 (d) The Division of Treasury, which shall include a Bureau
136 of Deferred Compensation responsible for administering the
137 Government Employees Deferred Compensation Plan established
138 under s. 112.215 for state employees.

139 (e) The Division of Insurance Fraud.

140 (f) The Division of Rehabilitation and Liquidation.



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

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

144 1. The Division of Consumer Services shall perform the
145 following functions concerning products or services regulated by
146 the Department of Financial Services or by either office of the
147 Financial Services Commission:

148 a. Receive inquiries and complaints from consumers;

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

151 c. Provide direct assistance and advocacy for consumers
152 who request such assistance or advocacy;

153 d. With respect to apparent or potential violations of law
154 or applicable rules by a person or entity licensed by the
155 department or by either office of the commission, report such
156 apparent or potential violation to the appropriate division of
157 the department or office of the commission, which may take such
158 further action as it deems appropriate.

159 2. The division may request that any person in possession
160 of, or reasonably believed to be in possession of, accounts,
161 records, documents, files, or any other information relating to
162 a consumer inquiry or complaint, provide such information to the
163 division. All requested information in the person's possession
164 or control shall be filed with the division within 20 days after
165 the date of the request unless the division grants an extension
166 for filing. If the requested information is not in the person's
167 possession or control, the person shall inform the division
168 within 20 days after the date of the request. Possession and



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169 control of information includes, but is not limited to,
170 information in the possession of the person's officers,
171 attorneys, employees, agents and representatives. The division
172 may, in its discretion, impose an administrative penalty upon
173 any entity licensed by the department or the Office of Insurance
174 Regulation for failure to comply with this subparagraph in an
175 amount up to \$2,500 per violation, and upon any individual
176 licensed by the department or the Office of Insurance Regulation
177 for failure to comply with this subparagraph in an amount of
178 \$250 for the first violation, \$500 for the second violation, and
179 up to \$1,000 per violation thereafter. Additionally, the
180 division shall report violations of this subparagraph to the
181 appropriate division of the department or the appropriate
182 office. This subparagraph shall not apply to entities regulated
183 by the Office of Financial Institutions and Securities
184 Regulation.

185 3. The department shall have the authority to adopt rules
186 to implement the provisions of this paragraph.

187 4. The powers, duties, and responsibilities expressed or
188 granted in this paragraph shall not limit the powers, duties,
189 and responsibilities of the Department of Financial Services,
190 the Financial Services Commission, the Office of the Insurance
191 Regulation, or the Office of Financial Institutions and
192 Securities Regulation as provided by law.

193 (i) The Division of Workers' Compensation.

194 (j) The Division of Administration.

195 (k) The Division of Legal Services.

196 (l) The Division of Information Systems.



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197 (m) The Office of Insurance Consumer Advocate.

198 (3) FINANCIAL SERVICES COMMISSION.--Effective January 7,
199 2003, there is created within the Department of Financial
200 Services the Financial Services Commission, composed of the
201 Governor, the Attorney General, the Chief Financial Officer, and
202 the Commissioner of Agriculture, which shall for purposes of
203 this section be referred to as the commission. Commission
204 members shall serve as agency head of the Financial Services
205 Commission. The commission shall be a separate budget entity
206 and shall be exempt from the provisions of s. 20.052. Commission
207 action shall be by majority vote consisting of at least three
208 affirmative votes. The commission shall not be subject to
209 control, supervision, or direction by the Department of
210 Financial Services in any manner, including purchasing,
211 transactions involving real or personal property, personnel, or
212 budgetary matters.

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

216 1. The Office of Insurance Regulation, which shall be
217 responsible for all activities concerning insurers and other
218 risk bearing entities, including licensing, rates, policy forms,
219 market conduct, claims, adjusters, issuance of certificates of
220 authority, solvency, viatical settlements, premium financing,
221 and administrative supervision, as provided under the insurance
222 code or chapter 636. The head of the Office of Insurance
223 Regulation is the Director of the Office of Insurance
224 Regulation.



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225 | 2. The Office of Financial Institutions and Securities
226 | Regulation, also to be known as the Office of Financial
227 | Regulation, which shall be responsible for all activities of the
228 | Financial Services Commission relating to the regulation of
229 | banks, credit unions, other financial institutions, finance
230 | companies, and the securities industry. The head of the office
231 | is the Director of the Office of Financial Institutions and
232 | Securities Regulation. The Office of Financial Institutions and
233 | Securities Regulation shall include a Bureau of Financial
234 | Investigations, which shall function as a criminal justice
235 | agency for purposes of ss. 943.045-943.08 and shall have a
236 | separate budget. The bureau may conduct investigations within
237 | or outside this state as the bureau deems necessary to aid in
238 | the enforcement of this section. If, during an investigation,
239 | the office has reason to believe that any criminal law of this
240 | state has or may have been violated, the office shall refer any
241 | records tending to show such violation to state or federal law
242 | enforcement or prosecutorial agencies and shall provide
243 | investigative assistance to those agencies as required.

244 | (b) Organization.--The commission shall establish by rule
245 | any additional organizational structure of the offices. It is
246 | the intent of the Legislature to provide the commission with the
247 | flexibility to organize the offices in any manner they determine
248 | appropriate to promote both efficiency and accountability.

249 | (c) Powers.--Commission members shall serve as the agency
250 | head for purposes of rulemaking under ss. 120.536-120.565 by the
251 | commission and all subunits of the commission. Each director is
252 | agency head for purposes of final agency action under chapter



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253 | 120 for all areas within the regulatory authority delegated to
254 | the director's office.

255 | (d) Appointment and qualifications of directors.--The
256 | commission shall appoint or remove each director by a majority
257 | vote consisting of at least three affirmative votes, with both
258 | the Governor and the Chief Financial Officer on the prevailing
259 | side. The minimum qualifications of the directors are as
260 | follows:

261 | 1. Prior to appointment as director, the Director of the
262 | Office of Insurance Regulation must have had, within the
263 | previous 10 years, at least 5 years of responsible private
264 | sector experience working full time in areas within the scope of
265 | the subject matter jurisdiction of the Office of Insurance
266 | Regulation or at least 5 years of experience as a senior
267 | examiner or other senior employee of a state or federal agency
268 | having regulatory responsibility over insurers or insurance
269 | agencies.

270 | 2. Prior to appointment as director, the Director of the
271 | Office of Financial Institutions and Securities Regulation must
272 | have had, within the previous 10 years, at least 5 years of
273 | responsible private sector experience working full time in areas
274 | within the subject matter jurisdiction of the Office of
275 | Financial Institutions and Securities Regulation or at least 5
276 | years of experience as a senior examiner or other senior
277 | employee of a state or federal agency having regulatory
278 | responsibility over financial institutions, finance companies,
279 | or securities companies.



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280 (e) Administrative support.--The offices shall have a
281 sufficient number of attorneys, examiners, investigators, other
282 professional personnel to carry out their responsibilities and
283 administrative personnel as determined annually in the
284 appropriations process. The Department of Financial Services
285 shall provide administrative and information systems support to
286 the offices.

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

289 103.091 Political parties.--

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

295 (b)2. Each state executive committee shall include, as at-
296 large committeemen and committeewomen, all members of the United
297 States Congress representing the State of Florida who are
298 members of the political party, all statewide elected officials
299 who are members of the party, and the President of the Senate or
300 the Minority Leader in the Senate, and the Speaker of the House
301 of Representatives or the Minority Leader in the House of
302 Representatives, whichever is a member of the political party,
303 and 20 members of the Legislature who are members of the
304 political party. Ten of the legislators shall be appointed with
305 the concurrence of the state chair of the respective party, as
306 follows: five to be appointed by the President of the Senate;
307 five by the Minority Leader in the Senate; five by the Speaker



308 of the House of Representatives; and five by the Minority Leader
309 in the House.

310 (c)~~3.~~ When a political party allows any member of the
311 state executive committee to have more than one vote per person,
312 other than by proxy, in a matter coming before the state
313 executive committee, the 20 members of the Legislature appointed
314 under subparagraph 2. shall not be appointed to the state
315 executive committee and the following elected officials who are
316 members of that political party shall be appointed and shall
317 have the following votes:

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

320 2.b. Lieutenant Governor: a number equal to 5 percent of
321 the votes cast by state executive committeemen and
322 committeewomen;

323 3.e. Each member of the United States Senate representing
324 the state: a number equal to 10 percent of the votes cast by
325 state executive committeemen and committeewomen;

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

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

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

333 ~~g. Treasurer: a number equal to 5 percent of the votes~~
334 ~~cast by state executive committeemen and committeewomen;~~



335 6.h. Commissioner of Agriculture: a number equal to 5
336 percent of the votes cast by state executive committeemen and
337 committeewomen;

338 ~~i.~~ ~~Commissioner of Education: a number equal to 5 percent~~
339 ~~of the votes cast by state executive committeemen and~~
340 ~~committeewomen;~~

341 7.j. President of the Senate: a number equal to 10 percent
342 of the votes cast by state executive committeemen and
343 committeewomen;

344 8.k. Minority leader of the Senate: a number equal to 10
345 percent of the votes cast by state executive committeemen and
346 committeewomen;

347 9.l. Speaker of the House of Representatives: a number
348 equal to 10 percent of the votes cast by state executive
349 committeemen and committeewomen;

350 10.m. Minority leader of the House of Representatives: a
351 number equal to 10 percent of the votes cast by state executive
352 committeemen and committeewomen; and

353 11.n. Each member of the United States House of
354 Representatives representing the state: a number equal to 1
355 percent of the votes cast by state executive committeemen and
356 committeewomen.

357 (d)1.4.a. The governing body of each state executive
358 committee as defined by party rule shall include as at-large
359 committeemen and committeewomen all statewide elected officials
360 who are members of such political party; up to four members of
361 the United States Congress representing the state who are
362 members of such political party and who shall be appointed by



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363 the state chair on the basis of geographic representation; the
364 permanent presiding officer selected by the members of each
365 house of the Legislature who are members of such political
366 party; and the minority leader selected by the members of each
367 house of the Legislature who are members of such political
368 party.

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

371 Section 3. Paragraph (a) of subsection (2) of section
372 110.1127, Florida Statutes, is amended to read:

373 110.1127 Employee security checks.--

374 (2)(a) All positions within the Division of Treasury of
375 the Department of Financial Services ~~Insurance~~ are deemed to be
376 positions of special trust or responsibility, and a person may
377 be disqualified for employment in any such position by reason
378 of:

379 1. The conviction or prior conviction of a crime which is
380 reasonably related to the nature of the position sought or held
381 by the individual; or

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

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



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390 112.215 Government employees; deferred compensation
391 program.--

392 (4)(a) The Chief Financial Officer ~~Treasurer~~, with the
393 approval of the State Board of Administration, shall establish
394 such plan or plans of deferred compensation for state employees,
395 including all such investment vehicles or products incident
396 thereto, as may be available through, or offered by, qualified
397 companies or persons, and may approve one or more such plans for
398 implementation by and on behalf of the state and its agencies
399 and employees.

400 (b) If the Chief Financial Officer ~~Treasurer~~ deems it
401 advisable, he or she shall have the power, with the approval of
402 the State Board of Administration, to create a trust or other
403 special funds for the segregation of funds or assets resulting
404 from compensation deferred at the request of employees of the
405 state or its agencies and for the administration of such
406 program.

407 (c) The Chief Financial Officer ~~Treasurer~~, with the
408 approval of the State Board of Administration, may delegate
409 responsibility for administration of the plan to a person the
410 Chief Financial Officer ~~Treasurer~~ determines to be qualified,
411 compensate such person, and, directly or through such person or
412 pursuant to a collective bargaining agreement, contract with a
413 private corporation or institution to provide such services as
414 may be part of any such plan or as may be deemed necessary or
415 proper by the Chief Financial Officer ~~Treasurer~~ or such person,
416 including, but not limited to, providing consolidated billing,
417 individual and collective recordkeeping and accountings, asset



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418 purchase, control, and safekeeping, and direct disbursement of
419 funds to employees or other beneficiaries. The Chief Financial
420 Officer ~~Treasurer~~ may authorize a person, private corporation,
421 or institution to make direct disbursement of funds under the
422 plan to an employee or other beneficiary ~~only upon the order of~~
423 ~~the Comptroller to the Treasurer.~~

424 (d) In accordance with such approved plan, and upon
425 contract or agreement with an eligible employee, deferrals of
426 compensation may be accomplished by payroll deductions made by
427 the appropriate officer or officers of the state, with such
428 funds being thereafter held and administered in accordance with
429 the plan.

430 (6)(a) No deferred compensation plan of the state shall
431 become effective until approved by the State Board of
432 Administration and the Chief Financial Officer ~~Treasurer~~ is
433 satisfied by opinion from such federal agency or agencies as may
434 be deemed necessary that the compensation deferred thereunder
435 and/or the investment products purchased pursuant to the plan
436 will not be included in the employee's taxable income under
437 federal or state law until it is actually received by such
438 employee under the terms of the plan, and that such compensation
439 will nonetheless be deemed compensation at the time of deferral
440 for the purposes of social security coverage, for the purposes
441 of the state retirement system, and for any other retirement,
442 pension, or benefit program established by law.

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



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445 1. One member shall be appointed by the Speaker of the
446 House of Representatives and the President of the Senate jointly
447 and shall be an employee of the legislative branch.

448 2. One member shall be appointed by the Chief Justice of
449 the Supreme Court and shall be an employee of the judicial
450 branch.

451 3. One member shall be appointed by the chair of the
452 Public Employees Relations Commission and shall be a nonexempt
453 public employee.

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

456 a. One member shall be appointed by the Chancellor of the
457 State University System and shall be an employee of the
458 university system.

459 b. One member shall be appointed by the Chief Financial
460 Officer ~~Treasurer~~ and shall be an employee of the Chief
461 Financial Officer ~~Treasurer~~.

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

464 ~~d. One member shall be appointed by the Comptroller and~~
465 ~~shall be an employee of the Comptroller.~~

466 (d) The council shall meet at the call of its chair, at
467 the request of a majority of its membership, or at the request
468 of the Chief Financial Officer ~~Treasurer~~, but not less than
469 twice a year. The business of the council shall be presented to
470 the council in the form of an agenda. The agenda shall be set
471 by the Chief Financial Officer ~~Treasurer~~ and shall include items
472 of business requested by the council members.



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473 (f) The council shall make a report of each meeting to the
474 Chief Financial Officer ~~Treasurer~~, which shall show the names of
475 the members present and shall include a record of its
476 discussions, recommendations, and actions taken. The Chief
477 Financial Officer ~~Treasurer~~ shall keep the records of the
478 proceedings of each meeting on file and shall make the records
479 available to any interested person or group.

480 (h) The advisory council shall provide assistance and
481 recommendations to the Chief Financial Officer ~~Treasurer~~
482 relating to the provisions of the plan, the insurance or
483 investment options to be offered under the plan, and any other
484 contracts or appointments deemed necessary by the council and
485 the Chief Financial Officer ~~Treasurer~~ to carry out the
486 provisions of this act. The Chief Financial Officer ~~Treasurer~~
487 shall inform the council of the manner in which each council
488 recommendation is being addressed. The Chief Financial Officer
489 ~~Treasurer~~ shall provide the council, at least annually, a report
490 on the status of the deferred compensation program, including,
491 but not limited to, information on participant enrollment,
492 amount of compensation deferred, total plan assets, product
493 provider performance, and participant satisfaction with the
494 program.

495 (10)

496 (b)1. There is created in the State Treasury the Deferred
497 Compensation Trust Fund, through which the Chief Financial
498 Officer ~~Treasurer~~ as trustee shall hold moneys, pensions,
499 annuities, or other benefits accrued or accruing under and



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500 | pursuant to 26 U.S.C. s. 457 and the deferred compensation plan
 501 | provided for therein and adopted by this state; and
 502 | a. All amounts of compensation deferred thereunder;
 503 | b. All property and rights purchased with such amounts;
 504 | and
 505 | c. All income attributable to such amounts, property, or
 506 | rights.
 507 | 2. Notwithstanding the mandates of 26 U.S.C. s. 457(b)(6),
 508 | all of the assets specified in subparagraph 1. shall be held in
 509 | trust for the exclusive benefit of participants and their
 510 | beneficiaries as mandated by 26 U.S.C. s. 457(g)(1).
 511 | (11) With respect to any funds held pursuant to a deferred
 512 | compensation plan, any plan provider which is a bank or savings
 513 | association and which provides time deposit accounts and
 514 | certificates of deposit as an investment product to the plan
 515 | participants may, with the approval of the State Board of
 516 | Administration for providers in the state plan, or with the
 517 | approval of the appropriate official or body designated under
 518 | subsection (5) for a plan of a county, municipality, other
 519 | political subdivision, or constitutional county officer, be
 520 | exempt from the provisions of chapter 280 requiring it to be a
 521 | qualified public depository, provided:
 522 | (a) The bank or savings association shall, to the extent
 523 | that the time deposit accounts or certificates of deposit are
 524 | not insured by the Federal Deposit Insurance Corporation or the
 525 | Federal Savings and Loan Insurance Corporation, pledge
 526 | collateral with the Chief Financial Officer ~~Treasurer~~ for all
 527 | state funds held by it under a deferred compensation plan, or



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528 with such other appropriate official for all public funds held
529 by it under a deferred compensation plan of a county,
530 municipality, other political subdivision, or constitutional
531 county officer, in an amount which equals at least 150 percent
532 of all uninsured deferred compensation funds then held.

533 (b) Said collateral shall be of the kind permitted by s.
534 280.13 and shall be pledged in the manner provided for by the
535 applicable provisions of chapter 280.

536

537 The Chief Financial Officer ~~Treasurer~~ shall have all the
538 applicable powers provided in ss. 280.04, 280.05, and 280.08
539 relating to the sale or other disposition of the pledged
540 collateral.

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

544 Section 5. Paragraph (c) of subsection (2), paragraph (d)
545 of subsection (4), and paragraphs (a), (b), and (c) of
546 subsection (6) of section 215.555, Florida Statutes, are amended
547 to read:

548 215.555 Florida Hurricane Catastrophe Fund.--

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

550 (c) "Covered policy" means any insurance policy covering
551 residential property in this state, including, but not limited
552 to, any homeowner's, mobile home owner's, farm owner's,
553 condominium association, condominium unit owner's, tenant's, or
554 apartment building policy, or any other policy covering a
555 residential structure or its contents issued by any authorized



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556 insurer, including any joint underwriting association or similar
557 entity created pursuant to law. The term "covered policy"
558 includes any collateral protection insurance policy covering
559 personal residences which protects both the borrower's and the
560 lender's financial interests, in an amount at least equal to the
561 coverage for the dwelling in place under the lapsed homeowner's
562 policy, if such policy can be accurately reported as required in
563 subsection(5). Additionally, covered policies include policies
564 covering the peril of wind removed from the Florida Residential
565 Property and Casualty Joint Underwriting Association or from the
566 Citizens Property Insurance Corporation, created pursuant to s.
567 627.351(6), or from the Florida Windstorm Underwriting
568 Association, created pursuant to s. 627.351(2), by an authorized
569 insurer under the terms and conditions of an executed assumption
570 agreement between the authorized insurer and ~~either~~ such
571 association. Each assumption agreement between the ~~either~~
572 association and such authorized insurer must be approved by the
573 Florida Department of Insurance or the Office of Insurance
574 Regulation prior to the effective date of the assumption, and
575 the Department of Insurance or the Office of Insurance
576 Regulation must provide written notification to the board within
577 15 working days after such approval. "Covered policy" does not
578 include any policy that excludes wind coverage or hurricane
579 coverage or any reinsurance agreement and does not include any
580 policy otherwise meeting this definition which is issued by a
581 surplus lines insurer or a reinsurer.

582 (4) REIMBURSEMENT CONTRACTS.--



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583 (d)1. For purposes of determining potential liability and
584 to aid in the sound administration of the fund, the contract
585 shall require each insurer to report such insurer's losses from
586 each covered event on an interim basis, as directed by the
587 board. The contract shall require the insurer to report to the
588 board no later than December 31 of each year, and quarterly
589 thereafter, its reimbursable losses from covered events for the
590 year. The contract shall require the board to determine and pay,
591 as soon as practicable after receiving these reports of
592 reimbursable losses, the initial amount of reimbursement due and
593 adjustments to this amount based on later loss information. The
594 adjustments to reimbursement amounts shall require the board to
595 pay, or the insurer to return, amounts reflecting the most
596 recent calculation of losses.

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

599 a. First reimburse insurers writing covered policies,
600 which insurers are in full compliance with this section and have
601 petitioned the Office of Insurance Regulation ~~Department of~~
602 ~~Insurance~~ and qualified as limited apportionment companies under
603 s. 627.351(2)(b)3. The amount of such reimbursement shall be
604 the lesser of \$10 million or an amount equal to 10 times the
605 insurer's reimbursement premium for the current year. The
606 amount of reimbursement paid under this sub-subparagraph may not
607 exceed the full amount of reimbursement promised in the
608 reimbursement contract. This sub-subparagraph does not apply
609 with respect to any contract year in which the year-end
610 projected cash balance of the fund, exclusive of any bonding



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611 capacity of the fund, exceeds \$2 billion. Only one member of any
612 insurer group may receive reimbursement under this sub-
613 subparagraph.

614 b. Next pay to each insurer such insurer's projected
615 payout, which is the amount of reimbursement it is owed, up to
616 an amount equal to the insurer's share of the actual premium
617 paid for that contract year, multiplied by the actual claims-
618 paying capacity available for that contract year; provided,
619 entities created pursuant to s. 627.351 shall be further
620 reimbursed in accordance with sub-subparagraph c.

621 c. Thereafter, establish, based on reimbursable losses,
622 the prorated reimbursement level at the highest level for which
623 any remaining fund balance or bond proceeds are sufficient to
624 reimburse entities created pursuant to s. 627.351 for losses
625 exceeding the amounts payable pursuant to sub-subparagraph b.
626 for the current contract year.

627 (6) REVENUE BONDS.--

628 (a) General provisions.--

629 1. Upon the occurrence of a hurricane and a determination
630 that the moneys in the fund are or will be insufficient to pay
631 reimbursement at the levels promised in the reimbursement
632 contracts, the board may take the necessary steps under
633 paragraph (b) or paragraph (c) for the issuance of revenue bonds
634 for the benefit of the fund. The proceeds of such revenue bonds
635 may be used to make reimbursement payments under reimbursement
636 contracts; to refinance or replace previously existing
637 borrowings or financial arrangements; to pay interest on bonds;
638 to fund reserves for the bonds; to pay expenses incident to the



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639 issuance or sale of any bond issued under this section,
640 including costs of validating, printing, and delivering the
641 bonds, costs of printing the official statement, costs of
642 publishing notices of sale of the bonds, and related
643 administrative expenses; or for such other purposes related to
644 the financial obligations of the fund as the board may
645 determine. The term of the bonds may not exceed 30 years. The
646 board may pledge or authorize the corporation to pledge all or a
647 portion of all revenues under subsection (5) and under
648 subparagraph 3. to secure such revenue bonds and the board may
649 execute such agreements between the board and the issuer of any
650 revenue bonds and providers of other financing arrangements
651 under paragraph (7)(b) as the board deems necessary to evidence,
652 secure, preserve, and protect such pledge. If reimbursement
653 premiums received under subsection (5) or earnings on such
654 premiums are used to pay debt service on revenue bonds, such
655 premiums and earnings shall be used only after the use of the
656 moneys derived from assessments under subparagraph 3. The
657 funds, credit, property, or taxing power of the state or
658 political subdivisions of the state shall not be pledged for the
659 payment of such bonds. The board may also enter into agreements
660 under paragraph (b) or paragraph (c) for the purpose of issuing
661 revenue bonds in the absence of a hurricane upon a determination
662 that such action would maximize the ability of the fund to meet
663 future obligations.

664 2. The Legislature finds and declares that the issuance of
665 bonds under this subsection is for the public purpose of paying
666 the proceeds of the bonds to insurers, thereby enabling insurers



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667 to pay the claims of policyholders to assure that policyholders
668 are able to pay the cost of construction, reconstruction,
669 repair, restoration, and other costs associated with damage to
670 property of policyholders of covered policies after the
671 occurrence of a hurricane. Revenue bonds may not be issued under
672 this subsection until validated under chapter 75. The validation
673 of at least the first obligations incurred pursuant to this
674 subsection shall be appealed to the Supreme Court, to be handled
675 on an expedited basis.

676 3. If the board determines that the amount of revenue
677 produced under subsection (5) is insufficient to fund the
678 obligations, costs, and expenses of the fund and the
679 corporation, including repayment of revenue bonds, the board
680 shall direct the Office of Insurance Regulation ~~Department of~~
681 ~~Insurance~~ to levy an emergency assessment on each insurer
682 writing property and casualty business in this state. Pursuant
683 to the emergency assessment, each such insurer shall pay to the
684 corporation by July 1 of each year an amount set by the board
685 not exceeding 2 percent of its gross direct written premium for
686 the prior year from all property and casualty business in this
687 state except for workers' compensation, except that, if the
688 Governor has declared a state of emergency under s. 252.36 due
689 to the occurrence of a covered event, the amount of the
690 assessment for the contract year may be increased to an amount
691 not exceeding 4 percent of such premium. Any assessment
692 authority not used for the contract year may be used for a
693 subsequent contract year. If, for a subsequent contract year,
694 the board determines that the amount of revenue produced under



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695 subsection (5) is insufficient to fund the obligations, costs,
696 and expenses of the fund and the corporation, including
697 repayment of revenue bonds for that contract year, the board
698 shall direct the Office of Insurance Regulation ~~Department of~~
699 ~~Insurance~~ to levy an emergency assessment up to an amount not
700 exceeding the amount of unused assessment authority from a
701 previous contract year or years, plus an additional 2 percent if
702 the Governor has declared a state of emergency under s. 252.36
703 due to the occurrence of a covered event. Any assessment
704 authority not used for the contract year may be used for a
705 subsequent contract year. As used in this subsection, the term
706 "property and casualty business" includes all lines of business
707 identified on Form 2, Exhibit of Premiums and Losses, in the
708 annual statement required by s. 624.424 and any rules adopted
709 under such section, except for those lines identified as
710 accident and health insurance. The annual assessments under this
711 subparagraph shall continue as long as the revenue bonds issued
712 with respect to which the assessment was imposed are
713 outstanding, unless adequate provision has been made for the
714 payment of such bonds pursuant to the documents authorizing
715 issuance of the bonds. An insurer shall not at any time be
716 subject to aggregate annual assessments under this subparagraph
717 of more than 2 percent of premium, except that in the case of a
718 declared emergency, an insurer shall not at any time be subject
719 to aggregate annual assessments under this subparagraph of more
720 than 6 percent of premium; provided, no more than 4 percent may
721 be assessed for any one contract year. Any rate filing or
722 portion of a rate filing reflecting a rate change attributable



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723 entirely to the assessment levied under this subparagraph shall
724 be deemed approved when made, subject to the authority of the
725 Office of Insurance Regulation ~~Department of Insurance~~ to
726 require actuarial justification as to the adequacy of any rate
727 at any time. If the rate filing reflects only a rate change
728 attributable to the assessment under this paragraph, the filing
729 may consist of a certification so stating. The assessments
730 otherwise payable to the corporation pursuant to this
731 subparagraph shall be paid instead to the fund unless and until
732 the Office of Insurance Regulation ~~Department of Insurance~~ has
733 received from the corporation and the fund a notice, which shall
734 be conclusive and upon which the Office of Insurance Regulation
735 ~~Department of Insurance~~ may rely without further inquiry, that
736 the corporation has issued bonds and the fund has no agreements
737 in effect with local governments pursuant to paragraph (b). On
738 or after the date of such notice and until such date as the
739 corporation has no bonds outstanding, the fund shall have no
740 right, title, or interest in or to the assessments, except as
741 provided in the fund's agreements with the corporation.

742 (b) Revenue bond issuance through counties or
743 municipalities.--

744 1. If the board elects to enter into agreements with local
745 governments for the issuance of revenue bonds for the benefit of
746 the fund, the board shall enter into such contracts with one or
747 more local governments, including agreements providing for the
748 pledge of revenues, as are necessary to effect such issuance.
749 The governing body of a county or municipality is authorized to
750 issue bonds as defined in s. 125.013 or s. 166.101 from time to



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751 | time to fund an assistance program, in conjunction with the
752 | Florida Hurricane Catastrophe Fund, for the purposes set forth
753 | in this section or for the purpose of paying the costs of
754 | construction, reconstruction, repair, restoration, and other
755 | costs associated with damage to properties of policyholders of
756 | covered policies due to the occurrence of a hurricane by
757 | assuring that policyholders located in this state are able to
758 | recover claims under property insurance policies after a covered
759 | event.

760 | 2. In order to avoid needless and indiscriminate
761 | proliferation, duplication, and fragmentation of such assistance
762 | programs, any local government may provide for the payment of
763 | fund reimbursements, regardless of whether or not the losses for
764 | which reimbursement is made occurred within or outside of the
765 | territorial jurisdiction of the local government.

766 | 3. The state hereby covenants with holders of bonds issued
767 | under this paragraph that the state will not repeal or abrogate
768 | the power of the board to direct the Office of Insurance
769 | Regulation Department ~~Department of Insurance~~ to levy the assessments and
770 | to collect the proceeds of the revenues pledged to the payment
771 | of such bonds as long as any such bonds remain outstanding
772 | unless adequate provision has been made for the payment of such
773 | bonds pursuant to the documents authorizing the issuance of such
774 | bonds.

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



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779 (c) Florida Hurricane Catastrophe Fund Finance
780 Corporation.--

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

783 a. The public benefits corporation created under this
784 paragraph will provide a mechanism necessary for the cost-
785 effective and efficient issuance of bonds. This mechanism will
786 eliminate unnecessary costs in the bond issuance process,
787 thereby increasing the amounts available to pay reimbursement
788 for losses to property sustained as a result of hurricane
789 damage.

790 b. The purpose of such bonds is to fund reimbursements
791 through the Florida Hurricane Catastrophe Fund to pay for the
792 costs of construction, reconstruction, repair, restoration, and
793 other costs associated with damage to properties of
794 policyholders of covered policies due to the occurrence of a
795 hurricane.

796 c. The efficacy of the financing mechanism will be
797 enhanced by the corporation's ownership of the assessments, by
798 the insulation of the assessments from possible bankruptcy
799 proceedings, and by covenants of the state with the
800 corporation's bondholders.

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

804 b. The corporation shall operate under a five-member board
805 of directors consisting of the Governor or a designee, the Chief
806 Financial Officer ~~Comptroller~~ or a designee, the Attorney



807 General Treasurer or a designee, the director of the Division of
 808 Bond Finance of the State Board of Administration, and the
 809 senior employee of the State Board of Administration responsible
 810 for operations ~~chief operating officer~~ of the Florida Hurricane
 811 Catastrophe Fund.

812 c. The corporation has all of the powers of corporations
 813 under chapter 607 and under chapter 617, subject only to the
 814 provisions of this subsection.

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

818 e. The corporation may invest in any of the investments
 819 authorized under s. 215.47.

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

824 3.a. In actions under chapter 75 to validate any bonds
 825 issued by the corporation, the notice required by s. 75.06 shall
 826 be published only in Leon County and in two newspapers of
 827 general circulation in the state, and the complaint and order of
 828 the court shall be served only on the State Attorney of the
 829 Second Judicial Circuit.

830 b. The state hereby covenants with holders of bonds of the
 831 corporation that the state will not repeal or abrogate the power
 832 of the board to direct the Office of Insurance Regulation
 833 ~~Department of Insurance~~ to levy the assessments and to collect
 834 the proceeds of the revenues pledged to the payment of such



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835 | bonds as long as any such bonds remain outstanding unless
836 | adequate provision has been made for the payment of such bonds
837 | pursuant to the documents authorizing the issuance of such
838 | bonds.

839 | 4. The bonds of the corporation are not a debt of the
840 | state or of any political subdivision, and neither the state nor
841 | any political subdivision is liable on such bonds. The
842 | corporation does not have the power to pledge the credit, the
843 | revenues, or the taxing power of the state or of any political
844 | subdivision. The credit, revenues, or taxing power of the state
845 | or of any political subdivision shall not be deemed to be
846 | pledged to the payment of any bonds of the corporation.

847 | 5.a. The property, revenues, and other assets of the
848 | corporation; the transactions and operations of the corporation
849 | and the income from such transactions and operations; and all
850 | bonds issued under this paragraph and interest on such bonds are
851 | exempt from taxation by the state and any political subdivision,
852 | including the intangibles tax under chapter 199 and the income
853 | tax under chapter 220. This exemption does not apply to any tax
854 | imposed by chapter 220 on interest, income, or profits on debt
855 | obligations owned by corporations other than the Florida
856 | Hurricane Catastrophe Fund Finance Corporation.

857 | b. All bonds of the corporation shall be and constitute
858 | legal investments without limitation for all public bodies of
859 | this state; for all banks, trust companies, savings banks,
860 | savings associations, savings and loan associations, and
861 | investment companies; for all administrators, executors,
862 | trustees, and other fiduciaries; for all insurance companies and



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863 associations and other persons carrying on an insurance
864 business; and for all other persons who are now or may hereafter
865 be authorized to invest in bonds or other obligations of the
866 state and shall be and constitute eligible securities to be
867 deposited as collateral for the security of any state, county,
868 municipal, or other public funds. This sub-subparagraph shall be
869 considered as additional and supplemental authority and shall
870 not be limited without specific reference to this sub-
871 subparagraph.

872 6. The corporation and its corporate existence shall
873 continue until terminated by law; however, no such law shall
874 take effect as long as the corporation has bonds outstanding
875 unless adequate provision has been made for the payment of such
876 bonds pursuant to the documents authorizing the issuance of such
877 bonds. Upon termination of the existence of the corporation, all
878 of its rights and properties in excess of its obligations shall
879 pass to and be vested in the state.

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

882 215.559 Hurricane Loss Mitigation Program.--

883 (5) Except for the program set forth in subsection (3),
884 the Department of Community Affairs shall develop the programs
885 set forth in this section in consultation with an advisory
886 council consisting of a representative designated by the Chief
887 Financial Officer ~~Department of Insurance~~, a representative
888 designated by the Florida Home Builders Association, a
889 representative designated by the Florida Insurance Council, a
890 representative designated by the Federation of Manufactured Home



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891 Owners, a representative designated by the Florida Association
892 of Counties, and a representative designated by the Florida
893 Manufactured Housing Association.

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

896 391.221 Statewide Children's Medical Services Network
897 Advisory Council.--

898 (2) The council shall be composed of 12 members
899 representing the private health care provider sector, families
900 with children who have special health care needs, the Agency for
901 Health Care Administration, the Office of Insurance Regulation
902 of the Financial Services Commission ~~Department of Insurance~~,
903 the Florida Chapter of the American Academy of Pediatrics, an
904 academic health center pediatric program, and the health
905 insurance industry. Members shall be appointed for 4-year,
906 staggered terms. In no case shall an employee of the Department
907 of Health serve as a member or as an ex officio member of the
908 advisory council. A vacancy shall be filled for the remainder
909 of the unexpired term in the same manner as the original
910 appointment. A member may not be appointed to more than two
911 consecutive terms. However, a member may be reappointed after
912 being off the council for at least 2 years.

913 Section 8. Paragraph (b) of subsection (2) of section
914 401.245, Florida Statutes, is amended to read:

915 401.245 Emergency Medical Services Advisory Council.--

916 (2)

917 (b) Representation on the Emergency Medical Services
918 Advisory Council shall include: two licensed physicians who are



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919 "medical directors" as defined in s. 401.23(15) or whose medical
920 practice is closely related to emergency medical services; two
921 emergency medical service administrators, one of whom is
922 employed by a fire service; two certified paramedics, one of
923 whom is employed by a fire service; two certified emergency
924 medical technicians, one of whom is employed by a fire service;
925 one emergency medical services educator; one emergency nurse;
926 one hospital administrator; one representative of air ambulance
927 services; one representative of a commercial ambulance operator;
928 and two laypersons who are in no way connected with emergency
929 medical services, one of whom is a representative of the
930 elderly. Ex officio members of the advisory council from state
931 agencies shall include, but shall not be limited to,
932 representatives from the Department of Education, the Department
933 of Management Services, the Office of Insurance Regulation of
934 the Financial Services Commission ~~Department of Insurance~~, the
935 Department of Highway Safety and Motor Vehicles, the Department
936 of Transportation, and the Department of Community Affairs.

937 Section 9. Paragraph (a) of subsection (8) of section
938 408.05, Florida Statutes, is amended to read:

939 408.05 State Center for Health Statistics.--

940 (8) STATE COMPREHENSIVE HEALTH INFORMATION SYSTEM ADVISORY
941 COUNCIL.--

942 (a) There is established in the agency the State
943 Comprehensive Health Information System Advisory Council to
944 assist the center in reviewing the comprehensive health
945 information system and to recommend improvements for such
946 system. The council shall consist of the following members:



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947 1. An employee of the Executive Office of the Governor, to
948 be appointed by the Governor.

949 2. An employee of the Department of Financial Services
950 ~~Department of Insurance~~, to be appointed by the Chief Financial
951 Officer ~~Insurance Commissioner~~.

952 3. An employee of the Department of Education, to be
953 appointed by the Commissioner of Education.

954 4. Ten persons, to be appointed by the Secretary of Health
955 Care Administration, representing other state and local
956 agencies, state universities, the Florida Association of
957 Business/Health Coalitions, local health councils, professional
958 health-care-related associations, consumers, and purchasers.

959 Section 10. Section 408.7056, Florida Statutes, is amended
960 to read:

961 408.7056 Statewide Provider and Subscriber Assistance
962 Program.--

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

964 (a) "Agency" means the Agency for Health Care
965 Administration.

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

967 (b)(e) "Grievance procedure" means an established set of
968 rules that specify a process for appeal of an organizational
969 decision.

970 (c)(d) "Health care provider" or "provider" means a state-
971 licensed or state-authorized facility, a facility principally
972 supported by a local government or by funds from a charitable
973 organization that holds a current exemption from federal income
974 tax under s. 501(c)(3) of the Internal Revenue Code, a licensed



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975 practitioner, a county health department established under part
976 I of chapter 154, a prescribed pediatric extended care center
977 defined in s. 400.902, a federally supported primary care
978 program such as a migrant health center or a community health
979 center authorized under s. 329 or s. 330 of the United States
980 Public Health Services Act that delivers health care services to
981 individuals, or a community facility that receives funds from
982 the state under the Community Alcohol, Drug Abuse, and Mental
983 Health Services Act and provides mental health services to
984 individuals.

985 ~~(d)(e)~~ "Managed care entity" means a health maintenance
986 organization or a prepaid health clinic certified under chapter
987 641, a prepaid health plan authorized under s. 409.912, or an
988 exclusive provider organization certified under s. 627.6472.

989 (e) "Office" means the Office of Insurance Regulation of
990 the Financial Services Commission.

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

993 (2) The agency shall adopt and implement a program to
994 provide assistance to subscribers and providers, including those
995 whose grievances are not resolved by the managed care entity to
996 the satisfaction of the subscriber or provider. The program
997 shall consist of one or more panels that meet as often as
998 necessary to timely review, consider, and hear grievances and
999 recommend to the agency or the office ~~department~~ any actions
1000 that should be taken concerning individual cases heard by the
1001 panel. The panel shall hear every grievance filed by subscribers
1002 and providers on behalf of subscribers, unless the grievance:



1003 (a) Relates to a managed care entity's refusal to accept a
1004 provider into its network of providers;

1005 (b) Is part of an internal grievance in a Medicare managed
1006 care entity or a reconsideration appeal through the Medicare
1007 appeals process which does not involve a quality of care issue;

1008 (c) Is related to a health plan not regulated by the state
1009 such as an administrative services organization, third-party
1010 administrator, or federal employee health benefit program;

1011 (d) Is related to appeals by in-plan suppliers and
1012 providers, unless related to quality of care provided by the
1013 plan;

1014 (e) Is part of a Medicaid fair hearing pursued under 42
1015 C.F.R. ss. 431.220 et seq.;

1016 (f) Is the basis for an action pending in state or federal
1017 court;

1018 (g) Is related to an appeal by nonparticipating providers,
1019 unless related to the quality of care provided to a subscriber
1020 by the managed care entity and the provider is involved in the
1021 care provided to the subscriber;

1022 (h) Was filed before the subscriber or provider completed
1023 the entire internal grievance procedure of the managed care
1024 entity, the managed care entity has complied with its timeframes
1025 for completing the internal grievance procedure, and the
1026 circumstances described in subsection (6) do not apply;

1027 (i) Has been resolved to the satisfaction of the
1028 subscriber or provider who filed the grievance, unless the
1029 managed care entity's initial action is egregious or may be
1030 indicative of a pattern of inappropriate behavior;



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1031 (j) Is limited to seeking damages for pain and suffering,
1032 lost wages, or other incidental expenses, including accrued
1033 interest on unpaid balances, court costs, and transportation
1034 costs associated with a grievance procedure;

1035 (k) Is limited to issues involving conduct of a health
1036 care provider or facility, staff member, or employee of a
1037 managed care entity which constitute grounds for disciplinary
1038 action by the appropriate professional licensing board and is
1039 not indicative of a pattern of inappropriate behavior, and the
1040 agency or office ~~department~~ has reported these grievances to the
1041 appropriate professional licensing board or to the health
1042 facility regulation section of the agency for possible
1043 investigation; or

1044 (1) Is withdrawn by the subscriber or provider. Failure
1045 of the subscriber or the provider to attend the hearing shall be
1046 considered a withdrawal of the grievance.

1047 (3) The agency shall review all grievances within 60 days
1048 after receipt and make a determination whether the grievance
1049 shall be heard. Once the agency notifies the panel, the
1050 subscriber or provider, and the managed care entity that a
1051 grievance will be heard by the panel, the panel shall hear the
1052 grievance either in the network area or by teleconference no
1053 later than 120 days after the date the grievance was filed. The
1054 agency shall notify the parties, in writing, by facsimile
1055 transmission, or by phone, of the time and place of the hearing.
1056 The panel may take testimony under oath, request certified
1057 copies of documents, and take similar actions to collect
1058 information and documentation that will assist the panel in



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1059 making findings of fact and a recommendation. The panel shall
1060 issue a written recommendation, supported by findings of fact,
1061 to the provider or subscriber, to the managed care entity, and
1062 to the agency or the office ~~department~~ no later than 15 working
1063 days after hearing the grievance. If at the hearing the panel
1064 requests additional documentation or additional records, the
1065 time for issuing a recommendation is tolled until the
1066 information or documentation requested has been provided to the
1067 panel. The proceedings of the panel are not subject to chapter
1068 120.

1069 (4) If, upon receiving a proper patient authorization
1070 along with a properly filed grievance, the agency requests
1071 medical records from a health care provider or managed care
1072 entity, the health care provider or managed care entity that has
1073 custody of the records has 10 days to provide the records to the
1074 agency. Failure to provide requested medical records may result
1075 in the imposition of a fine of up to \$500. Each day that
1076 records are not produced is considered a separate violation.

1077 (5) Grievances that the agency determines pose an
1078 immediate and serious threat to a subscriber's health must be
1079 given priority over other grievances. The panel may meet at the
1080 call of the chair to hear the grievances as quickly as possible
1081 but no later than 45 days after the date the grievance is filed,
1082 unless the panel receives a waiver of the time requirement from
1083 the subscriber. The panel shall issue a written recommendation,
1084 supported by findings of fact, to the office ~~department~~ or the
1085 agency within 10 days after hearing the expedited grievance.



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1086 (6) When the agency determines that the life of a
1087 subscriber is in imminent and emergent jeopardy, the chair of
1088 the panel may convene an emergency hearing, within 24 hours
1089 after notification to the managed care entity and to the
1090 subscriber, to hear the grievance. The grievance must be heard
1091 notwithstanding that the subscriber has not completed the
1092 internal grievance procedure of the managed care entity. The
1093 panel shall, upon hearing the grievance, issue a written
1094 emergency recommendation, supported by findings of fact, to the
1095 managed care entity, to the subscriber, and to the agency or the
1096 office ~~department~~ for the purpose of deferring the imminent and
1097 emergent jeopardy to the subscriber's life. Within 24 hours
1098 after receipt of the panel's emergency recommendation, the
1099 agency or office ~~department~~ may issue an emergency order to the
1100 managed care entity. An emergency order remains in force until:

1101 (a) The grievance has been resolved by the managed care
1102 entity;

1103 (b) Medical intervention is no longer necessary; or

1104 (c) The panel has conducted a full hearing under
1105 subsection (3) and issued a recommendation to the agency or the
1106 office ~~department~~, and the agency or office ~~department~~ has
1107 issued a final order.

1108 (7) After hearing a grievance, the panel shall make a
1109 recommendation to the agency or the office ~~department~~ which may
1110 include specific actions the managed care entity must take to
1111 comply with state laws or rules regulating managed care
1112 entities.



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1113 (8) A managed care entity, subscriber, or provider that is
1114 affected by a panel recommendation may within 10 days after
1115 receipt of the panel's recommendation, or 72 hours after receipt
1116 of a recommendation in an expedited grievance, furnish to the
1117 agency or office ~~department~~ written evidence in opposition to
1118 the recommendation or findings of fact of the panel.

1119 (9) No later than 30 days after the issuance of the
1120 panel's recommendation and, for an expedited grievance, no later
1121 than 10 days after the issuance of the panel's recommendation,
1122 the agency or the office ~~department~~ may adopt the panel's
1123 recommendation or findings of fact in a proposed order or an
1124 emergency order, as provided in chapter 120, which it shall
1125 issue to the managed care entity. The agency or office
1126 ~~department~~ may issue a proposed order or an emergency order, as
1127 provided in chapter 120, imposing fines or sanctions, including
1128 those contained in ss. 641.25 and 641.52. The agency or the
1129 office ~~department~~ may reject all or part of the panel's
1130 recommendation. All fines collected under this subsection must
1131 be deposited into the Health Care Trust Fund.

1132 (10) In determining any fine or sanction to be imposed,
1133 the agency and the office ~~department~~ may consider the following
1134 factors:

1135 (a) The severity of the noncompliance, including the
1136 probability that death or serious harm to the health or safety
1137 of the subscriber will result or has resulted, the severity of
1138 the actual or potential harm, and the extent to which provisions
1139 of chapter 641 were violated.



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1140 (b) Actions taken by the managed care entity to resolve or
1141 remedy any quality-of-care grievance.

1142 (c) Any previous incidents of noncompliance by the managed
1143 care entity.

1144 (d) Any other relevant factors the agency or office
1145 ~~department~~ considers appropriate in a particular grievance.

1146 (11) The panel shall consist of members employed by the
1147 agency, ~~and~~ members employed by the office department, and
1148 members employed by the Department of Financial Services, chosen
1149 by their respective agencies; a consumer appointed by the
1150 Governor; a physician appointed by the Governor, as a standing
1151 member; and physicians who have expertise relevant to the case
1152 to be heard, on a rotating basis. The agency may contract with a
1153 medical director and a primary care physician who shall provide
1154 additional technical expertise to the panel. The medical
1155 director shall be selected from a health maintenance
1156 organization with a current certificate of authority to operate
1157 in Florida.

1158 (12) Every managed care entity shall submit a quarterly
1159 report to the agency and the office department listing the
1160 number and the nature of all subscribers' and providers'
1161 grievances which have not been resolved to the satisfaction of
1162 the subscriber or provider after the subscriber or provider
1163 follows the entire internal grievance procedure of the managed
1164 care entity. The agency shall notify all subscribers and
1165 providers included in the quarterly reports of their right to
1166 file an unresolved grievance with the panel.



1167 (13) Any information which would identify a subscriber or
 1168 the spouse, relative, or guardian of a subscriber and which is
 1169 contained in a report obtained by the office ~~Department of~~
 1170 ~~Insurance~~ pursuant to this section is confidential and exempt
 1171 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
 1172 State Constitution.

1173 (14) A proposed order issued by the agency or office
 1174 ~~department~~ which only requires the managed care entity to take a
 1175 specific action under subsection (7) is subject to a summary
 1176 hearing in accordance with s. 120.574, unless all of the parties
 1177 agree otherwise. If the managed care entity does not prevail at
 1178 the hearing, the managed care entity must pay reasonable costs
 1179 and attorney's fees of the agency or the office ~~department~~
 1180 incurred in that proceeding.

1181 (15)(a) Any information which would identify a subscriber
 1182 or the spouse, relative, or guardian of a subscriber which is
 1183 contained in a document, report, or record prepared or reviewed
 1184 by the panel or obtained by the agency pursuant to this section
 1185 is confidential and exempt from the provisions of s. 119.07(1)
 1186 and s. 24(a), Art. I of the State Constitution.

1187 (b) Meetings of the panel shall be open to the public
 1188 unless the provider or subscriber whose grievance will be heard
 1189 requests a closed meeting or the agency or the office ~~Department~~
 1190 ~~of Insurance~~ determines that information of a sensitive personal
 1191 nature which discloses the subscriber's medical treatment or
 1192 history; or information which constitutes a trade secret as
 1193 defined by s. 812.081; or information relating to internal risk
 1194 management programs as defined in s. 641.55(5)(c), (6), and (8)



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1195 may be revealed at the panel meeting, in which case that portion
 1196 of the meeting during which such sensitive personal information,
 1197 trade secret information, or internal risk management program
 1198 information is discussed shall be exempt from the provisions of
 1199 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
 1200 closed meetings shall be recorded by a certified court reporter.

1201
 1202 This subsection is subject to the Open Government Sunset Review
 1203 Act of 1995 in accordance with s. 119.15, and shall stand
 1204 repealed on October 2, 2003, unless reviewed and saved from
 1205 repeal through reenactment by the Legislature.

1206 Section 11. Subsections (11) and (12) of section 440.13,
 1207 Florida Statutes, are amended to read:

1208 440.13 Medical services and supplies; penalty for
 1209 violations; limitations.--

1210 (11) ~~AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND~~
 1211 ~~THE DEPARTMENT OF INSURANCE; JURISDICTION.--~~

1212 (a) The Agency for Health Care Administration may
 1213 investigate health care providers to determine whether providers
 1214 are complying with this chapter and with rules adopted by the
 1215 agency, whether the providers are engaging in overutilization,
 1216 and whether providers are engaging in improper billing
 1217 practices. If the agency finds that a health care provider has
 1218 improperly billed, overutilized, or failed to comply with agency
 1219 rules or the requirements of this chapter it must notify the
 1220 provider of its findings and may determine that the health care
 1221 provider may not receive payment from the carrier or may impose
 1222 penalties as set forth in subsection (8) or other sections of



1223 this chapter. If the health care provider has received payment
 1224 from a carrier for services that were improperly billed or for
 1225 overutilization, it must return those payments to the carrier.
 1226 The agency may assess a penalty not to exceed \$500 for each
 1227 overpayment that is not refunded within 30 days after
 1228 notification of overpayment by the agency or carrier.

1229 (b) The department shall monitor carriers as provided in
 1230 this chapter and the Office of Insurance Regulation shall ~~and~~
 1231 audit insurers and group self-insurance funds ~~carriers~~ as
 1232 provided in s. 624.3161, to determine if medical bills are paid
 1233 in accordance with this section and ~~department~~ rules of the
 1234 department and Financial Services Commission, respectively. Any
 1235 employer, if self-insured, or carrier found by the department or
 1236 Office of Insurance Regulation ~~division~~ not to be within 90
 1237 percent compliance as to the payment of medical bills after July
 1238 1, 1994, must be assessed a fine not to exceed 1 percent of the
 1239 prior year's assessment levied against such entity under s.
 1240 440.51 for every quarter in which the entity fails to attain 90-
 1241 percent compliance. The department shall fine or otherwise
 1242 discipline an employer or carrier, pursuant to this chapter, ~~the~~
 1243 ~~insurance code,~~ or rules adopted by the department, and the
 1244 Office of Insurance Regulation shall fine or otherwise
 1245 discipline an insurer or group self-insurance fund pursuant to
 1246 the insurance code or rules adopted by the Financial Services
 1247 Commission, for each late payment of compensation that is below
 1248 the minimum 90-percent performance standard. Any carrier that is
 1249 found to be not in compliance in subsequent consecutive quarters
 1250 must implement a medical-bill review program approved by the



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1251 department or office ~~division~~, and an insurer or group self-
 1252 insurance fund ~~the carrier~~ is subject to disciplinary action by
 1253 the Office of Insurance Regulation ~~Department of Insurance~~.

1254 (c) The agency has exclusive jurisdiction to decide any
 1255 matters concerning reimbursement, to resolve any overutilization
 1256 dispute under subsection (7), and to decide any question
 1257 concerning overutilization under subsection (8), which question
 1258 or dispute arises after January 1, 1994.

1259 (d) The following agency actions do not constitute agency
 1260 action subject to review under ss. 120.569 and 120.57 and do not
 1261 constitute actions subject to s. 120.56: referral by the entity
 1262 responsible for utilization review; a decision by the agency to
 1263 refer a matter to a peer review committee; establishment by a
 1264 health care provider or entity of procedures by which a peer
 1265 review committee reviews the rendering of health care services;
 1266 and the review proceedings, report, and recommendation of the
 1267 peer review committee.

1268 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
 1269 REIMBURSEMENT ALLOWANCES.--

1270 (a) A three-member panel is created, consisting of the
 1271 Chief Financial Officer ~~Insurance Commissioner~~, or the Chief
 1272 Financial Officer's ~~Insurance Commissioner's~~ designee, and two
 1273 members to be appointed by the Governor, subject to confirmation
 1274 by the Senate, one member who, on account of present or previous
 1275 vocation, employment, or affiliation, shall be classified as a
 1276 representative of employers, the other member who, on account of
 1277 previous vocation, employment, or affiliation, shall be
 1278 classified as a representative of employees. The panel shall



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1279 determine statewide schedules of maximum reimbursement
1280 allowances for medically necessary treatment, care, and
1281 attendance provided by physicians, hospitals, ambulatory
1282 surgical centers, work-hardening programs, pain programs, and
1283 durable medical equipment. The maximum reimbursement allowances
1284 for inpatient hospital care shall be based on a schedule of per
1285 diem rates, to be approved by the three-member panel no later
1286 than March 1, 1994, to be used in conjunction with a
1287 precertification manual as determined by the agency. All
1288 compensable charges for hospital outpatient care shall be
1289 reimbursed at 75 percent of usual and customary charges. Until
1290 the three-member panel approves a schedule of per diem rates for
1291 inpatient hospital care and it becomes effective, all
1292 compensable charges for hospital inpatient care must be
1293 reimbursed at 75 percent of their usual and customary charges.
1294 Annually, the three-member panel shall adopt schedules of
1295 maximum reimbursement allowances for physicians, hospital
1296 inpatient care, hospital outpatient care, ambulatory surgical
1297 centers, work-hardening programs, and pain programs. However,
1298 the maximum percentage of increase in the individual
1299 reimbursement allowance may not exceed the percentage of
1300 increase in the Consumer Price Index for the previous year. An
1301 individual physician, hospital, ambulatory surgical center, pain
1302 program, or work-hardening program shall be reimbursed either
1303 the usual and customary charge for treatment, care, and
1304 attendance, the agreed-upon contract price, or the maximum
1305 reimbursement allowance in the appropriate schedule, whichever
1306 is less.



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1307 (b) As to reimbursement for a prescription medication, the
 1308 reimbursement amount for a prescription shall be the average
 1309 wholesale price times 1.2 plus \$4.18 for the dispensing fee,
 1310 except where the carrier has contracted for a lower amount. Fees
 1311 for pharmaceuticals and pharmaceutical services shall be
 1312 reimbursable at the applicable fee schedule amount. Where the
 1313 employer or carrier has contracted for such services and the
 1314 employee elects to obtain them through a provider not a party to
 1315 the contract, the carrier shall reimburse at the schedule,
 1316 negotiated, or contract price, whichever is lower.

1317 (c) Reimbursement for all fees and other charges for such
 1318 treatment, care, and attendance, including treatment, care, and
 1319 attendance provided by any hospital or other health care
 1320 provider, ambulatory surgical center, work-hardening program, or
 1321 pain program, must not exceed the amounts provided by the
 1322 uniform schedule of maximum reimbursement allowances as
 1323 determined by the panel or as otherwise provided in this
 1324 section. This subsection also applies to independent medical
 1325 examinations performed by health care providers under this
 1326 chapter. Until the three-member panel approves a uniform
 1327 schedule of maximum reimbursement allowances and it becomes
 1328 effective, all compensable charges for treatment, care, and
 1329 attendance provided by physicians, ambulatory surgical centers,
 1330 work-hardening programs, or pain programs shall be reimbursed at
 1331 the lowest maximum reimbursement allowance across all 1992
 1332 schedules of maximum reimbursement allowances for the services
 1333 provided regardless of the place of service. In determining the
 1334 uniform schedule, the panel shall first approve the data which



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1335 it finds representative of prevailing charges in the state for
1336 similar treatment, care, and attendance of injured persons. Each
1337 health care provider, health care facility, ambulatory surgical
1338 center, work-hardening program, or pain program receiving
1339 workers' compensation payments shall maintain records verifying
1340 their usual charges. In establishing the uniform schedule of
1341 maximum reimbursement allowances, the panel must consider:

1342 1. The levels of reimbursement for similar treatment,
1343 care, and attendance made by other health care programs or
1344 third-party providers;

1345 2. The impact upon cost to employers for providing a level
1346 of reimbursement for treatment, care, and attendance which will
1347 ensure the availability of treatment, care, and attendance
1348 required by injured workers;

1349 3. The financial impact of the reimbursement allowances
1350 upon health care providers and health care facilities, including
1351 trauma centers as defined in s. 395.4001, and its effect upon
1352 their ability to make available to injured workers such
1353 medically necessary remedial treatment, care, and attendance.
1354 The uniform schedule of maximum reimbursement allowances must be
1355 reasonable, must promote health care cost containment and
1356 efficiency with respect to the workers' compensation health care
1357 delivery system, and must be sufficient to ensure availability
1358 of such medically necessary remedial treatment, care, and
1359 attendance to injured workers; and

1360 4. The most recent average maximum allowable rate of
1361 increase for hospitals determined by the Health Care Board under
1362 chapter 408.



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1363 (d) In addition to establishing the uniform schedule of
1364 maximum reimbursement allowances, the panel shall:

1365 1. Take testimony, receive records, and collect data to
1366 evaluate the adequacy of the workers' compensation fee schedule,
1367 nationally recognized fee schedules and alternative methods of
1368 reimbursement to certified health care providers and health care
1369 facilities for inpatient and outpatient treatment and care.

1370 2. Survey certified health care providers and health care
1371 facilities to determine the availability and accessibility of
1372 workers' compensation health care delivery systems for injured
1373 workers.

1374 3. Survey carriers to determine the estimated impact on
1375 carrier costs and workers' compensation premium rates by
1376 implementing changes to the carrier reimbursement schedule or
1377 implementing alternative reimbursement methods.

1378 4. Submit recommendations on or before January 1, 2003,
1379 and biennially thereafter, to the President of the Senate and
1380 the Speaker of the House of Representatives on methods to
1381 improve the workers' compensation health care delivery system.

1382
1383 The agency and the department, as requested, ~~division~~ shall
1384 provide data to the panel, including but not limited to,
1385 utilization trends in the workers' compensation health care
1386 delivery system. The agency ~~division~~ shall provide the panel
1387 with an annual report regarding the resolution of medical
1388 reimbursement disputes and any actions pursuant to s. 440.13(8).
1389 The department ~~division~~ shall provide administrative support and
1390 service to the panel to the extent requested by the panel.



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1391 Section 12. Paragraph (c) of subsection (8) and
1392 subsections (10), (15), (16), and (17) of section 440.20,
1393 Florida Statutes, are amended to read:

1394 440.20 Time for payment of compensation; penalties for
1395 late payment.--

1396 (8) In addition to any other penalties provided by this
1397 chapter for late payment, if any installment of compensation is
1398 not paid when it becomes due, the employer, carrier, or
1399 servicing agent shall pay interest thereon at the rate of 12
1400 percent per year from the date the installment becomes due until
1401 it is paid, whether such installment is payable without an order
1402 or under the terms of an order. The interest payment shall be
1403 the greater of the amount of interest due or \$5.

1404 (c) In order to ensure carrier compliance under this
1405 chapter and provisions of the Florida Insurance Code, the office
1406 ~~department~~ shall monitor the performance of carriers by
1407 conducting market conduct examinations, as provided in s.
1408 624.3161, and conducting investigations, as provided in s.
1409 624.317. The department shall establish by rule minimum
1410 performance standards for carriers to ensure that a minimum of
1411 90 percent of all compensation benefits are timely paid. The
1412 department shall fine a carrier as provided in s. 440.13(11)(b)
1413 up to \$50 for each late payment of compensation that is below
1414 the minimum 90 percent performance standard. This paragraph does
1415 not affect the imposition of any penalties or interest due to
1416 the claimant. If a carrier contracts with a servicing agent to
1417 fulfill its administrative responsibilities under this chapter,
1418 the payment practices of the servicing agent are deemed the



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1419 payment practices of the carrier for the purpose of assessing
1420 penalties against the carrier.

1421 (10) Whenever the department deems it advisable, it may
1422 require any employer to make a deposit with the Chief Financial
1423 Officer ~~Treasurer~~ to secure the prompt and convenient payments
1424 of such compensation; and payments therefrom upon any awards
1425 shall be made upon order of the department or judge of
1426 compensation claims.

1427 (15)(a) The office ~~department~~ shall examine on an ongoing
1428 basis claims files in accordance with s. 624.3161 and may impose
1429 fines pursuant to s. 624.310(5) and this chapter in order to
1430 identify questionable claims-handling techniques, questionable
1431 patterns or practices of claims, or a pattern of repeated
1432 unreasonably controverted claims by carriers, as defined in s.
1433 440.02, providing services to employees pursuant to this
1434 chapter. If the office ~~department~~ finds such questionable
1435 techniques, patterns, or repeated unreasonably controverted
1436 claims as constitute a general business practice of a carrier,
1437 as defined in s. 440.02, the office ~~department~~ shall take
1438 appropriate action so as to bring such general business
1439 practices to a halt pursuant to s. 440.38(3) or may impose
1440 penalties pursuant to s. 624.4211. The department and office may
1441 initiate investigations of questionable techniques, patterns,
1442 practices, or repeated unreasonably controverted claims. The
1443 Financial Services Commission ~~department~~ may by rule establish
1444 forms and procedures for corrective action plans and for
1445 auditing carriers.



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1446 (b) As to any examination, investigation, or hearing being
1447 conducted under this chapter, the department and office
1448 ~~Insurance Commissioner or his or her designee~~:

1449 1. May administer oaths, examine and cross-examine
1450 witnesses, receive oral and documentary evidence; and

1451 2. Shall have the power to subpoena witnesses, compel
1452 their attendance and testimony, and require by subpoena the
1453 production of books, papers, records, files, correspondence,
1454 documents, or other evidence which is relevant to the inquiry.

1455 (c) If any person refuses to comply with any such subpoena
1456 or to testify as to any matter concerning which she or he may be
1457 lawfully interrogated, the Circuit Court of Leon County or of
1458 the county wherein such examination, investigation, or hearing
1459 is being conducted, or of the county wherein such person
1460 resides, may, on the application of the department or the
1461 office, issue an order requiring such person to comply with the
1462 subpoena and to testify.

1463 (d) Subpoenas shall be served, and proof of such service
1464 made, in the same manner as if issued by a circuit court.
1465 Witness fees, costs, and reasonable travel expenses, if claimed,
1466 shall be allowed the same as for testimony in a circuit court.

1467 (e) The department shall publish annually a report which
1468 indicates the promptness of first payment of compensation
1469 records of each carrier or self-insurer so as to focus attention
1470 on those carriers or self-insurers with poor payment records for
1471 the preceding year. The department and the office shall take
1472 appropriate steps so as to cause such poor carrier payment
1473 practices to halt pursuant to s. 440.38(3). In addition, the



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1474 department shall take appropriate action so as to halt such poor
 1475 payment practices of self-insurers. "Poor payment practice"
 1476 means a practice of late payment sufficient to constitute a
 1477 general business practice.

1478 (f) The Financial Services Commission, in consultation
 1479 with the department, shall adopt ~~promulgate~~ rules providing
 1480 guidelines to carriers, as defined in s. 440.02, self-insurers,
 1481 and employers to indicate behavior that may be construed as
 1482 questionable claims-handling techniques, questionable patterns
 1483 of claims, repeated unreasonably controverted claims, or poor
 1484 payment practices.

1485 (16) No penalty assessed under this section may be
 1486 recouped by any carrier or self-insurer in the rate base, the
 1487 premium, or any rate filing. The office ~~Department of Insurance~~
 1488 shall enforce this subsection.

1489 (17) The Financial Services Commission ~~department~~ may by
 1490 rule establish audit procedures and set standards for the
 1491 Automated Carrier Performance System.

1492 Section 13. Subsections (2) and (3) of section 440.24,
 1493 Florida Statutes, is amended to read:

1494 440.24 Enforcement of compensation orders; penalties.--

1495 (2) In any case where the employer is insured and the
 1496 carrier fails to comply with any compensation order of a judge
 1497 of compensation claims or court within 10 days after such order
 1498 becomes final, the department shall notify the office of such
 1499 failure and the office shall thereupon suspend the license of
 1500 such carrier to do an insurance business in this state, until
 1501 such carrier has complied with such order.



1502 (3) In any case where the employer is a self-insurer and
 1503 fails to comply with any compensation order of a judge of
 1504 compensation claims or court within 10 days after such order
 1505 becomes final, the department ~~of Insurance~~ may suspend or revoke
 1506 any authorization previously given to the employer to be a self-
 1507 insurer, and the Florida Self-Insurers Guaranty Association,
 1508 Incorporated, may call or sue upon the surety bond or exercise
 1509 its rights under the letter of credit deposited by the self-
 1510 insurer with the association as a qualifying security deposit as
 1511 may be necessary to satisfy the order.

1512 Section 14. Subsections (1), (2), (3), and (4) of section
 1513 440.38, Florida Statutes, are amended to read:

1514 440.38 Security for compensation; insurance carriers and
 1515 self-insurers.--

1516 (1) Every employer shall secure the payment of
 1517 compensation under this chapter:

1518 (a) By insuring and keeping insured the payment of such
 1519 compensation with any stock company or mutual company or
 1520 association or exchange, authorized to do business in the state;

1521 (b) By furnishing satisfactory proof to the Florida Self-
 1522 Insurers Guaranty Association, Incorporated, created in s.
 1523 440.385, that it has the financial strength necessary to ensure
 1524 timely payment of all current and future claims individually and
 1525 on behalf of its subsidiary and affiliated companies with
 1526 employees in this state and receiving an authorization from the
 1527 department ~~of Insurance~~ to pay such compensation directly. The
 1528 association shall review the financial strength of applicants
 1529 for membership, current members, and former members and make



1530 recommendations to the department of ~~Insurance~~ regarding their
 1531 qualifications to self-insure in accordance with this section
 1532 and ss. 440.385 and 440.386. The department shall act in
 1533 accordance with the recommendations unless it finds by clear and
 1534 convincing evidence that the recommendations are erroneous.

1535 1. As a condition of authorization under paragraph (a),
 1536 the association may recommend that the department of ~~Insurance~~
 1537 require an employer to deposit with the association a qualifying
 1538 security deposit. The association shall recommend the type and
 1539 amount of the qualifying security deposit and shall prescribe
 1540 conditions for the qualifying security deposit, which shall
 1541 include authorization for the association to call the qualifying
 1542 security deposit in the case of default to pay compensation
 1543 awards and related expenses of the association. As a condition
 1544 to authorization to self-insure, the employer shall provide
 1545 proof that the employer has provided for competent personnel
 1546 with whom to deliver benefits and to provide a safe working
 1547 environment. The employer shall also provide evidence that it
 1548 carries reinsurance at levels that will ensure the financial
 1549 strength and actuarial soundness of such employer in accordance
 1550 with rules adopted by the department of ~~Insurance~~. The
 1551 department of ~~Insurance~~ may by rule require that, in the event
 1552 of an individual self-insurer's insolvency, such qualifying
 1553 security deposits and reinsurance policies are payable to the
 1554 association. Any employer securing compensation in accordance
 1555 with the provisions of this paragraph shall be known as a self-
 1556 insurer and shall be classed as a carrier of her or his own
 1557 insurance. The employer shall, if requested, provide the



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1558 association an actuarial report signed by a member of the
1559 American Academy of Actuaries providing an opinion of the
1560 appropriate present value of the reserves, using a 4-percent
1561 discount rate, for current and future compensation claims. If
1562 any member or former member of the association refuses to timely
1563 provide such a report, the association may obtain an order from
1564 a circuit court requiring the member to produce such a report
1565 and ordering any other relief that the court determines is
1566 appropriate. The association may recover all reasonable costs
1567 and attorney's fees in such proceedings.

1568 2. If the employer fails to maintain the foregoing
1569 requirements, the association shall recommend to the department
1570 ~~of Insurance~~ that the department revoke the employer's authority
1571 to self-insure, unless the employer provides to the association
1572 the certified opinion of an independent actuary who is a member
1573 of the American Academy of Actuaries as to the actuarial present
1574 value of the employer's determined and estimated future
1575 compensation payments based on cash reserves, using a 4-percent
1576 discount rate, and a qualifying security deposit equal to 1.5
1577 times the value so certified. The employer shall thereafter
1578 annually provide such a certified opinion until such time as the
1579 employer meets the requirements of subparagraph 1. The
1580 qualifying security deposit shall be adjusted at the time of
1581 each such annual report. Upon the failure of the employer to
1582 timely provide such opinion or to timely provide a security
1583 deposit in an amount equal to 1.5 times the value certified in
1584 the latest opinion, the association shall provide that
1585 information to the department ~~of Insurance~~ along with a



1586 recommendation, and the department ~~of Insurance~~ shall then
 1587 revoke such employer's authorization to self-insure. Failure to
 1588 comply with this subparagraph constitutes an immediate serious
 1589 danger to the public health, safety, or welfare sufficient to
 1590 justify the summary suspension of the employer's authorization
 1591 to self-insure pursuant to s. 120.68.

1592 3. Upon the suspension or revocation of the employer's
 1593 authorization to self-insure, the employer shall provide to the
 1594 association the certified opinion of an independent actuary who
 1595 is a member of the American Academy of Actuaries of the
 1596 actuarial present value of the determined and estimated future
 1597 compensation payments of the employer for claims incurred while
 1598 the member exercised the privilege of self-insurance, using a
 1599 discount rate of 4 percent. The employer shall provide such an
 1600 opinion at 6-month intervals thereafter until such time as the
 1601 latest opinion shows no remaining value of claims. With each
 1602 such opinion, the employer shall deposit with the association a
 1603 qualifying security deposit in an amount equal to the value
 1604 certified by the actuary. The association has a cause of action
 1605 against an employer, and against any successor of the employer,
 1606 who fails to timely provide such opinion or who fails to timely
 1607 maintain the required security deposit with the association. The
 1608 association shall recover a judgment in the amount of the
 1609 actuarial present value of the determined and estimated future
 1610 compensation payments of the employer for claims incurred while
 1611 the employer exercised the privilege of self-insurance, together
 1612 with attorney's fees. For purposes of this section, the
 1613 successor of an employer means any person, business entity, or



1614 group of persons or business entities, which holds or acquires
 1615 legal or beneficial title to the majority of the assets or the
 1616 majority of the shares of the employer.

1617 4. A qualifying security deposit shall consist, at the
 1618 option of the employer, of:

1619 a. Surety bonds, in a form and containing such terms as
 1620 prescribed by the association, issued by a corporation surety
 1621 authorized to transact surety business by the department of
 1622 ~~Insurance~~, and whose policyholders' and financial ratings, as
 1623 reported in A.M. Best's Insurance Reports, Property-Liability,
 1624 are not less than "A" and "V", respectively.

1625 b. Irrevocable letters of credit in favor of the
 1626 association issued by financial institutions located within this
 1627 state, the deposits of which are insured through the Federal
 1628 Deposit Insurance Corporation.

1629 5. The qualifying security deposit shall be held by the
 1630 association exclusively for the benefit of workers' compensation
 1631 claimants. The security shall not be subject to assignment,
 1632 execution, attachment, or any legal process whatsoever, except
 1633 as necessary to guarantee the payment of compensation under this
 1634 chapter. No surety bond may be terminated, and no letter of
 1635 credit may be allowed to expire, without 90 days' prior written
 1636 notice to the association and deposit by the self-insuring
 1637 employer of some other qualifying security deposit of equal
 1638 value within 10 business days after such notice. Failure to
 1639 provide such written notice or failure to timely provide
 1640 qualifying replacement security after such notice shall
 1641 constitute grounds for the association to call or sue upon the



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1642 surety bond or to exercise its rights under a letter of credit.
1643 Current self-insured employers must comply with this section on
1644 or before December 31, 2001, or upon the maturity of existing
1645 security deposits, whichever occurs later. The department of ~~of~~
1646 ~~Insurance~~ may specify by rule the amount of the qualifying
1647 security deposit required prior to authorizing an employer to
1648 self-insure and the amount of net worth required for an employer
1649 to qualify for authorization to self-insure;

1650 (c) By entering into a contract with a public utility
1651 under an approved utility-provided self-insurance program as set
1652 forth in s. 624.46225 in effect as of July 1, 1983. The
1653 department ~~division~~ shall adopt rules to implement this
1654 paragraph;

1655 (d) By entering into an interlocal agreement with other
1656 local governmental entities to create a local government pool
1657 pursuant to s. 624.4622;

1658 ~~(e) In accordance with s. 440.135, an employer, other than~~
1659 ~~a local government unit, may elect coverage under the Workers'~~
1660 ~~Compensation Law and retain the benefit of the exclusiveness of~~
1661 ~~liability provided in s. 440.11 by obtaining a 24-hour health~~
1662 ~~insurance policy from an authorized property and casualty~~
1663 ~~insurance carrier or an authorized life and health insurance~~
1664 ~~carrier, or by participating in a fully or partially self-~~
1665 ~~insured 24-hour health plan that is established or maintained by~~
1666 ~~or for two or more employers, so long as the law of this state~~
1667 ~~is not preempted by the Employee Retirement Income Security Act~~
1668 ~~of 1974, Pub. L. No. 93-406, or any amendment to that law, which~~
1669 ~~policy or plan must provide, for at least occupational injuries~~



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1670 ~~and illnesses, medical benefits that are comparable to those~~
1671 ~~required by this chapter. A local government unit, as a single~~
1672 ~~employer, in accordance with s. 440.135, may participate in the~~
1673 ~~24-hour health insurance coverage plan referenced in this~~
1674 ~~paragraph. Disputes and remedies arising under policies issued~~
1675 ~~under this section are governed by the terms and conditions of~~
1676 ~~the policies and under the applicable provisions of the Florida~~
1677 ~~Insurance Code and rules adopted under the insurance code and~~
1678 ~~other applicable laws of this state. The 24-hour health~~
1679 ~~insurance policy may provide for health care by a health~~
1680 ~~maintenance organization or a preferred provider organization.~~
1681 ~~The premium for such 24-hour health insurance policy shall be~~
1682 ~~paid entirely by the employer. The 24-hour health insurance~~
1683 ~~policy may use deductibles and coinsurance provisions that~~
1684 ~~require the employee to pay a portion of the actual medical care~~
1685 ~~received by the employee. If an employer obtains a 24-hour~~
1686 ~~health insurance policy or self-insured plan to secure payment~~
1687 ~~of compensation as to medical benefits, the employer must also~~
1688 ~~obtain an insurance policy or policies that provide indemnity~~
1689 ~~benefits as follows:~~

1690 ~~1. If indemnity benefits are provided only for~~
1691 ~~occupational-related disability, such benefits must be~~
1692 ~~comparable to those required by this chapter.~~

1693 ~~2. If indemnity benefits are provided for both~~
1694 ~~occupational-related and nonoccupational-related disability,~~
1695 ~~such benefits must be comparable to those required by this~~
1696 ~~chapter, except that they must be based on 60 percent of the~~
1697 ~~average weekly wages.~~



1698 ~~3. The employer shall provide for each of its employees~~
 1699 ~~life insurance with a death benefit of \$100,000.~~

1700 ~~4. Policies providing coverage under this subsection must~~
 1701 ~~use prescribed and acceptable underwriting standards, forms, and~~
 1702 ~~policies approved by the Department of Insurance. If any~~
 1703 ~~insurance policy that provides coverage under this section is~~
 1704 ~~canceled, terminated, or nonrenewed for any reason, the~~
 1705 ~~cancellation, termination, or nonrenewal is ineffective until~~
 1706 ~~the self-insured employer or insurance carrier or carriers~~
 1707 ~~notify the division and the Department of Insurance of the~~
 1708 ~~cancellation, termination, or nonrenewal, and until the division~~
 1709 ~~has actually received the notification. The division must be~~
 1710 ~~notified of replacement coverage under a workers' compensation~~
 1711 ~~and employer's liability insurance policy or plan by the~~
 1712 ~~employer prior to the effective date of the cancellation,~~
 1713 ~~termination, or nonrenewal; or~~

1714 ~~(e)(f)~~ By entering into a contract with an individual
 1715 self-insurer under an approved individual self-insurer-provided
 1716 self-insurance program as set forth in s. 624.46225. The
 1717 department ~~division~~ may adopt rules to administer this
 1718 subsection.

1719 (2)(a) The department ~~of Insurance~~ shall adopt rules by
 1720 which businesses may become qualified to provide underwriting
 1721 claims-adjusting, loss control, and safety engineering services
 1722 to self-insurers.

1723 (b) The department ~~of Insurance~~ shall adopt rules
 1724 requiring self-insurers to file any reports necessary to fulfill
 1725 the requirements of this chapter. Any self-insurer who fails to



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1726 file any report as prescribed by the rules adopted by the
1727 department ~~of Insurance~~ shall be subject to a civil penalty.

1728 (3)(a) The license of any stock company or mutual company
1729 or association or exchange authorized to do insurance business
1730 in the state shall for good cause, upon recommendation of the
1731 department division, be suspended or revoked by the office
1732 ~~Department of Insurance~~. No suspension or revocation shall
1733 affect the liability of any carrier already incurred.

1734 (b) The department ~~of Insurance~~ shall suspend or revoke
1735 any authorization to a self-insurer for failure to comply with
1736 this section or for good cause, as defined by rule of the
1737 department ~~of Insurance~~. No suspension or revocation shall
1738 affect the liability of any self-insurer already incurred.

1739 (c) Violation of s. 440.381 by a self-insurance fund shall
1740 result in the imposition of a fine not to exceed \$1,000 per
1741 audit if the self-insurance fund fails to act on said audits by
1742 correcting errors in employee classification or accepted
1743 applications for coverage where it knew employee classifications
1744 were incorrect. Such fines shall be levied by the department
1745 ~~division~~ and deposited into the Workers' Compensation
1746 Administration Trust Fund.

1747 (4)(a) A carrier of insurance, including the parties to
1748 any mutual, reciprocal, or other association, may not write any
1749 compensation insurance under this chapter without a certificate
1750 of authority permit from the office ~~Department of Insurance~~.
1751 Such certificate of authority permit shall be given, upon
1752 application therefor, to any insurance or mutual or reciprocal
1753 insurance association upon the office's ~~department's~~ being



1754 satisfied of the solvency of such corporation or association and
 1755 its ability to perform all its undertakings. The office
 1756 ~~Department of Insurance~~ may revoke any certificate of authority
 1757 ~~permit~~ so issued for violation of any provision of this chapter.

1758 (b) A carrier of insurance, including the parties to any
 1759 mutual, reciprocal, or other association, may not write any
 1760 compensation insurance under this chapter unless such carrier
 1761 has a claims adjuster, either in-house or under contract,
 1762 situated within this state. Self-insurers whose compensation
 1763 payments are administered through a third party and carriers of
 1764 insurance shall maintain a claims adjuster within this state
 1765 during any period for which there are any open claims against
 1766 such self-insurer or carrier arising under the compensation
 1767 insurance written by the self-insurer or carrier. Individual
 1768 self-insurers whose compensation payments are administered by
 1769 employees of the self-insurer shall not be required to have
 1770 their claims adjuster situated within this state. Individual
 1771 self-insurers shall not be required to have their claims
 1772 adjusters situated within this state.

1773 Section 15. Subsections (1) and (3) of section 440.381,
 1774 Florida Statutes, are amended to read:

1775 440.381 Application for coverage; reporting payroll;
 1776 payroll audit procedures; penalties.--

1777 (1) Applications by an employer to a carrier for coverage
 1778 required by s. 440.38 must be made on a form prescribed by the
 1779 Financial Services Commission ~~Department of Insurance~~. The
 1780 Financial Services Commission ~~Department of Insurance~~ shall
 1781 adopt rules for applications for coverage required by s. 440.38.



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1782 The rules must provide that an application include information
1783 on the employer, the type of business, past and prospective
1784 payroll, estimated revenue, previous workers' compensation
1785 experience, employee classification, employee names, and any
1786 other information necessary to enable a carrier to accurately
1787 underwrite the applicant. The rules must include a provision
1788 that a carrier or self-insurance fund may require that an
1789 employer update an application monthly to reflect any change in
1790 the required application information.

1791 (3) The Financial Services Commission, in consultation
1792 with the department, shall establish by rule minimum
1793 requirements for audits of payroll and classifications in order
1794 to ensure that the appropriate premium is charged for workers'
1795 compensation coverage. The rules shall ensure that audits
1796 performed by both carriers and employers are adequate to provide
1797 that all sources of payments to employees, subcontractors, and
1798 independent contractors have been reviewed and that the accuracy
1799 of classification of employees has been verified. The rules
1800 shall provide that employers in all classes other than the
1801 construction class be audited not less frequently than
1802 biennially and may provide for more frequent audits of employers
1803 in specified classifications based on factors such as amount of
1804 premium, type of business, loss ratios, or other relevant
1805 factors. In no event shall employers in the construction class,
1806 generating more than the amount of premium required to be
1807 experience rated, be audited less than annually. The annual
1808 audits required for construction classes shall consist of
1809 physical onsite audits. Payroll verification audit rules must



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1810 include, but need not be limited to, the use of state and
1811 federal reports of employee income, payroll and other accounting
1812 records, certificates of insurance maintained by subcontractors,
1813 and duties of employees. At the completion of an audit, the
1814 employer or officer of the corporation and the auditor must
1815 print and sign their names on the audit document and attach
1816 proof of identification to the audit document.

1817 Section 16. Section 440.385, Florida Statutes, is amended
1818 to read:

1819 440.385 Florida Self-Insurers Guaranty Association,
1820 Incorporated.--

1821 (1) CREATION OF ASSOCIATION.--

1822 (a) There is created a nonprofit corporation to be known
1823 as the "Florida Self-Insurers Guaranty Association,
1824 Incorporated," hereinafter referred to as "the association."
1825 Upon incorporation of the association, all individual self-
1826 insurers as defined in ss. 440.02(23)(a) and 440.38(1)(b), other
1827 than individual self-insurers which are public utilities or
1828 governmental entities, shall be members of the association as a
1829 condition of their authority to individually self-insure in this
1830 state. The association shall perform its functions under a plan
1831 of operation as established and approved under subsection (5)
1832 and shall exercise its powers and duties through a board of
1833 directors as established under subsection (2). The association
1834 shall have those powers granted or permitted corporations not
1835 for profit, as provided in chapter 617. The activities of the
1836 association shall be subject to review by the department of
1837 ~~Insurance~~. The department of ~~Insurance~~ shall have oversight



1838 responsibility as set forth in this section. The association is
 1839 specifically authorized to enter into agreements with this state
 1840 to perform specified services.

1841 (b) A member may voluntarily withdraw from the association
 1842 when the member voluntarily terminates the self-insurance
 1843 privilege and pays all assessments due to the date of such
 1844 termination. However, the withdrawing member shall continue to
 1845 be bound by the provisions of this section relating to the
 1846 period of his or her membership and any claims charged pursuant
 1847 thereto. The withdrawing member who is a member on or after
 1848 January 1, 1991, shall also be required to provide to the
 1849 association upon withdrawal, and at 12-month intervals
 1850 thereafter, satisfactory proof, including, if requested by the
 1851 association, a report of known and potential claims certified by
 1852 a member of the American Academy of Actuaries, that it continues
 1853 to meet the standards of s. 440.38(1)(b)1. in relation to claims
 1854 incurred while the withdrawing member exercised the privilege of
 1855 self-insurance. Such reporting shall continue until the
 1856 withdrawing member demonstrates to the association that there is
 1857 no remaining value to claims incurred while the withdrawing
 1858 member was self-insured. If a withdrawing member fails or
 1859 refuses to timely provide an actuarial report to the
 1860 association, the association may obtain an order from a circuit
 1861 court requiring the member to produce such a report and ordering
 1862 any other relief that the court determines appropriate. The
 1863 association is entitled to recover all reasonable costs and
 1864 attorney's fees expended in such proceedings. If during this
 1865 reporting period the withdrawing member fails to meet the



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1866 standards of s. 440.38(1)(b)1., the withdrawing member who is a
1867 member on or after January 1, 1991, shall thereupon, and at 6-
1868 month intervals thereafter, provide to the association the
1869 certified opinion of an independent actuary who is a member of
1870 the American Academy of Actuaries of the actuarial present value
1871 of the determined and estimated future compensation payments of
1872 the member for claims incurred while the member was a self-
1873 insurer, using a discount rate of 4 percent. With each such
1874 opinion, the withdrawing member shall deposit with the
1875 association security in an amount equal to the value certified
1876 by the actuary and of a type that is acceptable for qualifying
1877 security deposits under s. 440.38(1)(b). The withdrawing member
1878 shall continue to provide such opinions and to provide such
1879 security until such time as the latest opinion shows no
1880 remaining value of claims. The association has a cause of
1881 action against a withdrawing member, and against any successor
1882 of a withdrawing member, who fails to timely provide the
1883 required opinion or who fails to maintain the required deposit
1884 with the association. The association shall be entitled to
1885 recover a judgment in the amount of the actuarial present value
1886 of the determined and estimated future compensation payments of
1887 the withdrawing member for claims incurred during the time that
1888 the withdrawing member exercised the privilege of self-
1889 insurance, together with reasonable attorney's fees. The
1890 association is also entitled to recover reasonable attorney's
1891 fees in any action to compel production of any actuarial report
1892 required by this section. For purposes of this section, the
1893 successor of a withdrawing member means any person, business



1894 entity, or group of persons or business entities, which holds or
 1895 acquires legal or beneficial title to the majority of the assets
 1896 or the majority of the shares of the withdrawing member.

1897 (2) BOARD OF DIRECTORS.--The board of directors of the
 1898 association shall consist of nine persons and shall be organized
 1899 as established in the plan of operation. All board members shall
 1900 be experienced in self-insurance in this state. Each director
 1901 shall serve for a 4-year term and may be reappointed.

1902 Appointments after January 1, 2002, shall be made by the
 1903 department ~~of Insurance~~ upon recommendation of members of the
 1904 association. Any vacancy on the board shall be filled for the
 1905 remaining period of the term in the same manner as appointments
 1906 other than initial appointments are made. Each director shall be
 1907 reimbursed for expenses incurred in carrying out the duties of
 1908 the board on behalf of the association.

1909 (3) POWERS AND DUTIES.--

1910 (a) Upon creation of the Insolvency Fund pursuant to the
 1911 provisions of subsection (4), the association is obligated for
 1912 payment of compensation under this chapter to insolvent members'
 1913 employees resulting from incidents and injuries existing prior
 1914 to the member becoming an insolvent member and from incidents
 1915 and injuries occurring within 30 days after the member has
 1916 become an insolvent member, provided the incidents giving rise
 1917 to claims for compensation under this chapter occur during the
 1918 year in which such insolvent member is a member of the guaranty
 1919 fund and was assessable pursuant to the plan of operation, and
 1920 provided the employee makes timely claim for such payments
 1921 according to procedures set forth by a court of competent



1922 jurisdiction over the delinquency or bankruptcy proceedings of
 1923 the insolvent member. Such obligation includes only that amount
 1924 due the injured worker or workers of the insolvent member under
 1925 this chapter. In no event is the association obligated to a
 1926 claimant in an amount in excess of the obligation of the
 1927 insolvent member. The association shall be deemed the insolvent
 1928 employer for purposes of this chapter to the extent of its
 1929 obligation on the covered claims and, to such extent, shall have
 1930 all rights, duties, and obligations of the insolvent employer as
 1931 if the employer had not become insolvent. However, in no event
 1932 shall the association be liable for any penalties or interest.

1933 (b) The association may:

1934 1. Employ or retain such persons as are necessary to
 1935 handle claims and perform other duties of the association.

1936 2. Borrow funds necessary to effect the purposes of this
 1937 section in accord with the plan of operation.

1938 3. Sue or be sued.

1939 4. Negotiate and become a party to such contracts as are
 1940 necessary to carry out the purposes of this section.

1941 5. Purchase such reinsurance as is determined necessary
 1942 pursuant to the plan of operation.

1943 6. Review all applicants for membership in the association
 1944 to determine whether the applicant is qualified for membership
 1945 under the law. The association shall recommend to the department
 1946 ~~of Insurance~~ that the application be accepted or rejected based
 1947 on the criteria set forth in s. 440.38(1)(b). The department ~~of~~
 1948 ~~Insurance~~ shall approve or disapprove the application as
 1949 provided in paragraph (6)(a).



1950 7. Collect and review financial information from employers
 1951 and make recommendations to the department ~~of Insurance~~
 1952 regarding the appropriate security deposit and reinsurance
 1953 amounts necessary for an employer to demonstrate that it has the
 1954 financial strength necessary to ensure the timely payment of all
 1955 current and future claims. The association may audit and examine
 1956 an employer to verify the financial strength of its current and
 1957 former members. If the association determines that a current or
 1958 former self-insured employer does not have the financial
 1959 strength necessary to ensure the timely payment of all current
 1960 and estimated future claims, the association may recommend to
 1961 the department ~~of Insurance~~ that the department:
 1962 a. Revoke the employer's self-insurance privilege.
 1963 b. Require the employer to provide a certified opinion of
 1964 an independent actuary who is a member of the American Academy
 1965 of Actuaries as to the actuarial present value of the employer's
 1966 estimated current and future compensation payments, using a 4-
 1967 percent discount rate.
 1968 c. Require an increase in the employer's security deposit
 1969 in an amount determined by the association to be necessary to
 1970 ensure payment of compensation claims. The department ~~of~~
 1971 ~~Insurance~~ shall act on such recommendations as provided in
 1972 paragraph (6)(a). The association has a cause of action against
 1973 an employer, and against any successor of an employer, who fails
 1974 to provide an additional security deposit required by the
 1975 department ~~of Insurance~~. The association shall file an action
 1976 in circuit court to recover a judgment in the amount of the
 1977 requested additional security deposit together with reasonable



1978 attorney's fees. For the purposes of this section, the
 1979 successor of an employer is any person, business entity, or
 1980 group of persons or business entities which holds or acquires
 1981 legal or beneficial title to the majority of the assets or the
 1982 majority of the shares of the employer.

1983 8. Charge fees to any member of the association to cover
 1984 the actual costs of examining the financial and safety
 1985 conditions of that member.

1986 9. Charge an applicant for membership in the association a
 1987 fee sufficient to cover the actual costs of examining the
 1988 financial condition of the applicant.

1989 10. Implement any procedures necessary to ensure
 1990 compliance with regulatory actions taken by the department of
 1991 ~~Insurance~~.

1992 (c)1. To the extent necessary to secure funds for the
 1993 payment of covered claims and also to pay the reasonable costs
 1994 to administer them, the association, subject to approval by the
 1995 department of ~~Insurance~~, shall levy assessments based on the
 1996 annual written premium each employer would have paid had the
 1997 employer not been self-insured. Every assessment shall be made
 1998 as a uniform percentage of the figure applicable to all
 1999 individual self-insurers, provided that the assessment levied
 2000 against any self-insurer in any one year shall not exceed 1
 2001 percent of the annual written premium during the calendar year
 2002 preceding the date of the assessment. Assessments shall be
 2003 remitted to and administered by the board of directors in the
 2004 manner specified by the approved plan. Each employer so
 2005 assessed shall have at least 30 days' written notice as to the



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2006 date the assessment is due and payable. The association shall
2007 levy assessments against any newly admitted member of the
2008 association so that the basis of contribution of any newly
2009 admitted member is the same as previously admitted members,
2010 provision for which shall be contained in the plan of operation.

2011 2. If, in any one year, funds available from such
2012 assessments, together with funds previously raised, are not
2013 sufficient to make all the payments or reimbursements then
2014 owing, the funds available shall be prorated, and the unpaid
2015 portion shall be paid as soon thereafter as sufficient
2016 additional funds become available.

2017 3. Funds may be allocated or paid from the Workers'
2018 Compensation Administration Trust Fund to contract with the
2019 association to perform services required by law. However, no
2020 state funds of any kind shall be allocated or paid to the
2021 association or any of its accounts for payment of covered claims
2022 or related expenses except those state funds accruing to the
2023 association by and through the assignment of rights of an
2024 insolvent employer. The department ~~of Insurance~~ may not levy any
2025 assessment on the association.

2026 (4) INSOLVENCY FUND.--Upon the adoption of a plan of
2027 operation, there shall be created an Insolvency Fund to be
2028 managed by the association.

2029 (a) The Insolvency Fund is created for purposes of meeting
2030 the obligations of insolvent members incurred while members of
2031 the association and after the exhaustion of any security
2032 deposit, as required under this chapter. However, if such
2033 security deposit or reinsurance policy is payable to the



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2034 association, the association shall commence to provide benefits
 2035 out of the Insolvency Fund and be reimbursed from the security
 2036 deposit or reinsurance policy. The method of operation of the
 2037 Insolvency Fund shall be defined in the plan of operation as
 2038 provided in subsection (5).

2039 (b) The department ~~of Insurance~~ shall have the authority
 2040 to audit the financial soundness of the Insolvency Fund
 2041 annually.

2042 (c) The department ~~of Insurance~~ may offer certain
 2043 amendments to the plan of operation to the board of directors of
 2044 the association for purposes of assuring the ongoing financial
 2045 soundness of the Insolvency Fund and its ability to meet the
 2046 obligations of this section.

2047 (5) PLAN OF OPERATION.--The association shall operate
 2048 pursuant to a plan of operation approved by the board of
 2049 directors. The plan of operation in effect on January 1, 2002,
 2050 and approved by the Department of Labor and Employment Security
 2051 shall remain in effect. However, any amendments to the plan
 2052 shall not become effective until approved by the Department of
 2053 Financial Services Insurance.

2054 (a) The purpose of the plan of operation shall be to
 2055 provide the association and the board of directors with the
 2056 authority and responsibility to establish the necessary programs
 2057 and to take the necessary actions to protect against the
 2058 insolvency of a member of the association. In addition, the
 2059 plan shall provide that the members of the association shall be
 2060 responsible for maintaining an adequate Insolvency Fund to meet
 2061 the obligations of insolvent members provided for under this act



2062 and shall authorize the board of directors to contract and
 2063 employ those persons with the necessary expertise to carry out
 2064 this stated purpose. By January 1, 2003, the board of directors
 2065 shall submit to the department ~~of Insurance~~ a proposed plan of
 2066 operation for the administration of the association. The
 2067 department ~~of Insurance~~ shall approve the plan by order,
 2068 consistent with this section. The department ~~of Insurance~~ shall
 2069 approve any amendments to the plan, consistent with this
 2070 section, which are determined appropriate to carry out the
 2071 duties and responsibilities of the association.

2072 (b) All member employers shall comply with the plan of
 2073 operation.

2074 (c) The plan of operation shall:

2075 1. Establish the procedures whereby all the powers and
 2076 duties of the association under subsection (3) will be
 2077 performed.

2078 2. Establish procedures for handling assets of the
 2079 association.

2080 3. Establish the amount and method of reimbursing members
 2081 of the board of directors under subsection (2).

2082 4. Establish procedures by which claims may be filed with
 2083 the association and establish acceptable forms of proof of
 2084 covered claims. Notice of claims to the receiver or liquidator
 2085 of the insolvent employer shall be deemed notice to the
 2086 association or its agent, and a list of such claims shall be
 2087 submitted periodically to the association or similar
 2088 organization in another state by the receiver or liquidator.



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2089 5. Establish regular places and times for meetings of the
2090 board of directors.

2091 6. Establish procedures for records to be kept of all
2092 financial transactions of the association and its agents and the
2093 board of directors.

2094 7. Provide that any member employer aggrieved by any final
2095 action or decision of the association may appeal to the
2096 department ~~of Insurance~~ within 30 days after the action or
2097 decision.

2098 8. Establish the procedures whereby recommendations of
2099 candidates for the board of directors shall be submitted to the
2100 department ~~of Insurance~~.

2101 9. Contain additional provisions necessary or proper for
2102 the execution of the powers and duties of the association.

2103 (d) The plan of operation may provide that any or all of
2104 the powers and duties of the association, except those specified
2105 under subparagraphs (c)1. and 2., be delegated to a corporation,
2106 association, or other organization which performs or will
2107 perform functions similar to those of this association or its
2108 equivalent in two or more states. Such a corporation,
2109 association, or organization shall be reimbursed as a servicing
2110 facility would be reimbursed and shall be paid for its
2111 performance of any other functions of the association. A
2112 delegation of powers or duties under this subsection shall take
2113 effect only with the approval of both the board of directors and
2114 the department ~~of Insurance~~ and may be made only to a
2115 corporation, association, or organization which extends



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2116 protection which is not substantially less favorable and
2117 effective than the protection provided by this section.

2118 (6) POWERS AND DUTIES OF DEPARTMENT ~~OF INSURANCE~~.--The
2119 department ~~of Insurance~~ shall:

2120 (a) Review recommendations of the association concerning
2121 whether current or former self-insured employers or members of
2122 the association have the financial strength necessary to ensure
2123 the timely payment of all current and estimated future claims.
2124 If the association determines an employer does not have the
2125 financial strength necessary to ensure the timely payment of all
2126 current and future claims and recommends action pursuant to
2127 paragraph (3)(b), the department shall take such action as
2128 necessary to order the employer to comply with the
2129 recommendation, unless the department finds by clear and
2130 convincing evidence that the recommendation is erroneous.

2131 (b) Contract with the association for services, which may
2132 include, but are not limited to:

- 2133 1. Processing applications for self-insurance.
- 2134 2. Collecting and reviewing financial statements and loss
2135 reserve information from individual self-insurers.
- 2136 3. Collecting and maintaining files for original security
2137 deposit documents and reinsurance policies from individual self-
2138 insurers and, if necessary, perfecting security interests in
2139 security deposits.
- 2140 4. Processing compliance documentation for individual
2141 self-insurers and providing copies of such documentation to the
2142 department.



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2143 5. Collecting all data necessary to calculate annual
2144 premium for all individual self-insurers, including individual
2145 self-insurers that are public utilities or governmental
2146 entities, and providing such calculated annual premium to the
2147 department ~~division~~ for assessment purposes.

2148 6. Inspecting and auditing annually, if necessary, the
2149 payroll and other records of each individual self-insurer,
2150 including individual self-insurers that are public utilities or
2151 governmental entities, in order to determine the wages paid by
2152 each individual self-insurer, the premium such individual self-
2153 insurer would have to pay if insured, and all payments of
2154 compensation made by such individual self-insurer during each
2155 prior period with the results of such audit provided to the
2156 department ~~division~~. For purposes of this section, the payroll
2157 records of each individual self-insurer shall be open to
2158 inspection and audit by the association and the department, or
2159 their authorized representatives, during regular business hours.

2160 7. Processing applications and making recommendations with
2161 respect to the qualification of a business to be approved to
2162 provide or continue to provide services to individual self-
2163 insurers in the areas of underwriting, claims adjusting, loss
2164 control, and safety engineering.

2165 8. Providing legal representation to implement the
2166 administration and audit of individual self-insurers and making
2167 recommendations regarding prosecution of any administrative or
2168 legal proceedings necessitated by the regulation of the
2169 individual self-insurers by the department.



2170 (c) Contract with an attorney or attorneys recommended by
 2171 the association for representation of the department in any
 2172 administrative or legal proceedings necessitated by the
 2173 recommended regulation of the individual self-insurers.

2174 (d) Direct the association to require from each individual
 2175 self-insurer, at such time and in accordance with such
 2176 regulations as the department prescribes, reports relating to
 2177 wages paid, the amount of premiums such individual self-insurer
 2178 would have to pay if insured, and all payments of compensation
 2179 made by such individual self-insurer during each prior period
 2180 and to determine the amounts paid by each individual self-
 2181 insurer and the amounts paid by all individual self-insurers
 2182 during such period. For purposes of this section, the payroll
 2183 records of each individual self-insurer shall be open to annual
 2184 inspection and audit by the association and the department, or
 2185 their authorized representative, during regular business hours,
 2186 and if any audit of such records of an individual self-insurer
 2187 discloses a deficiency in the amount reported to the association
 2188 or in the amounts paid to the department ~~division~~ by an
 2189 individual self-insurer for its assessment for the Workers'
 2190 Compensation Administration Trust Fund, the department or the
 2191 association may assess the cost of such audit against the
 2192 individual self-insurer.

2193 (e) Require that the association notify the member
 2194 employers and any other interested parties of the determination
 2195 of insolvency and of their rights under this section. Such
 2196 notification shall be by mail at the last known address thereof
 2197 when available; but, if sufficient information for notification



2198 by mail is not available, notice by publication in a newspaper
2199 of general circulation shall be sufficient.

2200 (f) Suspend or revoke the authority of any member employer
2201 failing to pay an assessment when due or failing to comply with
2202 the plan of operation to self-insure in this state. As an
2203 alternative, the department may levy a fine on any member
2204 employer failing to pay an assessment when due. Such fine shall
2205 not exceed 5 percent of the unpaid assessment per month, except
2206 that no fine shall be less than \$100 per month.

2207 (g) Revoke the designation of any servicing facility if
2208 the department finds that claims are being handled
2209 unsatisfactorily.

2210 (7) EFFECT OF PAID CLAIMS.--

2211 (a) Any person who recovers from the association under
2212 this section shall be deemed to have assigned his or her rights
2213 to the association to the extent of such recovery. Every
2214 claimant seeking the protection of this section shall cooperate
2215 with the association to the same extent as such person would
2216 have been required to cooperate with the insolvent member. The
2217 association shall have no cause of action against the employee
2218 of the insolvent member for any sums the association has paid
2219 out, except such causes of action as the insolvent member would
2220 have had if such sums had been paid by the insolvent member. In
2221 the case of an insolvent member operating on a plan with
2222 assessment liability, payments of claims by the association
2223 shall not operate to reduce the liability of the insolvent
2224 member to the receiver, liquidator, or statutory successor for
2225 unpaid assessments.



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2226 (b) The receiver, liquidator, or statutory successor of an
 2227 insolvent member shall be bound by settlements of covered claims
 2228 by the association or a similar organization in another state.
 2229 The court having jurisdiction shall grant such claims priority
 2230 against the assets of the insolvent member equal to that to
 2231 which the claimant would have been entitled in the absence of
 2232 this section. The expense of the association or similar
 2233 organization in handling claims shall be accorded the same
 2234 priority as the expenses of the liquidator.

2235 (c) The association shall file periodically with the
 2236 receiver or liquidator of the insolvent member statements of the
 2237 covered claims paid by the association and estimates of
 2238 anticipated claims on the association, which shall preserve the
 2239 rights of the association against the assets of the insolvent
 2240 member.

2241 (8) NOTIFICATION OF INSOLVENCIES.--To aid in the detection
 2242 and prevention of employer insolvencies: Upon determination by
 2243 majority vote that any member employer may be insolvent or in a
 2244 financial condition hazardous to the employees thereof or to the
 2245 public, it shall be the duty of the board of directors to notify
 2246 the department ~~of Insurance~~ of any information indicating such
 2247 condition.

2248 (9) EXAMINATION OF THE ASSOCIATION.--The association shall
 2249 be subject to examination and regulation by the department ~~of~~
 2250 Insurance. No later than March 30 of each year, the board of
 2251 directors shall submit an audited financial statement for the
 2252 preceding calendar year in a form approved by the department.



2253 (10) IMMUNITY.--There shall be no liability on the part
 2254 of, and no cause of action of any nature shall arise against,
 2255 any member employer, the association or its agents or employees,
 2256 the board of directors, or the department of ~~Insurance~~ or its
 2257 representatives for any action taken by them in the performance
 2258 of their powers and duties under this section.

2259 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
 2260 JUDGMENTS.--All proceedings in which an insolvent employer is a
 2261 party, or is obligated to defend a party, in any court or before
 2262 any quasi-judicial body or administrative board in this state
 2263 shall be stayed for up to 6 months, or for such additional
 2264 period from the date the employer becomes an insolvent member,
 2265 as is deemed necessary by a court of competent jurisdiction to
 2266 permit proper defense by the association of all pending causes
 2267 of action as to any covered claims arising from a judgment under
 2268 any decision, verdict, or finding based on the default of the
 2269 insolvent member. The association, either on its own behalf or
 2270 on behalf of the insolvent member, may apply to have such
 2271 judgment, order, decision, verdict, or finding set aside by the
 2272 same court or administrator that made such judgment, order,
 2273 decision, verdict, or finding and shall be permitted to defend
 2274 against such claim on the merits. If requested by the
 2275 association, the stay of proceedings may be shortened or waived.

2276 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding any
 2277 other provision of this chapter, a covered claim, as defined
 2278 herein, with respect to which settlement is not effected and
 2279 pursuant to which suit is not instituted against the insured of
 2280 an insolvent member or the association within 1 year after the



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2281 deadline for filing claims with the receiver of the insolvent
2282 member, or any extension of the deadline, shall thenceforth be
2283 barred as a claim against the association.

2284 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired by a
2285 member by refund, dividend, or otherwise from the association
2286 shall be payable within 30 days of receipt to the Department of
2287 Revenue for deposit with the Chief Financial Officer ~~Treasurer~~
2288 to the credit of the General Revenue Fund. All provisions of
2289 chapter 220 relating to penalties and interest on delinquent
2290 corporate income tax payments apply to payments due under this
2291 subsection.

2292 Section 17. Subsections (2), (3), and (4) of section
2293 440.386, Florida Statutes, are amended to read:

2294 440.386 Individual self-insurers' insolvency;
2295 conservation; liquidation.--

2296 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
2297 department ~~of Insurance~~ or the Florida Self-Insurers Guaranty
2298 Association, Incorporated, may commence a delinquency proceeding
2299 by application to the court for an order directing the
2300 individual self-insurer to show cause why the department or
2301 association should not have the relief sought. On the return of
2302 such order to show cause, and after a full hearing, the court
2303 shall either deny the application or grant the application,
2304 together with such other relief as the nature of the case and
2305 the interests of the claimants, creditors, stockholders,
2306 members, subscribers, or public may require. The department and
2307 the association shall give reasonable written notice to each



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2308 | other of all hearings which pertain to an adjudication of
2309 | insolvency of a member individual self-insurer.

2310 | (3) GROUNDS FOR LIQUIDATION.--The department ~~of Insurance~~
2311 | or the association may apply to the court for an order
2312 | appointing a receiver and directing the receiver to liquidate
2313 | the business of a domestic individual self-insurer if such
2314 | individual self-insurer is insolvent.

2315 | (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL SELF-
2316 | INSURERS.--

2317 | (a) The department ~~of Insurance~~ or the association may
2318 | apply to the court for an order appointing a receiver or
2319 | ancillary receiver, and directing the receiver to conserve the
2320 | assets within this state, of a foreign individual self-insurer
2321 | if such individual self-insurer is insolvent.

2322 | (b) An order to conserve the assets of an individual self-
2323 | insurer shall require the receiver forthwith to take possession
2324 | of the property of the receiver within the state and to conserve
2325 | it, subject to the further direction of the court.

2326 | Section 18. Subsections (3), (4), and (6) of section
2327 | 440.44, Florida Statutes, are amended to read:

2328 | 440.44 Workers' compensation; staff organization.--

2329 | (3) EXPENDITURES.--The department, the agency, the office,
2330 | the Department of Education, and the director of the Division of
2331 | Administrative Hearings shall make such expenditures, including
2332 | expenditures for personal services and rent at the seat of
2333 | government and elsewhere, for law books; for telephone services
2334 | and WATS lines; for books of reference, periodicals, equipment,
2335 | and supplies; and for printing and binding as may be necessary



2336 in the administration of this chapter. All expenditures in the
 2337 administration of this chapter shall be allowed and paid as
 2338 provided in s. 440.50 upon the presentation of itemized vouchers
 2339 therefor approved by the department, the agency, the office, the
 2340 Department of Education, or the director of the Division of
 2341 Administrative Hearings.

2342 (4) PERSONNEL ADMINISTRATION.--Subject to the other
 2343 provisions of this chapter, the department, the agency, the
 2344 office, the Department of Education, and the Division of
 2345 Administrative Hearings may appoint, and prescribe the duties
 2346 and powers of, bureau chiefs, attorneys, accountants, medical
 2347 advisers, technical assistants, inspectors, claims examiners,
 2348 and such other employees as may be necessary in the performance
 2349 of their duties under this chapter.

2350 (6) SEAL.--The department and the judges of compensation
 2351 claims shall have a seal upon which shall be inscribed the words
 2352 "State of Florida Department of Financial Services ~~Insurance~~--
 2353 Seal" and "Division of Administrative Hearings--Seal,"
 2354 respectively.

2355 Section 19. Subsections (3) and (4) of section 440.52,
 2356 Florida Statutes, are amended to read:

2357 440.52 Registration of insurance carriers; notice of
 2358 cancellation or expiration of policy; suspension or revocation
 2359 of authority.--

2360 (3) If the department finds, after due notice and a
 2361 hearing at which the insurance carrier is entitled to be heard
 2362 in person or by counsel and present evidence, that the insurance
 2363 carrier has repeatedly failed to comply with its obligations



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2364 | under this chapter, the department may request the office to
2365 | suspend or revoke the authorization of such insurance carrier to
2366 | write workers' compensation insurance under this chapter. Such
2367 | suspension or revocation shall not affect the liability of any
2368 | such insurance carrier under policies in force prior to the
2369 | suspension or revocation.

2370 | (4) In addition to the penalties prescribed in subsection
2371 | (3), violation of s. 440.381 by an insurance carrier shall
2372 | result in the imposition of a fine not to exceed \$1,000 per
2373 | audit, if the insurance carrier fails to act on said audits by
2374 | correcting errors in employee classification or accepted
2375 | applications for coverage where it knew employee classifications
2376 | were incorrect. Such fines shall be levied by the office
2377 | ~~Department of Insurance~~ and deposited into the Insurance
2378 | ~~Commissioner's~~ Regulatory Trust Fund.

2379 | Section 20. Section 440.525, Florida Statutes, is amended
2380 | to read:

2381 | 440.525 Examination of carriers.--The department and
2382 | office may examine each carrier as often as is warranted to
2383 | ensure that carriers are fulfilling their obligations under this
2384 | chapter ~~the law~~. The examination may cover any period of the
2385 | carrier's operations since the last previous examination.

2386 | Section 21. Paragraph (k) of subsection (1) of section
2387 | 553.74, Florida Statutes, is amended to read:

2388 | 553.74 Florida Building Commission.--

2389 | (1) The Florida Building Commission is created and shall
2390 | be located within the Department of Community Affairs for
2391 | administrative purposes. Members shall be appointed by the



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2392 Governor subject to confirmation by the Senate. The commission
2393 shall be composed of 23 members, consisting of the following:

2394 (k) One member who represents the Department of Financial
2395 Services Insurance.

2396 Section 22. Effective October 1, 2003, paragraph (k) of
2397 subsection (1) of section 553.74, Florida Statutes, as amended
2398 by chapter 2002-293, Laws of Florida, is amended to read:

2399 553.74 Florida Building Commission.--

2400 (1) The Florida Building Commission is created and shall
2401 be located within the Department of Community Affairs for
2402 administrative purposes. Members shall be appointed by the
2403 Governor subject to confirmation by the Senate. The commission
2404 shall be composed of 23 members, consisting of the following:

2405 (k) One member who represents the Department of Financial
2406 Services Insurance.

2407

2408 Any person serving on the commission under paragraph (c) or
2409 paragraph (h) on October 1, 2003, and who has served less than
2410 two full terms is eligible for reappointment to the commission
2411 regardless of whether he or she meets the new qualification.

2412 Section 23. Section 624.05, Florida Statutes, is amended
2413 to read:

2414 624.05 "Department," "commission," and "office"
2415 defined.--As used in the Insurance Code:

2416 (1) "Department" means the Department of Financial
2417 Services. The term does not mean the Financial Services
2418 Commission or any office of the Financial Services Commission
2419 ~~Insurance of this state, unless the context otherwise requires.~~



2420 (2) "Commission" means the Financial Services Commission.

2421 (3) "Office" means the Office of Insurance Regulation of
 2422 the Financial Services Commission.

2423 Section 24. Subsections (2) and (5) of section 624.155,
 2424 Florida Statutes, are amended to read:

2425 624.155 Civil remedy.--

2426 (2)(a) As a condition precedent to bringing an action
 2427 under this section, the office ~~department~~ and the insurer must
 2428 have been given 60 days' written notice of the violation. If
 2429 the office ~~department~~ returns a notice for lack of specificity,
 2430 the 60-day time period shall not begin until a proper notice is
 2431 filed.

2432 (b) The notice shall be on a form adopted by the
 2433 commission and provided by the office ~~department~~ and shall state
 2434 with specificity the following information, and such other
 2435 information as the commission requires ~~department may require~~:

2436 1. The statutory provision, including the specific
 2437 language of the statute, which the insurer allegedly violated.

2438 2. The facts and circumstances giving rise to the
 2439 violation.

2440 3. The name of any individual involved in the violation.

2441 4. Reference to specific policy language that is relevant
 2442 to the violation, if any. If the person bringing the civil
 2443 action is a third party claimant, she or he shall not be
 2444 required to reference the specific policy language if the
 2445 insurer has not provided a copy of the policy to the third party
 2446 claimant pursuant to written request.



2447 5. A statement that the notice is given in order to
2448 perfect the right to pursue the civil remedy authorized by this
2449 section.

2450 (c) Within 20 days of receipt of the notice, the office
2451 ~~department~~ may return any notice that does not provide the
2452 specific information required by this section, and the office
2453 ~~department~~ shall indicate the specific deficiencies contained in
2454 the notice. A determination by the office ~~department~~ to return a
2455 notice for lack of specificity shall be exempt from the
2456 requirements of chapter 120.

2457 (d) No action shall lie if, within 60 days after filing
2458 notice, the damages are paid or the circumstances giving rise to
2459 the violation are corrected.

2460 (e) The insurer that is the recipient of a notice filed
2461 pursuant to this section shall report to the office ~~department~~
2462 on the disposition of the alleged violation.

2463 (f) The applicable statute of limitations for an action
2464 under this section shall be tolled for a period of 65 days by
2465 the mailing of the notice required by this subsection or the
2466 mailing of a subsequent notice required by this subsection.

2467 (5) This section shall not be construed to authorize a
2468 class action suit against an insurer or a civil action against
2469 the commission, the office, or the department or any of their,
2470 ~~its employees, or the Insurance Commissioner,~~ or to create a
2471 cause of action when a health insurer refuses to pay a claim for
2472 reimbursement on the ground that the charge for a service was
2473 unreasonably high or that the service provided was not medically
2474 necessary.



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2475 Section 25. Section 624.303, Florida Statutes, is amended
2476 to read:

2477 624.303 Seal; certified copies as evidence.--

2478 (1) The department, commission, and office shall each have
2479 an official seal by which its respective proceedings are
2480 authenticated.

2481 (2) All certificates executed by the department or office,
2482 other than licenses of agents, solicitors, or adjusters or
2483 similar licenses or permits, shall bear its respective seal.

2484 (3) Any written instrument purporting to be a copy of any
2485 action, proceeding, or finding of fact by the department,
2486 commission, or office or any record of the department,
2487 commission, or office or copy of any document on file in its
2488 office when authenticated under hand of the respective agency
2489 head or his or her designee ~~commissioner~~ by the seal shall be
2490 accepted by all the courts of this state as prima facie evidence
2491 of its contents.

2492 Section 26. Section 624.305, Florida Statutes, is amended
2493 to read:

2494 624.305 Prohibited interests, rewards.--

2495 (1) No employee of the department, commission, or office,
2496 including the members of the commission, but not including
2497 employees of the Office of Financial Institutions and Securities
2498 Regulation, Insurance Commissioner and Treasurer shall:

2499 (a) Be financially interested, directly or indirectly, in
2500 any insurer or insurance agency authorized to transact insurance
2501 in this state, or in any insurance transaction except as a
2502 policyholder or claimant under a policy; or



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2503 (b) Be given or receive any fee, compensation, loan, gift,
2504 or other thing of value in addition to the compensation and
2505 expense allowance provided by law, for any service rendered or
2506 to be rendered in her or his capacity as a department,
2507 commission, or office employee.

2508 (2) This section shall not be deemed to prohibit an
2509 insurer from making, in the regular course of business, a loan
2510 to any employee of the department, commission, or office, if
2511 such loan is adequately secured by a mortgage upon real estate
2512 or other collateral and qualifies as an eligible investment of
2513 the insurer under part II of chapter 625.

2514 (3) When there is no conflict of interest, the department,
2515 commission, and office may each employ or retain from time to
2516 time an insurance actuary, accountant, or other professional
2517 person who is independently practicing her or his profession
2518 even though such person is similarly employed or retained by
2519 insurers or others.

2520 (4) Any person employed by the department, commission, or
2521 office on January 7, 2003, including a member of the commission,
2522 who was not subject to this section prior to that date, has
2523 until January 1, 2004, to comply with this section.

2524 Section 27. Section 624.316, Florida Statutes, is amended
2525 to read:

2526 624.316 Examination of insurers.--

2527 (1)(a) The office ~~department~~ shall examine the affairs,
2528 transactions, accounts, records, and assets of each authorized
2529 insurer and of the attorney in fact of a reciprocal insurer as
2530 to its transactions affecting the insurer as often as it deems



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2531 | advisable, except as provided in this section. The examination
 2532 | may include examination of the affairs, transactions, accounts,
 2533 | and records relating directly or indirectly to the insurer and
 2534 | of the assets of the insurer's managing general agents and
 2535 | controlling or controlled person, as defined in s. 625.012. The
 2536 | examination shall be pursuant to a written order of the office
 2537 | ~~department~~. Such order shall expire upon receipt by the office
 2538 | ~~department~~ of the written report of the examination.

2539 | (b) As a part of its examination procedure, the office
 2540 | ~~department~~ shall examine each insurer regarding all of the
 2541 | information required by s. 627.915.

2542 | (c) The office ~~department~~ shall examine each insurer
 2543 | according to accounting procedures designed to fulfill the
 2544 | requirements of generally accepted insurance accounting
 2545 | principles and practices and good internal control and in
 2546 | keeping with generally accepted accounting forms, accounts,
 2547 | records, methods, and practices relating to insurers. To
 2548 | facilitate uniformity in examinations, the commission ~~department~~
 2549 | may adopt, by rule, the Market ~~and Financial~~ Conduct Examiners
 2550 | ~~Examination~~ Handbook and the Financial Condition Examiners
 2551 | Handbook of the National Association of Insurance Commissioners,
 2552 | 2002 ~~1990~~, and may adopt subsequent amendments thereto, if the
 2553 | examination methodology remains substantially consistent.

2554 | (2)(a) Except as provided in paragraph (f), the office
 2555 | ~~department~~ may examine each insurer as often as may be warranted
 2556 | for the protection of the policyholders and in the public
 2557 | interest, and shall examine each domestic insurer not less
 2558 | frequently than once every 3 years. The examination shall cover



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2559 | the preceding 3 fiscal years of the insurer and shall be
2560 | commenced within 12 months after the end of the most recent
2561 | fiscal year being covered by the examination. The examination
2562 | may cover any period of the insurer's operations since the last
2563 | previous examination. The examination may include examination of
2564 | events subsequent to the end of the most recent fiscal year and
2565 | the events of any prior period that affect the present financial
2566 | condition of the insurer. In lieu of making its own examination,
2567 | the office ~~department~~ may accept an independent certified public
2568 | accountant's audit report prepared on a statutory basis
2569 | consistent with the Florida Insurance Code on that specific
2570 | company. The office ~~department~~ may not accept the report in lieu
2571 | of the requirement imposed by paragraph (1)(b). When an
2572 | examination is conducted by the office ~~department~~ for the sole
2573 | purpose of examining the 3 preceding fiscal years of the insurer
2574 | within 12 months after the opinion date of an independent
2575 | certified public accountant's audit report prepared on a
2576 | statutory basis on that specific company consistent with the
2577 | Florida Insurance Code, the cost of the examination as charged
2578 | to the insurer pursuant to s. 624.320 shall be reduced by the
2579 | cost to the insurer of the independent certified public
2580 | accountant's audit reports. Requests for the reduction in cost
2581 | of examination must be submitted to the office ~~department~~ in
2582 | writing no later than 90 days after the conclusion of the
2583 | examination and shall include sufficient documentation to
2584 | support the charges incurred for the statutory audit performed
2585 | by the independent certified public accountant.



2586 (b) The office ~~department~~ shall examine each insurer
 2587 applying for an initial certificate of authority to transact
 2588 insurance in this state before granting the initial certificate.

2589 (c) In lieu of making its own examination, the office
 2590 ~~department~~ may accept a full report of the last recent
 2591 examination of a foreign insurer, certified to by the insurance
 2592 supervisory official of another state.

2593 (d) The examination by the office ~~department~~ of an alien
 2594 insurer shall be limited to the alien insurer's insurance
 2595 transactions and affairs in the United States, except as
 2596 otherwise required by the office ~~department~~.

2597 (e) The commission ~~department~~ shall adopt rules providing
 2598 that, upon agreement between the office ~~department~~ and the
 2599 insurer, an examination under this section may be conducted by
 2600 independent certified public accountants, actuaries meeting
 2601 criteria specified by rule, and reinsurance specialists meeting
 2602 criteria specified by rule. The rules shall provide:

2603 1. That the agreement of the insurer is not required if
 2604 the office ~~department~~ reasonably suspects criminal misconduct on
 2605 the part of the insurer.

2606 2. That the office ~~department~~ shall provide the insurer
 2607 with a list of three firms acceptable to the office ~~department~~,
 2608 and that the insurer shall select the firm to conduct the
 2609 examination from the list provided by the office ~~department~~.

2610 3. That the insurer being examined must make payment for
 2611 the examination directly to the firm performing the examination
 2612 in accordance with the rates and terms agreed to by the office



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2613 ~~department~~, the insurer, and the firm performing the
2614 examination.

2615 4. That if the examination is conducted without the
2616 consent of the insurer, the insurer must pay all reasonable
2617 charges of the examining firm if the examination finds
2618 impairment, insolvency, or criminal misconduct on the part of
2619 the insurer.

2620 (f)1.

2621 a. An examination under this section must be conducted at
2622 least once every year with respect to a domestic insurer that
2623 has continuously held a certificate of authority for less than 3
2624 years. The examination must cover the preceding fiscal year or
2625 the period since the last examination of the insurer. The office
2626 ~~department~~ may limit the scope of the examination.

2627 b. The office ~~department~~ may not accept an independent
2628 certified public accountant's audit report in lieu of an
2629 examination required by this subparagraph.

2630 c. An insurer may not be required to pay more than \$25,000
2631 to cover the costs of any one examination under this
2632 subparagraph.

2633 2. An examination under this section must be conducted not
2634 less frequently than once every 5 years with respect to an
2635 insurer that has continuously held a certificate of authority,
2636 without a change in ownership subject to s. 624.4245 or s.
2637 628.461, for more than 15 years. The examination must cover the
2638 preceding 5 fiscal years of the insurer or the period since the
2639 last examination of the insurer. This subparagraph does not



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2640 limit the ability of the office ~~department~~ to conduct more
2641 frequent examinations.

2642 Section 28. Section 624.317, Florida Statutes, is amended
2643 to read:

2644 624.317 Investigation of agents, adjusters,
2645 administrators, service companies, and others.--If it has reason
2646 to believe that any person has violated or is violating any
2647 provision of this code, or upon the written complaint signed by
2648 any interested person indicating that any such violation may
2649 exist:7

2650 (1) The department shall conduct such investigation as it
2651 deems necessary of the accounts, records, documents, and
2652 transactions pertaining to or affecting the insurance affairs of
2653 any:

2654 ~~(1)~~ general agent, surplus line agent, managing general
2655 agent, adjuster, administrator, service company, or other
2656 person.

2657 ~~(2)~~ insurance agent, customer representative, service
2658 representative, or other person subject to its jurisdiction ~~or~~
2659 ~~solicitor~~, subject to the requirements of s. 626.601.

2660 (2) The office shall conduct such investigation as it
2661 deems necessary of the accounts, records, documents, and
2662 transactions pertaining to or affecting the insurance affairs of
2663 any:

2664 (a) Adjuster, administrator, service company, or other
2665 person subject to its jurisdiction.



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2666 (b)~~(3)~~ Person having a contract or power of attorney under
2667 which she or he enjoys in fact the exclusive or dominant right
2668 to manage or control an insurer.

2669 (c)~~(4)~~ Person engaged in or proposing to be engaged in the
2670 promotion or formation of:

2671 1.~~(a)~~ A domestic insurer;

2672 2.~~(b)~~ An insurance holding corporation; or

2673 3.~~(e)~~ A corporation to finance a domestic insurer or in
2674 the production of the domestic insurer's business.

2675 Section 29. Subsections (2), (3), (4), (5), and (7) of
2676 section 624.404, Florida Statutes, are amended to read:

2677 624.404 General eligibility of insurers for certificate of
2678 authority.--To qualify for and hold authority to transact
2679 insurance in this state, an insurer must be otherwise in
2680 compliance with this code and with its charter powers and must
2681 be an incorporated stock insurer, an incorporated mutual
2682 insurer, or a reciprocal insurer, of the same general type as
2683 may be formed as a domestic insurer under this code; except
2684 that:

2685 (2) No foreign or alien insurer or exchange shall be
2686 authorized to transact insurance in this state unless it is
2687 otherwise qualified therefor under this code and has operated
2688 satisfactorily for at least 3 years in its state or country of
2689 domicile; however, the office ~~department~~ may waive the 3-year
2690 requirement if the foreign or alien insurer or exchange:

2691 (a) Has operated successfully and has capital and surplus
2692 of \$5 million;



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2693 (b) Is the wholly owned subsidiary of an insurer which is
2694 an authorized insurer in this state;

2695 (c) Is the successor in interest through merger or
2696 consolidation of an authorized insurer; or

2697 (d) Provides a product or service not readily available to
2698 the consumers of this state.

2699 (3)(a) The office ~~department~~ shall not grant or continue
2700 authority to transact insurance in this state as to any insurer
2701 the management, officers, or directors of which are found by it
2702 to be incompetent or untrustworthy; or so lacking in insurance
2703 company managerial experience as to make the proposed operation
2704 hazardous to the insurance-buying public; or so lacking in
2705 insurance experience, ability, and standing as to jeopardize the
2706 reasonable promise of successful operation; or which it has good
2707 reason to believe are affiliated directly or indirectly through
2708 ownership, control, reinsurance transactions, or other insurance
2709 or business relations, with any person or persons whose business
2710 operations are or have been marked, to the detriment of
2711 policyholders or stockholders or investors or creditors or of
2712 the public, by manipulation of assets, accounts, or reinsurance
2713 or by bad faith.

2714 (b) The office ~~department~~ shall not grant or continue
2715 authority to transact insurance in this state as to any insurer
2716 if any person, including any subscriber, stockholder, or
2717 incorporator, who exercises or has the ability to exercise
2718 effective control of the insurer, or who influences or has the
2719 ability to influence the transaction of the business of the



2720 insurer, does not possess the financial standing and business
2721 experience for the successful operation of the insurer.

2722 (c) The office ~~department~~ may deny, suspend, or revoke the
2723 authority to transact insurance in this state of any insurer if
2724 any person, including any subscriber, stockholder, or
2725 incorporator, who exercises or has the ability to exercise
2726 effective control of the insurer, or who influences or has the
2727 ability to influence the transaction of the business of the
2728 insurer, has been found guilty of, or has pleaded guilty or nolo
2729 contendere to, any felony or crime punishable by imprisonment of
2730 1 year or more under the law of the United States or any state
2731 thereof or under the law of any other country which involves
2732 moral turpitude, without regard to whether a judgment of
2733 conviction has been entered by the court having jurisdiction in
2734 such case. However, in the case of an insurer operating under a
2735 subsisting certificate of authority, the insurer shall remove
2736 any such person immediately upon discovery of the conditions set
2737 forth in this paragraph when applicable to such person or upon
2738 the order of the office ~~department~~, and the failure to so act by
2739 said insurer shall be grounds for revocation or suspension of
2740 the insurer's certificate of authority.

2741 (d) The office ~~department~~ may deny, suspend, or revoke the
2742 authority of an insurer to transact insurance in this state if
2743 any person, including any subscriber, stockholder, or
2744 incorporator, who exercises or has the ability to exercise
2745 effective control of the insurer, or who influences or has the
2746 ability to influence the transaction of the business of the
2747 insurer, which person the office ~~department~~ has good reason to



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2748 believe is now or was in the past affiliated directly or
2749 indirectly, through ownership interest of 10 percent or more,
2750 control, or reinsurance transactions, with any business,
2751 corporation, or other entity that has been found guilty of or
2752 has pleaded guilty or nolo contendere to any felony or crime
2753 punishable by imprisonment for 1 year or more under the laws of
2754 the United States, any state, or any other country, regardless
2755 of adjudication. However, in the case of an insurer operating
2756 under a subsisting certificate of authority, the insurer shall
2757 immediately remove such person or immediately notify the office
2758 ~~department~~ of such person upon discovery of the conditions set
2759 forth in this paragraph, either when applicable to such person
2760 or upon order of the office ~~department~~; the failure to remove
2761 such person, provide such notice, or comply with such order
2762 constitutes grounds for suspension or revocation of the
2763 insurer's certificate of authority.

2764 (4)(a) No authorized insurer shall act as a fronting
2765 company for any unauthorized insurer which is not an approved
2766 reinsurer.

2767 (b) A "fronting company" is an authorized insurer which by
2768 reinsurance or otherwise generally transfers more than 50
2769 percent to one unauthorized insurer which does not meet the
2770 requirements of s. 624.610(3)(a), (b), or (c), or more than 75
2771 percent to two or more unauthorized insurers which do not meet
2772 the requirements of s. 624.610(3)(a), (b), or (c), of the entire
2773 risk of loss on all of the insurance written by it in this
2774 state, or on one or more lines of insurance, on all of the
2775 business produced through one or more agents or agencies, or on



2776 all of the business from a designated geographical territory,
2777 without obtaining the prior approval of the office ~~department~~.

2778 (c) The office ~~department~~ may, in its discretion, approve
2779 a transfer of risk in excess of the limits in paragraph (b) upon
2780 presentation of evidence, satisfactory to the office ~~department~~,
2781 that the transfer would be in the best interests of the
2782 financial condition of the insurer and in the best interests of
2783 the policyholders.

2784 (5) No insurer shall be authorized to transact insurance
2785 in this state which, during the 3 years immediately preceding
2786 its application for a certificate of authority, has violated any
2787 of the insurance laws of this state and after being informed of
2788 such violation has failed to correct the same; except that, if
2789 all other requirements are met, the office ~~department~~ may
2790 nevertheless issue a certificate of authority to such an insurer
2791 upon the filing by the insurer of a sworn statement of all such
2792 insurance so written in violation of law, and upon payment to
2793 the office ~~department~~ of a sum of money as additional filing fee
2794 equivalent to all premium taxes and other state taxes and fees
2795 as would have been payable by the insurer if such insurance had
2796 been lawfully written by an authorized insurer under the laws of
2797 this state. This fee, when collected, shall be deposited to the
2798 credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

2799 (7) For the purpose of satisfying the requirements of ss.
2800 624.407 and 624.408, the investment portfolio of an insurer
2801 applying for an initial certificate of authority to do business
2802 in this state shall value its bonds and stocks in accordance
2803 with the provisions of the latest edition of the publication



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2804 "Purposes and Procedures Manual of the NAIC Securities Valuation
 2805 Office" ~~"Valuations of Securities"~~ by the National Association
 2806 of Insurance Commissioners, July 1, 2002 ~~1990~~, and subsequent
 2807 amendments thereto, if the valuation methodology remains
 2808 substantially unchanged.

2809 Section 30. Subsection (1) of section 624.4072, Florida
 2810 Statutes, is amended to read:

2811 624.4072 Minority-owned property and casualty insurers;
 2812 limited exemption for taxation and assessments.--

2813 (1) A minority business that is at least 51 percent owned
 2814 by minority persons, as defined in s. 288.703(3), initially
 2815 issued a certificate of authority in this state as an authorized
 2816 insurer after May 1, 1998, and before January 1, 2002, to write
 2817 property and casualty insurance shall be exempt, for a period
 2818 not to exceed 10 years from the date of receiving its
 2819 certificate of authority, from the following taxes and
 2820 assessments:

2821 (a) Taxes imposed under ss. 175.101, 185.08, and 624.509;

2822 (b) Assessments by the Citizens Property Insurance
 2823 Corporation ~~Florida Residential Property and Casualty Joint~~
 2824 ~~Underwriting Association or by the Florida Windstorm~~
 2825 ~~Underwriting Association, as provided under s. 627.351, except~~
 2826 ~~for emergency assessments collected from policyholders pursuant~~
 2827 ~~to s. 627.351(6)(b)3.d. s. 627.351(2)(b)2.d.(III) and(6)(b)3.d.~~
 2828 Any such insurer shall be a member insurer of the Citizens
 2829 Property Insurance Corporation ~~Florida Windstorm Underwriting~~
 2830 ~~Association and the Florida Residential Property and Casualty~~
 2831 ~~Joint Underwriting Association.~~ The premiums of such insurer



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2832 shall be included in determining, for the Citizens Property
2833 Insurance Corporation Florida Windstorm Underwriting
2834 Association, ~~the aggregate statewide direct written premium for~~
2835 ~~property insurance and in determining, for the Florida~~
2836 ~~Residential Property and Casualty Joint Underwriting~~
2837 ~~Association~~, the aggregate statewide direct written premium for
2838 the subject lines of business for all member insurers.

2839 Section 31. Subsection (1) of section 624.413, Florida
2840 Statutes, is amended to read:

2841 624.413 Application for certificate of authority.--

2842 (1) To apply for a certificate of authority, an insurer
2843 shall file its application therefor with the office department,
2844 upon a form adopted by the commission and furnished by the
2845 office ~~it~~, showing its name; location of its home office and, if
2846 an alien insurer, its principal office in the United States;
2847 kinds of insurance to be transacted; state or country of
2848 domicile; and such additional information as the commission
2849 ~~department may~~ reasonably requires ~~require~~, together with the
2850 following documents:

2851 (a) One copy of its corporate charter, articles of
2852 incorporation, existing and proposed nonfacultative reinsurance
2853 contracts, declaration of trust, or other charter documents,
2854 with all amendments thereto, certified by the public official
2855 with whom the originals are on file in the state or country of
2856 domicile.

2857 (b) If a mutual insurer, a copy of its bylaws, as amended,
2858 certified by its secretary or other officer having custody
2859 thereof.



2860 (c) If a foreign or alien reciprocal insurer, a copy of
 2861 the power of attorney of its attorney in fact and of its
 2862 subscribers' agreement, if any, certified by the attorney in
 2863 fact; and, if a domestic reciprocal insurer, the declaration
 2864 provided for in s. 629.081.

2865 (d) A copy of its financial statement as of December 31
 2866 next preceding, containing information generally included in
 2867 insurer financial statements prepared in accordance with
 2868 generally accepted insurance accounting principles and practices
 2869 and in a form generally utilized by insurers for financial
 2870 statements, sworn to by at least two executive officers of the
 2871 insurer, or certified by the public official having supervision
 2872 of insurance in the insurer's state of domicile or of entry into
 2873 the United States. To facilitate uniformity in financial
 2874 statements, the commission ~~department~~ may by rule adopt the form
 2875 for financial statements approved by the National Association of
 2876 Insurance Commissioners in 2002 ~~1990~~, and may adopt subsequent
 2877 amendments thereto if the form remains substantially consistent.

2878 (e) Supplemental quarterly financial statements for each
 2879 calendar quarter since the beginning of the year of its
 2880 application for the certificate of authority, sworn to by at
 2881 least two of its executive officers. To facilitate uniformity in
 2882 financial statements, the commission ~~department~~ may by rule
 2883 adopt the form for quarterly financial statements approved by
 2884 the National Association of Insurance Commissioners in 2002
 2885 ~~1990~~, and may adopt subsequent amendments thereto if the form
 2886 remains substantially consistent.



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2887 (f) If a foreign or alien insurer, a copy of the report of
2888 the most recent examination of the insurer certified by the
2889 public official having supervision of insurance in its state of
2890 domicile or of entry into the United States. The end of the
2891 most recent year covered by the examination must be within the
2892 3-year period preceding the date of application. In lieu of the
2893 certified examination report, the office ~~department~~ may accept
2894 an audited certified public accountant's report prepared on a
2895 basis consistent with the insurance laws of the insurer's state
2896 of domicile, certified by the public official having supervision
2897 of insurance in its state of domicile or of entry into the
2898 United States.

2899 (g) If a foreign or alien insurer, a certificate of
2900 compliance from the public official having supervision of
2901 insurance in its state or country of domicile showing that it is
2902 duly organized and authorized to transact insurance therein and
2903 the kinds of insurance it is so authorized to transact.

2904 (h) If a foreign or alien insurer, a certificate of the
2905 public official having custody of any deposit maintained by the
2906 insurer in another state in lieu of a deposit or part thereof
2907 required in this state under s. 624.411 or s. 624.412, showing
2908 the amount of such deposit and the assets or securities of which
2909 comprised.

2910 (i) If a life insurer, a certificate of valuation.

2911 (j) If an alien insurer, a copy of the appointment and
2912 authority of its United States manager, certified by its officer
2913 having custody of its records.



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2914 Section 32. Section 624.424, Florida Statutes, is amended
 2915 to read:
 2916 624.424 Annual statement and other information.--
 2917 (1)(a) Each authorized insurer shall file with the office
 2918 ~~department~~ full and true statements of its financial condition,
 2919 transactions, and affairs. An annual statement covering the
 2920 preceding calendar year shall be filed on or before March 1, and
 2921 quarterly statements covering the periods ending on March 31,
 2922 June 30, and September 30 shall be filed within 45 days after
 2923 each such date. The office ~~department~~ may, for good cause, grant
 2924 an extension of time for filing of an annual or quarterly
 2925 statement. The statements shall contain information generally
 2926 included in insurers' financial statements prepared in
 2927 accordance with generally accepted insurance accounting
 2928 principles and practices and in a form generally utilized by
 2929 insurers for financial statements, sworn to by at least two
 2930 executive officers of the insurer or, if a reciprocal insurer,
 2931 by the oath of the attorney in fact or its like officer if a
 2932 corporation. To facilitate uniformity in financial statements
 2933 and to facilitate office ~~department~~ analysis, the commission
 2934 ~~department~~ may by rule adopt the form for financial statements
 2935 approved by the National Association of Insurance Commissioners
 2936 in 2002 ~~1990~~, and may adopt subsequent amendments thereto if the
 2937 methodology remains substantially consistent, and may by rule
 2938 require each insurer to submit to the office ~~department~~ or such
 2939 organization as the office ~~department~~ may designate all or part
 2940 of the information contained in the financial statement in a



2941 computer-readable form compatible with the electronic data
2942 processing system specified by the office ~~department~~.

2943 (b) Each insurer's annual statement must contain a
2944 statement of opinion on loss and loss adjustment expense
2945 reserves made by a member of the American Academy of Actuaries
2946 or by a qualified loss reserve specialist, under criteria
2947 established by rule of the commission ~~department~~. In adopting
2948 the rule, the commission ~~department~~ must consider any criteria
2949 established by the National Association of Insurance
2950 Commissioners. The office ~~department~~ may require semiannual
2951 updates of the annual statement of opinion as to a particular
2952 insurer if the office ~~department~~ has reasonable cause to believe
2953 that such reserves are understated to the extent of materially
2954 misstating the financial position of the insurer. Workpapers in
2955 support of the statement of opinion must be provided to the
2956 office ~~department~~ upon request. This paragraph does not apply to
2957 life insurance or title insurance.

2958 (c) The commission ~~department~~ may by rule require reports
2959 or filings required under the insurance code to be submitted on
2960 a computer-diskette compatible with the electronic data
2961 processing equipment specified by the commission ~~department~~.

2962 (2) The statement of an alien insurer shall be verified by
2963 the insurer's United States manager or other officer duly
2964 authorized. It shall be a separate statement, to be known as
2965 its general statement, of its transactions, assets, and affairs
2966 within the United States unless the office ~~department~~ requires
2967 otherwise. If the office ~~department~~ requires a statement as to
2968 the insurer's affairs elsewhere, the insurer shall file such



2969 | statement with the office ~~department~~ as soon as reasonably
 2970 | possible.

2971 | (3) Each insurer having a deposit as required under s.
 2972 | 624.411 shall file with the office ~~department~~ annually with its
 2973 | annual statement a certificate to the effect that the assets so
 2974 | deposited have a market value equal to or in excess of the
 2975 | amount of deposit so required.

2976 | (4) At the time of filing, the insurer shall pay the fee
 2977 | for filing its annual statement in the amount specified in s.
 2978 | 624.501.

2979 | (5) The office ~~department~~ may refuse to continue, or may
 2980 | suspend or revoke, the certificate of authority of an insurer
 2981 | failing to file its annual or quarterly statements and
 2982 | accompanying certificates when due.

2983 | (6) In addition to information called for and furnished in
 2984 | connection with its annual or quarterly statements, an insurer
 2985 | shall furnish to the office ~~department~~ as soon as reasonably
 2986 | possible such information as to its transactions or affairs as
 2987 | the office ~~department~~ may from time to time request in writing.
 2988 | All such information furnished pursuant to the office's
 2989 | ~~department's~~ request shall be verified by the oath of two
 2990 | executive officers of the insurer or, if a reciprocal insurer,
 2991 | by the oath of the attorney in fact or its like officers if a
 2992 | corporation.

2993 | (7) The signatures of all such persons when written on
 2994 | annual or quarterly statements or other reports required by this
 2995 | section shall be presumed to have been so written by authority
 2996 | of the person whose signature is affixed thereon. The affixing



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2997 of any signature by anyone other than the purported signer
2998 constitutes a felony of the second degree, punishable as
2999 provided in s. 775.082, s. 775.083, or s. 775.084.

3000 (8)(a) All authorized insurers must have conducted an
3001 annual audit by an independent certified public accountant and
3002 must file an audited financial report with the office ~~department~~
3003 on or before June 1 for the preceding year ending December 31.
3004 The office ~~department~~ may require an insurer to file an audited
3005 financial report earlier than June 1 upon 90 days' advance
3006 notice to the insurer. The office ~~department~~ may immediately
3007 suspend an insurer's certificate of authority by order if an
3008 insurer's failure to file required reports, financial
3009 statements, or information required by this subsection or rule
3010 adopted pursuant thereto creates a significant uncertainty as to
3011 the insurer's continuing eligibility for a certificate of
3012 authority.

3013 (b) Any authorized insurer otherwise subject to this
3014 section having direct premiums written in this state of less
3015 than \$1 million in any calendar year and fewer ~~less~~ than 1,000
3016 policyholders or certificateholders of directly written policies
3017 nationwide at the end of such calendar year is exempt from this
3018 section for such year unless the office ~~department~~ makes a
3019 specific finding that compliance is necessary in order for the
3020 office ~~department~~ to carry out its statutory responsibilities.
3021 However, any insurer having assumed premiums pursuant to
3022 contracts or treaties or reinsurance of \$1 million or more is
3023 not exempt. Any insurer subject to an exemption must submit by
3024 March 1 following the year to which the exemption applies an



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3025 affidavit sworn to by a responsible officer of the insurer
3026 specifying the amount of direct premiums written in this state
3027 and number of policyholders or certificateholders.

3028 (c) The board of directors of an insurer shall hire the
3029 certified public accountant that prepares the audit required by
3030 this subsection and the board shall establish an audit committee
3031 of three or more directors of the insurer or an affiliated
3032 company. The audit committee shall be responsible for discussing
3033 audit findings and interacting with the certified public
3034 accountant with regard to her or his findings. The audit
3035 committee shall be comprised solely of members who are free from
3036 any relationship that, in the opinion of its board of directors,
3037 would interfere with the exercise of independent judgment as a
3038 committee member. The audit committee shall report to the board
3039 any findings of adverse financial conditions or significant
3040 deficiencies in internal controls that have been noted by the
3041 accountant. The insurer may request the office ~~department~~ to
3042 waive this requirement of the audit committee membership based
3043 upon unusual hardship to the insurer.

3044 (d) An insurer may not use the same accountant or partner
3045 of an accounting firm responsible for preparing the report
3046 required by this subsection for more than 7 consecutive years.
3047 Following this period, the insurer may not use such accountant
3048 or partner for a period of 2 years, but may use another
3049 accountant or partner of the same firm. An insurer may request
3050 the office ~~department~~ to waive this prohibition based upon an
3051 unusual hardship to the insurer and a determination that the
3052 accountant is exercising independent judgment that is not unduly



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3053 influenced by the insurer considering such factors as the number
3054 of partners, expertise of the partners or the number of
3055 insurance clients of the accounting firm; the premium volume of
3056 the insurer; and the number of jurisdictions in which the
3057 insurer transacts business.

3058 (e) The commission ~~department~~ shall adopt rules to
3059 implement this subsection, which rules must be in substantial
3060 conformity with the 1998 ~~1990~~ Model Rule Requiring Annual
3061 Audited Financial Reports adopted by the National Association of
3062 Insurance Commissioners, except where inconsistent with the
3063 requirements of this subsection. Any exception to, waiver of, or
3064 interpretation of accounting requirements of the commission
3065 ~~department~~ must be in writing and signed by an authorized
3066 representative of the office ~~department~~. No insurer may raise as
3067 a defense in any action, any exception to, waiver of, or
3068 interpretation of accounting requirements, unless previously
3069 issued in writing by an authorized representative of the office
3070 ~~department~~.

3071 (9)(a) Each authorized insurer shall, pursuant to s.
3072 409.910(20), provide records and information to the Agency for
3073 Health Care Administration to identify potential insurance
3074 coverage for claims filed with that agency and its fiscal agents
3075 for payment of medical services under the Medicaid program.

3076 (b) Each authorized insurer shall, pursuant to s.
3077 409.2561(5)(c), notify the Medicaid agency of a cancellation or
3078 discontinuance of a policy within 30 days if the insurer
3079 received notification from the Medicaid agency to do so.



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3080 (c) Any information provided by an insurer under this
 3081 subsection does not violate any right of confidentiality or
 3082 contract that the insurer may have with covered persons. The
 3083 insurer is immune from any liability that it may otherwise incur
 3084 through its release of such information to the Agency for Health
 3085 Care Administration.

3086 (10) Each insurer or insurer group doing business in this
 3087 state shall file on a quarterly basis in conjunction with
 3088 financial reports required by paragraph (1)(a) a supplemental
 3089 report on an individual and group basis on a form prescribed by
 3090 the commission ~~department~~ with information on personal lines and
 3091 commercial lines residential property insurance policies in this
 3092 state. The supplemental report shall include separate
 3093 information for personal lines property policies and for
 3094 commercial lines property policies and totals for each item
 3095 specified, including premiums written for each of the property
 3096 lines of business as described in ss. 215.555(2)(c) and
 3097 627.351(6)(a). The report shall include the following
 3098 information for each county on a monthly basis:

- 3099 (a) Total number of policies in force at the end of each
 3100 month.
- 3101 (b) Total number of policies canceled.
- 3102 (c) Total number of policies nonrenewed.
- 3103 (d) Number of policies canceled due to hurricane risk.
- 3104 (e) Number of policies nonrenewed due to hurricane risk.
- 3105 (f) Number of new policies written.
- 3106 (g) Total dollar value of structure exposure under
 3107 policies that include wind coverage.



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3108 (h) Number of policies that exclude wind coverage.
 3109 Section 33. Subsections (2), (3), and (4) of section
 3110 624.476, Florida Statutes, are amended to read:
 3111 624.476 Impaired self-insurance funds.--
 3112 (2) If any fund levies an assessment pursuant to
 3113 subsection (1), the office ~~department~~ shall require the fund to
 3114 consent to administrative supervision under part VI of this
 3115 chapter. The office ~~department~~ may waive the requirement to
 3116 consent to administrative supervision for good cause.
 3117 (3) If the trustees fail to make an assessment as required
 3118 by subsection(1), the office ~~department~~ shall order the trustees
 3119 to do so. If the deficiency is not sufficiently made up within
 3120 60 days after the date of the order, the fund shall be deemed
 3121 insolvent and grounds shall exist to proceed against the fund as
 3122 provided for in part I of chapter 631.
 3123 (4) Notwithstanding the requirement of the fund to make an
 3124 assessment pursuant to subsection (1) or subsection (3), the
 3125 office ~~department~~ may at any time request that the department ~~to~~
 3126 be appointed receiver for purposes of rehabilitation or
 3127 liquidation if it is able to demonstrate that any grounds for
 3128 rehabilitation or liquidation exist pursuant to s. 631.051 or s.
 3129 631.061.
 3130 Section 34. Section 624.477, Florida Statutes, is amended
 3131 to read:
 3132 624.477 Liquidation, rehabilitation, reorganization, and
 3133 conservation.--Any rehabilitation, liquidation, conservation, or
 3134 dissolution of a self-insurance fund shall be conducted under
 3135 the supervision of the office and department, which shall each



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3136 have all power with respect thereto granted to the fund under
 3137 part I of chapter 631 governing the rehabilitation, liquidation,
 3138 conservation, or dissolution of insurers and including all
 3139 grounds for the appointment of a receiver contained in ss.
 3140 631.051 and 631.061.

3141 Section 35. Section 625.01115, Florida Statutes, is
 3142 amended to read:

3143 625.01115 Definitions.--As used in this chapter, the term
 3144 "statutory accounting principles" means accounting principles as
 3145 defined in the National Association of Insurance Commissioners
 3146 Accounting Practices and Procedures Manual as of March 2002 and
 3147 subsequent amendments thereto if the methodology remains
 3148 substantially consistent effective January 1, 2001.

3149 Section 36. Subsections (2), (3), and (4), paragraphs (c),
 3150 (d), (g), (h), (i), and (j) of subsection (5), paragraph (e) of
 3151 subsection (6), subsection (10), paragraph(b) of subsection
 3152 (12), and subsection (14) of section 625.121, Florida Statutes,
 3153 are amended to read:

3154 625.121 Standard Valuation Law; life insurance.--

3155 (2) ANNUAL VALUATION.--The office ~~department~~ shall
 3156 annually value, or cause to be valued, the reserve liabilities,
 3157 hereinafter called "reserves," for all outstanding life
 3158 insurance policies and annuity and pure endowment contracts of
 3159 every life insurer doing business in this state, and may certify
 3160 the amount of any such reserves, specifying the mortality table
 3161 or tables, rate or rates of interest, and methods, net-level
 3162 premium method or others, used in the calculation of such
 3163 reserves. In the case of an alien insurer, such valuation shall



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3164 be limited to its insurance transactions in the United States.
3165 In calculating such reserves, the office ~~department~~ may use
3166 group methods and approximate averages for fractions of a year
3167 or otherwise. It may accept in its discretion the insurer's
3168 calculation of such reserves. In lieu of the valuation of the
3169 reserves herein required of any foreign or alien insurer, it may
3170 accept any valuation made or caused to be made by the insurance
3171 supervisory official of any state or other jurisdiction when
3172 such valuation complies with the minimum standard herein
3173 provided and if the official of such state or jurisdiction
3174 accepts as sufficient and valid for all legal purposes the
3175 certificate of valuation of the office ~~department~~ when such
3176 certificate states the valuation to have been made in a
3177 specified manner according to which the aggregate reserves would
3178 be at least as large as if they had been computed in the manner
3179 prescribed by the law of that state or jurisdiction. When any
3180 such valuation is made by the office ~~department~~, it may use the
3181 actuary of the office ~~department~~ or employ an actuary for the
3182 purpose; and the reasonable compensation of the actuary, at a
3183 rate approved by the office ~~department~~, and reimbursement of
3184 travel expenses pursuant to s. 624.320 upon demand by the office
3185 ~~department~~, supported by an itemized statement of such
3186 compensation and expenses, shall be paid by the insurer. When a
3187 domestic insurer furnishes the office ~~department~~ with a
3188 valuation of its outstanding policies as computed by its own
3189 actuary or by an actuary deemed satisfactory for the purpose by
3190 the office ~~department~~, the valuation shall be verified by the
3191 actuary of the office ~~department~~ without cost to the insurer.



3192 (3) ACTUARIAL OPINION OF RESERVES.--

3193 (a)1. Each life insurance company doing business in this

3194 state shall annually submit the opinion of a qualified actuary

3195 as to whether the reserves and related actuarial items held in

3196 support of the policies and contracts specified by the

3197 commission ~~department~~ by rule are computed appropriately, are

3198 based on assumptions which satisfy contractual provisions, are

3199 consistent with prior reported amounts, and comply with

3200 applicable laws of this state. The commission ~~department~~ by rule

3201 shall define the specifics of this opinion and add any other

3202 items determined to be necessary to its scope.

3203 2. The opinion shall be submitted with the annual

3204 statement reflecting the valuation of such reserve liabilities

3205 for each year ending on or after December 31, 1992.

3206 3. The opinion shall apply to all business in force,

3207 including individual and group health insurance plans, in the

3208 form and substance acceptable to the office ~~department~~ as

3209 specified by rule of the commission.

3210 4. The commission ~~department~~ may adopt rules providing the

3211 standards of the actuarial opinion consistent with standards

3212 adopted by the Actuarial Standards Board on December 31, 2002

3213 ~~October 1, 1991~~, and subsequent revisions thereto, provided that

3214 the standards remain substantially consistent.

3215 5. In the case of an opinion required to be submitted by a

3216 foreign or alien company, the office ~~department~~ may accept the

3217 opinion filed by that company with the insurance supervisory

3218 official of another state if the office ~~department~~ determines



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3219 that the opinion reasonably meets the requirements applicable to
3220 a company domiciled in this state.

3221 6. For the purposes of this subsection, "qualified
3222 actuary" means a member in good standing of the American Academy
3223 of Actuaries who also meets the requirements specified by rule
3224 of the commission ~~department~~.

3225 7. Disciplinary action by the office ~~department~~ against
3226 the company or the qualified actuary shall be in accordance with
3227 the insurance code and related rules adopted by the commission
3228 ~~department~~.

3229 8. A memorandum in the form and substance specified by
3230 rule shall be prepared to support each actuarial opinion.

3231 9. If the insurance company fails to provide a supporting
3232 memorandum at the request of the office ~~department~~ within a
3233 period specified by rule of the commission, or if the office
3234 ~~department~~ determines that the supporting memorandum provided by
3235 the insurance company fails to meet the standards prescribed by
3236 rule of the commission, the office ~~department~~ may engage a
3237 qualified actuary at the expense of the company to review the
3238 opinion and the basis for the opinion and prepare such
3239 supporting memorandum as is required by the office ~~department~~.

3240 10. Except as otherwise provided in this paragraph, any
3241 memorandum or other material in support of the opinion is
3242 confidential and exempt from the provisions of s. 119.07(1);
3243 however, the memorandum or other material may be released by the
3244 office ~~department~~ with the written consent of the company, or to
3245 the American Academy of Actuaries upon request stating that the
3246 memorandum or other material is required for the purpose of



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3247 professional disciplinary proceedings and setting forth
3248 procedures satisfactory to the office ~~department~~ for preserving
3249 the confidentiality of the memorandum or other material. If any
3250 portion of the confidential memorandum is cited by the company
3251 in its marketing or is cited before any governmental agency
3252 other than a state insurance department or is released by the
3253 company to the news media, no portion of the memorandum is
3254 confidential.

3255 (b) In addition to the opinion required by subparagraph
3256 (a)1., the office ~~department~~ may, pursuant to commission ~~by~~
3257 rule, require an opinion of the same qualified actuary as to
3258 whether the reserves and related actuarial items held in support
3259 of the policies and contracts specified by the commission
3260 ~~department~~ by rule, when considered in light of the assets held
3261 by the company with respect to the reserves and related
3262 actuarial items, including but not limited to the investment
3263 earnings on the assets and considerations anticipated to be
3264 received and retained under the policies and contracts, make
3265 adequate provision for the company's obligations under the
3266 policies and contracts, including, but not limited to, the
3267 benefits under, and expenses associated with, the policies and
3268 contracts.

3269 (c) The commission ~~department~~ may provide by rule for a
3270 transition period for establishing any higher reserves which the
3271 qualified actuary may deem necessary in order to render the
3272 opinion required by this subsection.

3273 (4) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
3274 CONTRACTS ISSUED BEFORE OPERATIVE DATE OF STANDARD NONFORFEITURE



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3275 LAW.--The minimum standard for the valuation of all such
 3276 policies and contracts issued prior to the operative date of s.
 3277 627.476 (Standard Nonforfeiture Law) shall be any basis
 3278 satisfactory to the office department. Any basis satisfactory to
 3279 the former Department of Insurance on the effective date of this
 3280 code shall be deemed to meet such minimum standards.

3281 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
 3282 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD
 3283 NONFORFEITURE LAW.--Except as otherwise provided in paragraph
 3284 (h) and subsections (6), (11), and (14), the minimum standard
 3285 for the valuation of all such policies and contracts issued on
 3286 or after the operative date of s. 627.476 (Standard
 3287 Nonforfeiture Law for Life Insurance) shall be the
 3288 commissioners' reserve valuation method defined in subsections
 3289 (7), (11), and (14); 5 percent interest for group annuity and
 3290 pure endowment contracts and 3.5 percent interest for all other
 3291 such policies and contracts, or in the case of life insurance
 3292 policies and contracts, other than annuity and pure endowment
 3293 contracts, issued on or after July 1, 1973, 4 percent interest
 3294 for such policies issued prior to October 1, 1979, and 4.5
 3295 percent interest for such policies issued on or after October 1,
 3296 1979; and the following tables:

3297 (c) For individual annuity and pure endowment contracts,
 3298 excluding any disability and accidental death benefits in such
 3299 policies, the 1937 Standard Annuity Mortality Table or, at the
 3300 option of the insurer, the Annuity Mortality Table for 1949,
 3301 Ultimate, or any modification of either of these tables approved
 3302 by the office department.



3303 (d) For group annuity and pure endowment contracts,
 3304 excluding any disability and accidental death benefits in such
 3305 policies, the Group Annuity Mortality Table for 1951; any
 3306 modification of such table approved by the office ~~department~~;
 3307 or, at the option of the insurer, any of the tables or
 3308 modifications of tables specified for individual annuity and
 3309 pure endowment contracts.

3310 (g) For group life insurance, life insurance issued on the
 3311 substandard basis, and other special benefits, such tables as
 3312 may be approved by the office ~~department~~ as being sufficient
 3313 with relation to the benefits provided by such policies.

3314 (h) Except as provided in subsection (6), the minimum
 3315 standard for the valuation of all individual annuity and pure
 3316 endowment contracts issued on or after the operative date of
 3317 this paragraph and for all annuities and pure endowments
 3318 purchased on or after such operative date under group annuity
 3319 and pure endowment contracts shall be the commissioners' reserve
 3320 valuation method defined in subsection (7) and the following
 3321 tables and interest rates:

3322 1. For individual annuity and pure endowment contracts
 3323 issued prior to October 1, 1979, excluding any disability and
 3324 accidental death benefits in such contracts, the 1971 Individual
 3325 Annuity Mortality Table, or any modification of this table
 3326 approved by the office ~~department~~, and 6 percent interest for
 3327 single-premium immediate annuity contracts and 4 percent
 3328 interest for all other individual annuity and pure endowment
 3329 contracts.



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3330 2. For individual single-premium immediate annuity
3331 contracts issued on or after October 1, 1979, and prior to
3332 October 1, 1986, excluding any disability and accidental death
3333 benefits in such contracts, the 1971 Individual Annuity
3334 Mortality Table, or any modification of this table approved by
3335 the office ~~department~~, and 7.5 percent interest. For such
3336 contracts issued on or after October 1, 1986, the 1983
3337 Individual Annual Mortality Table, or any modification of such
3338 table approved by the office ~~department~~, and the applicable
3339 calendar year statutory valuation interest rate as described in
3340 subsection (6).

3341 3. For individual annuity and pure endowment contracts
3342 issued on or after October 1, 1979, and prior to October 1,
3343 1986, other than single-premium immediate annuity contracts,
3344 excluding any disability and accidental death benefits in such
3345 contracts, the 1971 Individual Annuity Mortality Table, or any
3346 modification of this table approved by the office ~~department~~,
3347 and 5.5 percent interest for single-premium deferred annuity and
3348 pure endowment contracts and 4.5 percent interest for all other
3349 such individual annuity and pure endowment contracts. For such
3350 contracts issued on or after October 1, 1986, the 1983
3351 Individual Annual Mortality Table, or any modification of such
3352 table approved by the office ~~department~~, and the applicable
3353 calendar year statutory valuation interest rate as described in
3354 subsection (6).

3355 4. For all annuities and pure endowments purchased prior
3356 to October 1, 1979, under group annuity and pure endowment
3357 contracts, excluding any disability and accidental death



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3358 benefits purchased under such contracts, the 1971 Group Annuity
3359 Mortality Table, or any modification of this table approved by
3360 the office ~~department~~, and 6 percent interest.

3361 5. For all annuities and pure endowments purchased on or
3362 after October 1, 1979, and prior to October 1, 1986, under group
3363 annuity and pure endowment contracts, excluding any disability
3364 and accidental death benefits purchased under such contracts,
3365 the 1971 Group Annuity Mortality Table, or any modification of
3366 this table approved by the office ~~department~~, and 7.5 percent
3367 interest. For such contracts purchased on or after October 1,
3368 1986, the 1983 Group Annuity Mortality Table, or any
3369 modification of such table approved by the office ~~department~~,
3370 and the applicable calendar year statutory valuation interest
3371 rate as described in subsection (6).

3372

3373

3374 After July 1, 1973, any insurer may have filed ~~file~~ with the
3375 former Department of Insurance a written notice of its election
3376 to comply with the provisions of this paragraph after a
3377 specified date before January 1, 1979, which shall be the
3378 operative date of this paragraph for such insurer. However, an
3379 insurer may elect a different operative date for individual
3380 annuity and pure endowment contracts from that elected for group
3381 annuity and pure endowment contracts. If an insurer makes no
3382 such election, the operative date of this paragraph for such
3383 insurer shall be January 1, 1979.

3384 (i) In lieu of the mortality tables specified in this
3385 subsection, and subject to rules previously adopted by the



3386 former Department of Insurance, the insurance company may, at
3387 its option:

3388 1. Substitute the applicable 1958 CSO or CET Smoker and
3389 Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET
3390 mortality table standard, for policies issued on or after the
3391 operative date of s. 627.476(9) and before January 1, 1989.

3392 2. Substitute the applicable 1980 CSO or CET Smoker and
3393 Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET
3394 mortality table standard;

3395 3. Use the Annuity 2000 Mortality Table for determining
3396 the minimum standard of valuation for individual annuity and
3397 pure endowment contracts issued on or after January 1, 1998, and
3398 ~~before July 1, 1998 the operative date of this section until the~~
3399 ~~department, on a date certain that is on or after January 1,~~
3400 ~~1998, adopts by rule that table for determining the minimum~~
3401 ~~standard for valuation purposes.~~

3402 4. Use the 1994 GAR Table for determining the minimum
3403 standard of valuation for annuities and pure endowments
3404 purchased on or after January 1, 1998, and before July 1, 1998,
3405 ~~the operative date of this section under group annuity and pure~~
3406 ~~endowment contracts until the department, on a date certain that~~
3407 ~~is on or after January 1, 1998, adopts by rule that table for~~
3408 ~~determining the minimum standard for valuation purposes.~~

3409 (j) The commission ~~department~~ may adopt by rule the model
3410 regulation for valuation of life insurance policies as approved
3411 by the National Association of Insurance Commissioners in March
3412 1999, including tables of select mortality factors, and may make



3413 the regulation effective for policies issued on or after January
3414 1, 2000.

3415 (6) MINIMUM STANDARD OF VALUATION.--

3416 (e) The interest rate index shall be the Moody's Corporate
3417 Bond Yield Average-Monthly Average Corporates as published by
3418 Moody's Investors Service, Inc., as long as this index is
3419 calculated by using substantially the same methodology as used
3420 by it on January 1, 1981. If Moody's corporate bond yield
3421 average ceases to be calculated in this manner, the interest
3422 rate index shall be the index approved by rule promulgated by
3423 the commission ~~department~~. The methodology used in determining
3424 the index approved by rule shall be substantially the same as
3425 the methodology employed on January 1, 1981, for determining
3426 Moody's Corporate Bond Yield Average-Monthly Average Corporates
3427 as published by Moody's Investors Services, Inc.

3428 (10) LOWER VALUATIONS.--An insurer which at any time had
3429 adopted any standard of valuation producing greater aggregate
3430 reserves than those calculated according to the minimum standard
3431 herein provided may, with the approval of the office ~~department~~,
3432 adopt any lower standard of valuation, but not lower than the
3433 minimum herein provided; however, for the purposes of this
3434 subsection, the holding of additional reserves previously
3435 determined by a qualified actuary to be necessary to render the
3436 opinion required by subsection (3) shall not be deemed to be the
3437 adoption of a higher standard of valuation.

3438 (12) ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN
3439 CASES.--In the case of any plan of life insurance which provides
3440 for future premium determination, the amounts of which are to be



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3441 determined by the insurer based on then estimates of future
3442 experience, or in the case of any plan of life insurance or
3443 annuity which is of such a nature that the minimum reserves
3444 cannot be determined by the methods described in subsection (7),
3445 the reserves which are held under any such plan shall:

3446 (b) Be computed by a method which is consistent with the
3447 principles of this section, as determined by rules promulgated
3448 by the commission ~~department~~.

3449 (14) MINIMUM STANDARDS FOR HEALTH PLANS.--The commission
3450 ~~department~~ shall adopt a rule containing the minimum standards
3451 applicable to the valuation of health plans in accordance with
3452 sound actuarial principles.

3453 Section 37. Subsections (1), (2), and (4) of section
3454 625.151, Florida Statutes, are amended to read:

3455 625.151 Valuation of other securities.--

3456 (1) Securities, other than those referred to in s.
3457 625.141, held by an insurer shall be valued, in the discretion
3458 of the office ~~department~~, at their market value, or at their
3459 appraised value, or at prices determined by it as representing
3460 their fair market value.

3461 (2) Preferred or guaranteed stocks or shares while paying
3462 full dividends may be carried at a fixed value in lieu of market
3463 value, at the discretion of the office ~~department~~ and in
3464 accordance with such method of valuation as it may approve.

3465 (4) No valuations under this section shall be inconsistent
3466 with any applicable valuation or method contained in the latest
3467 edition of the publication "Valuation of Securities" published
3468 by the National Association of Insurance Commissioners or its



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3469 successor organization; provided that such valuation methodology
 3470 is substantially similar to the methodology used by the National
 3471 Association of Insurance Commissioners in its July 1, 2002, ~~1988~~
 3472 edition of such publication.

3473 Section 38. Section 625.317, Florida Statutes, is amended
 3474 to read:

3475 625.317 Corporate bonds and debentures.--An insurer may
 3476 invest in bonds, notes, or other interest-bearing or interest-
 3477 accruing obligations of any solvent corporation organized under
 3478 the laws of the United States or Canada or under the laws of any
 3479 state, the District of Columbia, any territory or possession of
 3480 the United States, or any Province of Canada or in bonds or
 3481 notes issued by the Citizens Property Insurance Corporation as
 3482 authorized by s. 627.351(6) Florida Windstorm Underwriting
 3483 ~~Association or a private nonprofit corporation, a private~~
 3484 ~~nonprofit unincorporated association, or a nonprofit mutual~~
 3485 ~~company organized by that association, all as authorized in s.~~
 3486 ~~627.351(2)(c), or any subsidiary or affiliate thereof authorized~~
 3487 ~~by the Department of Insurance to issue such bonds or notes.~~

3488 Section 39. Subsection (4) of section 625.325, Florida
 3489 Statutes, is amended to read:

3490 625.325 Investments in subsidiaries and related
 3491 corporations.--

3492 (4) DEBT OBLIGATIONS.--Debt obligations, other than
 3493 mortgage loans, made under the authority of this section must
 3494 meet amortization requirements in accordance with the latest
 3495 edition of the publication "Valuation of Securities" by the
 3496 National Association of Insurance Commissioners or its successor



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3497 organization; provided that such amortization methodology is
 3498 substantially similar to the methodology used by the National
 3499 Association of Insurance Commissioners in its July 1, 2002, 1988
 3500 edition of such publication.

3501 Section 40. Subsections (6) and (11) of section 626.015,
 3502 Florida Statutes, are amended, and present subsections (7)-(19)
 3503 of said section are renumbered as subsections (6)-(18),
 3504 respectively, to read:

3505 626.015 Definitions.--As used in this part:

3506 ~~(6) "Department" means the Department of Insurance.~~

3507 (10)(11) "License" means a document issued by the
 3508 department or office authorizing a person to be appointed to
 3509 transact insurance or adjust claims for the kind, line, or class
 3510 of insurance identified in the document.

3511 Section 41. Section 626.016, Florida Statutes, is created
 3512 to read:

3513 626.016 Powers and duties of department, commission, and
 3514 office.--

3515 (1) The powers and duties of the Chief Financial Officer
 3516 and the department specified in this chapter apply only with
 3517 respect to insurance agents, managing general agents,
 3518 reinsurance intermediaries, viatical settlement brokers,
 3519 customer representatives, service representatives, agencies, and
 3520 unlicensed persons subject to the regulatory jurisdiction of the
 3521 department.

3522 (2) The powers and duties of the commission and office
 3523 specified in this chapter apply only with respect to insurance
 3524 adjusters, service companies, administrators, viatical



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3525 settlement providers and contracts, and unlicensed persons
3526 subject to the regulatory jurisdiction of the commission and
3527 office.

3528 (3) The department has jurisdiction to enforce provisions
3529 of this chapter with respect to persons who engage in actions
3530 for which a license issued by the department is legally
3531 required. The office has jurisdiction to enforce provisions of
3532 this chapter with respect to persons who engage in actions for
3533 which a license or certificate of authority issued by the office
3534 is legally required. For persons who violate a provision of this
3535 chapter for whom a license or certificate of authority issued by
3536 either the department or office is not required, either the
3537 department or office may take administrative action against such
3538 person as authorized by this chapter, pursuant to agreement
3539 between the office and department.

3540 (4) Nothing in this section is intended to limit the
3541 authority of the department and the Division of Insurance Fraud,
3542 as specified in s. 626.989.

3543 Section 42. Subsection (16) of section 626.025, Florida
3544 Statutes, is amended to read:

3545 626.025 Consumer protections.--To transact insurance,
3546 agents shall comply with consumer protection laws, including the
3547 following, as applicable:

3548 (16) Any other licensing requirement, restriction, or
3549 prohibition designated a consumer protection by the Chief
3550 Financial Officer ~~Insurance Commissioner~~, but not inconsistent
3551 with the requirements of Subtitle C of the Gramm-Leach-Bliley
3552 Act, 15 U.S.C.A. ss. 6751 et seq.



3553 Section 43. Paragraph (a) of subsection (1) of section
3554 626.112, Florida Statutes, is amended to read:

3555 626.112 License and appointment required; agents, customer
3556 representatives, adjusters, insurance agencies, service
3557 representatives, managing general agents.--

3558 (1)(a) No person may be, act as, or advertise or hold
3559 himself or herself out to be an insurance agent, or customer
3560 representative, ~~or adjuster~~ unless he or she is currently
3561 licensed by the department and appointed by one or more
3562 insurers. No person may be, act as, or advertise or hold himself
3563 or herself out to be an insurance adjuster unless he or she is
3564 currently licensed by the office and appointed by one or more
3565 insurers.

3566
3567 However, an employee leasing company licensed pursuant to
3568 chapter 468 which is seeking to enter into a contract with an
3569 employer that identifies products and services offered to
3570 employees may deliver proposals for the purchase of employee
3571 leasing services to prospective clients of the employee leasing
3572 company setting forth the terms and conditions of doing
3573 business; classify employees as permitted by s. 468.529; collect
3574 information from prospective clients and other sources as
3575 necessary to perform due diligence on the prospective client and
3576 to prepare a proposal for services; provide and receive
3577 enrollment forms, plans, and other documents; and discuss or
3578 explain in general terms the conditions, limitations, options,
3579 or exclusions of insurance benefit plans available to the client
3580 or employees of the employee leasing company were the client to



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3581 contract with the employee leasing company. Any advertising
3582 materials or other documents describing specific insurance
3583 coverages must identify and be from a licensed insurer or its
3584 licensed agent or a licensed and appointed agent employed by the
3585 employee leasing company. The employee leasing company may not
3586 advise or inform the prospective business client or individual
3587 employees of specific coverage provisions, exclusions, or
3588 limitations of particular plans. As to clients for which the
3589 employee leasing company is providing services pursuant to s.
3590 468.525(4), the employee leasing company may engage in
3591 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
3592 subject to the restrictions specified in those sections. If a
3593 prospective client requests more specific information concerning
3594 the insurance provided by the employee leasing company, the
3595 employee leasing company must refer the prospective business
3596 client to the insurer or its licensed agent or to a licensed and
3597 appointed agent employed by the employee leasing company.

3598 Section 44. Section 626.161, Florida Statutes, is amended
3599 to read:

3600 626.161 Licensing forms.--The department shall prescribe
3601 and furnish all printed forms required in connection with the
3602 application for issuance of and termination of all licenses and
3603 appointments, except that, with respect to adjusters, the
3604 commission shall prescribe and the office shall furnish such
3605 forms.

3606 Section 45. Subsections (1), (2), and (5) of section
3607 626.171, Florida Statutes, are amended to read:

3608 626.171 Application for license.--



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3609 (1) The department or office shall not issue a license as
3610 agent, customer representative, adjuster, insurance agency,
3611 service representative, managing general agent, or reinsurance
3612 intermediary to any person except upon written application
3613 therefor filed with it, qualification therefor, and payment in
3614 advance of all applicable fees. Any such application shall be
3615 made under the oath of the applicant and be signed by the
3616 applicant. Beginning November 1, 2002, the department shall
3617 accept the uniform application for nonresident agent licensing.
3618 The department may adopt revised versions of the uniform
3619 application by rule.

3620 (2) In the application, the applicant shall set forth:

3621 (a) His or her full name, age, social security number,
3622 residence, and place of business.

3623 (b) Proof that he or she has completed or is in the
3624 process of completing any required prelicensing course.

3625 (c) Whether he or she has been refused or has voluntarily
3626 surrendered or has had suspended or revoked a license to solicit
3627 insurance by the department or by the supervising officials of
3628 any state.

3629 (d) Whether any insurer or any managing general agent
3630 claims the applicant is indebted under any agency contract or
3631 otherwise and, if so, the name of the claimant, the nature of
3632 the claim, and the applicant's defense thereto, if any.

3633 (e) Proof that the applicant meets the requirements for
3634 the type of license for which he or she is applying.

3635 (f) Such other or additional information as the department
3636 or office may deem proper to enable it to determine the



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3637 character, experience, ability, and other qualifications of the
3638 applicant to hold himself or herself out to the public as an
3639 insurance representative.

3640 (5) An application for a license as an agent, customer
3641 representative, adjuster, insurance agency, service
3642 representative, managing general agent, or reinsurance
3643 intermediary must be accompanied by a set of the individual
3644 applicant's fingerprints, or, if the applicant is not an
3645 individual, by a set of the fingerprints of the sole proprietor,
3646 majority owner, partners, officers, and directors, on a form
3647 adopted by rule of the department or commission and accompanied
3648 by the fingerprint processing fee set forth in s. 624.501. The
3649 fingerprints shall be certified by a law enforcement officer.

3650 Section 46. Section 626.181, Florida Statutes, is amended
3651 to read:

3652 626.181 Number of applications for licensure
3653 required.--After a license as agent, customer representative, or
3654 adjuster has been issued to an individual, the same individual
3655 shall not be required to take another examination for a similar
3656 license, regardless, in the case of an agent, of the number of
3657 insurers to be represented by him or her as agent, unless:

3658 (1) Specifically ordered by the department or office to
3659 complete a new application for license; or

3660 (2) During any period of 48 months since the filing of the
3661 original license application, such individual was not appointed
3662 as an agent, customer representative, or adjuster, unless the
3663 failure to be so appointed was due to military service, in which
3664 event the period within which a new application is not required



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3665 | may, in the discretion of the department or office, be extended
3666 | to 12 months following the date of discharge from military
3667 | service if the military service does not exceed 3 years, but in
3668 | no event to extend under this clause for a period of more than 6
3669 | years from the date of filing of the original application for
3670 | license.

3671 | Section 47. Section 626.191, Florida Statutes, is amended
3672 | to read:

3673 | 626.191 Repeated applications.--The failure of an
3674 | applicant to secure a license upon an application shall not
3675 | preclude him or her from applying again as many times as
3676 | desired, but the department or office shall not give
3677 | consideration to or accept any further application by the same
3678 | individual for a similar license dated or filed within 30 days
3679 | subsequent to the date the department or office denied the last
3680 | application, except as provided in s. 626.281.

3681 | Section 48. Section 626.201, Florida Statutes, is amended
3682 | to read:

3683 | 626.201 Investigation.--The department or office may
3684 | propound any reasonable interrogatories in addition to those
3685 | contained in the application, to any applicant for license or
3686 | appointment, or on any renewal, reinstatement, or continuation
3687 | thereof, relating to his or her qualifications, residence,
3688 | prospective place of business, and any other matter which, in
3689 | the opinion of the department or office, is deemed necessary or
3690 | advisable for the protection of the public and to ascertain the
3691 | applicant's qualifications. The department or office may, upon
3692 | completion of the application, make such further investigation



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3693 as it may deem advisable of the applicant's character,
3694 experience, background, and fitness for the license or
3695 appointment. Such an inquiry or investigation shall be in
3696 addition to any examination required to be taken by the
3697 applicant as hereinafter in this chapter provided.

3698 Section 49. Section 626.202, Florida Statutes, is amended
3699 to read:

3700 626.202 Fingerprinting requirements.--If there is a change
3701 in ownership or control of any entity licensed under this
3702 chapter, or if a new partner, officer, or director is employed
3703 or appointed, a set of fingerprints of the new owner, partner,
3704 officer, or director must be filed with the department or office
3705 within 30 days after the change. The acquisition of 10 percent
3706 or more of the voting securities of a licensed entity is
3707 considered a change of ownership or control. The fingerprints
3708 must be certified by a law enforcement officer and be
3709 accompanied by the fingerprint processing fee in s. 624.501.

3710 Section 50. Section 626.211, Florida Statutes, is amended
3711 to read:

3712 626.211 Approval, disapproval of application.--

3713 (1) If upon the basis of a completed application for
3714 license and such further inquiry or investigation as the
3715 department or office may make concerning an applicant the
3716 department or office is satisfied that, subject to any
3717 examination required to be taken and passed by the applicant for
3718 a license, the applicant is qualified for the license applied
3719 for and that all pertinent fees have been paid, it shall approve
3720 the application. The department or office shall not deny,



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3721 delay, or withhold approval of an application due to the fact
3722 that it has not received a criminal history report based on the
3723 applicant's fingerprints.

3724 (2) Upon approval of an applicant for license as agent,
3725 customer representative, or adjuster who is subject to written
3726 examination, the department or office shall notify the applicant
3727 when and where he or she may take the required examination.

3728 (3) Upon approval of an applicant for license who is not
3729 subject to examination, the department or office shall promptly
3730 issue the license.

3731 (4) If upon the basis of the completed application and
3732 such further inquiry or investigation the department or office
3733 deems the applicant to be lacking in any one or more of the
3734 required qualifications for the license applied for, the
3735 department or office shall disapprove the application and notify
3736 the applicant, stating the grounds of disapproval.

3737 Section 51. Section 626.221, Florida Statutes, is amended
3738 to read:

3739 626.221 Examination requirement; exemptions.--

3740 (1) The department or office shall not issue any license
3741 as agent, customer representative, or adjuster to any individual
3742 who has not qualified for, taken, and passed to the satisfaction
3743 of the department or office a written examination of the scope
3744 prescribed in s. 626.241.

3745 (2) However, no such examination shall be necessary in any
3746 of the following cases:

3747 (a) An applicant for renewal of appointment as an agent,
3748 customer representative, or adjuster, unless the department or



3749 office determines that an examination is necessary to establish
3750 the competence or trustworthiness of such applicant.

3751 (b) An applicant for limited license as agent for personal
3752 accident insurance, baggage and motor vehicle excess liability
3753 insurance, credit life or disability insurance, credit
3754 insurance, credit property insurance, in-transit and storage
3755 personal property insurance, or communications equipment
3756 property insurance or communication equipment inland marine
3757 insurance.

3758 (c) In the discretion of the department or office, an
3759 applicant for reinstatement of license or appointment as an
3760 agent, customer representative, or adjuster whose license has
3761 been suspended within 2 years prior to the date of application
3762 or written request for reinstatement.

3763 (d) An applicant who, within 2 years prior to application
3764 for license and appointment as an agent, customer
3765 representative, or adjuster, was a full-time salaried employee
3766 of the department or office and had continuously been such an
3767 employee with responsible insurance duties for not less than 2
3768 years and who had been a licensee within 2 years prior to
3769 employment by the department or office with the same class of
3770 license as that being applied for.

3771 (e) An individual who qualified as a managing general
3772 agent, service representative, customer representative, or all-
3773 lines adjuster by passing a general lines agent's examination
3774 and subsequently was licensed and appointed and has been
3775 actively engaged in all lines of property and casualty insurance
3776 may, upon filing an application for appointment, be licensed and



3777 appointed as a general lines agent for the same kinds of
 3778 business without taking another examination if he or she holds
 3779 any such currently effective license referred to in this
 3780 paragraph or held the license within 24 months prior to the date
 3781 of filing the application with the department.

3782 (f) A person who has been licensed and appointed ~~by the~~
 3783 ~~department~~ as a public adjuster or independent adjuster, or
 3784 licensed and appointed either as an agent or company adjuster as
 3785 to all property, casualty, and surety insurances, may be
 3786 licensed and appointed as a company adjuster as to any of such
 3787 insurances, or as an independent adjuster or public adjuster,
 3788 without additional written examination if an application for
 3789 appointment is filed with the office ~~department~~ within 24 months
 3790 following the date of cancellation or expiration of the prior
 3791 appointment.

3792 (g) A person who has been licensed ~~by the department~~ as an
 3793 adjuster for motor vehicle, property and casualty, workers'
 3794 compensation, and health insurance may be licensed as such an
 3795 adjuster without additional written examination if his or her
 3796 application for appointment is filed with the office ~~department~~
 3797 within 24 months after cancellation or expiration of the prior
 3798 license.

3799 (h) An applicant for temporary license, except as provided
 3800 in this code.

3801 (i) An applicant for a life or health license who has
 3802 received the designation of chartered life underwriter (CLU)
 3803 from the American College of Life Underwriters and who has been
 3804 engaged in the insurance business within the past 4 years,



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3805 | except that such an individual may be examined on pertinent
3806 | provisions of this code.

3807 | (j) An applicant for license as a general lines agent,
3808 | customer representative, or adjuster who has received the
3809 | designation of chartered property and casualty underwriter
3810 | (CPCU) from the American Institute for Property and Liability
3811 | Underwriters and who has been engaged in the insurance business
3812 | within the past 4 years, except that such an individual may be
3813 | examined on pertinent provisions of this code.

3814 | (k) An applicant for license as a customer representative
3815 | who has the designation of Accredited Advisor in Insurance (AAI)
3816 | from the Insurance Institute of America, the designation of
3817 | Certified Insurance Counselor (CIC) from the Society of
3818 | Certified Insurance Service Counselors, the designation of
3819 | Accredited Customer Service Representative (ACSR) from the
3820 | Independent Insurance Agents of America, the designation of
3821 | Certified Professional Service Representative (CPSR) from the
3822 | National Association of Professional Insurance Agents, the
3823 | designation of Certified Insurance Service Representative (CISR)
3824 | from the Society of Certified Insurance Service Representatives.
3825 | Also, an applicant for license as a customer representative who
3826 | has the designation of Certified Customer Service Representative
3827 | (CCSR) from the Florida Association of Insurance Agents, or the
3828 | designation of Registered Customer Service Representative (RCSR)
3829 | from a regionally accredited postsecondary institution in this
3830 | state, or the designation of Professional Customer Service
3831 | Representative (PCSR) from the Professional Career Institute,
3832 | whose curriculum has been approved by the department and whose



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3833 curriculum includes comprehensive analysis of basic property and
 3834 casualty lines of insurance and testing at least equal to that
 3835 of standard department testing for the customer representative
 3836 license. The department shall adopt rules establishing standards
 3837 for the approval of curriculum.

3838 (l) An applicant for license as an adjuster who has the
 3839 designation of Accredited Claims Adjuster (ACA) from a
 3840 regionally accredited postsecondary institution in this state,
 3841 or the designation of Professional Claims Adjuster (PCA) from the
 3842 Professional Career Institute, whose curriculum has been
 3843 approved by the office ~~department~~ and whose curriculum includes
 3844 comprehensive analysis of basic property and casualty lines of
 3845 insurance and testing at least equal to that of standard office
 3846 ~~department~~ testing for the all-lines adjuster license. The
 3847 commission ~~department~~ shall adopt rules establishing standards
 3848 for the approval of curriculum.

3849 (m) An applicant qualifying for a license transfer under
 3850 s. 626.292, if the applicant:

3851 1. Has successfully completed the prelicensing examination
 3852 requirements in the applicant's previous state which are
 3853 substantially equivalent to the examination requirements in this
 3854 state, as determined by the department ~~Insurance Commissioner of~~
 3855 ~~this state;~~

3856 2. Has received the designation of chartered property and
 3857 casualty underwriter (CPCU) from the American Institute for
 3858 Property and Liability Underwriters and has been engaged in the
 3859 insurance business within the past 4 years if applying to
 3860 transfer a general lines agent license; or



3861 3. Has received the designation of chartered life
3862 underwriter (CLU) from the American College of Life Underwriters
3863 and has been engaged in the insurance business within the past 4
3864 years, if applying to transfer a life or health agent license.

3865 (n) An applicant for a nonresident agent license, if the
3866 applicant:

3867 1. Has successfully completed prelicensing examination
3868 requirements in the applicant's home state which are
3869 substantially equivalent to the examination requirements in this
3870 state, as determined by the department ~~Insurance Commissioner of~~
3871 ~~this state~~, as a requirement for obtaining a resident license in
3872 his or her home state;

3873 2. Held a general lines agent license, life agent license,
3874 or health agent license prior to the time a written examination
3875 was required;

3876 3. Has received the designation of chartered property and
3877 casualty underwriter (CPCU) from the American Institute for
3878 Property and Liability Underwriters and has been engaged in the
3879 insurance business within the past 4 years, if an applicant for
3880 a nonresident license as a general lines agent; or

3881 4. Has received the designation of chartered life
3882 underwriter (CLU) from the American College of Life Underwriters
3883 and has been in the insurance business within the past 4 years,
3884 if an applicant for a nonresident license as a life agent or
3885 health agent.

3886 (3) An individual who is already licensed as a customer
3887 representative shall not be licensed as a general lines agent
3888 without application and examination for such license.



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3889 Section 52. Section 626.231, Florida Statutes, is amended
3890 to read:

3891 626.231 Eligibility for examination.--No person shall be
3892 permitted to take an examination for license until his or her
3893 application for the license has been approved and the required
3894 fees have been received by the department or office or a person
3895 designated by the department or office to administer the
3896 examination.

3897 Section 53. Subsection (1) of section 626.241, Florida
3898 Statutes, is amended to read:

3899 626.241 Scope of examination.--

3900 (1) Each examination for a license as agent, customer
3901 representative, or adjuster shall be of such scope as is deemed
3902 by the department or office to be reasonably necessary to test
3903 the applicant's ability and competence and knowledge of the
3904 kinds of insurance and transactions to be handled under the
3905 license applied for, of the duties and responsibilities of such
3906 a licensee, and of the pertinent provisions of the laws of this
3907 state.

3908 Section 54. Section 626.251, Florida Statutes, is amended
3909 to read:

3910 626.251 Time and place of examination; notice.--

3911 (1) The department or office or a person designated by the
3912 department or office shall mail written notice of the time and
3913 place of the examination to each applicant for license required
3914 to take an examination who will be eligible to take the
3915 examination as of the examination date. The notice shall be so
3916 mailed, postage prepaid, and addressed to the applicant at his



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3917 or her address shown on the application for license or at such
3918 other address as requested by the applicant in writing filed
3919 with the department or office prior to the mailing of the
3920 notice. Notice shall be deemed given when so mailed.

3921 (2) The examination shall be held in an adequate and
3922 designated examination center in this state.

3923 (3) The department or office shall make an examination
3924 available to the applicant, to be taken as soon as reasonably
3925 possible after the applicant is eligible therefor. Any
3926 examination required under this part shall be available in this
3927 state at a designated examination center.

3928 Section 55. Section 626.261, Florida Statutes, is amended
3929 to read:

3930 626.261 Conduct of examination.--

3931 (1) The applicant for license shall appear in person and
3932 personally take the examination for license at the time and
3933 place specified by the department or office or by a person
3934 designated by the department or office.

3935 (2) The examination shall be conducted by an employee of
3936 the department or office or a person designated by the
3937 department or office for that purpose.

3938 (3) The questions propounded shall be as prepared by the
3939 department or office, or by a person designated by the
3940 department or office for that purpose, consistent with the
3941 applicable provisions of this code.

3942 (4) All examinations shall be given and graded in a fair
3943 and impartial manner and without unfair discrimination in favor
3944 of or against any particular applicant.



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3945 Section 56. Section 626.266, Florida Statutes, is amended
3946 to read:

3947 626.266 Printing of examinations or related materials to
3948 preserve examination security.--A contract let for the
3949 development, administration, or grading of examinations or
3950 related materials by the department or office ~~of Insurance~~
3951 pursuant to the various agent, customer representative,
3952 solicitor, or adjuster licensing and examination provisions of
3953 this code may include the printing or furnishing of these
3954 examinations or related materials in order to preserve security.
3955 Any such contract shall be let as a contract for a contractual
3956 service pursuant to s. 287.057.

3957 Section 57. Subsection (1) of section 626.271, Florida
3958 Statutes, is amended to read:

3959 626.271 Examination fee; determination, refund.--

3960 (1) Prior to being permitted to take an examination, each
3961 applicant who is subject to examination shall pay to the
3962 department or office or a person designated by the department or
3963 office an examination fee. A separate and additional
3964 examination fee shall be payable for each separate class of
3965 license applied for, notwithstanding that all such examinations
3966 are taken on the same date and at the same place.

3967 Section 58. Section 626.281, Florida Statutes, is amended
3968 to read:

3969 626.281 Reexamination.--

3970 (1) Any applicant for license who has either:

3971 (a) Taken an examination and failed to make a passing
3972 grade, or



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3973 (b) Failed to appear for the examination or to take or
3974 complete the examination at the time and place specified in the
3975 notice of the department or office,

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3977

3978 may take additional examinations, after filing with the
3979 department or office an application for reexamination together
3980 with applicable fees. The failure of an applicant to pass an
3981 examination or the failure to appear for the examination or to
3982 take or complete the examination does not preclude the applicant
3983 from taking subsequent examinations.

3984 (2) The department or office may require any individual
3985 whose license as an agent, customer representative, or adjuster
3986 has expired or has been suspended to pass an examination prior
3987 to reinstating or relicensing the individual as to any class of
3988 license. The examination fee shall be paid as to each
3989 examination.

3990 Section 59. Subsections (5) and (6) of section 626.2815,
3991 Florida Statutes, are amended to read:

3992 626.2815 Continuing education required; application;
3993 exceptions; requirements; penalties.--

3994 (5) The department ~~of Insurance~~ shall refuse to renew the
3995 appointment of any agent who has not had his or her continuing
3996 education requirements certified unless the agent has been
3997 granted an extension by the department. The department may not
3998 issue a new appointment of the same or similar type, with any
3999 insurer, to an agent who was denied a renewal appointment for



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4000 failure to complete continuing education as required until the
4001 agent completes his or her continuing education requirement.

4002 (6)(a) There is created an 11-member continuing education
4003 advisory board to be appointed by the Chief Financial Officer
4004 ~~Insurance Commissioner and Treasurer~~. Appointments shall be for
4005 terms of 4 years. The purpose of the board is to advise the
4006 department in determining standards by which courses may be
4007 evaluated and categorized as basic, intermediate, or advanced.
4008 ~~The board shall establish such criteria and the department shall~~
4009 ~~implement such criteria by January 1, 1997.~~ The board shall
4010 submit recommendations to the department of changes needed in
4011 such criteria not less frequently than every 2 years ~~thereafter~~.
4012 The department shall require all approved course providers to
4013 submit courses for approval to the department using the
4014 criteria. All materials, brochures, and advertisements related
4015 to the approved courses must specify the level assigned to the
4016 course.

4017 (b) The board members shall be appointed as follows:

4018 1. Seven members representing agents of which at least one
4019 must be a representative from each of the following
4020 organizations: the Florida Association of Insurance Agents; the
4021 Florida Association of Life Underwriters; the Professional
4022 Insurance Agents of Florida, Inc.; the Florida Association of
4023 Health Underwriters; the Specialty Agents' Association; the
4024 Latin American Agents' Association; and the National Association
4025 of Insurance Women. Such board members must possess at least a
4026 bachelor's degree or higher from an accredited college or
4027 university with major coursework in insurance, risk management,



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4028 or education or possess the designation of CLU, CPCU, CHFC, CFP,
4029 AAI, or CIC. In addition, each member must possess 5 years of
4030 classroom instruction experience or 5 years of experience in the
4031 development or design of educational programs or 10 years of
4032 experience as a licensed resident agent. Each organization may
4033 submit to the department a list of recommendations for
4034 appointment. If one organization does not submit a list of
4035 recommendations, the Chief Financial Officer Insurance
4036 ~~Commissioner~~ may select more than one recommended person from a
4037 list submitted by other eligible organizations.

4038 2. Two members representing insurance companies at least
4039 one of whom must represent a Florida Domestic Company and one of
4040 whom must represent the Florida Insurance Council. Such board
4041 members must be employed within the training department of the
4042 insurance company. At least one such member must be a member of
4043 the Society of Insurance Trainers and Educators.

4044 3. One member representing the general public who is not
4045 directly employed in the insurance industry. Such board member
4046 must possess a minimum of a bachelor's degree or higher from an
4047 accredited college or university with major coursework in
4048 insurance, risk management, training, or education.

4049 4. One member, appointed by the Chief Financial Officer
4050 ~~Insurance Commissioner~~, who represents the department.

4051 (c) The members of the board shall serve at the pleasure
4052 of the Chief Financial Officer Insurance Commissioner and
4053 ~~Treasurer~~. Each board member shall be entitled to reimbursement
4054 for expenses pursuant to s. 112.061. The board shall designate
4055 one member as chair. The board shall meet at the call of the



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4056 chair or the Chief Financial Officer ~~Insurance Commissioner and~~
4057 ~~Treasurer.~~

4058 Section 60. Section 626.2817, Florida Statutes, is amended
4059 to read:

4060 626.2817 Regulation of course providers, instructors,
4061 school officials, and monitor groups involved in prelicensure
4062 education for insurance agents and other licensees.--

4063 (1) Any course provider, instructor, school official, or
4064 monitor group must be approved by and registered with the
4065 department or office before offering prelicensure education
4066 courses for insurance agents and other licensees.

4067 (2) The department or commission shall adopt rules
4068 establishing standards for the approval, registration,
4069 discipline, or removal from registration of course providers,
4070 instructors, school officials, and monitor groups. The standards
4071 must be designed to ensure that such persons have the knowledge,
4072 competence, and integrity to fulfill the educational objectives
4073 of the prelicensure requirements of this chapter and chapter 648
4074 and to assure that insurance agents and licensees are competent
4075 to engage in the activities authorized under the license.

4076 (3) The department or commission shall adopt rules to
4077 establish a process for determining compliance with the
4078 prelicensure requirements of this chapter and chapter 648 and
4079 shall establish a prelicensure cycle for insurance agents and
4080 other licensees. The department or commission shall adopt rules
4081 prescribing the forms necessary to administer the prelicensure
4082 requirements.



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4083 Section 61. Section 626.291, Florida Statutes, is amended
4084 to read:

4085 626.291 Denial, issuance of license.--

4086 (1) Within 30 days after the applicant has completed any
4087 examination required under s. 626.221, the department or office
4088 or its designee shall provide a score report; and, if it finds
4089 that the applicant has received a passing grade, the department
4090 or office shall within such period notify the applicant and
4091 issue and transmit the license to which such examination
4092 related. If it finds that the applicant did not make a passing
4093 grade on the examination for a particular license, the
4094 department or office or its designee shall within this period
4095 provide notice to the applicant to that effect and of its denial
4096 of the license.

4097 (2) As to an applicant for a license for which no
4098 examination is required, the department or office shall promptly
4099 issue the license applied for as soon as it has approved the
4100 application.

4101 (3) The department or office shall not deny, delay, or
4102 withhold issuance of a license due to the fact that it has not
4103 received a criminal history report based on the applicant's
4104 fingerprints.

4105 Section 62. Paragraph (d) of subsection (2) of section
4106 626.292, Florida Statutes, is amended to read:

4107 626.292 Transfer of license from another state.--

4108 (2) To qualify for a license transfer, an individual
4109 applicant must meet the following requirements:



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4110 (d) The individual shall satisfy prelicensing education
4111 requirements in this state, unless the completion of
4112 prelicensing education requirements was a prerequisite for
4113 licensure in the other state and the prelicensing education
4114 requirements in the other state are substantially equivalent to
4115 the prelicensing requirements of this state as determined by the
4116 department ~~Insurance Commissioner of this state~~.

4117 Section 63. Section 626.301, Florida Statutes, is amended
4118 to read:

4119 626.301 Form and contents of licenses, in general.--Each
4120 license issued by the department or office shall be in such form
4121 as the department or commission may designate and contain the
4122 licensee's name, lines of authority the licensee is authorized
4123 to transact, the licensee's personal identification number, the
4124 date of issuance, and any other information the department or
4125 commission deems necessary to fully identify the licensee and
4126 the authority being granted. The department or commission may by
4127 rule require photographs of applicants as a part of the
4128 licensing process.

4129 Section 64. Section 626.322, Florida Statutes, is amended
4130 to read:

4131 626.322 License, appointment; certain military
4132 installations.--A natural person, not a resident of this state,
4133 may be licensed and appointed to represent an authorized life
4134 insurer domiciled in this state or an authorized foreign life
4135 insurer which maintains a regional home office in this state,
4136 provided such person represents such insurer exclusively at a
4137 United States military installation located in a foreign



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4138 country. The department may, upon request of the applicant and
 4139 the insurer on application forms furnished by the department and
 4140 upon payment of fees as prescribed in s. 624.501, issue a
 4141 license and appointment to such person. The insurer shall
 4142 certify to the department that the applicant has the necessary
 4143 training to hold himself or herself out as a life insurance
 4144 representative, and the insurer shall further certify that it is
 4145 willing to be bound by the acts of such applicant within the
 4146 scope of his or her employment. Appointments shall be continued
 4147 as prescribed in s. 626.381 and upon payment of a fee as
 4148 prescribed in s. 624.501, unless sooner terminated. Such fees
 4149 received shall be credited to the Insurance ~~Commissioner's~~
 4150 Regulatory Trust Fund as provided for in s. 624.523.

4151 Section 65. Section 626.361, Florida Statutes, is amended
 4152 to read:

4153 626.361 Effective date of appointments.--All appointments
 4154 shall be submitted to the department or office on a monthly
 4155 basis no later than 45 days after the date of appointment. All
 4156 appointments shall be effective as of the date requested on the
 4157 appointment form.

4158 Section 66. Section 626.371, Florida Statutes, is amended
 4159 to read:

4160 626.371 Payment of fees, taxes for appointment period
 4161 without appointment.--If, upon application and qualification for
 4162 an appointment and such investigation as the department or
 4163 office may make, it appears to the department or office that an
 4164 individual who was formerly appointed has been actively engaged
 4165 or is currently actively engaged as such an appointee, but



4166 without being appointed as required, the department or office
 4167 may, if it finds that such failure to be appointed was an
 4168 inadvertent error on the part of the insurer or employer so
 4169 represented, nevertheless issue the appointment as applied for
 4170 but subject to the condition that, before the appointment is
 4171 issued, all fees and taxes which would have been due had the
 4172 applicant been so appointed during such current and prior
 4173 periods, together with a continuation fee for such current and
 4174 prior terms of appointment, shall be paid to the department or
 4175 office.

4176 Section 67. Subsections (2), (3), and (4), of section
 4177 626.381, Florida Statutes, are amended to read:

4178 626.381 Renewal, continuation, reinstatement, or
 4179 termination of appointment.--

4180 (2) Each appointing entity shall file with the department
 4181 or office the lists, statements, and information as to
 4182 appointees whose appointments are being renewed or terminated,
 4183 accompanied by payment of the applicable renewal fees and taxes
 4184 as prescribed in s. 624.501, by a date set forth by the
 4185 department or office following the month during which the
 4186 appointments will expire.

4187 (3) Renewal of an appointment which is received on a date
 4188 set forth by the department or office in the succeeding month
 4189 may be renewed by the department or office without penalty and
 4190 shall be effective as of the day the appointment would have
 4191 expired.

4192 (4) Renewal of an appointment which is received by the
 4193 department or office after the date set by the department or



4194 | office may be accepted and effectuated by the department or
 4195 | office in its discretion if an additional appointment,
 4196 | continuation, and reinstatement fee accompanies the renewal
 4197 | pursuant to s. 624.501.

4198 | Section 68. Subsection (2) of section 626.431, Florida
 4199 | Statutes, is amended to read:

4200 | 626.431 Effect of expiration of license and appointment.--

4201 | (2) When a licensee's last appointment for a particular
 4202 | class of insurance has been terminated or not renewed, the
 4203 | department or office must notify the licensee that his or her
 4204 | eligibility for appointment as such an appointee will expire
 4205 | unless he or she is appointed prior to expiration of the 48-
 4206 | month period referred to in subsection (3).

4207 | Section 69. Section 626.451, Florida Statutes, is amended
 4208 | to read:

4209 | 626.451 Appointment of agent or other representative.--

4210 | (1) Each appointing entity appointing an agent, adjuster,
 4211 | service representative, customer representative, or managing
 4212 | general agent in this state shall file the appointment with the
 4213 | department or office and, at the same time, pay the applicable
 4214 | appointment fee and taxes. Every appointment shall be subject
 4215 | to the prior issuance of the appropriate agent's, adjuster's,
 4216 | service representative's, customer representative's, or managing
 4217 | general agent's license.

4218 | (2) As a part of each appointment there shall be a
 4219 | certified statement or affidavit of an appropriate officer or
 4220 | official of the appointing entity stating what investigation the
 4221 | appointing entity has made concerning the proposed appointee and



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4222 his or her background and the appointing entity's opinion to the
4223 best of its knowledge and belief as to the moral character,
4224 fitness, and reputation of the proposed appointee and any other
4225 information the department or office may reasonably require
4226 relative to the proposed appointee.

4227 (3) In the appointment of an agent, adjuster, service
4228 representative, customer representative, or managing general
4229 agent the appointing entity shall also certify therein that it
4230 is willing to be bound by the acts of the agent, adjuster,
4231 service representative, customer representative, or managing
4232 general agent, within the scope of his or her employment.

4233 (4) Each appointing entity shall advise the department or
4234 office in writing within 15 days after it or its general agent,
4235 officer, or other official becomes aware that an appointee has
4236 pleaded guilty or nolo contendere to or has been found guilty of
4237 a felony after being appointed.

4238 (5) Any law enforcement agency or state attorney's office
4239 that is aware that an agent, adjuster, service representative,
4240 customer representative, or managing general agent has pleaded
4241 guilty or nolo contendere to or has been found guilty of a
4242 felony shall notify the department or office of such fact.

4243 (6) Upon the filing of an information or indictment
4244 against an agent, adjuster, service representative, customer
4245 representative, or managing general agent, the state attorney
4246 shall immediately furnish the department or office a certified
4247 copy of the information or indictment.

4248 Section 70. Section 626.461, Florida Statutes, is amended
4249 to read:



4250 626.461 Continuation of appointment of agent or other
 4251 representative.--Subject to renewal or continuation by the
 4252 appointing entity, the appointment of the agent, adjuster,
 4253 solicitor, service representative, customer representative, or
 4254 managing general agent shall continue in effect until the
 4255 person's license is revoked or otherwise terminated, unless
 4256 written notice of earlier termination of the appointment is
 4257 filed with the department or office by either the appointing
 4258 entity or the appointee.

4259 Section 71. Subsections (2), (3), (4), and (5) of section
 4260 626.471, Florida Statutes, are amended to read:

4261 626.471 Termination of appointment.--

4262 (2) As soon as possible and at all events within 30 days
 4263 after terminating the appointment of an appointee, other than as
 4264 to an appointment terminated by the appointing entity's failure
 4265 to continue or renew it, the appointing entity shall file
 4266 written notice thereof with the department or office, together
 4267 with a statement that it has given the appointee notice thereof
 4268 as provided in subsection (1) and shall file with the department
 4269 or office the reasons and facts involved in such termination as
 4270 required under s. 626.511.

4271 (3) Upon termination of the appointment of an appointee,
 4272 whether by failure to renew or continue the appointment, the
 4273 appointing entity shall:

4274 (a) File with the department or office the information
 4275 required under s. 626.511.

4276 (b) Subject to the exceptions provided under subsection
 4277 (1), continue the outstanding contracts transacted by an agent



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4278 until the expiration date or anniversary date when the policy is
 4279 a continuous policy with no expiration date. This paragraph
 4280 shall not be construed to prohibit the cancellation of such
 4281 contracts when not otherwise prohibited by law.

4282 (4) An appointee may terminate the appointment at any time
 4283 by giving written notice thereof to the appointing entity and
 4284 filing a copy of the notice with the department or office. Such
 4285 termination shall be subject to the appointee's contract rights,
 4286 if any.

4287 (5) Upon receiving notice of termination, the department
 4288 or office shall terminate the appointment.

4289 Section 72. Section 626.511, Florida Statutes, is amended
 4290 to read:

4291 626.511 Reasons for termination; confidential
 4292 information.--

4293 (1) Any insurer terminating the appointment of an agent;
 4294 any general lines agent terminating the appointment of a
 4295 customer representative or a crop hail or multiple-peril crop
 4296 insurance agent; and any employer terminating the appointment of
 4297 an adjuster, service representative, or managing general agent,
 4298 whether such termination is by direct action of the appointing
 4299 insurer, agent, or employer or by failure to renew or continue
 4300 the appointment as provided, shall file with the department or
 4301 office a statement of the reasons, if any, for and the facts
 4302 relative to such termination. In the case of termination of the
 4303 appointment of an agent, such information may be filed by the
 4304 insurer or by the general agent of the insurer.



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4305 (2) In the case of terminations by failure to renew or
4306 continue the appointment, the information required under
4307 subsection (1) shall be filed with the department or office as
4308 soon as possible, and at all events within 30 days, after the
4309 date notice of intention not to so renew or continue was filed
4310 with the department or office as required in this chapter. In
4311 all other cases, the information required under subsection (1)
4312 shall be filed with the department or office at the time, or at
4313 all events within 10 days after, notice of the termination was
4314 filed with the department or office.

4315 (3) Any information, document, record, or statement
4316 furnished to the department or office under subsection (1) is
4317 confidential and exempt from the provisions of s. 119.07(1).

4318 Section 73. Subsections (2), (3), and (5) of section
4319 626.521, Florida Statutes, are amended to read:

4320 626.521 Character, credit reports.--

4321 (2) If requested by the department or office, the insurer,
4322 manager, general agent, general lines agent, or employer, as the
4323 case may be, shall furnish to the department or office on a form
4324 adopted by the department or commission and furnished by the
4325 department or office, such information as it may reasonably
4326 require relative to such individual and investigation.

4327 (3) As to an applicant for an adjuster's or reinsurance
4328 intermediary's license who is to be self-employed, the
4329 department or office may secure, at the cost of the applicant, a
4330 full detailed credit and character report made by an established
4331 and reputable independent reporting service relative to the
4332 applicant.



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4333 (5) Information contained in credit or character reports
4334 furnished to or secured by the department or office under this
4335 section is confidential and exempt from the provisions of s.
4336 119.07(1).

4337 Section 74. Subsections (1) and (2) of section 626.541,
4338 Florida Statutes, are amended to read:

4339 626.541 Firm, corporate, and business names; officers;
4340 associates; notice of changes.--

4341 (1) Any licensed agent or adjuster doing business under a
4342 firm or corporate name or under any business name other than his
4343 or her own individual name shall, within 30 days after the
4344 initial transaction of insurance under such business name, file
4345 with the department or office, on forms adopted by the
4346 department or commission and furnished by the department or
4347 office ~~it~~, a written statement of the firm, corporate, or
4348 business name being so used, the address of any office or
4349 offices or places of business making use of such name, and the
4350 name and social security number of each officer and director of
4351 the corporation and of each individual associated in such firm
4352 or corporation as to the insurance transactions thereof or in
4353 the use of such business name.

4354 (2) In the event of any change of such name, or of any of
4355 the officers and directors, or of any of such addresses, or in
4356 the personnel so associated, written notice of such change must
4357 be filed with the department or office within 30 days by or on
4358 behalf of those licensees terminating any such firm, corporate,
4359 or business name or continuing to operate thereunder.



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4360 Section 75. Section 626.551, Florida Statutes, is amended
4361 to read:

4362 626.551 Notice of change of address, name.--Every licensee
4363 shall notify the department or office in writing within 60 days
4364 after a change of name, residence address, principal business
4365 street address, or mailing address. Any licensed agent who has
4366 moved his or her residence from this state shall have his or her
4367 license and all appointments immediately terminated by the
4368 department or office. Failure to notify the department or office
4369 within the required time period shall result in a fine not to
4370 exceed \$250 for the first offense and, for subsequent offenses,
4371 a fine of not less than \$500 or suspension or revocation of the
4372 license pursuant to s. 626.611 or s. 626.621.

4373 Section 76. Subsections (1) and (2) of section 626.561,
4374 Florida Statutes, are amended to read:

4375 626.561 Reporting and accounting for funds.--

4376 (1) All premiums, return premiums, or other funds
4377 belonging to insurers or others received by an agent, customer
4378 representative, or adjuster in transactions under his or her
4379 license are trust funds received by the licensee in a fiduciary
4380 capacity. An agent shall keep the funds belonging to each
4381 insurer for which he or she is not appointed, other than a
4382 surplus lines insurer, in a separate account so as to allow the
4383 department or office to properly audit such funds. The licensee
4384 in the applicable regular course of business shall account for
4385 and pay the same to the insurer, insured, or other person
4386 entitled thereto.



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4387 (2) The licensee shall keep and make available to the
4388 department or office books, accounts, and records as will enable
4389 the department or office to determine whether such licensee is
4390 complying with the provisions of this code. Every licensee shall
4391 preserve books, accounts, and records pertaining to a premium
4392 payment for at least 3 years after payment; provided, however,
4393 the preservation of records by computer or photographic
4394 reproductions or records in photographic form shall constitute
4395 compliance with this requirement. All other records shall be
4396 maintained in accordance with s. 626.748. The 3-year
4397 requirement shall not apply to insurance binders when no policy
4398 is ultimately issued and no premium is collected.

4399 Section 77. Section 626.591, Florida Statutes, is amended
4400 to read:

4401 626.591 Penalty for violation of s. 626.581.--

4402 (1) If any ~~insurer or~~ agent is found by the department to
4403 be in violation of s. 626.581, the department may, in its
4404 discretion, suspend or revoke the insurer's certificate of
4405 authority and the agent's license. If any insurer is found by
4406 the office to be in violation of s. 626.581, the office may, in
4407 its discretion, suspend or revoke the insurer's certificate of
4408 authority.

4409 (2) Any such suspension or revocation shall be for a
4410 period of not less than 6 months, and the insurer or agent shall
4411 not subsequently be authorized or licensed to transact insurance
4412 unless the office or department is satisfied that the insurer or
4413 agent will not again violate any of the provisions of s.
4414 626.581.



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4415 Section 78. Subsection (1) of section 626.592, Florida
4416 Statutes, is amended to read:

4417 626.592 Primary agents.--

4418 (1) Each person operating an insurance agency and each
4419 location of a multiple location agency shall designate a primary
4420 agent for each insurance agency location and shall file the name
4421 of the person so designated, and the address of the insurance
4422 agency location where he or she is primary agent, with the
4423 department ~~of Insurance~~, on a form approved by the department.
4424 The designation of the primary agent may be changed at the
4425 option of the agency, and any change shall be effective upon
4426 notification to the department. Notice of change must be sent to
4427 the department within 30 days after such change.

4428 Section 79. Section 626.601, Florida Statutes, is amended
4429 to read:

4430 626.601 Improper conduct; inquiry; fingerprinting.--

4431 (1) The department or office may, upon its own motion or
4432 upon a written complaint signed by any interested person and
4433 filed with the department or office, inquire into any alleged
4434 improper conduct of any licensed agent, adjuster, service
4435 representative, managing general agent, customer representative,
4436 title insurance agent, title insurance agency, continuing
4437 education course provider, instructor, school official, or
4438 monitor group under this code. The department or office may
4439 thereafter initiate an investigation of any such licensee if it
4440 has reasonable cause to believe that the licensee has violated
4441 any provision of the insurance code. During the course of its
4442 investigation, the department or office shall contact the



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4443 licensee being investigated unless it determines that contacting
4444 such person could jeopardize the successful completion of the
4445 investigation or cause injury to the public.

4446 (2) In the investigation by the department or office of
4447 the alleged misconduct, the licensee shall, whenever so required
4448 by the department or office, cause his or her books and records
4449 to be open for inspection for the purpose of such inquiries.

4450 (3) The complaints against any licensee may be informally
4451 alleged and need not be in any such language as is necessary to
4452 charge a crime on an indictment or information.

4453 (4) The expense for any hearings or investigations under
4454 this law, as well as the fees and mileage of witnesses, may be
4455 paid out of the appropriate fund.

4456 (5) If the department or office, after investigation, has
4457 reason to believe that a licensee may have been found guilty of
4458 or pleaded guilty or nolo contendere to a felony or a crime
4459 related to the business of insurance in this or any other state
4460 or jurisdiction, the department or office may require the
4461 licensee to file with the department or office a complete set of
4462 his or her fingerprints, which shall be accompanied by the
4463 fingerprint processing fee set forth in s. 624.501. The
4464 fingerprints shall be certified by an authorized law enforcement
4465 officer.

4466 (6) The complaint and any information obtained pursuant to
4467 the investigation by the department or office are confidential
4468 and are exempt from the provisions of s. 119.07, unless the
4469 department or office files a formal administrative complaint,
4470 emergency order, or consent order against the licensee. Nothing



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4471 in this subsection shall be construed to prevent the department
4472 or office from disclosing the complaint or such information as
4473 it deems necessary to conduct the investigation, to update the
4474 complainant as to the status and outcome of the complaint, or to
4475 share such information with any law enforcement agency.

4476 Section 80. Section 626.611, Florida Statutes, is amended
4477 to read:

4478 626.611 Grounds for compulsory refusal, suspension, or
4479 revocation of agent's, title agency's, adjuster's, customer
4480 representative's, service representative's, or managing general
4481 agent's license or appointment.--The department or office shall
4482 deny an application for, suspend, revoke, or refuse to renew or
4483 continue the license or appointment of any applicant, agent,
4484 title agency, adjuster, customer representative, service
4485 representative, or managing general agent, and it shall suspend
4486 or revoke the eligibility to hold a license or appointment of
4487 any such person, if it finds that as to the applicant, licensee,
4488 or appointee any one or more of the following applicable grounds
4489 exist:

4490 (1) Lack of one or more of the qualifications for the
4491 license or appointment as specified in this code.

4492 (2) Material misstatement, misrepresentation, or fraud in
4493 obtaining the license or appointment or in attempting to obtain
4494 the license or appointment.

4495 (3) Failure to pass to the satisfaction of the department
4496 or office any examination required under this code.



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4497 (4) If the license or appointment is willfully used, or to
4498 be used, to circumvent any of the requirements or prohibitions
4499 of this code.

4500 (5) Willful misrepresentation of any insurance policy or
4501 annuity contract or willful deception with regard to any such
4502 policy or contract, done either in person or by any form of
4503 dissemination of information or advertising.

4504 (6) If, as an adjuster, or agent licensed and appointed to
4505 adjust claims under this code, he or she has materially
4506 misrepresented to an insured or other interested party the terms
4507 and coverage of an insurance contract with intent and for the
4508 purpose of effecting settlement of claim for loss or damage or
4509 benefit under such contract on less favorable terms than those
4510 provided in and contemplated by the contract.

4511 (7) Demonstrated lack of fitness or trustworthiness to
4512 engage in the business of insurance.

4513 (8) Demonstrated lack of reasonably adequate knowledge and
4514 technical competence to engage in the transactions authorized by
4515 the license or appointment.

4516 (9) Fraudulent or dishonest practices in the conduct of
4517 business under the license or appointment.

4518 (10) Misappropriation, conversion, or unlawful withholding
4519 of moneys belonging to insurers or insureds or beneficiaries or
4520 to others and received in conduct of business under the license
4521 or appointment.

4522 (11) Unlawfully rebating, attempting to unlawfully rebate,
4523 or unlawfully dividing or offering to divide his or her
4524 commission with another.



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4525 (12) Having obtained or attempted to obtain, or having
4526 used or using, a license or appointment as agent or customer
4527 representative for the purpose of soliciting or handling
4528 "controlled business" as defined in s. 626.730 with respect to
4529 general lines agents, s. 626.784 with respect to life agents,
4530 and s. 626.830 with respect to health agents.

4531 (13) Willful failure to comply with, or willful violation
4532 of, any proper order or rule of the department, commission, or
4533 office or willful violation of any provision of this code.

4534 (14) Having been found guilty of or having pleaded guilty
4535 or nolo contendere to a felony or a crime punishable by
4536 imprisonment of 1 year or more under the law of the United
4537 States of America or of any state thereof or under the law of
4538 any other country which involves moral turpitude, without regard
4539 to whether a judgment of conviction has been entered by the
4540 court having jurisdiction of such cases.

4541 (15) Fraudulent or dishonest practice in submitting or
4542 aiding or abetting any person in the submission of an
4543 application for workers' compensation coverage under chapter 440
4544 containing false or misleading information as to employee
4545 payroll or classification for the purpose of avoiding or
4546 reducing the amount of premium due for such coverage.

4547 (16) Sale of an unregistered security that was required to
4548 be registered, pursuant to chapter 517.

4549 Section 81. Section 626.621, Florida Statutes, is amended
4550 to read:

4551 626.621 Grounds for discretionary refusal, suspension, or
4552 revocation of agent's, adjuster's, customer representative's,



4553 service representative's, or managing general agent's license or
 4554 appointment.--The department or office may, in its discretion,
 4555 deny an application for, suspend, revoke, or refuse to renew or
 4556 continue the license or appointment of any applicant, agent,
 4557 adjuster, customer representative, service representative, or
 4558 managing general agent, and it may suspend or revoke the
 4559 eligibility to hold a license or appointment of any such person,
 4560 if it finds that as to the applicant, licensee, or appointee any
 4561 one or more of the following applicable grounds exist under
 4562 circumstances for which such denial, suspension, revocation, or
 4563 refusal is not mandatory under s. 626.611:

4564 (1) Any cause for which issuance of the license or
 4565 appointment could have been refused had it then existed and been
 4566 known to the department or office.

4567 (2) Violation of any provision of this code or of any
 4568 other law applicable to the business of insurance in the course
 4569 of dealing under the license or appointment.

4570 (3) Violation of any lawful order or rule of the
 4571 department, commission, or office.

4572 (4) Failure or refusal, upon demand, to pay over to any
 4573 insurer he or she represents or has represented any money coming
 4574 into his or her hands belonging to the insurer.

4575 (5) Violation of the provision against twisting, as
 4576 defined in s. 626.9541(1)(1).

4577 (6) In the conduct of business under the license or
 4578 appointment, engaging in unfair methods of competition or in
 4579 unfair or deceptive acts or practices, as prohibited under part
 4580 IX of this chapter, or having otherwise shown himself or herself



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4581 to be a source of injury or loss to the public or detrimental to
4582 the public interest.

4583 (7) Willful overinsurance of any property or health
4584 insurance risk.

4585 (8) Having been found guilty of or having pleaded guilty
4586 or nolo contendere to a felony or a crime punishable by
4587 imprisonment of 1 year or more under the law of the United
4588 States of America or of any state thereof or under the law of
4589 any other country, without regard to whether a judgment of
4590 conviction has been entered by the court having jurisdiction of
4591 such cases.

4592 (9) If a life agent, violation of the code of ethics.

4593 (10) Cheating on an examination required for licensure or
4594 violating test center or examination procedures published
4595 orally, in writing, or electronically at the test site by
4596 authorized representatives of the examination program
4597 administrator. Communication of test center and examination
4598 procedures must be clearly established and documented.

4599 (11) Failure to inform the department or office in writing
4600 within 30 days after pleading guilty or nolo contendere to, or
4601 being convicted or found guilty of, any felony or a crime
4602 punishable by imprisonment of 1 year or more under the law of
4603 the United States or of any state thereof, or under the law of
4604 any other country without regard to whether a judgment of
4605 conviction has been entered by the court having jurisdiction of
4606 the case.

4607 (12) Knowingly aiding, assisting, procuring, advising, or
4608 abetting any person in the violation of or to violate a



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4609 provision of the insurance code or any order or rule of the
4610 department, commission, or office.

4611 Section 82. Section 626.631, Florida Statutes, is amended
4612 to read:

4613 626.631 Procedure for refusal, suspension, or revocation
4614 of license.--

4615 (1) If any licensee is convicted by a court of a violation
4616 of this code or a felony, the licenses and appointments of such
4617 person shall be immediately revoked by the department or office.
4618 The licensee may subsequently request a hearing pursuant to ss.
4619 120.569 and 120.57, and the department or office shall expedite
4620 any such requested hearing. The sole issue at such hearing
4621 shall be whether the revocation should be rescinded because such
4622 person was not in fact convicted of a violation of this code or
4623 a felony.

4624 (2) The papers, documents, reports, or evidence of the
4625 department or office relative to a hearing for revocation or
4626 suspension of a license or appointment pursuant to the
4627 provisions of this chapter and chapter 120 are confidential and
4628 exempt from the provisions of s. 119.07(1) until after the same
4629 have been published at the hearing. However, such papers,
4630 documents, reports, or items of evidence are subject to
4631 discovery in a hearing for revocation or suspension of a license
4632 or appointment.

4633 Section 83. Subsections (1) and (2) of section 626.641,
4634 Florida Statutes, are amended to read:

4635 626.641 Duration of suspension or revocation.--



4636 (1) The department or office shall, in its order
 4637 suspending a license or appointment or in its order suspending
 4638 the eligibility of a person to hold or apply for such license or
 4639 appointment, specify the period during which the suspension is
 4640 to be in effect; but such period shall not exceed 2 years. The
 4641 license, appointment, or eligibility shall remain suspended
 4642 during the period so specified, subject, however, to any
 4643 rescission or modification of the order by the department or
 4644 office, or modification or reversal thereof by the court, prior
 4645 to expiration of the suspension period. A license, appointment,
 4646 or eligibility which has been suspended shall not be reinstated
 4647 except upon request for such reinstatement; but the department
 4648 or office shall not grant such reinstatement if it finds that
 4649 the circumstance or circumstances for which the license,
 4650 appointment, or eligibility was suspended still exist or are
 4651 likely to recur.

4652 (2) No person or appointee under any license or
 4653 appointment revoked by the department or office, nor any person
 4654 whose eligibility to hold same has been revoked by the
 4655 department or office, shall have the right to apply for another
 4656 license or appointment under this code within 2 years from the
 4657 effective date of such revocation or, if judicial review of such
 4658 revocation is sought, within 2 years from the date of final
 4659 court order or decree affirming the revocation. The department
 4660 or office shall not, however, grant a new license or appointment
 4661 or reinstate eligibility to hold such license or appointment if
 4662 it finds that the circumstance or circumstances for which the
 4663 eligibility was revoked or for which the previous license or



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4664 appointment was revoked still exist or are likely to recur; if
4665 an individual's license as agent or customer representative or
4666 eligibility to hold same has been revoked upon the ground
4667 specified in s. 626.611(12), the department or office shall
4668 refuse to grant or issue any new license or appointment so
4669 applied for.

4670 Section 84. Subsection (2) of section 626.661, Florida
4671 Statutes, is amended to read:

4672 626.661 Surrender of license.--

4673 (2) This section shall not be deemed to require the
4674 surrender to the department or office of any license unless such
4675 surrender has been requested by the department or office.

4676 Section 85. Section 626.681, Florida Statutes, is amended
4677 to read:

4678 626.681 Administrative fine in lieu of or in addition to
4679 suspension, revocation, or refusal of license, appointment, or
4680 disapproval.--

4681 (1) Except as to insurance agencies, if the department or
4682 office finds that one or more grounds exist for the suspension,
4683 revocation, or refusal to issue, renew, or continue any license
4684 or appointment issued under this chapter, or disapproval of a
4685 continuing education course provider, instructor, school
4686 official, or monitor groups, the department or office may, in
4687 its discretion, in lieu of or in addition to such suspension or
4688 revocation, or in lieu of such refusal, or disapproval, and
4689 except on a second offense or when such suspension, revocation,
4690 or refusal is mandatory, impose upon the licensee, appointee,
4691 course provider, instructor, school official, or monitor group



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4692 an administrative penalty in an amount up to \$500 or, if the
4693 department or office has found willful misconduct or willful
4694 violation on the part of the licensee, appointee, course
4695 provider, instructor, school official, or monitor group up to
4696 \$3,500. The administrative penalty may, in the discretion of the
4697 department or office, be augmented by an amount equal to any
4698 commissions received by or accruing to the credit of the
4699 licensee or appointee in connection with any transaction as to
4700 which the grounds for suspension, revocation, or refusal
4701 related.

4702 (2) With respect to insurance agencies, if the department
4703 finds that one or more grounds exist for the suspension,
4704 revocation, or refusal to issue, renew, or continue any license
4705 issued under this chapter, the department may, in its
4706 discretion, in lieu of or in addition to such suspension or
4707 revocation, or in lieu of such refusal, impose upon the licensee
4708 an administrative penalty in an amount not to exceed \$10,000 per
4709 violation. The administrative penalty may, in the discretion of
4710 the department, be augmented by an amount equal to any
4711 commissions received by or accruing to the credit of the
4712 licensee in connection with any transaction as to which the
4713 grounds for suspension, revocation, or refusal related.

4714 (3) The department or office may allow the licensee,
4715 appointee, or continuing education course provider, instructor,
4716 school official, or monitor group a reasonable period, not to
4717 exceed 30 days, within which to pay to the department or office
4718 the amount of the penalty so imposed. If the licensee,
4719 appointee, course provider, instructor, school official, or



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4720 monitor group fails to pay the penalty in its entirety to the
4721 department or office within the period so allowed, the license,
4722 appointments, approval, or status of that person shall stand
4723 suspended or revoked or issuance, renewal, or continuation shall
4724 be refused, as the case may be, upon expiration of such period.

4725 Section 86. Section 626.691, Florida Statutes, is amended
4726 to read:

4727 626.691 Probation.--

4728 (1) If the department or office finds that one or more
4729 grounds exist for the suspension, revocation, or refusal to
4730 renew or continue any license or appointment issued under this
4731 part, the department or office may, in its discretion, except
4732 when an administrative fine is not permissible under s. 626.681
4733 or when such suspension, revocation, or refusal is mandatory, in
4734 lieu of or in addition to such suspension or revocation, or in
4735 lieu of such refusal, or in connection with any administrative
4736 monetary penalty imposed under s. 626.681, place the offending
4737 licensee or appointee on probation for a period, not to exceed 2
4738 years, as specified by the department or office in its order.

4739 (2) As a condition to such probation or in connection
4740 therewith, the department or office may specify in its order
4741 reasonable terms and conditions to be fulfilled by the
4742 probationer during the probation period. If during the
4743 probation period the department or office has good cause to
4744 believe that the probationer has violated a term or condition,
4745 it shall suspend, revoke, or refuse to issue, renew, or continue
4746 the license or appointment of the probationer, as upon the
4747 original grounds referred to in subsection (1).



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4748 Section 87. Section 626.692, Florida Statutes, is amended
4749 to read:

4750 626.692 Restitution.--If any ground exists for the
4751 suspension, revocation, or refusal of a license or appointment,
4752 the department or office may, in addition to any other penalty
4753 authorized under this chapter, order the licensee to pay
4754 restitution to any person who has been deprived of money by the
4755 licensee's misappropriation, conversion, or unlawful withholding
4756 of moneys belonging to insurers, insureds, beneficiaries, or
4757 others. In no instance shall the amount of restitution required
4758 to be paid under this section exceed the amount of money
4759 misappropriated, converted, or unlawfully withheld. Nothing in
4760 this section limits or restricts a person's right to seek other
4761 remedies as provided for by law.

4762 Section 88. Section 626.7315, Florida Statutes, is amended
4763 to read:

4764 626.7315 Prohibition against the unlicensed transaction of
4765 general lines insurance.--With respect to any line of authority
4766 as defined in s. 626.015(6)~~(7)~~, no individual shall, unless
4767 licensed as a general lines agent:

- 4768 (1) Solicit insurance or procure applications therefor;
- 4769 (2) In this state, receive or issue a receipt for any
4770 money on account of or for any insurer, or receive or issue a
4771 receipt for money from other persons to be transmitted to any
4772 insurer for a policy, contract, or certificate of insurance or
4773 any renewal thereof, even though the policy, certificate, or
4774 contract is not signed by him or her as agent or representative
4775 of the insurer;



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4776 (3) Directly or indirectly represent himself or herself to
4777 be an agent of any insurer or as an agent, to collect or forward
4778 any insurance premium, or to solicit, negotiate, effect,
4779 procure, receive, deliver, or forward, directly or indirectly,
4780 any insurance contract or renewal thereof or any endorsement
4781 relating to an insurance contract, or attempt to effect the
4782 same, of property or insurable business activities or interests,
4783 located in this state;

4784 (4) In this state, engage or hold himself or herself out
4785 as engaging in the business of analyzing or abstracting
4786 insurance policies or of counseling or advising or giving
4787 opinions, other than as a licensed attorney at law, relative to
4788 insurance or insurance contracts, for fee, commission, or other
4789 compensation, other than as a salaried bona fide full-time
4790 employee so counseling and advising his or her employer relative
4791 to the insurance interests of the employer and of the
4792 subsidiaries or business affiliates of the employer;

4793 (5) In any way, directly or indirectly, make or cause to
4794 be made, or attempt to make or cause to be made, any contract of
4795 insurance for or on account of any insurer;

4796 (6) Solicit, negotiate, or in any way, directly or
4797 indirectly, effect insurance contracts, if a member of a
4798 partnership or association, or a stockholder, officer, or agent
4799 of a corporation which holds an agency appointment from any
4800 insurer; or

4801 (7) Receive or transmit applications for suretyship, or
4802 receive for delivery bonds founded on applications forwarded
4803 from this state, or otherwise procure suretyship to be effected



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4804 by a surety insurer upon the bonds of persons in this state or
4805 upon bonds given to persons in this state.

4806 Section 89. Subsection (3) of section 626.732, Florida
4807 Statutes, is amended to read:

4808 626.732 Requirement as to knowledge, experience, or
4809 instruction.--

4810 (3) An individual who was or became qualified to sit for
4811 an agent's, customer representative's, or adjuster's examination
4812 at or during the time he or she was employed by the department
4813 or office and who, while so employed, was employed in
4814 responsible insurance duties as a full-time bona fide employee
4815 shall be permitted to take an examination if application for
4816 such examination is made within 90 days after the date of
4817 termination of his or her employment with the department or
4818 office.

4819 Section 90. Section 626.742, Florida Statutes, is amended
4820 to read:

4821 626.742 Nonresident agents; service of process.--

4822 (1) Each licensed nonresident agent shall appoint the
4823 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as
4824 his or her attorney to receive service of legal process issued
4825 against the agent in this state, upon causes of action arising
4826 within this state out of transactions under the agent's license
4827 and appointment. Service upon the Chief Financial Officer
4828 ~~Insurance Commissioner and Treasurer~~ as attorney shall
4829 constitute effective legal service upon the agent.

4830 (2) The appointment of the Chief Financial Officer
4831 ~~Insurance Commissioner and Treasurer~~ for service of process



4832 shall be irrevocable for as long as there could be any cause of
 4833 action against the agent arising out of his or her insurance
 4834 transactions in this state.

4835 (3) Duplicate copies of such legal process against such
 4836 agent shall be served upon the Chief Financial Officer ~~Insurance~~
 4837 ~~Commissioner and Treasurer~~ by a person competent to serve a
 4838 summons.

4839 (4) Upon receiving such service, the Chief Financial
 4840 Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith
 4841 send one of the copies of the process, by registered mail with
 4842 return receipt requested, to the defendant agent at his or her
 4843 last address of record with the department.

4844 (5) The Chief Financial Officer ~~Insurance Commissioner and~~
 4845 ~~Treasurer~~ shall keep a record of the day and hour of service
 4846 upon him or her of all such legal process.

4847 Section 91. Subsections (4) and (7) of section 626.7451,
 4848 Florida Statutes, are amended to read:

4849 626.7451 Managing general agents; required contract
 4850 provisions.--No person acting in the capacity of a managing
 4851 general agent shall place business with an insurer unless there
 4852 is in force a written contract between the parties which sets
 4853 forth the responsibility for a particular function, specifies
 4854 the division of responsibilities, and contains the following
 4855 minimum provisions:

4856 (4) Separate records of business written by the managing
 4857 general agent shall be maintained unless the managing general
 4858 agent is a controlled or controlling person. The insurer shall
 4859 have access and the right to copy all accounts and records



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4860 related to its business in a form usable by the insurer, and the
 4861 department and office shall have access to all books, bank
 4862 accounts, and records of the managing general agent in a form
 4863 usable to the department and office. The records shall be
 4864 retained according to s. 626.561.

4865 (7) If the contract permits the managing general agent to
 4866 settle claims on behalf of the insurer:

4867 (a) All claims must be reported to the company in a timely
 4868 manner and all claims must be adjusted by properly licensed
 4869 persons.

4870 (b) Notice shall be sent by the managing general agent to
 4871 the insurer as soon as it becomes known that the claim:

- 4872 1. Exceeds the limit set by the insurer;
- 4873 2. Involves a coverage dispute;
- 4874 3. Exceeds the managing general agent's claims settlement
 4875 authority;
- 4876 4. Is open for more than 6 months; or
- 4877 5. Is closed by payment of an amount set by the office
 4878 ~~department~~ or an amount set by the insurer, whichever is less.

4879 (c) All claims files shall be the joint property of the
 4880 insurer and managing general agent. However, upon an order of
 4881 liquidation of the insurer the claims and related application
 4882 files shall become the sole property of the insurer or its
 4883 estate. The managing general agent shall have reasonable access
 4884 to and the right to copy the files on a timely basis.

4885 (d) Any settlement authority granted to the managing
 4886 general agent may be terminated for cause upon the insurer's
 4887 written notice to the managing general agent or upon the



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4888 termination of the contract. The insurer may suspend the
4889 settlement authority during the pendency of any dispute
4890 regarding the cause for termination.

4891
4892 For the purposes of this section and ss. 626.7453 and 626.7454,
4893 the term "controlling person" or "controlling" has the meaning
4894 set forth in s. 625.012(5)(b)1., and the term "controlled
4895 person" or "controlled" has the meaning set forth in s.
4896 625.012(5)(b)2.

4897 Section 92. Subsections (1), (5), and (6) of section
4898 626.7454, Florida Statutes, are amended to read:

4899 626.7454 Managing general agents; duties of insurers.--

4900 (1) The insurer shall have on file for each managing
4901 general agent with which it has done business an independent
4902 financial examination in a form acceptable to the office
4903 ~~department~~.

4904 (5) Within 30 days after entering into or terminating a
4905 contract with a managing general agent, the insurer shall
4906 provide written notification of the appointment or termination
4907 to the department and office. Notices of appointment of a
4908 managing general agent shall include a statement of duties which
4909 the applicant is expected to perform on behalf of the insurer,
4910 the lines of insurance for which the applicant is to be
4911 authorized to act, and any other information the department or
4912 office may request.

4913 (6) An insurer shall review its books and records on a
4914 quarterly basis to determine if any producer has become a
4915 managing general agent as defined in s. 626.015. If the insurer



4916 determines that a producer has become a managing general agent,
 4917 the insurer shall promptly notify the producer and the
 4918 department and office of such determination and the insurer and
 4919 producer must fully comply with the provisions of this section
 4920 and ss. 626.7451, 626.7452, and 626.7453 within 30 days after
 4921 such determination.

4922
 4923
 4924 Subsections (1), (3), and (4) do not apply to a managing
 4925 general agent that is a controlled or controlling person.

4926 Section 93. Subsections (6), (7), and (8) of section
 4927 626.7491, Florida Statutes, are amended to read:

4928 626.7491 Business transacted with producer controlled
 4929 property and casualty insurer.--

4930 (6) AUDIT COMMITTEE.--Every controlled insurer shall have
 4931 an audit committee of the board of directors composed of
 4932 independent directors. The audit committee shall annually meet
 4933 with management, the insurer's independent certified public
 4934 accountants, and an independent casualty actuary or other
 4935 independent loss reserve specialist acceptable to the office
 4936 ~~department~~ to review the adequacy of the insurer's loss
 4937 reserves.

4938 (7) REPORTING REQUIREMENTS.--

4939 (a) In addition to any other required loss reserve
 4940 certification, the controlled insurer shall, on April 1 of each
 4941 year, file with the office ~~department~~ the opinion of an
 4942 independent casualty actuary, or such other independent loss
 4943 reserve specialist acceptable to the office ~~department~~,



4944 reporting loss ratios for each line of business written and
 4945 attesting to the adequacy of loss reserves established for
 4946 losses incurred and outstanding as of the year end, including
 4947 incurred but not reported losses, on business placed by the
 4948 producer.

4949 (b) The controlled insurer shall annually report to the
 4950 office ~~department~~ the amount of commissions paid to the
 4951 producer, the percentage such amount represents of the net
 4952 premiums written, and comparable amounts and percentages paid to
 4953 noncontrolling producers for placements of the same kinds of
 4954 insurance.

4955 (8) PENALTIES.--

4956 (a) If the department believes that the controlling
 4957 producer or any other person has not materially complied with
 4958 this section, or any rule adopted or order issued hereunder, the
 4959 department may order the controlling producer to cease placing
 4960 business with the controlled insurer.

4961 (b) If, due to such material noncompliance, the controlled
 4962 insurer or any policyholder thereof has suffered any loss or
 4963 damage, the department or office may maintain a civil action or
 4964 intervene in an action brought by or on behalf of the insurer or
 4965 policyholder for recovery of compensatory damages for the
 4966 benefit of the insurer or policyholder or other appropriate
 4967 relief.

4968 (c) If an order for liquidation or rehabilitation of the
 4969 controlled insurer has been entered pursuant to chapter 631 and
 4970 the receiver appointed under such order believes that the
 4971 controlling producer or any other person has not materially



4972 | complied with this section or any rule adopted or order issued
 4973 | hereunder and the insurer has suffered any loss or damage
 4974 | therefrom, the receiver may maintain a civil action for recovery
 4975 | of damages or other appropriate sanctions for the benefit of the
 4976 | insurer.

4977 | (d) Nothing contained in this section shall affect the
 4978 | right of the department or office to impose any other penalties
 4979 | provided for in the Florida Insurance Code.

4980 | (e) Nothing contained in this section is intended to or
 4981 | shall in any manner alter or affect the rights of policyholders,
 4982 | claimants, creditors, or other third parties.

4983 | Section 94. Paragraph (e) of subsection (3) and
 4984 | subsections (11) and (12) of section 626.7492, Florida Statutes,
 4985 | are amended to read:

4986 | 626.7492 Reinsurance intermediaries.--

4987 | (3) LICENSURE.--

4988 | (e) If the applicant for a reinsurance intermediary
 4989 | license is a nonresident, the applicant, as a condition
 4990 | precedent to receiving or holding a license, must designate the
 4991 | Chief Financial Officer ~~Insurance Commissioner~~ as agent for
 4992 | service of process in the manner, and with the same legal
 4993 | effect, provided for by this section for designation of service
 4994 | of process upon unauthorized insurers. Such applicant shall also
 4995 | furnish the department with the name and address of a resident
 4996 | of this state upon whom notices or orders of the department or
 4997 | process affecting the nonresident reinsurance intermediary may
 4998 | be served. The licensee shall promptly notify the department in
 4999 | writing of each change in its designated agent for service of



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5000 process, and the change shall not become effective until
5001 acknowledged by the department.

5002 (11) PENALTIES AND LIABILITIES.--

5003 (a) A reinsurance intermediary found by the department, or
5004 an insurer, or reinsurer found by the office, ~~department~~ to be
5005 in violation of any provision of this section must:

5006 1. For each separate violation pay a penalty in an amount
5007 not to exceed \$5,000;

5008 2. Be subject to revocation or suspension of its license;
5009 and

5010 3. If a violation was committed by the reinsurance
5011 intermediary, the reinsurance intermediary must make restitution
5012 to the insurer, reinsurer, rehabilitator, or liquidator of the
5013 insurer or reinsurer for the net losses incurred by the insurer
5014 or reinsurer attributable to the violation.

5015 (b) Nothing contained in this section shall affect the
5016 right of the office or department to impose any other penalties
5017 provided in the Florida Insurance Code.

5018 (c) Nothing contained in this section is intended to or
5019 shall in any manner limit or restrict the rights of
5020 policyholders, claimants, creditors, or other third parties or
5021 confer any rights to these persons.

5022 ~~(12) No insurer or reinsurer may continue to use the~~
5023 ~~services of a reinsurance intermediary on or after April 8,~~
5024 ~~1992, unless such use is in compliance with this section.~~

5025 Section 95. Subsection (5) of section 626.752, Florida
5026 Statutes, is amended to read:

5027 626.752 Exchange of business.--



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5028 (5) Within 15 days after the last day of each month, any
 5029 insurer accepting business under this section shall report to
 5030 the department the name, address, telephone number, and social
 5031 security number of each agent from which the insurer received
 5032 more than 24 personal lines risks during the calendar year,
 5033 except for risks being removed from the Citizens Property
 5034 Insurance Corporation Residential Property and Casualty Joint
 5035 Underwriting Association and placed with that insurer by a
 5036 brokering agent. Once the insurer has reported pursuant to this
 5037 subsection an agent's name to the department, additional reports
 5038 on the same agent shall not be required. However, the fee set
 5039 forth in s. 624.501 shall be paid for the agent by the insurer
 5040 for each year until the insurer notifies the department that the
 5041 insurer is no longer accepting business from the agent pursuant
 5042 to this section. The insurer may require that the agent
 5043 reimburse the insurer for the fee.

5044 Section 96. Subsection (2) of section 626.7845, Florida
 5045 Statutes, is amended to read:

5046 626.7845 Prohibition against unlicensed transaction of
 5047 life insurance.--

5048 (2) Except as provided in s. 626.112(6), with respect to
 5049 any line of authority specified in s. 626.015(11)(~~12~~), no
 5050 individual shall, unless licensed as a life agent:

5051 (a) Solicit insurance or annuities or procure
 5052 applications; or

5053 (b) In this state, engage or hold himself or herself out
 5054 as engaging in the business of analyzing or abstracting
 5055 insurance policies or of counseling or advising or giving



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5056 | opinions to persons relative to insurance or insurance contracts
5057 | other than:

- 5058 | 1. As a consulting actuary advising an insurer; or
- 5059 | 2. As to the counseling and advising of labor unions,
- 5060 | associations, trustees, employers, or other business entities,
- 5061 | the subsidiaries and affiliates of each, relative to their
- 5062 | interests and those of their members or employees under
- 5063 | insurance benefit plans.

5064 | Section 97. Section 626.7851, Florida Statutes, is amended
5065 | to read:

5066 | 626.7851 Requirement as to knowledge, experience, or
5067 | instruction.--No applicant for a license as a life agent, except
5068 | for a chartered life underwriter (CLU), shall be qualified or
5069 | licensed unless within the 4 years immediately preceding the
5070 | date the application for a license is filed with the department
5071 | he or she has:

5072 | (1) Successfully completed 40 hours of classroom courses
5073 | in insurance satisfactory to the department at a school or
5074 | college, or extension division thereof, or other authorized
5075 | course of study, approved by the department. Courses must
5076 | include instruction on the subject matter of unauthorized
5077 | entities engaging in the business of insurance, to include the
5078 | Florida Nonprofit Multiple-Employer Welfare Arrangement Act and
5079 | the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001
5080 | et seq., as it relates to the provision of life insurance by
5081 | employers to their employees and the regulation thereof;

5082 | (2) Successfully completed a correspondence course in
5083 | insurance satisfactory to the department and regularly offered



5084 by accredited institutions of higher learning in this state,
 5085 approved by the department. Courses must include instruction on
 5086 the subject matter of unauthorized entities engaging in the
 5087 business of insurance, to include the Florida Nonprofit
 5088 Multiple-Employer Welfare Arrangement Act and the Employee
 5089 Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as
 5090 it relates to the provision of life insurance by employers to
 5091 their employees and the regulation thereof;

5092 (3) Held an active license in life, or life and health,
 5093 insurance in another state. This provision may not be utilized
 5094 unless the other state grants reciprocal treatment to licensees
 5095 formerly licensed in Florida; or

5096 (4) Been employed by the department or office for at least
 5097 1 year, full time in life or life and health insurance
 5098 regulatory matters and who was not terminated for cause, and
 5099 application for examination is made within 90 days after the
 5100 date of termination of his or her employment with the department
 5101 or office.

5102 Section 98. Section 626.8305, Florida Statutes, is amended
 5103 to read:

5104 626.8305 Prohibition against the unlicensed transaction of
 5105 health insurance.--Except as provided in s. 626.112(6), with
 5106 respect to any line of authority specified in s. 626.015~~(7)(8)~~,
 5107 no individual shall, unless licensed as a health agent:

5108 (1) Solicit insurance or procure applications; or

5109 (2) In this state, engage or hold himself or herself out
 5110 as engaging in the business of analyzing or abstracting



5111 insurance policies or of counseling or advising or giving
5112 opinions to persons relative to insurance contracts other than:

- 5113 (a) As a consulting actuary advising insurers; or
- 5114 (b) As to the counseling and advising of labor unions,
- 5115 associations, trustees, employers, or other business entities,
- 5116 the subsidiaries and affiliates of each, relative to their
- 5117 interests and those of their members or employees under
- 5118 insurance benefit plans.

5119 Section 99. Subsection (4) of section 626.8311, Florida
5120 Statutes, is amended to read:

5121 626.8311 Requirement as to knowledge, experience, or
5122 instruction.--No applicant for a license as a health agent,
5123 except for a chartered life underwriter (CLU), shall be
5124 qualified or licensed unless within the 4 years immediately
5125 preceding the date the application for license is filed with the
5126 department he or she has:

- 5127 (4) Been employed by the department or office for at least
- 5128 1 year, full time in health insurance regulatory matters and who
- 5129 was not terminated for cause, and application for examination is
- 5130 made within 90 days after the date of termination of his or her
- 5131 employment with the department or office.

5132 Section 100. Subsection (1) of section 626.8427, Florida
5133 Statutes, is amended to read:

5134 626.8427 Number of applications for licensure required;
5135 exemption; effect of expiration of license.--

- 5136 (1) After a license as a title insurance agent has been
- 5137 issued to a title insurance agent, the agent is not required to
- 5138 file another license application for a similar license,



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5139 | irrespective of the number of insurers to be represented by the
5140 | agent, unless:

5141 | (a) The agent is specifically ordered by the department to
5142 | complete a new application; or

5143 | (b) During any period of 48 months since the filing of the
5144 | original license application, the agent was not appointed,
5145 | unless in the case of individuals the failure to be so appointed
5146 | was due to military service, in which event the period within
5147 | which a new application is not required may, in the discretion
5148 | of the department ~~of Insurance~~, be extended for 12 months
5149 | following the date of discharge from military service if the
5150 | military service does not exceed 3 years, but in no event shall
5151 | the period be extended under this clause for a period of more
5152 | than 6 years from the date of filing the original application.

5153 | Section 101. Subsections (1) and (3) of section 626.8463,
5154 | Florida Statutes, are amended to read:

5155 | 626.8463 Witnesses and evidence.--

5156 | (1) As to the subject of any examination, investigation,
5157 | or hearing being conducted by him or her under s. 624.5015, ss.
5158 | 626.8417-626.847, or s. 627.791, an examiner appointed by the
5159 | department or office ~~of Insurance~~ may administer oaths, examine
5160 | and cross-examine witnesses, and receive oral and documentary
5161 | evidence and shall have the power to subpoena witnesses, compel
5162 | their attendance and testimony, and require by subpoena the
5163 | production of books, papers, records, files, correspondence,
5164 | documents, or other evidence which the examiner deems relevant
5165 | to the inquiry.



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5166 (3) If a person refuses to comply with any such subpoena
5167 or to testify as to any matter concerning which the person may
5168 be lawfully interrogated, the circuit court in and for Leon
5169 County, or the county in which such examination, investigation,
5170 or hearing is being conducted, or the county in which such
5171 person resides, upon application by the department or office,
5172 may issue an order requiring such person to comply with the
5173 subpoena and to testify. A person who fails to obey such an
5174 order of the court may be punished by the court for contempt.

5175 Section 102. Section 626.8467, Florida Statutes, is
5176 amended to read:

5177 626.8467 Testimony compelled; immunity from prosecution.--

5178 (1) If a person asks to be excused from attending or
5179 testifying or from producing any books, papers, records,
5180 contracts, documents, or other evidence in connection with any
5181 examination, hearing, or investigation being conducted under s.
5182 624.5015, ss. 626.8417-626.847, or s. 627.791 by the department
5183 or office or its examiner on the ground that the testimony or
5184 evidence required of the person may tend to incriminate him or
5185 her or subject him or her to a penalty or forfeiture and
5186 notwithstanding is directed to give such testimony or produce
5187 such evidence, the person must, if so directed by the Department
5188 of Financial Services Insurance ~~Insurance~~ and the Department of Legal
5189 Affairs or by the office and the Department of Legal Affairs,
5190 nonetheless comply with such direction, but he or she shall not
5191 thereafter be prosecuted or subjected to any penalty or
5192 forfeiture for or on account of any transaction, matter, or
5193 thing concerning which he or she may have so testified or



5194 produced evidence, and no testimony so given or evidence
 5195 produced shall be received against the person upon any criminal
 5196 action, investigation, or proceeding. However, a person so
 5197 testifying shall not be exempt from prosecution or punishment
 5198 for any perjury committed by him or her in such testimony, and
 5199 the testimony or evidence so given or produced shall be
 5200 admissible against him or her upon any criminal action,
 5201 investigation, or proceeding concerning such perjury; and such
 5202 person shall not be exempt from the refusal, suspension, or
 5203 revocation of any license or appointment, permission, or
 5204 authority conferred or to be conferred pursuant to s. 624.5015,
 5205 ss. 626.8417-626.847, or s. 627.791.

5206 (2) Any such person may execute, acknowledge, and file
 5207 with in the office of the Department of Financial Services or
 5208 the office, as appropriate, ~~Insurance~~ a statement expressly
 5209 waiving such immunity or privilege with respect to any
 5210 transaction, matter, or thing specified in the statement, and
 5211 thereupon the testimony of such person or such evidence in
 5212 relation to such transaction, matter, or thing may be received
 5213 or produced before any judge or justice, court, tribunal, or
 5214 grand jury or otherwise and, if so received or produced, such
 5215 person shall not be entitled to any immunity or privilege on
 5216 account of any testimony he or she may so give or evidence so
 5217 produced.

5218 Section 103. Section 626.847, Florida Statutes, is amended
 5219 to read:

5220 626.847 Penalty for refusal to testify.--A person who
 5221 refuses or fails, without lawful cause, to testify relative to



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5222 the affairs of any title insurer or other person when subpoenaed
 5223 under s. 626.8463 and requested by the department or office ~~of~~
 5224 ~~Insurance~~ to so testify is guilty of a misdemeanor of the second
 5225 degree and, upon conviction, is punishable as provided in s.
 5226 775.082 or s. 775.083.

5227 Section 104. Subsection (3) of section 626.8473, Florida
 5228 Statutes, is amended to read:

5229 626.8473 Escrow; trust fund.--

5230 (3) All funds received by a title insurance agent to be
 5231 held in trust shall be immediately placed in a financial
 5232 institution that is located within this state and is a member of
 5233 the Federal Deposit Insurance Corporation or the National Credit
 5234 Union Share Insurance Fund. These funds shall be invested in an
 5235 escrow account in accordance with the investment requirements
 5236 and standards established for deposits and investments of state
 5237 funds in s. 17.57 ~~18.10~~, where the funds shall be kept until
 5238 disbursement thereof is properly authorized.

5239 Section 105. Section 626.8582, Florida Statutes, is
 5240 amended to read:

5241 626.8582 "Nonresident public adjuster" defined.--A

5242 "nonresident public adjuster" is a person who:

5243 (1) Is not a resident of this state;

5244 (2) Is a currently licensed public adjuster in his or her
 5245 state of residence for the type or kinds of insurance for which
 5246 the licensee intends to adjust claims in this state or, if a
 5247 resident of a state that does not license public adjusters, has
 5248 passed the office's ~~department's~~ adjuster examination as
 5249 prescribed in s. 626.8732(1)(b); and



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5250 (3) Is a self-employed public adjuster or associated with
5251 or employed by a public adjusting firm or other public adjuster.

5252 Section 106. Section 626.8584, Florida Statutes, is
5253 amended to read:

5254 626.8584 "Nonresident independent adjuster" defined.--A
5255 "nonresident independent adjuster" is a person who:

5256 (1) Is not a resident of this state;

5257 (2) Is a currently licensed independent adjuster in his or
5258 her state of residence for the type or kinds of insurance for
5259 which the licensee intends to adjust claims in this state or, if
5260 a resident of a state that does not license independent
5261 adjusters, has passed the office's ~~department's~~ adjuster
5262 examination as prescribed in s. 626.8734(1)(b); and

5263 (3) Is a self-employed independent adjuster or associated
5264 with or employed by an independent adjusting firm or other
5265 independent adjuster.

5266 Section 107. Section 626.859, Florida Statutes, is amended
5267 to read:

5268 626.859 "Catastrophe" or "emergency" adjuster defined.--A
5269 "catastrophe" or "emergency" adjuster is a person who is not a
5270 licensed adjuster under this part, but who has been designated
5271 and certified to the office ~~department~~ by insurers as qualified
5272 to adjust claims, losses, or damages under policies or contracts
5273 of insurance issued by such insurer, and whom the office
5274 ~~department~~ may license, in the event of a catastrophe or
5275 emergency, for the purposes and under the conditions which the
5276 office ~~department~~ shall fix and for the period of the emergency
5277 as the office ~~department~~ shall determine, to adjust claims,



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5278 losses, or damages under the policies of insurance issued by the
5279 insurers.

5280 Section 108. Subsection (2) of section 626.861, Florida
5281 Statutes, is amended to read:

5282 626.861 Insurer's officers, insurer's employees,
5283 reciprocal insurer's representatives; adjustments by.--

5284 (2) If any such officer, employee, attorney, or agent in
5285 connection with the adjustment of any such claim, loss, or
5286 damage engages in any of the misconduct described in or
5287 contemplated by s. 626.611(6), the office ~~department~~ may suspend
5288 or revoke the insurer's certificate of authority.

5289 Section 109. Subsection (2) of section 626.863, Florida
5290 Statutes, is amended to read:

5291 626.863 Licensed independent adjusters required; insurers'
5292 responsibility.--

5293 (2) Before referring any claim or loss, the insurer shall
5294 ascertain from the office ~~department~~ whether the proposed
5295 independent adjuster is currently licensed and appointed as
5296 such. Having once ascertained that a particular person is so
5297 licensed and appointed, the insurer may assume that he or she
5298 will continue to be so licensed and appointed until the insurer
5299 has knowledge, or receives information from the office
5300 ~~department~~, to the contrary.

5301 Section 110. Section 626.865, Florida Statutes, is amended
5302 to read:

5303 626.865 Public adjuster's qualifications, bond.--

5304 (1) The office ~~department~~ shall issue a license to an
5305 applicant for a public adjuster's license upon determining that



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5306 | the applicant has paid the applicable fees specified in s.
5307 | 624.501 and possesses the following qualifications:

5308 | (a) Is a natural person at least 18 years of age.

5309 | (b) Is a bona fide resident of this state.

5310 | (c) Is trustworthy and has such business reputation as
5311 | would reasonably assure that the applicant will conduct his or
5312 | her business as insurance adjuster fairly and in good faith and
5313 | without detriment to the public.

5314 | (d) Has had sufficient experience, training, or
5315 | instruction concerning the adjusting of damages or losses under
5316 | insurance contracts, other than life and annuity contracts, is
5317 | sufficiently informed as to the terms and effects of the
5318 | provisions of those types of insurance contracts, and possesses
5319 | adequate knowledge of the laws of this state relating to such
5320 | contracts as to enable and qualify him or her to engage in the
5321 | business of insurance adjuster fairly and without injury to the
5322 | public or any member thereof with whom the applicant may have
5323 | business as a public adjuster.

5324 | (e) Has passed any required written examination.

5325 | (2) At the time of application for license as a public
5326 | adjuster, the applicant shall file with the office ~~department~~ a
5327 | bond executed and issued by a surety insurer authorized to
5328 | transact such business in this state, in the amount of \$50,000,
5329 | conditioned for the faithful performance of his or her duties as
5330 | a public adjuster under the license applied for. The bond shall
5331 | be in favor of the office ~~department~~ and shall specifically
5332 | authorize recovery by the office ~~department~~ of the damages
5333 | sustained in case the licensee is guilty of fraud or unfair



5334 practices in connection with his or her business as public
 5335 adjuster. The aggregate liability of the surety for all such
 5336 damages shall in no event exceed the amount of the bond. Such
 5337 bond shall not be terminated unless at least 30 days' written
 5338 notice is given to the licensee and filed with the office
 5339 ~~department~~.

5340 Section 111. Section 626.866, Florida Statutes, is amended
 5341 to read:

5342 626.866 Independent adjuster's qualifications.--The office
 5343 ~~department~~ shall issue a license to an applicant for an
 5344 independent adjuster's license upon determining that the
 5345 applicable license fee specified in s. 624.501 has been paid and
 5346 that the applicant possesses the following qualifications:

- 5347 (1) Is a natural person at least 18 years of age.
- 5348 (2) Is a bona fide resident of this state.
- 5349 (3) Is trustworthy and has such business reputation as
 5350 would reasonably assure that the applicant will conduct his or
 5351 her business as insurance adjuster fairly and in good faith and
 5352 without detriment to the public.

5353 (4) Has had sufficient experience, training, or
 5354 instruction concerning the adjusting of damage or loss under
 5355 insurance contracts, other than life and annuity contracts, is
 5356 sufficiently informed as to the terms and the effects of the
 5357 provisions of such types of contracts, and possesses adequate
 5358 knowledge of the insurance laws of this state relating to such
 5359 contracts as to enable and qualify him or her to engage in the
 5360 business of insurance adjuster fairly and without injury to the
 5361 public or any member thereof with whom he or she may have



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5362 relations as an insurance adjuster and to adjust all claims in
5363 accordance with the policy or contract and the insurance laws of
5364 this state.

5365 (5) Has passed any required written examination.

5366 Section 112. Section 626.867, Florida Statutes, is amended
5367 to read:

5368 626.867 Company employee adjuster's qualifications.--The
5369 office department shall issue a license to an applicant for a
5370 company employee adjuster's license upon determining that the
5371 applicable license fee specified in s. 624.501 has been paid and
5372 that the applicant possesses the following qualifications:

5373 (1) Is a natural person at least 18 years of age.

5374 (2) Is a bona fide resident of this state.

5375 (3) Is trustworthy and has such business reputation as
5376 would reasonably assure that the applicant will conduct his or
5377 her business as insurance adjuster fairly and in good faith and
5378 without detriment to the public.

5379 (4) Has had sufficient experience, training, or
5380 instruction concerning the adjusting of damage or loss of risks
5381 described in his or her application, is sufficiently informed as
5382 to the terms and the effects of the provisions of insurance
5383 contracts covering such risks, and possesses adequate knowledge
5384 of the insurance laws of this state relating to such insurance
5385 contracts as to enable and qualify him or her to engage in such
5386 business as insurance adjuster fairly and without injury to the
5387 public or any member thereof with whom he or she may have
5388 relations as an insurance adjuster and to adjust all claims in



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5389 | accordance with the policy or contract and the insurance laws of
5390 | this state.

5391 | (5) Has passed any required written examination.

5392 | Section 113. Subsection (5) of section 626.869, Florida
5393 | Statutes, is amended to read:

5394 | 626.869 License, adjusters.--

5395 | (5) Any person holding a license for 24 consecutive months
5396 | or longer and who engages in adjusting workers' compensation
5397 | insurance must, beginning in their birth month and every 2 years
5398 | thereafter, have completed 24 hours of courses, 2 hours of which
5399 | relate to ethics, in subjects designed to inform the licensee
5400 | regarding the current workers' compensation laws of this state,
5401 | so as to enable him or her to engage in business as a workers'
5402 | compensation insurance adjuster fairly and without injury to the
5403 | public and to adjust all claims in accordance with the policy or
5404 | contract and the workers' compensation laws of this state. In
5405 | order to qualify as an eligible course under this subsection,
5406 | the course must:

5407 | (a) Have a course outline approved by the office
5408 | ~~department~~.

5409 | (b) Be taught at a school training facility or other
5410 | location approved by the office ~~department~~.

5411 | (c) Be taught by instructors with at least 5 years of
5412 | experience in the area of workers' compensation, general lines
5413 | of insurance, or other persons approved by the office
5414 | ~~department~~. However, a member of The Florida Bar is exempt from
5415 | the 5 years' experience requirement.



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5416 (d) Furnish the attendee a certificate of completion. The
5417 course provider shall send a roster to the office ~~department~~ in
5418 a format prescribed by the commission ~~department~~.

5419 Section 114. Section 626.8695, Florida Statutes, is
5420 amended to read:

5421 626.8695 Primary adjuster.--

5422 (1) Each person operating an adjusting firm and each
5423 location of a multiple location adjusting firm must designate a
5424 primary adjuster for each such firm or location and must file
5425 with the office ~~department~~ the name of such primary adjuster and
5426 the address of the firm or location where he or she is the
5427 primary adjuster, on a form approved by the commission
5428 ~~department~~. The designation of the primary adjuster may be
5429 changed at the option of the adjusting firm. Any such change is
5430 effective upon notification to the office ~~department~~. Notice of
5431 change must be sent to the office ~~department~~ within 30 days
5432 after such change.

5433 (2)(a) For purposes of this section, a "primary adjuster"
5434 is the licensed adjuster who is responsible for the hiring and
5435 supervision of all individuals within an adjusting firm location
5436 who deal with the public and who acts in the capacity of a
5437 public adjuster as defined in s. 626.854, or an independent
5438 adjuster as defined in s. 626.855. An adjuster may be
5439 designated as a primary adjuster for only one adjusting firm
5440 location.

5441 (b) For purposes of this section, an "adjusting firm" is a
5442 location where an independent or public adjuster is engaged in
5443 the business of insurance.



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5444 (3) The office ~~department~~ may suspend or revoke the
5445 license of the primary adjuster if the adjusting firm employs
5446 any person who has had a license denied or any person whose
5447 license is currently suspended or revoked. However, if a person
5448 has been denied a license for failure to pass a required
5449 examination, he or she may be employed to perform clerical or
5450 administrative functions for which licensure is not required.

5451 (4) The primary adjuster in an unincorporated adjusting
5452 firm, or the primary adjuster in an incorporated adjusting firm
5453 in which no officer, director, or stockholder is an adjuster, is
5454 responsible and accountable for the acts of salaried employees
5455 under his or her direct supervision and control while acting on
5456 behalf of the adjusting firm. Nothing in this section renders
5457 any person criminally liable or subject to any disciplinary
5458 proceedings for any act unless the person personally committed
5459 or knew or should have known of the act and of the facts
5460 constituting a violation of this code.

5461 (5) The office ~~department~~ may suspend or revoke the
5462 license of any adjuster who is employed by a person whose
5463 license is currently suspended or revoked.

5464 (6) An adjusting firm location may not conduct the
5465 business of insurance unless a primary adjuster is designated.
5466 Failure of the person operating the adjusting firm to designate
5467 a primary adjuster for the firm, or for each location, as
5468 applicable, on a form prescribed by the commission ~~department~~
5469 within 30 days after inception of the firm or change of primary
5470 adjuster designation, constitutes grounds for requiring the



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5471 adjusting firm to obtain an adjusting firm license pursuant to
5472 s. 626.8696.

5473 (7) Any adjusting firm may request, on a form prescribed
5474 by the commission ~~department~~, verification from the office
5475 ~~department~~ of any person's current licensure status. If a
5476 request is mailed to the office ~~department~~ within 5 working days
5477 after the date an adjuster is hired, and the office ~~department~~
5478 subsequently notifies the adjusting firm that an employee's
5479 license is currently suspended, revoked, or has been denied, the
5480 license of the primary adjuster shall not be revoked or
5481 suspended if the unlicensed person is immediately dismissed from
5482 employment as an adjuster with the firm.

5483 Section 115. Subsections (1) and (5) of section 626.8696,
5484 Florida Statutes, are amended to read:

5485 626.8696 Application for adjusting firm license.--

5486 (1) The application for an adjusting firm license must
5487 include:

5488 (a) The name of each majority owner, partner, officer, and
5489 director of the adjusting firm.

5490 (b) The resident address of each person required to be
5491 listed in the application under paragraph (a).

5492 (c) The name of the adjusting firm and its principal
5493 business address.

5494 (d) The location of each adjusting firm office and the
5495 name under which each office conducts or will conduct business.

5496 (e) Any additional information which the commission
5497 ~~department~~ may require.



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5498 (5) An adjusting firm required to be licensed pursuant to
5499 s. 626.8695 must remain so licensed for a period of 3 years from
5500 the date of licensure, unless the license is suspended or
5501 revoked. The office ~~department~~ may suspend or revoke the
5502 adjusting firm's authority to do business for activities
5503 occurring during the time the firm is licensed, regardless of
5504 whether the licensing period has terminated.

5505 Section 116. Section 626.8697, Florida Statutes, is
5506 amended to read:

5507 626.8697 Grounds for refusal, suspension, or revocation of
5508 adjusting firm license.--

5509 (1) The office ~~department~~ shall deny, suspend, revoke, or
5510 refuse to continue the license of any adjusting firm if it
5511 finds, as to any adjusting firm or as to any majority owner,
5512 partner, manager, director, officer, or other person who manages
5513 or controls the firm, that any of the following grounds exist:

5514 (a) Lack by the firm of one or more of the qualifications
5515 for the license as specified in this code.

5516 (b) Material misstatement, misrepresentation, or fraud in
5517 obtaining the license or in attempting to obtain the license.

5518 (2) The office ~~department~~ may, in its discretion, deny,
5519 suspend, revoke, or refuse to continue the license of any
5520 adjusting firm if it finds that any of the following applicable
5521 grounds exist with respect to the firm or any owner, partner,
5522 manager, director, officer, or other person who is otherwise
5523 involved in the operation of the firm:



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5524 (a) Any cause for which issuance of the license could have
5525 been refused had it then existed and been known to the office
5526 ~~department~~.

5527 (b) Violation of any provision of this code or of any
5528 other law applicable to the business of insurance.

5529 (c) Violation of any order or rule of the office or
5530 commission ~~department~~.

5531 (d) An owner, partner, manager, director, officer, or
5532 other person who manages or controls the firm having been found
5533 guilty of or having pleaded guilty or nolo contendere to a
5534 felony or a crime punishable by imprisonment of 1 year or more
5535 under the laws of the United States or of any state or under the
5536 laws of any other country, without regard to whether
5537 adjudication was made or withheld by the court.

5538 (e) Failure to inform the office ~~department~~ in writing
5539 within 30 days after a pleading by an owner, partner, manager,
5540 director, officer, or other person managing or controlling the
5541 firm of guilty or nolo contendere to, or being convicted or
5542 found guilty of, any felony or a crime punishable by
5543 imprisonment of 1 year or more under the laws of the United
5544 States or of any state, or under the laws of any other country,
5545 without regard to whether adjudication was made or withheld by
5546 the court.

5547 (f) Knowingly aiding, assisting, procuring, advising, or
5548 abetting any person in the violation of or to violate a
5549 provision of the insurance code or any order or rule of the
5550 office or commission ~~department~~.



5551 (g) Knowingly employing any individual in a managerial
 5552 capacity or in a capacity dealing with the public who is under
 5553 an order of revocation or suspension issued by the office
 5554 ~~department~~.

5555 (h) Committing any of the following acts with such a
 5556 frequency as to have made the operation of the adjusting firm
 5557 hazardous to the insurance-buying public or other persons:

5558 1. Misappropriation, conversion, or unlawful or
 5559 unreasonable withholding of moneys belonging to insurers or
 5560 insureds or beneficiaries or claimants or to others and received
 5561 in the conduct of business under the license.

5562 2. Misrepresentation or deception with regard to the
 5563 business of insurance, dissemination of information, or
 5564 advertising.

5565 3. Demonstrated lack of fitness or trustworthiness to
 5566 engage in the business of insurance adjusting arising out of
 5567 activities related to insurance adjusting or the adjusting firm.

5568 (i) Failure to appoint a primary adjuster.

5569 (3) In lieu of discretionary refusal, suspension, or
 5570 revocation of an adjusting firm's license, the office ~~department~~
 5571 may impose an administrative penalty of up to \$1,000 for each
 5572 violation or ground provided under this section, not to exceed
 5573 an aggregate amount of \$10,000 for all violations or grounds.

5574 (4) If any adjusting firm, having been licensed,
 5575 thereafter has such license revoked or suspended, the firm shall
 5576 terminate all adjusting activities while the license is revoked
 5577 or suspended.



5578 Section 117. Section 626.8698, Florida Statutes, is
5579 amended to read:

5580 626.8698 Disciplinary guidelines for public
5581 adjusters.--The office ~~department~~ may deny, suspend, or revoke
5582 the license of a public adjuster, and administer a fine not to
5583 exceed \$5,000 per act, for any of the following:

5584 (1) Violating any provision of this chapter or a rule or
5585 order of the office or commission ~~department~~;

5586 (2) Receiving payment or anything of value as a result of
5587 an unfair or deceptive practice;

5588 (3) Receiving or accepting any fee, kickback, or other
5589 thing of value pursuant to any agreement or understanding, oral
5590 or otherwise; entering into a split-fee arrangement with another
5591 person who is not a public adjuster; or being otherwise paid or
5592 accepting payment for services that have not been performed;

5593 (4) Violating s. 316.066 or s. 817.234;

5594 (5) Soliciting or otherwise taking advantage of a person
5595 who is vulnerable, emotional, or otherwise upset as the result
5596 of a trauma, accident, or other similar occurrence; or

5597 (6) Violating any ethical rule of the commission
5598 ~~department~~.

5599 Section 118. Section 626.870, Florida Statutes, is amended
5600 to read:

5601 626.870 Application for license.--

5602 (1) Application for a license under this part shall be
5603 made as provided in s. 626.171 and related sections of this
5604 code.



5605 (2) The commission ~~department~~ shall so prepare the form of
5606 the application as to elicit and require from the applicant the
5607 information necessary to enable the office ~~department~~ to
5608 determine whether the applicant possesses the qualifications
5609 prerequisite to issuance of the license to the applicant.

5610 (3) The commission ~~department~~ may, in its discretion,
5611 require that the application be supplemented by the certificate
5612 or affidavit of such person or persons as it deems necessary for
5613 its determination of the applicant's residence, business
5614 reputation, and reputation for trustworthiness. The commission
5615 ~~department~~ shall prescribe and the office may furnish the forms
5616 for such certificates and affidavits.

5617 Section 119. Section 626.871, Florida Statutes, is amended
5618 to read:

5619 626.871 Reappointment after military service.--The office
5620 ~~department~~ may, without requiring a further written examination,
5621 issue an appointment as an adjuster to a formerly licensed and
5622 appointed adjuster of this state who held a current adjuster's
5623 appointment at the time of entering service in the Armed Forces
5624 of the United States, subject to the following conditions:

5625 (1) The period of military service must not have been in
5626 excess of 3 years;

5627 (2) The application for the appointment must be filed with
5628 the office ~~department~~ and the applicable fee paid, within 12
5629 months following the date of honorable discharge of the
5630 applicant from the military service; and

5631 (3) The new appointment will be of the same type and class
5632 as that currently effective at the time the applicant entered



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5633 military service; but, if such type and class of appointment is
5634 not being currently issued under this code, the new appointment
5635 shall be of that type and class or classes most closely
5636 resembling those of the former appointment.

5637 Section 120. Subsections (1) and (5) of section 626.872,
5638 Florida Statutes, are amended to read:

5639 626.872 Temporary license.--

5640 (1) The office ~~department~~ may, in its discretion, issue a
5641 temporary license as an independent adjuster or as a company
5642 employee adjuster, subject to the following conditions:

5643 (a) The applicant must be an employee of an adjuster
5644 currently licensed by the office ~~department~~, an employee of an
5645 authorized insurer, or an employee of an established adjusting
5646 firm or corporation which is supervised by a currently licensed
5647 independent adjuster.

5648 (b) The application must be accompanied by a certificate
5649 of employment and a report as to the applicant's integrity and
5650 moral character on a form prescribed by the commission
5651 ~~department~~ and executed by the employer.

5652 (c) The applicant must be a natural person of at least 18
5653 years of age, must be a bona fide resident of this state, must
5654 be trustworthy, and must have such business reputation as would
5655 reasonably assure that the applicant will conduct his or her
5656 business as an adjuster fairly and in good faith and without
5657 detriment to the public.

5658 (d) The applicant's employer is responsible for the
5659 adjustment acts of any licensee under this section.



5660 (e) The applicable license fee specified must be paid
5661 before issuance of the temporary license.

5662 (f) The temporary license shall be effective for a period
5663 of 1 year, but subject to earlier termination at the request of
5664 the employer, or if the licensee fails to take an examination as
5665 an independent adjuster or company employee adjuster within 6
5666 months after issuance of the temporary license, or if suspended
5667 or revoked by the office ~~department~~.

5668 (5) The office ~~department~~ shall not issue a temporary
5669 license as an independent adjuster or as a company employee
5670 adjuster to any individual who has ever held such a license in
5671 this state.

5672 Section 121. Subsection (1) of section 626.873, Florida
5673 Statutes, is amended to read:

5674 626.873 Nonresident company employee adjusters.--

5675 (1) The office ~~department~~ shall, upon application
5676 therefor, issue a license to an applicant for a nonresident
5677 adjuster's license upon determining that the applicant has paid
5678 the applicable license fees required under s. 624.501 and:

5679 (a) Is a currently licensed insurance adjuster in his or
5680 her home state, if such state requires a license.

5681 (b) Is an employee of an insurer, or a wholly owned
5682 subsidiary of an insurer, admitted to do business in this state.

5683 (c) Has filed a certificate or letter of authorization
5684 from the insurance department of his or her home state, if such
5685 state requires an adjuster to be licensed, stating that he or
5686 she holds a current license or authorization to adjust insurance
5687 losses. Such certificate or authorization must be signed by the



5688 insurance commissioner, or his or her deputy, of the adjuster's
 5689 home state and must reflect whether or not the adjuster has ever
 5690 had his or her license or authorization in the adjuster's home
 5691 state suspended or revoked and, if such is the case, the reason
 5692 for such action.

5693 Section 122. Section 626.8732, Florida Statutes, is
 5694 amended to read:

5695 626.8732 Nonresident public adjuster's qualifications,
 5696 bond.--

5697 (1) The office ~~department~~ shall, upon application
 5698 therefor, issue a license to an applicant for a nonresident
 5699 public adjuster's license upon determining that the applicant
 5700 has paid the applicable license fees required under s. 624.501
 5701 and:

5702 (a) Is a natural person at least 18 years of age.

5703 (b) Has passed to the satisfaction of the office
 5704 ~~department~~ a written Florida public adjuster's examination of
 5705 the scope prescribed in s. 626.241(6); however, the requirement
 5706 for such an examination does not apply to any of the following:

5707 1. An applicant who is licensed as a resident public
 5708 adjuster in his or her state of residence, when that state
 5709 requires the passing of a written examination in order to obtain
 5710 the license and a reciprocal agreement with the appropriate
 5711 official of that state has been entered into by the office
 5712 ~~department~~; or

5713 2. An applicant who is licensed as a nonresident public
 5714 adjuster in a state other than his or her state of residence
 5715 when the state of licensure requires the passing of a written



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5716 examination in order to obtain the license and a reciprocal
5717 agreement with the appropriate official of the state of
5718 licensure has been entered into by the office ~~department~~.

5719 (c) Is self-employed as a public adjuster or associated
5720 with or employed by a public adjusting firm or other public
5721 adjuster. Applicants licensed as nonresident public adjusters
5722 under this section must be appointed as such in accordance with
5723 the provisions of ss. 626.112 and 626.451. Appointment fees in
5724 the amount specified in s. 624.501 must be paid to the office
5725 ~~department~~ in advance. The appointment of a nonresident public
5726 adjuster shall continue in force until suspended, revoked, or
5727 otherwise terminated, but subject to biennial renewal or
5728 continuation by the licensee in accordance with procedures
5729 prescribed in s. 626.381 for licensees in general.

5730 (d) Is trustworthy and has such business reputation as
5731 would reasonably assure that he or she will conduct his or her
5732 business as a nonresident public adjuster fairly and in good
5733 faith and without detriment to the public.

5734 (e) Has had sufficient experience, training, or
5735 instruction concerning the adjusting of damages or losses under
5736 insurance contracts, other than life and annuity contracts; is
5737 sufficiently informed as to the terms and effects of the
5738 provisions of those types of insurance contracts; and possesses
5739 adequate knowledge of the laws of this state relating to such
5740 contracts as to enable and qualify him or her to engage in the
5741 business of insurance adjuster fairly and without injury to the
5742 public or any member thereof with whom he or she may have
5743 business as a public adjuster.



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5744 (2) The applicant shall furnish the following with his or
5745 her application:

5746 (a) A complete set of his or her fingerprints. The
5747 applicant's fingerprints must be certified by an authorized law
5748 enforcement officer. The office ~~department~~ may not authorize an
5749 applicant to take the required examination or issue a
5750 nonresident public adjuster's license to the applicant until the
5751 office ~~department~~ has received a report from the Florida
5752 Department of Law Enforcement and the Federal Bureau of
5753 Investigation relative to the existence or nonexistence of a
5754 criminal history report based on the applicant's fingerprints.

5755 (b) If currently licensed as a resident public adjuster in
5756 the applicant's state of residence, a certificate or letter of
5757 authorization from the licensing authority of the applicant's
5758 state of residence, stating that the applicant holds a current
5759 or comparable license to act as a public adjuster. The
5760 certificate or letter of authorization must be signed by the
5761 insurance commissioner or his or her deputy or the appropriate
5762 licensing official and must disclose whether the adjuster has
5763 ever had any license or eligibility to hold any license
5764 declined, denied, suspended, revoked, or placed on probation or
5765 whether an administrative fine or penalty has been levied
5766 against the adjuster and, if so, the reason for the action.

5767 (c) If the applicant's state of residence does not require
5768 licensure as a public adjuster and the applicant has been
5769 licensed as a resident insurance adjuster, agent, broker, or
5770 other insurance representative in his or her state of residence
5771 or any other state within the past 3 years, a certificate or



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5772 letter of authorization from the licensing authority stating
5773 that the applicant holds or has held a license to act as such an
5774 insurance adjuster, agent, or other insurance representative.
5775 The certificate or letter of authorization must be signed by the
5776 insurance commissioner or his or her deputy or the appropriate
5777 licensing official and must disclose whether or not the
5778 adjuster, agent, or other insurance representative has ever had
5779 any license or eligibility to hold any license declined, denied,
5780 suspended, revoked, or placed on probation or whether an
5781 administrative fine or penalty has been levied against the
5782 adjuster and, if so, the reason for the action.

5783 (3) At the time of application for license as a
5784 nonresident public adjuster, the applicant shall file with the
5785 office ~~department~~ a bond executed and issued by a surety insurer
5786 authorized to transact surety business in this state, in the
5787 amount of \$50,000, conditioned for the faithful performance of
5788 his or her duties as a nonresident public adjuster under the
5789 license applied for. The bond must be in favor of the office
5790 ~~department~~ and must specifically authorize recovery by the
5791 office ~~department~~ of the damages sustained if the licensee
5792 commits fraud or unfair practices in connection with his or her
5793 business as nonresident public adjuster. The aggregate liability
5794 of the surety for all the damages may not exceed the amount of
5795 the bond. The bond may not be terminated unless at least 30
5796 days' written notice is given to the licensee and filed with the
5797 office ~~department~~.

5798 (4) The usual and customary records pertaining to
5799 transactions under the license of a nonresident public adjuster



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5800 must be retained for at least 3 years after completion of the
5801 adjustment and must be made available in this state to the
5802 office ~~department~~ upon request. The failure of a nonresident
5803 public adjuster to properly maintain records and make them
5804 available to the office ~~department~~ upon request constitutes
5805 grounds for the immediate suspension of the license issued under
5806 this section.

5807 (5) After licensure as a nonresident public adjuster, as a
5808 condition of doing business in this state, the licensee must
5809 annually on or before January 1, on a form prescribed by the
5810 commission ~~department~~, submit an affidavit certifying that the
5811 licensee is familiar with and understands the insurance code and
5812 rules adopted thereunder and the provisions of the contracts
5813 negotiated or to be negotiated. Compliance with this filing
5814 requirement is a condition precedent to the issuance,
5815 continuation, reinstatement, or renewal of a nonresident public
5816 adjuster's appointment.

5817 Section 123. Subsections (1), (3), and (4) of section
5818 626.8734, Florida Statutes, are amended to read:

5819 626.8734 Nonresident independent adjuster's
5820 qualifications.--

5821 (1) The office ~~department~~ shall, upon application
5822 therefor, issue a license to an applicant for a nonresident
5823 independent adjuster's license upon determining that the
5824 applicant has paid the applicable license fees required under s.
5825 624.501 and:

5826 (a) Is a natural person at least 18 years of age.



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5827 (b) Has passed to the satisfaction of the office
5828 ~~department~~ a written Florida independent adjuster's examination
5829 of the scope prescribed in s. 626.241(6); however, the
5830 requirement for the examination does not apply to any of the
5831 following:

5832 1. An applicant who is licensed as a resident independent
5833 adjuster in his or her state of residence when that state
5834 requires the passing of a written examination in order to obtain
5835 the license and a reciprocal agreement with the appropriate
5836 official of that state has been entered into by the office
5837 ~~department~~; or

5838 2. An applicant who is licensed as a nonresident
5839 independent adjuster in a state other than his or her state of
5840 residence when the state of licensure requires the passing of a
5841 written examination in order to obtain the license and a
5842 reciprocal agreement with the appropriate official of the state
5843 of licensure has been entered into by the office ~~department~~.

5844 (c) Is self-employed or associated with or employed by an
5845 independent adjusting firm or other independent adjuster.
5846 Applicants licensed as nonresident independent adjusters under
5847 this section must be appointed as such in accordance with the
5848 provisions of ss. 626.112 and 626.451. Appointment fees in the
5849 amount specified in s. 624.501 must be paid to the office
5850 ~~department~~ in advance. The appointment of a nonresident
5851 independent adjuster shall continue in force until suspended,
5852 revoked, or otherwise terminated, but subject to biennial
5853 renewal or continuation by the licensee in accordance with
5854 procedures prescribed in s. 626.381 for licensees in general.



5855 (d) Is trustworthy and has such business reputation as
 5856 would reasonably assure that he or she will conduct his or her
 5857 business as a nonresident independent adjuster fairly and in
 5858 good faith and without detriment to the public.

5859 (e) Has had sufficient experience, training, or
 5860 instruction concerning the adjusting of damages or losses under
 5861 insurance contracts, other than life and annuity contracts; is
 5862 sufficiently informed as to the terms and effects of the
 5863 provisions of those types of insurance contracts; and possesses
 5864 adequate knowledge of the laws of this state relating to such
 5865 contracts as to enable and qualify him or her to engage in the
 5866 business of insurance adjuster fairly and without injury to the
 5867 public or any member thereof with whom he or she may have
 5868 business as an independent adjuster.

5869 (3) The usual and customary records pertaining to
 5870 transactions under the license of a nonresident independent
 5871 adjuster must be retained for at least 3 years after completion
 5872 of the adjustment and must be made available in this state to
 5873 the office ~~department~~ upon request. The failure of a nonresident
 5874 independent adjuster to properly maintain records and make them
 5875 available to the office ~~department~~ upon request constitutes
 5876 grounds for the immediate suspension of the license issued under
 5877 this section.

5878 (4) After licensure as a nonresident independent adjuster,
 5879 as a condition of doing business in this state, the licensee
 5880 must annually on or before January 1, on a form prescribed by
 5881 the commission ~~department~~, submit an affidavit certifying that
 5882 the licensee is familiar with and understands the insurance laws



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5883 and administrative rules of this state and the provisions of the
5884 contracts negotiated or to be negotiated. Compliance with this
5885 filing requirement is a condition precedent to the issuance,
5886 continuation, reinstatement, or renewal of a nonresident
5887 independent adjuster's appointment.

5888 Section 124. Section 626.8736, Florida Statutes, is
5889 amended to read:

5890 626.8736 Nonresident independent or public adjusters;
5891 service of process.--

5892 (1) Each licensed nonresident independent or public
5893 adjuster shall appoint the Chief Financial Officer ~~Insurance~~
5894 ~~Commissioner and Treasurer~~ and his or her successors in office
5895 as his or her attorney to receive service of legal process
5896 issued against the nonresident independent or public adjuster in
5897 this state, upon causes of action arising within this state out
5898 of transactions under his license and appointment. Service upon
5899 the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
5900 as attorney shall constitute effective legal service upon the
5901 nonresident independent or public adjuster.

5902 (2) The appointment of the Chief Financial Officer
5903 ~~Insurance Commissioner and Treasurer~~ for service of process
5904 shall be irrevocable for as long as there could be any cause of
5905 action against the nonresident independent or public adjuster
5906 arising out of his or her insurance transactions in this state.

5907 (3) Duplicate copies of legal process against the
5908 nonresident independent or public adjuster shall be served upon
5909 the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
5910 by a person competent to serve a summons.



5911 (4) Upon receiving the service, the Chief Financial
 5912 Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith
 5913 send one of the copies of the process, by registered mail with
 5914 return receipt requested, to the defendant nonresident
 5915 independent or public adjuster at his or her last address of
 5916 record with the office ~~department~~.

5917 (5) The Chief Financial Officer ~~Insurance Commissioner and~~
 5918 ~~Treasurer~~ shall keep a record of the day and hour of service
 5919 upon him or her of all legal process received under this
 5920 section.

5921 Section 125. Section 626.8738, Florida Statutes, is
 5922 amended to read:

5923 626.8738 Penalty for violation.--In addition to any other
 5924 remedy imposed pursuant to this code, any person who acts as a
 5925 resident or nonresident public adjuster or holds himself or
 5926 herself out to be a public adjuster to adjust claims in this
 5927 state, without being licensed by the office ~~department~~ as a
 5928 public adjuster and appointed as a public adjuster, commits a
 5929 felony of the third degree, punishable as provided in s.
 5930 775.082, s. 775.083, or s. 775.084. Each act in violation of
 5931 this section constitutes a separate offense.

5932 Section 126. Section 626.874, Florida Statutes, is amended
 5933 to read:

5934 626.874 Catastrophe or emergency adjusters.--

5935 (1) In the event of a catastrophe or emergency, the office
 5936 ~~department~~ may issue a license, for the purposes and under the
 5937 conditions which it shall fix and for the period of emergency as
 5938 it shall determine, to persons who are residents or nonresidents



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5939 of this state and who are not licensed adjusters under this part
 5940 but who have been designated and certified to it as qualified to
 5941 act as adjusters by independent resident adjusters or by an
 5942 authorized insurer or by a licensed general lines agent to
 5943 adjust claims, losses, or damages under policies or contracts of
 5944 insurance issued by such insurers. The fee for the license
 5945 shall be as provided in s. 624.501(12)(c).

5946 (2) If any person not a licensed adjuster who has been
 5947 permitted to adjust such losses, claims, or damages under the
 5948 conditions and circumstances set forth in subsection (1),
 5949 engages in any of the misconduct described in or contemplated by
 5950 ss. 626.611 and 626.621, the office ~~department~~, without notice
 5951 and hearing, shall be authorized to issue its order denying such
 5952 person the privileges granted under this section; and thereafter
 5953 it shall be unlawful for any such person to adjust any such
 5954 losses, claims, or damages in this state.

5955 Section 127. Section 626.878, Florida Statutes, is amended
 5956 to read:

5957 626.878 Rules; code of ethics.--An adjuster shall
 5958 subscribe to the code of ethics specified in the rules of the
 5959 commission ~~department~~.

5960 Section 128. Paragraphs (d) and (m) of subsection (1) of
 5961 section 626.88, Florida Statutes, are amended to read:

5962 626.88 Definitions of "administrator" and "insurer".--

5963 (1) For the purposes of this part, an "administrator" is
 5964 any person who directly or indirectly solicits or effects
 5965 coverage of, collects charges or premiums from, or adjusts or
 5966 settles claims on residents of this state in connection with



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5967 authorized commercial self-insurance funds or with insured or
 5968 self-insured programs which provide life or health insurance
 5969 coverage or coverage of any other expenses described in s.
 5970 624.33(1) or any person who, through a health care risk contract
 5971 as defined in s. 641.234 with an insurer or health maintenance
 5972 organization, provides billing and collection services to health
 5973 insurers and health maintenance organizations on behalf of
 5974 health care providers, other than any of the following persons:

5975 (d) A health care services plan, health maintenance
 5976 organization, professional service plan corporation, or person
 5977 in the business of providing continuing care, possessing a valid
 5978 certificate of authority issued by the office ~~department~~, and
 5979 the sales representatives thereof, if the activities of such
 5980 entity are limited to the activities permitted under the
 5981 certificate of authority.

5982 (m) A person approved by the department ~~of Insurance~~ who
 5983 administers only self-insured workers' compensation plans.

5984
 5985
 5986 A person who provides billing and collection services to health
 5987 insurers and health maintenance organizations on behalf of
 5988 health care providers shall comply with the provisions of ss.
 5989 627.6131, 641.3155, and 641.51(4).

5990 Section 129. Section 626.8805, Florida Statutes, is
 5991 amended to read:

5992 626.8805 Certificate of authority to act as
 5993 administrator.--



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5994 (1) It is unlawful for any person to act as or hold
5995 himself or herself out to be an administrator in this state
5996 without a valid certificate of authority issued by the office
5997 ~~department~~ pursuant to ss. 626.88-626.894. To qualify for and
5998 hold authority to act as an administrator in this state, an
5999 administrator must otherwise be in compliance with this code and
6000 with its organizational agreement. The failure of any person to
6001 hold such a certificate while acting as an administrator shall
6002 subject such person to a fine of not less than \$5,000 or more
6003 than \$10,000 for each violation.

6004 (2) The administrator shall file with the office
6005 ~~department~~ an application for a certificate of authority upon a
6006 form to be adopted by the commission and furnished by the office
6007 ~~department~~, which application shall include or have attached the
6008 following information and documents:

6009 (a) All basic organizational documents of the
6010 administrator, such as the articles of incorporation, articles
6011 of association, partnership agreement, trade name certificate,
6012 trust agreement, shareholder agreement, and other applicable
6013 documents, and all amendments to those documents.

6014 (b) The bylaws, rules, and regulations or similar
6015 documents regulating the conduct or the internal affairs of the
6016 administrator.

6017 (c) The names, addresses, official positions, and
6018 professional qualifications of the individuals who are
6019 responsible for the conduct of the affairs of the administrator,
6020 including all members of the board of directors, board of
6021 trustees, executive committee, or other governing board or



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6022 | committee, the principal officers in the case of a corporation,
6023 | the partners or members in the case of a partnership or
6024 | association, and any other person who exercises control or
6025 | influence over the affairs of the administrator.

6026 | (d) Annual statements or reports for the 3 most recent
6027 | years, or such other information as the office ~~department~~ may
6028 | require in order to review the current financial condition of
6029 | the applicant.

6030 | (e) If the applicant is not currently acting as an
6031 | administrator, a statement of the amounts and sources of the
6032 | funds available for organization expenses and the proposed
6033 | arrangements for reimbursement and compensation of incorporators
6034 | or other principals.

6035 | (3) The applicant shall make available for inspection by
6036 | the office ~~department~~ copies of all contracts with insurers or
6037 | other persons utilizing the services of the administrator.

6038 | (4) The office ~~department~~ shall not issue a certificate of
6039 | authority if it determines that the administrator or any
6040 | principal thereof is not competent, trustworthy, financially
6041 | responsible, or of good personal and business reputation or has
6042 | had an insurance license denied for cause by any state.

6043 | (5) A certificate of authority issued under this section
6044 | shall remain valid, unless suspended or revoked by the office
6045 | ~~department~~, so long as the certificateholder continues in
6046 | business in this state.

6047 | (6) A certificate of authority issued under this section
6048 | shall indicate that the administrator is authorized to
6049 | administer commercial self-insurance funds or life and health



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6050 programs or both, except that a certificate of authority issued
6051 prior to October 1, 1988, does not authorize the administration
6052 of commercial self-insurance funds.

6053 Section 130. Section 626.8809, Florida Statutes, is
6054 amended to read:

6055 626.8809 Fidelity bond.--An administrator shall have and
6056 keep in full force and effect a fidelity bond equal to at least
6057 10 percent of the amount of the funds handled or managed
6058 annually by the administrator. However, the office ~~department~~
6059 may not require a bond greater than \$500,000 unless the office
6060 ~~department~~, after due notice to all interested parties and
6061 opportunity for hearing and after consideration of the record,
6062 requires an amount in excess of \$500,000 but not more than 10
6063 percent of the amount of the funds handled or managed annually
6064 by the administrator.

6065 Section 131. Section 626.8814, Florida Statutes, is
6066 amended to read:

6067 626.8814 Disclosure of ownership or affiliation.--Each
6068 administrator shall identify to the office ~~department~~ any
6069 ownership interest or affiliation of any kind with any insurance
6070 company responsible for providing benefits directly or through
6071 reinsurance to any plan for which the administrator provides
6072 administrative services.

6073 Section 132. Subsection (2) of section 626.884, Florida
6074 Statutes, is amended to read:

6075 626.884 Maintenance of records by administrator; access;
6076 confidentiality.--



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6077 (2) The office ~~department~~ shall have access to books and
6078 records maintained by the administrator for the purpose of
6079 examination, audit, and inspection. Information contained in
6080 such books and records is confidential and exempt from the
6081 provisions of s. 119.07(1) if the disclosure of such information
6082 would reveal a trade secret as defined in s. 688.002. However,
6083 the office ~~department~~ may use such information in any proceeding
6084 instituted against the administrator.

6085 Section 133. Subsections (1) and (3) of section 626.89,
6086 Florida Statutes, are amended to read:

6087 626.89 Annual financial statement and filing fee; notice
6088 of change of ownership.--

6089 (1) Each authorized administrator shall file with the
6090 office ~~department~~ a full and true statement of its financial
6091 condition, transactions, and affairs. The statement shall be
6092 filed annually on or before March 1 or within such extension of
6093 time therefor as the office ~~department~~ for good cause may have
6094 granted and shall be for the preceding calendar year. The
6095 statement shall be in such form and contain such matters as the
6096 commission ~~department~~ prescribes and shall be verified by at
6097 least two officers of such administrator.

6098 (3) In addition, the administrator shall immediately
6099 notify the office ~~department~~ of any material change in its
6100 ownership.

6101 Section 134. Section 626.891, Florida Statutes, is amended
6102 to read:

6103 626.891 Grounds for suspension or revocation of
6104 certificate of authority.--



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6105 (1) The certificate of authority of an administrator shall
6106 be suspended or revoked if the office ~~department~~ determines that
6107 the administrator:

6108 (a) Is in an unsound financial condition;

6109 (b) Has used or is using such methods or practices in the
6110 conduct of its business so as to render its further transaction
6111 of business in this state hazardous or injurious to insured
6112 persons or the public; or

6113 (c) Has failed to pay any judgment rendered against it in
6114 this state within 60 days after the judgment has become final.

6115 (2) The office ~~department~~ may, in its discretion, suspend
6116 or revoke the certificate of authority of an administrator if it
6117 finds that the administrator:

6118 (a) Has violated any lawful rule or order of the
6119 commission or office ~~department~~ or any provision of this
6120 chapter;

6121 (b) Has refused to be examined or to produce its accounts,
6122 records, and files for examination, or if any of its officers
6123 has refused to give information with respect to its affairs or
6124 has refused to perform any other legal obligation as to such
6125 examination, when required by the office ~~department~~;

6126 (c) Has, without just cause, refused to pay proper claims
6127 or perform services arising under its contracts or has, without
6128 just cause, compelled insured persons to accept less than the
6129 amount due them or to employ attorneys or bring suit against the
6130 administrator to secure full payment or settlement of such
6131 claims;



6132 (d) Is or was affiliated with and under the same general
 6133 management or interlocking directorate or ownership as another
 6134 administrator which transacts business in this state without
 6135 having a certificate of authority;

6136 (e) At any time fails to meet any qualification for which
 6137 issuance of the certificate could have been refused had such
 6138 failure then existed and been known to the office ~~department~~;

6139 (f) Has been convicted of, or has entered a plea of guilty
 6140 or nolo contendere to, a felony relating to the business of
 6141 insurance or insurance administration in this state or in any
 6142 other state without regard to whether adjudication was withheld;
 6143 or

6144 (g) Is under suspension or revocation in another state.

6145 (3) The office ~~department~~ may, pursuant to s. 120.60, in
 6146 its discretion and without advance notice or hearing thereon,
 6147 immediately suspend the certificate of any administrator if it
 6148 finds that one or more of the following circumstances exist:

6149 (a) The administrator is insolvent or impaired.

6150 (b) The fidelity bond required by s. 626.8809 is not
 6151 maintained.

6152 (c) A proceeding for receivership, conservatorship,
 6153 rehabilitation, or other delinquency proceeding regarding the
 6154 administrator has been commenced in any state.

6155 (d) The financial condition or business practices of the
 6156 administrator otherwise pose an imminent threat to the public
 6157 health, safety, or welfare of the residents of this state.



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6158 (4) The violation of this part by any insurer shall be a
6159 ground for suspension or revocation of the certificate of
6160 authority of that insurer in this state.

6161 Section 135. Section 626.892, Florida Statutes, is amended
6162 to read:

6163 626.892 Order of suspension or revocation of certificate
6164 of authority; notice.--

6165 (1) The suspension or revocation of a certificate of
6166 authority of an administrator shall be effected by order of the
6167 office ~~department~~ mailed to the administrator by registered or
6168 certified mail.

6169 (2) In its discretion, the office ~~department~~ may cause
6170 notice of any such revocation or suspension to be published in
6171 one or more newspapers of general circulation published in this
6172 state.

6173 Section 136. Subsections (1), (3), and (4) of section
6174 626.894, Florida Statutes, are amended to read:

6175 626.894 Administrative fine in lieu of suspension or
6176 revocation.--

6177 (1) If the office ~~department~~ finds that one or more
6178 grounds exist for the suspension or revocation of a certificate
6179 of authority issued under this part, the office ~~department~~ may,
6180 in lieu of such suspension or revocation, impose a fine upon the
6181 administrator.

6182 (3) With respect to any knowing and willful violation of a
6183 lawful order or rule of the office or commission ~~department~~ or a
6184 provision of this part, the office ~~department~~ may impose a fine
6185 upon the administrator in an amount not to exceed \$5,000 for



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6186 each such violation. In no event may such fine exceed an
6187 aggregate amount of \$25,000 for all knowing and willful
6188 violations arising out of the same action. In addition to such
6189 fine, the administrator shall make restitution when due in
6190 accordance with the provisions of subsection (2).

6191 (4) The failure of an administrator to make restitution
6192 when due as required under this section constitutes a willful
6193 violation of this part. However, if an administrator in good
6194 faith is uncertain as to whether any restitution is due or as to
6195 the amount of restitution due, it shall promptly notify the
6196 office ~~department~~ of the circumstances; and the failure to make
6197 restitution pending a determination of whether restitution is
6198 due or the amount of restitution due will not constitute a
6199 violation of this part.

6200 Section 137. Section 626.895, Florida Statutes, is amended
6201 to read:

6202 626.895 Definition of "service company" or "service
6203 agent".--For the purpose of this part, a "service company" is
6204 any business entity which has met all the requirements of ss.
6205 626.895-626.899, which does not control funds, and which has
6206 obtained office ~~department~~ approval to contract with self-
6207 insurers or multiple-employer welfare arrangements for the
6208 purpose of providing all or any part of the services necessary
6209 to establish and maintain a multiple-employer welfare
6210 arrangement as defined in s. 624.437(1). The term "service
6211 agent" is synonymous with the term "service company" as used in
6212 this part.



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6213 Section 138. Subsection (3) of section 626.896, Florida
6214 Statutes, is amended to read:

6215 626.896 Servicing requirements for self-insurers and
6216 multiple-employer welfare arrangements.--

6217 (3) It is the responsibility of the self-insurer or
6218 multiple-employer welfare arrangement to notify the office
6219 ~~department~~ within 90 days of changing its method of fulfilling
6220 its servicing requirements from those which were previously
6221 filed with the office ~~department~~.

6222 Section 139. Subsection (2) of section 626.897, Florida
6223 Statutes, is amended to read:

6224 626.897 Application for authorization to act as service
6225 company; bond.--

6226 (2) Any business desiring to act as a service company for
6227 individual self-insurers or multiple-employer welfare
6228 arrangements shall be approved by the office ~~department~~. Any
6229 business acting as a service company prior to October 1, 1983,
6230 will be approved as a service company upon complying with the
6231 filing requirements of this section and s. 626.898. The failure
6232 of any person to obtain such approval while acting as a service
6233 company shall subject such person to a fine of not less than
6234 \$5,000 or more than \$10,000 for each violation.

6235 Section 140. Subsections (3) and (10) of section 626.898,
6236 Florida Statutes, are amended to read:

6237 626.898 Requirements for retaining authorization as
6238 service company; recertification.--

6239 (3)(a) Each service company shall maintain at one or more
6240 locations within this state copies of all contracts with each



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6241 self-insurer or multiple-employer welfare arrangement that it
6242 services and records relating thereto which are sufficient in
6243 type and quantity to verify the accuracy and completeness of all
6244 reports and documents submitted to the office ~~department~~
6245 pursuant to this part. In the event that the service company has
6246 its records distributed in multiple locations, it shall inform
6247 the office ~~department~~ as to the location of each type of record,
6248 as well as the location of specific records for the self-
6249 insurers or multiple-employer welfare arrangements it services.

6250 (b) These records shall be open to inspection by
6251 representatives of the office ~~department~~ during regular business
6252 hours. All records shall be retained according to the schedule
6253 adopted by the commission ~~department~~ for similar documents. The
6254 location of these records shall be made known to the office
6255 ~~department~~ as necessary.

6256 (10) Each service company shall identify to the office
6257 ~~department~~ any ownership interest or affiliation of any kind
6258 with any insurance company responsible directly or through
6259 reinsurance for providing benefits to any plan for which it
6260 provides services.

6261 Section 141. Section 626.899, Florida Statutes, is amended
6262 to read:

6263 626.899 Withdrawal of authorization as service
6264 company.--The failure to comply with any provision of ss.
6265 626.895-626.899 or with any rule or any order of the commission
6266 or office ~~department~~ within the time prescribed shall be
6267 considered good cause for withdrawal of the certificate of
6268 approval. The office ~~department~~ shall by registered or



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6269 certified mail give to the service company prior written notice
6270 of such withdrawal. The service company shall have 30 days from
6271 the date of mailing to request a hearing. The failure to
6272 request a hearing within the time prescribed shall result in the
6273 withdrawal becoming effective 45 days from the date of mailing
6274 of the original notice. In no event shall the withdrawal of the
6275 certificate of approval be effective prior to the date upon
6276 which a hearing, if requested, is scheduled. Copies of such
6277 notice of withdrawal of a certificate of approval shall be
6278 furnished by the office ~~department~~ to each self-funded program
6279 serviced.

6280 Section 142. Subsection (4) of section 626.901, Florida
6281 Statutes, is amended to read:

6282 626.901 Representing or aiding unauthorized insurer
6283 prohibited.--

6284 (4) This section does not apply to:

6285 (a) Matters authorized to be done by the office ~~department~~
6286 under the Unauthorized Insurers Process Law, ss. 626.904-
6287 626.912.

6288 (b) Surplus lines insurance when written pursuant to the
6289 Surplus Lines Law, ss. 626.913-626.937.

6290 (c) Transactions as to which a certificate of authority is
6291 not required of an insurer, as stated in s. 624.402.

6292 (d) Independently procured coverage written pursuant to s.
6293 626.938.

6294 Section 143. Section 626.906, Florida Statutes, is amended
6295 to read:



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6296 626.906 Acts constituting Chief Financial Officer
 6297 ~~Insurance Commissioner and Treasurer~~ as process agent.--Any of
 6298 the following acts in this state, effected by mail or otherwise,
 6299 by an unauthorized foreign insurer, alien insurer, or person
 6300 representing or aiding such an insurer is equivalent to and
 6301 shall constitute an appointment by such insurer or person
 6302 representing or aiding such insurer of the Chief Financial
 6303 Officer ~~Insurance Commissioner and Treasurer, and his or her~~
 6304 ~~successor or successors in office,~~ to be its true and lawful
 6305 attorney, upon whom may be served all lawful process in any
 6306 action, suit, or proceeding instituted by or on behalf of an
 6307 insured or beneficiary, arising out of any such contract of
 6308 insurance; and any such act shall be signification of the
 6309 insurer's or person's agreement that such service of process is
 6310 of the same legal force and validity as personal service of
 6311 process in this state upon such insurer or person representing
 6312 or aiding such insurer:

6313 (1) The issuance or delivery of contracts of insurance to
 6314 residents of this state or to corporations authorized to do
 6315 business therein;

6316 (2) The solicitation of applications for such contracts;

6317 (3) The collection of premiums, membership fees,
 6318 assessments, or other considerations for such contracts; or

6319 (4) Any other transaction of insurance.

6320 Section 144. Subsection (1) of section 626.907, Florida
 6321 Statutes, is amended to read:

6322 626.907 Service of process; judgment by default.--



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6323 (1) Service of process upon an insurer or person
6324 representing or aiding such insurer pursuant to s. 626.906 shall
6325 be made by delivering to and leaving with the Chief Financial
6326 Officer ~~Insurance Commissioner and Treasurer~~ or some person in
6327 apparent charge of his or her office two copies thereof. The
6328 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
6329 shall forthwith mail by registered mail one of the copies of
6330 such process to the defendant at the defendant's last known
6331 principal place of business and shall keep a record of all
6332 process so served upon him or her. The service of process is
6333 sufficient, provided notice of such service and a copy of the
6334 process are sent within 10 days thereafter by registered mail by
6335 plaintiff or plaintiff's attorney to the defendant at the
6336 defendant's last known principal place of business, and the
6337 defendant's receipt, or receipt issued by the post office with
6338 which the letter is registered, showing the name of the sender
6339 of the letter and the name and address of the person to whom the
6340 letter is addressed, and the affidavit of the plaintiff or
6341 plaintiff's attorney showing a compliance herewith are filed
6342 with the clerk of the court in which the action is pending on or
6343 before the date the defendant is required to appear, or within
6344 such further time as the court may allow.

6345 Section 145. Section 626.909, Florida Statutes, is amended
6346 to read:

6347 626.909 Jurisdiction of office and department; service of
6348 process on Secretary of State.--

6349 (1) The Legislature hereby declares that it is a subject
6350 of concern that the purpose of the Unauthorized Insurers Process



6351 Law as expressed in s. 626.905 may be denied by the possibility
 6352 that the right of service of process provided for in that law
 6353 may be restricted only to those actions, suits, or proceedings
 6354 brought by insureds or beneficiaries. It therefore declares that
 6355 it is the intent of s. 626.905 that it is the obligation and
 6356 duty of the state to protect its residents and also proceed
 6357 under this law through the office or department in the courts of
 6358 this state. It further declares that it is also the intent of
 6359 the Legislature to subject unauthorized insurers and persons
 6360 representing or aiding such insurers to the jurisdiction of the
 6361 office or department in proceedings, examinations, or hearings
 6362 before it as provided for in this code.

6363 (2) In addition to the procedure for service of process on
 6364 unauthorized insurers or persons representing or aiding such
 6365 insurers contained in ss. 626.906 and 626.907, the office or
 6366 department shall have the right to bring any action, suit, or
 6367 proceeding in the name of the state or conduct any proceeding,
 6368 examination, or hearing provided for in this code against any
 6369 unauthorized insurer or person representing or aiding such
 6370 insurer for violation of any lawful order of the office or
 6371 department or any provision of this code, specifically including
 6372 but not limited to the regulation of trade practices provided
 6373 for in part IX of this chapter, if the insurer or person
 6374 representing or aiding such insurer transacts insurance in this
 6375 state as defined in ss. 624.10 and 626.906 and the insurer does
 6376 not transact such business under a subsisting certificate of
 6377 authority as required by s. 624.401. In the event the
 6378 transaction of business is done by mail, the venue of the act is



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6379 | at the point where the matter transmitted by mail is delivered
6380 | and takes effect.

6381 | (3) In addition to the right of action, suit, or
6382 | proceeding authorized by subsection (2), the office or
6383 | department shall have the right to bring a civil action in the
6384 | name of the state, as parens patriae on behalf of any insured,
6385 | beneficiary of any insured, claimant or dependent, or any other
6386 | person or class of persons injured as a result of the
6387 | transaction of any insurance business as defined in s. 626.906
6388 | by any unauthorized insurer, as defined in s. 624.09 who is also
6389 | an ineligible insurer as set forth in ss. 626.917 and 626.918,
6390 | or any person who represents or aids any unauthorized insurer,
6391 | in violation of s. 626.901, to recover actual damages on behalf
6392 | of individuals who were residents at the time the transaction
6393 | occurred and the cost of such suit, including a reasonable
6394 | attorney's fee. The court shall exclude from the amount of
6395 | monetary relief awarded in such action any amount of monetary
6396 | relief which duplicates amounts which have been awarded for the
6397 | same injury.

6398 | (4) Transaction of business in this state, as so defined,
6399 | by any unauthorized insurer or person representing or aiding
6400 | such insurer shall be deemed consent by the insurer or person
6401 | representing or aiding such insurer to the jurisdiction of the
6402 | office or department in proceedings, examinations, and hearings
6403 | before it as provided for in this code and shall constitute an
6404 | irrevocable appointment by the insurer or person representing or
6405 | aiding such insurer of the Secretary of State and his or her
6406 | successor or successors in office as its true and lawful



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6407 attorney upon whom may be served all lawful process in any
6408 action, suit, or proceeding in any court by the office or
6409 department or by the state and upon whom may be served all
6410 notices and orders of the office or department arising out of
6411 any such transaction of business; and such transaction of
6412 business shall constitute the agreement of the insurer or person
6413 representing or aiding such insurer that any such process
6414 against it or any such notice or order which is so served shall
6415 be of the same legal force and validity as if served personally
6416 within this state on the insurer or person representing or
6417 aiding such insurer. Service of process shall be in accordance
6418 with and in the same manner as now provided for service of
6419 process upon nonresidents under the provision of s. 48.161, and
6420 service of process shall also be valid if made as provided in s.
6421 626.907(2).

6422 (5) No plaintiff shall be entitled to a judgment by
6423 default or a decree pro confesso under this section until the
6424 expiration of 30 days after date of the filing of the affidavit
6425 of compliance.

6426 (6) Nothing in this section shall limit or abridge the
6427 right to serve any process, notice, orders, or demand upon the
6428 insurer or person representing or aiding such insurer in any
6429 other manner now or hereafter permitted by law.

6430 (7) Nothing in this section shall apply as to surplus
6431 lines insurance when written pursuant to the Surplus Lines Law,
6432 ss. 626.913-626.937, or as to transactions as to which a
6433 certificate of authority is not required of the insurer, as
6434 stated in s. 624.402.



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6435 Section 146. Section 626.910, Florida Statutes, is amended
6436 to read:

6437 626.910 Penalty for violation by unauthorized insurers and
6438 persons representing or aiding such insurers.--Any unauthorized
6439 insurer or person representing or aiding such insurer
6440 transacting insurance in this state and subject to service of
6441 process as referred to in s. 626.909 shall forfeit and pay to
6442 the state a civil penalty of not more than \$1,000 for each
6443 nonwillful violation, or not more than \$10,000 for each willful
6444 violation, of any lawful order of the office or department or
6445 any provision of this code.

6446 Section 147. Section 626.912, Florida Statutes, is amended
6447 to read:

6448 626.912 Exemptions from ss. 626.904-626.911.--The
6449 provisions of ss. 626.904-626.911 do not apply to any action,
6450 suit, or proceeding against any unauthorized foreign insurer,
6451 alien insurer, or person representing or aiding such an insurer
6452 arising out of any contract of insurance:

6453 (1) Covering reinsurance, wet marine and transportation,
6454 commercial aircraft, or railway insurance risks;

6455 (2) Against legal liability arising out of the ownership,
6456 operation, or maintenance of any property having a permanent
6457 situs outside this state;

6458 (3) Against loss of or damage to any property having a
6459 permanent situs outside this state; or

6460 (4) Issued under and in accordance with the Surplus Lines
6461 Law, when such insurer or person representing or aiding such
6462 insurer enters a general appearance or when such contract of



6463 insurance contains a provision designating the Chief Financial
 6464 Officer ~~Insurance Commissioner and Treasurer and his or her~~
 6465 ~~successor or successors~~ in office or designating a Florida
 6466 resident agent to be the true and lawful attorney of such
 6467 unauthorized insurer or person representing or aiding such
 6468 insurer upon whom may be served all lawful process in any
 6469 action, suit, or proceeding instituted by or on behalf of an
 6470 insured or person representing or aiding such insurer or
 6471 beneficiary arising out of any such contract of insurance; and
 6472 service of process effected on such Chief Financial Officer
 6473 ~~Insurance Commissioner and Treasurer, his or her successor or~~
 6474 ~~successors in office,~~ or such resident agent shall be deemed to
 6475 confer complete jurisdiction over such unauthorized insurer or
 6476 person representing or aiding such insurer in such action.

6477 Section 148. Subsection (2) of section 626.914, Florida
 6478 Statutes, is amended to read:

6479 626.914 Definitions.--As used in this Surplus Lines Law,
 6480 the term:

6481 (2) "Eligible surplus lines insurer" means an unauthorized
 6482 insurer which has been made eligible by the office ~~department~~ to
 6483 issue insurance coverage under this Surplus Lines Law.

6484 Section 149. Subsections (1) and (2) of section 626.916,
 6485 Florida Statutes, are amended to read:

6486 626.916 Eligibility for export.--

6487 (1) No insurance coverage shall be eligible for export
 6488 unless it meets all of the following conditions:

6489 (a) The full amount of insurance required must not be
 6490 procurable, after a diligent effort has been made by the



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6491 producing agent to do so, from among the insurers authorized to
6492 transact and actually writing that kind and class of insurance
6493 in this state, and the amount of insurance exported shall be
6494 only the excess over the amount so procurable from authorized
6495 insurers. Surplus lines agents must verify that a diligent
6496 effort has been made by requiring a properly documented
6497 statement of diligent effort from the retail or producing agent.
6498 However, to be in compliance with the diligent effort
6499 requirement, the surplus lines agent's reliance must be
6500 reasonable under the particular circumstances surrounding the
6501 export of that particular risk. Reasonableness shall be assessed
6502 by taking into account factors which include, but are not
6503 limited to, a regularly conducted program of verification of the
6504 information provided by the retail or producing agent.
6505 Declinations must be documented on a risk-by-risk basis. If it
6506 is not possible to obtain the full amount of insurance required
6507 by layering the risk, it is permissible to export the full
6508 amount.

6509 (b) The premium rate at which the coverage is exported
6510 shall not be lower than that rate applicable, if any, in actual
6511 and current use by a majority of the authorized insurers for the
6512 same coverage on a similar risk.

6513 (c) The policy or contract form under which the insurance
6514 is exported shall not be more favorable to the insured as to the
6515 coverage or rate than under similar contracts on file and in
6516 actual current use in this state by the majority of authorized
6517 insurers actually writing similar coverages on similar risks;
6518 except that a coverage may be exported under a unique form of



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6519 policy designed for use with respect to a particular subject of
6520 insurance if a copy of such form is filed with the office
6521 ~~department~~ by the surplus lines agent desiring to use the same
6522 and is subject to the disapproval of the office ~~department~~
6523 within 10 days of filing such form exclusive of Saturdays,
6524 Sundays, and legal holidays if it finds that the use of such
6525 special form is not reasonably necessary for the principal
6526 purposes of the coverage or that its use would be contrary to
6527 the purposes of this Surplus Lines Law with respect to the
6528 reasonable protection of authorized insurers from unwarranted
6529 competition by unauthorized insurers.

6530 (d) Except as to extended coverage in connection with fire
6531 insurance policies and except as to windstorm insurance, the
6532 policy or contract under which the insurance is exported shall
6533 not provide for deductible amounts, in determining the existence
6534 or extent of the insurer's liability, other than those available
6535 under similar policies or contracts in actual and current use by
6536 one or more authorized insurers.

6537 (2) The commission ~~department~~ may by rule ~~rules and~~
6538 ~~regulations~~ declare eligible for export generally, and
6539 notwithstanding the provisions of paragraphs (a), (b), (c), and
6540 (d) of subsection (1), any class or classes of insurance
6541 coverage or risk for which it finds, after a hearing, that there
6542 is no reasonable or adequate market among authorized insurers.
6543 Any such rules ~~and regulations~~ shall continue in effect during
6544 the existence of the conditions upon which predicated, but
6545 subject to termination by the commission ~~department~~.



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6546 Section 150. Subsection (1) of section 626.917, Florida
6547 Statutes, is amended to read:

6548 626.917 Eligibility for export; wet marine and
6549 transportation, aviation risks.--

6550 (1) Insurance coverage of wet marine and transportation
6551 risks, as defined in this code in s. 624.607(2), or aviation
6552 risks, including airport and products liability incidental
6553 thereto and hangarkeeper's liability, may be exported under the
6554 following conditions:

6555 (a) The insurance must be placed only by or through a
6556 licensed Florida surplus lines agent; and

6557 (b) The insurer must be one made eligible by the office
6558 ~~department~~ specifically for such coverages, based upon
6559 information furnished by the insurer and indicating that the
6560 insurer is well able to meet its financial obligations.

6561 Section 151. Section 626.918, Florida Statutes, is amended
6562 to read:

6563 626.918 Eligible surplus lines insurers.--

6564 (1) No surplus lines agent shall place any coverage with
6565 any unauthorized insurer which is not then an eligible surplus
6566 lines insurer, except as permitted under subsections (5) and
6567 (6).

6568 (2) No unauthorized insurer shall be or become an eligible
6569 surplus lines insurer unless made eligible by the office
6570 ~~department~~ in accordance with the following conditions:

6571 (a) Eligibility of the insurer must be requested in
6572 writing by the Florida Surplus Lines Service Office;



6573 (b) The insurer must be currently an authorized insurer in
 6574 the state or country of its domicile as to the kind or kinds of
 6575 insurance proposed to be so placed and must have been such an
 6576 insurer for not less than the 3 years next preceding or must be
 6577 the wholly owned subsidiary of such authorized insurer or must
 6578 be the wholly owned subsidiary of an already eligible surplus
 6579 lines insurer as to the kind or kinds of insurance proposed for
 6580 a period of not less than the 3 years next preceding. However,
 6581 the office ~~department~~ may waive the 3-year requirement if the
 6582 insurer provides a product or service not readily available to
 6583 the consumers of this state or has operated successfully for a
 6584 period of at least 1 year next preceding and has capital and
 6585 surplus of not less than \$25 million;

6586 (c) Before granting eligibility, the requesting surplus
 6587 lines agent or the insurer shall furnish the office ~~department~~
 6588 with a duly authenticated copy of its current annual financial
 6589 statement in the English language and with all monetary values
 6590 therein expressed in United States dollars, at an exchange rate
 6591 (in the case of statements originally made in the currencies of
 6592 other countries) then-current and shown in the statement, and
 6593 with such additional information relative to the insurer as the
 6594 office ~~department~~ may request;

6595 (d)1. The insurer must have and maintain surplus as to
 6596 policyholders of not less than \$15 million; in addition, an
 6597 alien insurer must also have and maintain in the United States a
 6598 trust fund for the protection of all its policyholders in the
 6599 United States under terms deemed by the office ~~department~~ to be
 6600 reasonably adequate, in an amount not less than \$5.4 million.



6601 Any such surplus as to policyholders or trust fund shall be
 6602 represented by investments consisting of eligible investments
 6603 for like funds of like domestic insurers under part II of
 6604 chapter 625 provided, however, that in the case of an alien
 6605 insurance company, any such surplus as to policyholders may be
 6606 represented by investments permitted by the domestic regulator
 6607 of such alien insurance company if such investments are
 6608 substantially similar in terms of quality, liquidity, and
 6609 security to eligible investments for like funds of like domestic
 6610 insurers under part II of chapter 625;

6611 2. For those surplus lines insurers that were eligible on
 6612 January 1, 1994, and that maintained their eligibility

6613 thereafter, the required surplus as to policyholders shall be:

6614 a. On December 31, 1994, and until December 30, 1995, \$2.5
 6615 million.

6616 b. On December 31, 1995, and until December 30, 1996, \$3.5
 6617 million.

6618 c. On December 31, 1996, and until December 30, 1997, \$4.5
 6619 million.

6620 d. On December 31, 1997, and until December 30, 1998, \$5.5
 6621 million.

6622 e. On December 31, 1998, and until December 30, 1999, \$6.5
 6623 million.

6624 f. On December 31, 1999, and until December 30, 2000, \$8
 6625 million.

6626 g. On December 31, 2000, and until December 30, 2001, \$9.5
 6627 million.



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6628 h. On December 31, 2001, and until December 30, 2002, \$11
6629 million.

6630 i. On December 31, 2002, and until December 30, 2003, \$13
6631 million.

6632 j. On December 31, 2003, and thereafter, \$15 million.

6633 3. The capital and surplus requirements as set forth in
6634 subparagraph 2. do not apply in the case of an insurance
6635 exchange created by the laws of individual states, where the
6636 exchange maintains capital and surplus pursuant to the
6637 requirements of that state, or maintains capital and surplus in
6638 an amount not less than \$50 million in the aggregate. For an
6639 insurance exchange which maintains funds in the amount of at
6640 least \$12 million for the protection of all insurance exchange
6641 policyholders, each individual syndicate shall maintain minimum
6642 capital and surplus in an amount not less than \$3 million. If
6643 the insurance exchange does not maintain funds in the amount of
6644 at least \$12 million for the protection of all insurance
6645 exchange policyholders, each individual syndicate shall meet the
6646 minimum capital and surplus requirements set forth in
6647 subparagraph 2.;

6648 4. A surplus lines insurer which is a member of an
6649 insurance holding company that includes a member which is a
6650 Florida domestic insurer as set forth in its holding company
6651 registration statement, as set forth in s. 628.801 and rules
6652 adopted thereunder, may elect to maintain surplus as to
6653 policyholders in an amount equal to the requirements of s.
6654 624.408, subject to the requirement that the surplus lines



6655 insurer shall at all times be in compliance with the
6656 requirements of chapter 625.

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6659 The election shall be submitted to the office ~~department~~ and
6660 shall be effective upon the office's ~~department's~~ being
6661 satisfied that the requirements of subparagraph 4. have been
6662 met. The initial date of election shall be the date of office
6663 ~~department~~ approval. The election approval application shall be
6664 on a form adopted by commission ~~department~~ rule. The office
6665 ~~department~~ may approve an election form submitted pursuant to
6666 subparagraph 4. only if it was on file with the former
6667 Department of Insurance before February 28, 1998;

6668 (e) The insurer must be of good reputation as to the
6669 providing of service to its policyholders and the payment of
6670 losses and claims;

6671 (f) The insurer must be eligible, as for authority to
6672 transact insurance in this state, under s. 624.404(3); and

6673 (g) This subsection does not apply as to unauthorized
6674 insurers made eligible under s. 626.917 as to wet marine and
6675 aviation risks.

6676 (3) The office ~~department~~ shall from time to time publish
6677 a list of all currently eligible surplus lines insurers and
6678 shall mail a copy thereof to each licensed surplus lines agent
6679 at his or her office of record with the office ~~department~~.

6680 (4) This section shall not be deemed to cast upon the
6681 office ~~department~~ any duty or responsibility to determine the
6682 actual financial condition or claims practices of any



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6683 | unauthorized insurer; and the status of eligibility, if granted
6684 | by the office ~~department~~, shall indicate only that the insurer
6685 | appears to be sound financially and to have satisfactory claims
6686 | practices and that the office ~~department~~ has no credible
6687 | evidence to the contrary.

6688 | (5) When it appears that any particular insurance risk
6689 | which is eligible for export, but on which insurance coverage,
6690 | in whole or in part, is not procurable from the eligible surplus
6691 | lines insurers, after a search of eligible surplus lines
6692 | insurers, then the surplus lines agent may file a supplemental
6693 | signed statement setting forth such facts and advising the
6694 | office ~~department~~ that such part of the risk as shall be
6695 | unprocurable, as aforesaid, is being placed with named
6696 | unauthorized insurers, in the amounts and percentages set forth
6697 | in the statement. Such named unauthorized insurer shall,
6698 | however, before accepting any risk in this state, deposit with
6699 | the department cash or securities acceptable to the office and
6700 | department of the market value of \$50,000 for each individual
6701 | risk, contract, or certificate, which deposit shall be held by
6702 | the department for the benefit of Florida policyholders only;
6703 | and the surplus lines agent shall procure from such unauthorized
6704 | insurer and file with the office ~~department~~ a certified copy of
6705 | its statement of condition as of the close of the last calendar
6706 | year. If such statement reveals, including both capital and
6707 | surplus, net assets of at least that amount required for
6708 | licensure of a domestic insurer, then the surplus lines agent
6709 | may proceed to consummate such contract of insurance. Whenever
6710 | any insurance risk, or any part thereof, is placed with an



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6711 unauthorized insurer, as provided herein, the policy, binder, or
6712 cover note shall contain a statement signed by the insured and
6713 the agent with the following notation: "The insured is aware
6714 that certain insurers participating in this risk have not been
6715 approved to transact business in Florida nor have they been
6716 declared eligible as surplus lines insurers by the Office of
6717 Insurance Regulation ~~Department of Insurance~~ of Florida. The
6718 placing of such insurance by a duly licensed surplus lines agent
6719 in Florida shall not be construed as approval of such insurer by
6720 the Office of Insurance Regulation ~~Department of Insurance~~ of
6721 Florida. Consequently, the insured is aware that the insured
6722 has severely limited the assistance available under the
6723 insurance laws of Florida. The insured is further aware that he
6724 or she may be charged a reasonable per policy fee, as provided
6725 in s. 626.916(4), Florida Statutes, for each policy certified
6726 for export." All other provisions of this code shall apply to
6727 such placement the same as if such risks were placed with an
6728 eligible surplus lines insurer.

6729 (6) When any particular insurance risk subject to
6730 subsection (5) is eligible for placement with an unauthorized
6731 insurer and not more than 12.5 percent of the risk is so
6732 subject, the office ~~Department of Insurance~~ may, at its
6733 discretion, permit the agent to obtain from the insured a signed
6734 statement as indicated in subsection (5). All other provisions
6735 of this code apply to such placement the same as if such risks
6736 were placed with an eligible surplus lines insurer.

6737 Section 152. Section 626.919, Florida Statutes, is amended
6738 to read:



6739 | 626.919 Withdrawal of eligibility; surplus lines
6740 | insurer.--

6741 | (1) If at any time the office ~~department~~ has reason to
6742 | believe that any unauthorized insurer then on the list of
6743 | eligible surplus lines insurers is insolvent or in unsound
6744 | financial condition, or does not make reasonable prompt payment
6745 | of just losses and claims in this state, or that it is no longer
6746 | eligible under the conditions therefor provided in s. 626.918,
6747 | it shall withdraw the eligibility of the insurer to insure
6748 | surplus lines risks in this state.

6749 | (2) If the office ~~department~~ finds that an insurer
6750 | currently eligible as a surplus lines insurer has willfully
6751 | violated the laws of this state or a rule of the commission
6752 | ~~department~~, it may, in its discretion, withdraw the eligibility
6753 | of the insurer to insure surplus lines risks in this state.

6754 | (3) The office ~~department~~ shall promptly mail notice of
6755 | all such withdrawals of eligibility to each surplus lines agent
6756 | at his or her address of record with the department.

6757 | Section 153. Subsection (8) of section 626.921, Florida
6758 | Statutes, is amended to read:

6759 | 626.921 Florida Surplus Lines Service Office.--

6760 | (8)(a) Information furnished to the department under s.
6761 | 626.923 or contained in the records subject to examination by
6762 | the department under s. 626.930 is confidential and exempt from
6763 | the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
6764 | Constitution if the disclosure of the information would reveal
6765 | information specific to a particular policy or policyholder.



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6766 The exemption does not apply to any proceeding instituted by the
6767 department or office against an agent or insurer.

6768 (b) Information furnished to the Florida Surplus Lines
6769 Service Office under the Surplus Lines Law is confidential and
6770 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
6771 of the State Constitution if the disclosure of the information
6772 would reveal information specific to a particular policy or
6773 policyholder. This exemption does not prevent the disclosure of
6774 any information by the Florida Surplus Lines Service Office to
6775 the department, but the exemption applies to records obtained by
6776 the department from the Florida Surplus Lines Service Office.
6777 The exemption does not apply to any proceeding instituted by the
6778 department or office against an agent or insurer. This paragraph
6779 is subject to the Open Government Sunset Review Act of 1995 in
6780 accordance with s. 119.15, and shall stand repealed on October
6781 2, 2006, unless reviewed and saved from repeal through
6782 reenactment by the Legislature.

6783 Section 154. Subsection (5) of section 626.931, Florida
6784 Statutes, is amended to read:

6785 626.931 Agent affidavit and insurer reporting
6786 requirements.--

6787 (5) The department may ~~Insurance Commissioner shall have~~
6788 ~~the authority to~~ waive the filing requirements described in
6789 subsections(3) and (4).

6790 Section 155. Subsections (2) and (5) of section 626.932,
6791 Florida Statutes, are amended to read:

6792 626.932 Surplus lines tax.--



6793 (2)(a) The surplus lines agent shall make payable to the
 6794 department ~~of Insurance~~ the tax related to each calendar
 6795 quarter's business as reported to the Florida Surplus Lines
 6796 Service Office, and remit the tax to the Florida Surplus Lines
 6797 Service Office at the same time as provided for the filing of
 6798 the quarterly affidavit, under s. 626.931. The Florida Surplus
 6799 Lines Service Office shall forward to the department the taxes
 6800 and any interest collected pursuant to paragraph (b), within 10
 6801 days of receipt.

6802 (b) The agent shall pay interest on the amount of any
 6803 delinquent tax due, at the rate of 9 percent per year,
 6804 compounded annually, beginning the day the amount becomes
 6805 delinquent.

6806 (5) The department shall deposit 55 percent of all taxes
 6807 collected under this section to the credit of the Insurance
 6808 ~~Commissioner's~~ Regulatory Trust Fund. Forty-five percent of all
 6809 taxes collected under this section shall be deposited into the
 6810 General Revenue Fund.

6811 Section 156. Section 626.936, Florida Statutes, is amended
 6812 to read:

6813 626.936 Failure to file reports or pay tax or service fee;
 6814 administrative penalty.--

6815 (1) Any licensed surplus lines agent who neglects to file
 6816 a report or an affidavit in the form and within the time
 6817 required or provided for in the Surplus Lines Law may be fined
 6818 up to \$50 per day for each day the neglect continues, beginning
 6819 the day after the report or affidavit was due until the date the
 6820 report or affidavit is received. All sums collected under this



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6821 section shall be deposited into the Insurance ~~Commissioner's~~
6822 Regulatory Trust Fund.

6823 (2) Any licensed surplus lines agent who neglects to pay
6824 the taxes or service fees as required under the Surplus Lines
6825 Law and within the time required may be fined up to \$500 per day
6826 for each day the failure to pay continues, beginning the day
6827 after the tax or service fees were due. The agent shall pay
6828 interest on the amount of any delinquent tax due, at the rate of
6829 9 percent per year, compounded annually, beginning the day the
6830 amount becomes delinquent. The department shall deposit all
6831 sums collected under this section into the Insurance
6832 ~~Commissioner's~~ Regulatory Trust Fund.

6833 Section 157. Section 626.9361, Florida Statutes, is
6834 amended to read:

6835 626.9361 Failure to file report; administrative
6836 penalty.--Any eligible surplus lines insurer who fails to file a
6837 report in the form and within the time required or provided for
6838 in the Surplus Lines Law may be fined up to \$500 per day for
6839 each day such failure continues, beginning the day after the
6840 report was due, until the date the report is received. Failure
6841 to file a report may also result in withdrawal of eligibility as
6842 a surplus lines insurer in this state. All sums collected by the
6843 department under this section shall be deposited into the
6844 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

6845 Section 158. Subsections (2), (3), and (4) of section
6846 626.937, Florida Statutes, are amended to read:

6847 626.937 Actions against insurer; service of process.--



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6848 (2) The unauthorized insurer accepting the risk or issuing
6849 the policy shall be deemed thereby to have authorized service of
6850 process against it in the manner and to the effect as provided
6851 in this section, and to have appointed the Chief Financial
6852 Officer ~~Insurance Commissioner and Treasurer~~ as its agent for
6853 service of process issuing upon any cause of action arising in
6854 this state under any such policy, contract, or insurance.

6855 (3) Each unauthorized insurer requesting eligibility
6856 pursuant to s. 626.918 shall file with the department its
6857 appointment of the Chief Financial Officer ~~Insurance~~
6858 ~~Commissioner and Treasurer and his or her successors in office,~~
6859 on a form as furnished by the department, as its attorney to
6860 receive service of all legal process issued against it in any
6861 civil action or proceeding in this state, and agreeing that
6862 process so served shall be valid and binding upon the insurer.
6863 The appointment shall be irrevocable, shall bind the insurer and
6864 any successor in interest as to the assets or liabilities of the
6865 insurer, and shall remain in effect as long as there is
6866 outstanding in this state any obligation or liability of the
6867 insurer resulting from its insurance transactions therein.

6868 (4) At the time of such appointment of the Chief Financial
6869 Officer ~~Insurance Commissioner and Treasurer~~ as its process
6870 agent, the insurer shall file with the department designation of
6871 the name and address of the person to whom process against it
6872 served upon the Chief Financial Officer ~~Insurance Commissioner~~
6873 ~~and Treasurer~~ is to be forwarded. The insurer may change the
6874 designation at any time by a new filing.



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6875 Section 159. Subsections (3) and (7) of section 626.938,
6876 Florida Statutes, are amended to read:

6877 626.938 Report and tax of independently procured
6878 coverages.--

6879 (3) For the general support of the government of this
6880 state, there is levied upon the obligation, chose in action, or
6881 right represented by the premium charged for such insurance a
6882 tax at the rate of 5 percent of the gross amount of such premium
6883 and a 0.3 percent service fee pursuant to s. 626.9325. The
6884 insured shall withhold the amount of the tax and service fee
6885 from the amount of premium charged by and otherwise payable to
6886 the insurer for such insurance. Within 30 days after the
6887 insurance is procured, continued, or renewed, and simultaneously
6888 with the filing of the report provided for in subsection (1)
6889 with the Florida Surplus Lines Service Office, the insured shall
6890 make payable to the department of ~~Insurance~~ the amount of the
6891 tax and make payable to the Florida Surplus Lines Service Office
6892 the amount of the service fee. The insured shall remit the tax
6893 and the service fee to the Florida Surplus Lines Service Office.
6894 The Florida Surplus Lines Service Office shall forward to the
6895 department the taxes, and any interest collected pursuant to
6896 subsection (5), within 10 days after receipt.

6897 (7) The department shall deposit 55 percent of all taxes
6898 and interest collected under this section to the credit of the
6899 Insurance ~~Commissioner's~~ Regulatory Trust Fund. Forty-five
6900 percent of all taxes and interest collected under this section
6901 shall be deposited into the General Revenue Fund.



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6902 Section 160. Section 626.9511, Florida Statutes, is
6903 amended to read:

6904 626.9511 Definitions.--When used in this part:

6905 (1) "Person" means any individual, corporation,
6906 association, partnership, reciprocal exchange, interinsurer,
6907 Lloyds insurer, fraternal benefit society, or business trust or
6908 any entity involved in the business of insurance.

6909 ~~(2) "Department" means the Department of Insurance of this~~
6910 ~~state.~~

6911 (2)~~(3)~~ "Insurance policy" or "insurance contract" means a
6912 written contract of, or a written agreement for or effecting,
6913 insurance, or the certificate thereof, by whatever name called,
6914 and includes all clauses, riders, endorsements, and papers which
6915 are a part thereof.

6916 Section 161. Paragraphs (h), (o), (w), and (aa) of
6917 subsection (1) of section 626.9541, Florida Statutes, are
6918 amended to read:

6919 626.9541 Unfair methods of competition and unfair or
6920 deceptive acts or practices defined.--

6921 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
6922 ACTS.--The following are defined as unfair methods of
6923 competition and unfair or deceptive acts or practices:

6924 (h) Unlawful rebates.--

6925 1. Except as otherwise expressly provided by law, or in an
6926 applicable filing with the office ~~department~~, knowingly:

6927 a. Permitting, or offering to make, or making, any
6928 contract or agreement as to such contract other than as plainly
6929 expressed in the insurance contract issued thereon;



6930 b. Paying, allowing, or giving, or offering to pay, allow,
6931 or give, directly or indirectly, as inducement to such insurance
6932 contract, any unlawful rebate of premiums payable on the
6933 contract, any special favor or advantage in the dividends or
6934 other benefits thereon, or any valuable consideration or
6935 inducement whatever not specified in the contract;

6936 c. Giving, selling, or purchasing, or offering to give,
6937 sell, or purchase, as inducement to such insurance contract or
6938 in connection therewith, any stocks, bonds, or other securities
6939 of any insurance company or other corporation, association, or
6940 partnership, or any dividends or profits accrued thereon, or
6941 anything of value whatsoever not specified in the insurance
6942 contract.

6943 2. Nothing in paragraph (g) or subparagraph 1. of this
6944 paragraph shall be construed as including within the definition
6945 of discrimination or unlawful rebates:

6946 a. In the case of any contract of life insurance or life
6947 annuity, paying bonuses to all policyholders or otherwise
6948 abating their premiums in whole or in part out of surplus
6949 accumulated from nonparticipating insurance; provided that any
6950 such bonuses or abatement of premiums is fair and equitable to
6951 all policyholders and for the best interests of the company and
6952 its policyholders.

6953 b. In the case of life insurance policies issued on the
6954 industrial debit plan, making allowance to policyholders who
6955 have continuously for a specified period made premium payments
6956 directly to an office of the insurer in an amount which fairly
6957 represents the saving in collection expenses.



6958 c. Readjustment of the rate of premium for a group
6959 insurance policy based on the loss or expense thereunder, at the
6960 end of the first or any subsequent policy year of insurance
6961 thereunder, which may be made retroactive only for such policy
6962 year.

6963 d. Issuance of life insurance policies or annuity
6964 contracts at rates less than the usual rates of premiums for
6965 such policies or contracts, as group insurance or employee
6966 insurance as defined in this code.

6967 e. Issuing life or disability insurance policies on a
6968 salary savings, bank draft, preauthorized check, payroll
6969 deduction, or other similar plan at a reduced rate reasonably
6970 related to the savings made by the use of such plan.

6971 3.a. No title insurer, or any member, employee, attorney,
6972 agent, agency, or solicitor thereof, shall pay, allow, or give,
6973 or offer to pay, allow, or give, directly or indirectly, as
6974 inducement to title insurance, or after such insurance has been
6975 effected, any rebate or abatement of the agent's, agency's, or
6976 title insurer's share of the premium or any charge for related
6977 title services below the cost for providing such services, or
6978 provide any special favor or advantage, or any monetary
6979 consideration or inducement whatever. Nothing herein contained
6980 shall preclude an abatement in an attorney's fee charged for
6981 legal services.

6982 b. Nothing in this subparagraph shall be construed as
6983 prohibiting the payment of fees to attorneys at law duly
6984 licensed to practice law in the courts of this state, for
6985 professional services, or as prohibiting the payment of earned



6986 portions of the premium to duly appointed agents or agencies who
6987 actually perform services for the title insurer.

6988 c. No insured named in a policy, or any other person
6989 directly or indirectly connected with the transaction involving
6990 the issuance of such policy, including, but not limited to, any
6991 mortgage broker, real estate broker, builder, or attorney, any
6992 employee, agent, agency, or representative thereof, or any other
6993 person whatsoever, shall knowingly receive or accept, directly
6994 or indirectly, any rebate or abatement of said charge, or any
6995 monetary consideration or inducement, other than as set forth in
6996 sub-subparagraph b.

6997 (o) Illegal dealings in premiums; excess or reduced
6998 charges for insurance.--

6999 1. Knowingly collecting any sum as a premium or charge for
7000 insurance, which is not then provided, or is not in due course
7001 to be provided, subject to acceptance of the risk by the
7002 insurer, by an insurance policy issued by an insurer as
7003 permitted by this code.

7004 2. Knowingly collecting as a premium or charge for
7005 insurance any sum in excess of or less than the premium or
7006 charge applicable to such insurance, in accordance with the
7007 applicable classifications and rates as filed with and approved
7008 by the office ~~department~~, and as specified in the policy; or, in
7009 cases when classifications, premiums, or rates are not required
7010 by this code to be so filed and approved, premiums and charges
7011 in excess of or less than those specified in the policy and as
7012 fixed by the insurer. This provision shall not be deemed to
7013 prohibit the charging and collection, by surplus lines agents



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7014 licensed under part VIII of this chapter, of the amount of
 7015 applicable state and federal taxes, or fees as authorized by s.
 7016 626.916(4), in addition to the premium required by the insurer
 7017 or the charging and collection, by licensed agents, of the exact
 7018 amount of any discount or other such fee charged by a credit
 7019 card facility in connection with the use of a credit card, as
 7020 authorized by subparagraph (q)3., in addition to the premium
 7021 required by the insurer. This subparagraph shall not be
 7022 construed to prohibit collection of a premium for a universal
 7023 life or a variable or indeterminate value insurance policy made
 7024 in accordance with the terms of the contract.

7025 3.a. Imposing or requesting an additional premium for a
 7026 policy of motor vehicle liability, personal injury protection,
 7027 medical payment, or collision insurance or any combination
 7028 thereof or refusing to renew the policy solely because the
 7029 insured was involved in a motor vehicle accident unless the
 7030 insurer's file contains information from which the insurer in
 7031 good faith determines that the insured was substantially at
 7032 fault in the accident.

7033 b. An insurer which imposes and collects such a surcharge
 7034 or which refuses to renew such policy shall, in conjunction with
 7035 the notice of premium due or notice of nonrenewal, notify the
 7036 named insured that he or she is entitled to reimbursement of
 7037 such amount or renewal of the policy under the conditions listed
 7038 below and will subsequently reimburse him or her or renew the
 7039 policy, if the named insured demonstrates that the operator
 7040 involved in the accident was:

7041 (I) Lawfully parked;



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7042 (II) Reimbursed by, or on behalf of, a person responsible
7043 for the accident or has a judgment against such person;
7044 (III) Struck in the rear by another vehicle headed in the
7045 same direction and was not convicted of a moving traffic
7046 violation in connection with the accident;
7047 (IV) Hit by a "hit-and-run" driver, if the accident was
7048 reported to the proper authorities within 24 hours after
7049 discovering the accident;
7050 (V) Not convicted of a moving traffic violation in
7051 connection with the accident, but the operator of the other
7052 automobile involved in such accident was convicted of a moving
7053 traffic violation;
7054 (VI) Finally adjudicated not to be liable by a court of
7055 competent jurisdiction;
7056 (VII) In receipt of a traffic citation which was dismissed
7057 or nolle prossed; or
7058 (VIII) Not at fault as evidenced by a written statement
7059 from the insured establishing facts demonstrating lack of fault
7060 which are not rebutted by information in the insurer's file from
7061 which the insurer in good faith determines that the insured was
7062 substantially at fault.
7063 c. In addition to the other provisions of this
7064 subparagraph, an insurer may not fail to renew a policy if the
7065 insured has had only one accident in which he or she was at
7066 fault within the current 3-year period. However, an insurer may
7067 nonrenew a policy for reasons other than accidents in accordance
7068 with s. 627.728. This subparagraph does not prohibit nonrenewal
7069 of a policy under which the insured has had three or more



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7070 accidents, regardless of fault, during the most recent 3-year
7071 period.

7072 4. Imposing or requesting an additional premium for, or
7073 refusing to renew, a policy for motor vehicle insurance solely
7074 because the insured committed a noncriminal traffic infraction
7075 as described in s. 318.14 unless the infraction is:

7076 a. A second infraction committed within an 18-month
7077 period, or a third or subsequent infraction committed within a
7078 36-month period.

7079 b. A violation of s. 316.183, when such violation is a
7080 result of exceeding the lawful speed limit by more than 15 miles
7081 per hour.

7082 5. Upon the request of the insured, the insurer and
7083 licensed agent shall supply to the insured the complete proof of
7084 fault or other criteria which justifies the additional charge or
7085 cancellation.

7086 6. No insurer shall impose or request an additional
7087 premium for motor vehicle insurance, cancel or refuse to issue a
7088 policy, or refuse to renew a policy because the insured or the
7089 applicant is a handicapped or physically disabled person, so
7090 long as such handicap or physical disability does not
7091 substantially impair such person's mechanically assisted driving
7092 ability.

7093 7. No insurer may cancel or otherwise terminate any
7094 insurance contract or coverage, or require execution of a
7095 consent to rate endorsement, during the stated policy term for
7096 the purpose of offering to issue, or issuing, a similar or
7097 identical contract or coverage to the same insured with the same



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7098 exposure at a higher premium rate or continuing an existing
7099 contract or coverage with the same exposure at an increased
7100 premium.

7101 8. No insurer may issue a nonrenewal notice on any
7102 insurance contract or coverage, or require execution of a
7103 consent to rate endorsement, for the purpose of offering to
7104 issue, or issuing, a similar or identical contract or coverage
7105 to the same insured at a higher premium rate or continuing an
7106 existing contract or coverage at an increased premium without
7107 meeting any applicable notice requirements.

7108 9. No insurer shall, with respect to premiums charged for
7109 motor vehicle insurance, unfairly discriminate solely on the
7110 basis of age, sex, marital status, or scholastic achievement.

7111 10. Imposing or requesting an additional premium for motor
7112 vehicle comprehensive or uninsured motorist coverage solely
7113 because the insured was involved in a motor vehicle accident or
7114 was convicted of a moving traffic violation.

7115 11. No insurer shall cancel or issue a nonrenewal notice
7116 on any insurance policy or contract without complying with any
7117 applicable cancellation or nonrenewal provision required under
7118 the Florida Insurance Code.

7119 12. No insurer shall impose or request an additional
7120 premium, cancel a policy, or issue a nonrenewal notice on any
7121 insurance policy or contract because of any traffic infraction
7122 when adjudication has been withheld and no points have been
7123 assessed pursuant to s. 318.14(9) and (10). However, this
7124 subparagraph does not apply to traffic infractions involving



7125 accidents in which the insurer has incurred a loss due to the
7126 fault of the insured.

7127 (w) Soliciting or accepting new or renewal insurance risks
7128 by insolvent or impaired insurer prohibited; penalty.--

7129 1. Whether or not delinquency proceedings as to the
7130 insurer have been or are to be initiated, but while such
7131 insolvency or impairment exists, no director or officer of an
7132 insurer, except with the written permission of the office
7133 ~~Department of Insurance~~, shall authorize or permit the insurer
7134 to solicit or accept new or renewal insurance risks in this
7135 state after such director or officer knew, or reasonably should
7136 have known, that the insurer was insolvent or impaired.

7137 "Impaired" includes impairment of capital or surplus, as defined
7138 in s. 631.011(12) and (13).

7139 2. Any such director or officer, upon conviction of a
7140 violation of this paragraph, is guilty of a felony of the third
7141 degree, punishable as provided in s. 775.082, s. 775.083, or s.
7142 775.084.

7143 (aa) Churning.--

7144 1. Churning is the practice whereby policy values in an
7145 existing life insurance policy or annuity contract, including,
7146 but not limited to, cash, loan values, or dividend values, and
7147 in any riders to that policy or contract, are utilized to
7148 purchase another insurance policy or annuity contract with that
7149 same insurer for the purpose of earning additional premiums,
7150 fees, commissions, or other compensation:



- 7151 a. Without an objectively reasonable basis for believing
 7152 that the replacement or extraction will result in an actual and
 7153 demonstrable benefit to the policyholder;
- 7154 b. In a fashion that is fraudulent, deceptive, or
 7155 otherwise misleading or that involves a deceptive omission;
- 7156 c. ~~Effective October 1, 1995,~~ When the applicant is not
 7157 informed that the policy values including cash values,
 7158 dividends, and other assets of the existing policy or contract
 7159 will be reduced, forfeited, or utilized in the purchase of the
 7160 replacing or additional policy or contract, if this is the case;
 7161 or
- 7162 d. ~~Effective October 1, 1995,~~ Without informing the
 7163 applicant that the replacing or additional policy or contract
 7164 will not be a paid-up policy or that additional premiums will be
 7165 due, if this is the case.

7166
 7167
 7168 Churning by an insurer or an agent is an unfair method of
 7169 competition and an unfair or deceptive act or practice.

7170 2. ~~Effective October 1, 1995,~~ Each insurer shall comply
 7171 with sub-subparagraphs 1.c. and 1.d. by disclosing to the
 7172 applicant at the time of the offer on a form designed and
 7173 adopted by rule by the commission ~~department~~ if, how, and the
 7174 extent to which the policy or contract values (including cash
 7175 value, dividends, and other assets) of a previously issued
 7176 policy or contract will be used to purchase a replacing or
 7177 additional policy or contract with the same insurer. The form
 7178 shall include disclosure of the premium, the death benefit of



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7179 the proposed replacing or additional policy, and the date when
7180 the policy values of the existing policy or contract will be
7181 insufficient to pay the premiums of the replacing or additional
7182 policy or contract.

7183 3. ~~Effective October 1, 1995,~~ Each insurer shall adopt
7184 written procedures to reasonably avoid churning of policies or
7185 contracts that it has issued, and failure to adopt written
7186 procedures sufficient to reasonably avoid churning shall be an
7187 unfair method of competition and an unfair or deceptive act or
7188 practice.

7189 Section 162. Subsections (3), (5), (7), (8), (10), and
7190 (11) of section 626.9543, Florida Statutes, are amended to read:
7191 626.9543 Holocaust victims.--

7192 (3) DEFINITIONS.--For the purpose of this section, the
7193 term:

7194 ~~(a) "Department" means the Department of Insurance.~~

7195 ~~(a)(b)~~ (a) "Holocaust victim" means any person who lost his or
7196 her life or property as a result of discriminatory laws,
7197 policies, or actions targeted against discrete groups of persons
7198 between 1920 and 1945, inclusive, in Nazi Germany, areas
7199 occupied by Nazi Germany, or countries allied with Nazi Germany.

7200 ~~(b)(e)~~ (b) "Insurance policy" means, but is not limited to,
7201 life insurance, property insurance, or education policies.

7202 ~~(c)(d)~~ (c) "Legal relationship" means any parent, subsidiary,
7203 or affiliated company with an insurer doing business in this
7204 state.

7205 ~~(d)(e)~~ (d) "Proceeds" means the face or other payout value of
7206 policies and annuities plus reasonable interest to date of



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7207 | payments without diminution for wartime or immediate postwar
7208 | currency devaluation.

7209 | (5) PROOF OF A CLAIM.--Any insurer doing business in this
7210 | state, in receipt of a claim from a Holocaust victim or from a
7211 | beneficiary, descendant, or heir of a Holocaust victim, shall:

7212 | (a) Diligently and expeditiously investigate all such
7213 | claims.

7214 | (b) Allow such claimants to meet a reasonable, not unduly
7215 | restrictive, standard of proof to substantiate a claim, pursuant
7216 | to standards established by rule of the commission ~~department~~.

7217 | (c) Permit claims irrespective of any statute of
7218 | limitations or notice requirements imposed by any insurance
7219 | policy issued, provided the claim is submitted within 10 years
7220 | after the effective date of this section.

7221 | (7) REPORTS FROM INSURERS.--Any insurer doing business in
7222 | this state shall have an affirmative duty to ascertain to the
7223 | extent possible and report to the office ~~department~~ within 90
7224 | days after the effective date of this section and annually
7225 | thereafter all efforts made and results of such efforts to
7226 | ascertain:

7227 | (a) Any legal relationship with an international insurer
7228 | that issued an insurance policy to a Holocaust victim between
7229 | 1920 and 1945, inclusive.

7230 | (b) The number and total value of such policies.

7231 | (c) Any claim filed by a Holocaust victim, his or her
7232 | beneficiary, heir, or descendant that has been paid, denied
7233 | payment, or is pending.



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7234 (d) Attempts made by the insurer to locate the
7235 beneficiaries of any such policies for which no claim of
7236 benefits has been made.

7237 (e) An explanation of any denial or pending payment of a
7238 claim to a Holocaust victim, his or her beneficiary, heir, or
7239 descendant.

7240 (8) REPORTS TO THE LEGISLATURE.--The office and department
7241 shall jointly report to the Legislature 1 year after the
7242 effective date of this section and annually thereafter:

7243 (a) The number of insurers doing business in this state
7244 which have a legal relationship with an international insurer
7245 that could have issued a policy to a Holocaust victim between
7246 1920 and 1945, inclusive.

7247 (b) A list of all claims paid, denied, or pending to a
7248 Holocaust victim, his or her beneficiary, heir, or descendant.

7249 (c) A summary of the length of time for the processing and
7250 disposition of a claim by the insurer.

7251 (10) PRIVATE RIGHT OF ACTION.--An action to recover
7252 damages caused by a violation of this section must be commenced
7253 within 5 years after the cause of action has accrued. Any
7254 person who shall sustain damages by the reason of a violation of
7255 this section shall recover threefold the actual damages
7256 sustained thereby, as well as costs not exceeding \$50,000, and
7257 reasonable attorneys' fees. At or before the commencement of
7258 any civil action by a party, notice thereof shall be served upon
7259 the office ~~department~~.

7260 (11) RULES.--The commission ~~department~~, by rule, shall
7261 provide for the implementation of the provisions of this section



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7262 | by establishing procedures and related forms for facilitating,
7263 | monitoring, and verifying compliance with this section and for
7264 | the establishment of a restitution program for Holocaust
7265 | victims, survivors, and their heirs and beneficiaries.

7266 | Section 163. Section 626.9545, Florida Statutes, is
7267 | amended to read:

7268 | 626.9545 Improper charge identification incentive
7269 | program.--No section or provision of the Florida Insurance Code
7270 | shall be construed as prohibiting an insurer from establishing a
7271 | financial incentive program for remunerating a policyholder or
7272 | an insured person with a selected percentage or stated portion
7273 | of any health care charge identified by the policyholder or the
7274 | insured person as an error or overcharge if the health care
7275 | charge is recovered by the insurer. The financial incentive
7276 | program shall be written and shall be available for inspection
7277 | by the office ~~department~~.

7278 | Section 164. Subsection (5) of section 626.9551, Florida
7279 | Statutes, is amended to read:

7280 | 626.9551 Favored agent or insurer; coercion of debtors.--

7281 | (5) The department or office may investigate the affairs
7282 | of any person to whom this section applies to determine whether
7283 | such person has violated this section. If a violation of this
7284 | section is found to have been committed knowingly, the person in
7285 | violation shall be subject to the same procedures and penalties
7286 | as provided in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

7287 | Section 165. Section 626.9561, Florida Statutes, is
7288 | amended to read:



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7289 626.9561 Power of department and office.--The department
7290 and office shall each have power within its respective
7291 regulatory jurisdiction to examine and investigate the affairs
7292 of every person involved in the business of insurance in this
7293 state in order to determine whether such person has been or is
7294 engaged in any unfair method of competition or in any unfair or
7295 deceptive act or practice prohibited by s. 626.9521, and shall
7296 each have the powers and duties specified in ss. 626.9571-
7297 626.9601 in connection therewith.

7298 Section 166. Section 626.9571, Florida Statutes, is
7299 amended to read:

7300 626.9571 Defined practices; hearings, witnesses,
7301 appearances, production of books and service of process.--

7302 (1) Whenever the department or office has reason to
7303 believe that any person has engaged, or is engaging, in this
7304 state in any unfair method of competition or any unfair or
7305 deceptive act or practice as defined in s. 626.9541 or s.
7306 626.9551 or is engaging in the business of insurance without
7307 being properly licensed as required by this code and that a
7308 proceeding by it in respect thereto would be to the interest of
7309 the public, it shall conduct or cause to have conducted a
7310 hearing in accordance with chapter 120.

7311 (2) The department or office, a duly empowered hearing
7312 officer, or an administrative law judge shall, during the
7313 conduct of such hearing, have those powers enumerated in s.
7314 120.569; however, the penalties for failure to comply with a
7315 subpoena or with an order directing discovery shall be limited
7316 to a fine not to exceed \$1,000 per violation.



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7317 (3) Statements of charges, notices, and orders under this
7318 act may be served by anyone duly authorized by the department or
7319 office, either in the manner provided by law for service of
7320 process in civil actions or by certifying and mailing a copy
7321 thereof to the person affected by such statement, notice, order,
7322 or other process at his or her or its residence or principal
7323 office or place of business. The verified return by the person
7324 so serving such statement, notice, order, or other process,
7325 setting forth the manner of the service, shall be proof of the
7326 same, and the return postcard receipt for such statement,
7327 notice, order, or other process, certified and mailed as
7328 aforesaid, shall be proof of service of the same.

7329 Section 167. Section 626.9581, Florida Statutes, is
7330 amended to read:

7331 626.9581 Cease and desist and penalty orders.--After the
7332 hearing provided in s. 626.9571, the department or office shall
7333 enter a final order in accordance with s. 120.569. If it is
7334 determined that the person charged has engaged in an unfair or
7335 deceptive act or practice or the unlawful transaction of
7336 insurance, the department or office shall also issue an order
7337 requiring the violator to cease and desist from engaging in such
7338 method of competition, act, or practice or the unlawful
7339 transaction of insurance. Further, if the act or practice is a
7340 violation of s. 626.9541 or s. 626.9551, the department or
7341 office may, at its discretion, order any one or more of the
7342 following:

7343 (1) Suspension or revocation of the person's certificate
7344 of authority, license, or eligibility for any certificate of



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7345 authority or license, if he or she knew, or reasonably should
7346 have known, he or she was in violation of this act.

7347 (2) Such other relief as may be provided in the insurance
7348 code.

7349 Section 168. Section 626.9591, Florida Statutes, is
7350 amended to read:

7351 626.9591 Appeals from the department or office.--Any
7352 person subject to an order of the department or office under s.
7353 626.9581 or s. 626.9601 may obtain a review of such order by
7354 filing an appeal therefrom in accordance with the provisions and
7355 procedures for appeal from the orders of the department or
7356 office in general under s. 120.68.

7357 Section 169. Section 626.9601, Florida Statutes, is
7358 amended to read:

7359 626.9601 Penalty for violation of cease and desist
7360 orders.--Any person who violates a cease and desist order of the
7361 department or office under s. 626.9581 while such order is in
7362 effect, after notice and hearing as provided in s. 626.9571,
7363 shall be subject, at the discretion of the department or office,
7364 to any one or more of the following:

7365 (1) A monetary penalty of not more than \$50,000 as to all
7366 matters determined in such hearing.

7367 (2) Suspension or revocation of such person's certificate
7368 of authority, license, or eligibility to hold such certificate
7369 of authority or license.

7370 (3) Such other relief as may be provided in the insurance
7371 code.



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7372 Section 170. Section 626.9611, Florida Statutes, is
7373 amended to read:

7374 626.9611 Rules.--The department or commission may, in
7375 accordance with chapter 120, adopt ~~promulgate~~ reasonable rules
7376 as are necessary or proper to identify specific methods of
7377 competition or acts or practices which are prohibited by s.
7378 626.9541 or s. 626.9551, but the rules shall not enlarge upon or
7379 extend the provisions of ss. 626.9541 and 626.9551.

7380 Section 171. Section 626.9621, Florida Statutes, is
7381 amended to read:

7382 626.9621 Provisions of part additional to existing
7383 law.--The powers vested in the department, commission, and
7384 office by this part shall be additional to any other powers to
7385 enforce any penalties, fines, or forfeitures authorized by law.

7386 Section 172. Section 626.9631, Florida Statutes, is
7387 amended to read:

7388 626.9631 Civil liability.--The provisions of this part are
7389 cumulative to rights under the general civil and common law, and
7390 no action of the department, commission, or office shall
7391 abrogate such rights to damages or other relief in any court.

7392 Section 173. Subsection (1) of section 626.9641, Florida
7393 Statutes, is amended to read:

7394 626.9641 Policyholders, bill of rights.--

7395 (1) The principles expressed in the following statements
7396 shall serve as standards to be followed by the department,
7397 commission, and office in exercising their ~~its~~ powers and
7398 duties, in exercising administrative discretion, in dispensing



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7399 administrative interpretations of the law, and in adopting
7400 ~~promulgating~~ rules:

7401 (a) Policyholders shall have the right to competitive
7402 pricing practices and marketing methods that enable them to
7403 determine the best value among comparable policies.

7404 (b) Policyholders shall have the right to obtain
7405 comprehensive coverage.

7406 (c) Policyholders shall have the right to insurance
7407 advertising and other selling approaches that provide accurate
7408 and balanced information on the benefits and limitations of a
7409 policy.

7410 (d) Policyholders shall have a right to an insurance
7411 company that is financially stable.

7412 (e) Policyholders shall have the right to be serviced by a
7413 competent, honest insurance agent or broker.

7414 (f) Policyholders shall have the right to a readable
7415 policy.

7416 (g) Policyholders shall have the right to an insurance
7417 company that provides an economic delivery of coverage and that
7418 tries to prevent losses.

7419 (h) Policyholders shall have the right to a balanced and
7420 positive regulation by the department, commission, and office.

7421 Section 174. Section 626.9651, Florida Statutes, is
7422 amended to read:

7423 626.9651 Privacy.--The department and commission shall
7424 each adopt rules consistent with other provisions of the Florida
7425 Insurance Code to govern the use of a consumer's nonpublic
7426 personal financial and health information. These rules must be



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7427 based on, consistent with, and not more restrictive than the
7428 Privacy of Consumer Financial and Health Information Regulation,
7429 adopted September 26, 2000, by the National Association of
7430 Insurance Commissioners; however, the rules must permit the use
7431 and disclosure of nonpublic personal health information for
7432 scientific, medical, or public policy research, in accordance
7433 with federal law. In addition, these rules must be consistent
7434 with, and not more restrictive than, the standards contained in
7435 Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-
7436 102. If the office ~~department~~ determines that a health insurer
7437 or health maintenance organization is in compliance with, or is
7438 actively undertaking compliance with, the consumer privacy
7439 protection rules adopted by the United States Department of
7440 Health and Human Services, in conformance with the Health
7441 Insurance Portability and Affordability Act, that health insurer
7442 or health maintenance organization is in compliance with this
7443 section.

7444 Section 175. Paragraph (e) of subsection (4) and
7445 subsections (5) and (9) of section 626.989, Florida Statutes,
7446 are amended to read:

7447 626.989 Investigation by department or Division of
7448 Insurance Fraud; compliance; immunity; confidential information;
7449 reports to division; division investigator's power of arrest.--

7450 (4)

7451 (e) The Chief Financial Officer ~~Insurance Commissioner~~ and
7452 any employee or agent of the department, commission, office, or
7453 division, when acting without malice and in the absence of fraud
7454 or bad faith, is not subject to civil liability for libel,



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7455 slander, or any other relevant tort, and no civil cause of
7456 action of any nature exists against such person by virtue of the
7457 execution of official activities or duties of the department,
7458 commission, or office under this section or by virtue of the
7459 publication of any report or bulletin related to the official
7460 activities or duties of the department, ~~or~~ division, commission,
7461 or office under this section.

7462 (5) The office's and the department's papers, documents,
7463 reports, or evidence relative to the subject of an investigation
7464 under this section are confidential and exempt from the
7465 provisions of s. 119.07(1) until such investigation is completed
7466 or ceases to be active. For purposes of this subsection, an
7467 investigation is considered "active" while the investigation is
7468 being conducted by the office or department with a reasonable,
7469 good faith belief that it could lead to the filing of
7470 administrative, civil, or criminal proceedings. An investigation
7471 does not cease to be active if the office or department is
7472 proceeding with reasonable dispatch and has a good faith belief
7473 that action could be initiated by the office or department or
7474 other administrative or law enforcement agency. After an
7475 investigation is completed or ceases to be active, portions of
7476 records relating to the investigation shall remain exempt from
7477 the provisions of s. 119.07(1) if disclosure would:

7478 (a) Jeopardize the integrity of another active
7479 investigation;

7480 (b) Impair the safety and soundness of an insurer;

7481 (c) Reveal personal financial information;

7482 (d) Reveal the identity of a confidential source;



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7483 (e) Defame or cause unwarranted damage to the good name or
7484 reputation of an individual or jeopardize the safety of an
7485 individual; or

7486 (f) Reveal investigative techniques or procedures.
7487 Further, such papers, documents, reports, or evidence relative
7488 to the subject of an investigation under this section shall not
7489 be subject to discovery until the investigation is completed or
7490 ceases to be active. Office, department, or division
7491 investigators shall not be subject to subpoena in civil actions
7492 by any court of this state to testify concerning any matter of
7493 which they have knowledge pursuant to a pending insurance fraud
7494 investigation by the division.

7495 (9) In recognition of the complementary roles of
7496 investigating instances of workers' compensation fraud and
7497 enforcing compliance with the workers' compensation coverage
7498 requirements under chapter 440, the department ~~of Insurance~~ is
7499 directed to prepare and submit a joint performance report to the
7500 President of the Senate and the Speaker of the House of
7501 Representatives by November 1, 2003, and then by November 1
7502 every 3 years thereafter, describing the results obtained in
7503 achieving compliance with the workers' compensation coverage
7504 requirements and reducing the incidence of workers' compensation
7505 fraud.

7506 Section 176. Subsection (1) of section 626.9892, Florida
7507 Statutes, is amended to read:

7508 626.9892 Anti-Fraud Reward Program; reporting of insurance
7509 fraud.--



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7510 (1) The Anti-Fraud Reward Program is hereby established
7511 within the department, to be funded from the Insurance
7512 ~~Commissioner's~~ Regulatory Trust Fund.

7513 Section 177. Paragraph (k) of subsection (5) of section
7514 626.99, Florida Statutes, is amended to read:

7515 626.99 Life insurance solicitation.--

7516 (5) GENERAL RULES RELATING TO SOLICITATION.--

7517 (k) If an appropriately licensed agent proposes to replace
7518 a life insurance policy or an in-force annuity with a registered
7519 securities product, preapplication notice requirements ~~to the~~
7520 ~~department~~ shall not apply.

7521 Section 178. Section 626.9911, Florida Statutes, is
7522 amended to read:

7523 626.9911 Definitions.--As used in this act, the term:

7524 ~~(1) "Department" means the Department of Insurance.~~

7525 (1)~~(2)~~ "Independent third-party trustee or escrow agent"
7526 means an attorney, certified public accountant, financial
7527 institution, or other person providing escrow services under the
7528 authority of a regulatory body. The term does not include any
7529 person associated, affiliated, or under common control with a
7530 viatical settlement provider or viatical settlement broker.

7531 (2)~~(3)~~ "Person" has the meaning specified in s. 1.01.

7532 (3)~~(4)~~ "Viatical settlement broker" means a person who, on
7533 behalf of a viator and for a fee, commission, or other valuable
7534 consideration, offers or attempts to negotiate viatical
7535 settlement contracts between a viator resident in this state and
7536 one or more viatical settlement providers. Notwithstanding the
7537 manner in which the viatical settlement broker is compensated, a



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7538 | viatical settlement broker is deemed to represent only the
7539 | viator and owes a fiduciary duty to the viator to act according
7540 | to the viator's instructions and in the best interest of the
7541 | viator. The term does not include an attorney, licensed
7542 | Certified Public Accountant, or investment adviser lawfully
7543 | registered ~~with the department of Banking and Finance~~ under
7544 | chapter 517, who is retained to represent the viator and whose
7545 | compensation is paid directly by or at the direction and on
7546 | behalf of the viator.

7547 | (4)~~(5)~~ "Viatical settlement contract" means a written
7548 | agreement entered into between a viatical settlement provider,
7549 | or its related provider trust, and a viator. The viatical
7550 | settlement contract includes an agreement to transfer ownership
7551 | or change the beneficiary designation of a life insurance policy
7552 | at a later date, regardless of the date that compensation is
7553 | paid to the viator. The agreement must establish the terms
7554 | under which the viatical settlement provider will pay
7555 | compensation or anything of value, which compensation or value
7556 | is less than the expected death benefit of the insurance policy
7557 | or certificate, in return for the viator's assignment, transfer,
7558 | sale, devise, or bequest of the death benefit or ownership of
7559 | all or a portion of the insurance policy or certificate of
7560 | insurance to the viatical settlement provider. A viatical
7561 | settlement contract also includes a contract for a loan or other
7562 | financial transaction secured primarily by an individual or
7563 | group life insurance policy, other than a loan by a life
7564 | insurance company pursuant to the terms of the life insurance
7565 | contract, or a loan secured by the cash value of a policy.



7566 (5)~~(6)~~ "Viatical settlement provider" means a person who,
7567 in this state, from this state, or with a resident of this
7568 state, effectuates a viatical settlement contract. The term
7569 does not include:

7570 (a) Any bank, savings bank, savings and loan association,
7571 credit union, or other licensed lending institution that takes
7572 an assignment of a life insurance policy as collateral for a
7573 loan.†

7574 (b) A life and health insurer that has lawfully issued a
7575 life insurance policy that provides accelerated benefits to
7576 terminally ill policyholders or certificateholders.†~~or~~

7577 (c) Any natural person who enters into no more than one
7578 viatical settlement contract with a viator in 1 calendar year,
7579 unless such natural person has previously been licensed under
7580 this act or is currently licensed under this act.

7581 (d) A trust that meets the definition of a "related
7582 provider trust."

7583 (e) A viator in this state.

7584 (f) A viatical settlement purchaser.

7585 (g) A financing entity.

7586 (6)~~(7)~~ "Viator" means the owner of a life insurance policy
7587 or a certificateholder under a group policy who enters or seeks
7588 to enter into a viatical settlement contract. This term does not
7589 include a viatical settlement purchaser or a viatical settlement
7590 provider or any person acquiring a policy or interest in a
7591 policy from a viatical settlement provider, nor does it include
7592 an independent third-party trustee or escrow agent.



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7593 | (7)~~(8)~~ "Related provider trust" means a titling trust or
7594 | other trust established by a licensed viatical settlement
7595 | provider or financing entity for the sole purpose of holding the
7596 | ownership or beneficial interest in purchased policies in
7597 | connection with a financing transaction. The trust must have a
7598 | written agreement with a licensed viatical settlement provider
7599 | or financing entity under which the licensed viatical settlement
7600 | provider or financing entity is responsible for insuring
7601 | compliance with all statutory and regulatory requirements and
7602 | under which the trust agrees to make all records and files
7603 | relating to viatical settlement transactions available to the
7604 | office ~~department~~ as if those records and files were maintained
7605 | directly by the licensed viatical settlement provider. This term
7606 | does not include an independent third-party trustee or escrow
7607 | agent or a trust that does not enter into agreements with a
7608 | viator. A related provider trust shall be subject to all
7609 | provisions of this act that apply to the viatical settlement
7610 | provider who established the related provider trust, except s.
7611 | 626.9912, which shall not be applicable. A viatical settlement
7612 | provider may establish no more than one related provider trust,
7613 | and the sole trustee of such related provider trust shall be the
7614 | viatical settlement provider licensed under s. 626.9912. The
7615 | name of the licensed viatical settlement provider shall be
7616 | included within the name of the related provider trust.

7617 | (8)~~(9)~~ "Viatical settlement purchase agreement" means a
7618 | contract or agreement, entered into by a viatical settlement
7619 | purchaser, to which the viator is not a party, to purchase a
7620 | life insurance policy or an interest in a life insurance policy,



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7621 | which is entered into for the purpose of deriving an economic
7622 | benefit. The term also includes purchases made by viatical
7623 | settlement purchasers from any person other than the provider
7624 | who effectuated the viatical settlement contract.

7625 | (9)~~(10)~~ "Viatical settlement purchaser" means a person who
7626 | gives a sum of money as consideration for a life insurance
7627 | policy or an equitable or legal interest in the death benefits
7628 | of a life insurance policy that has been or will be the subject
7629 | of a viatical settlement contract, for the purpose of deriving
7630 | an economic benefit, including purchases made from any person
7631 | other than the provider who effectuated the viatical settlement
7632 | contract or an entity affiliated with the provider. The term
7633 | does not include a licensee under this part, an accredited
7634 | investor as defined in Rule 501, Regulation D of the Securities
7635 | Act Rules, or a qualified institutional buyer as defined by Rule
7636 | 144(a) of the Federal Securities Act, a special purpose entity,
7637 | a financing entity, or a contingency insurer. The above
7638 | references to Rule 501, Regulation D and Rule 144(a) of the
7639 | Federal Securities Act are used strictly for defining purposes
7640 | and shall not be interpreted in any other manner. Any person who
7641 | claims to be an accredited investor shall sign an affidavit
7642 | stating that he or she is an accredited investor, the basis of
7643 | that claim, and that he or she understands that as an accredited
7644 | investor he or she will not be entitled to certain protections
7645 | of the Viatical Settlement Act. This affidavit must be kept with
7646 | other documents required to be maintained by this act.

7647 | (10)~~(11)~~ "Viatical settlement sales agent" means a person
7648 | other than a licensed viatical settlement provider who arranges



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7649 the purchase through a viatical settlement purchase agreement of
7650 a life insurance policy or an interest in a life insurance
7651 policy.

7652 (11)~~(12)~~ "Viaticated policy" means a life insurance
7653 policy, or a certificate under a group policy, which is the
7654 subject of a viatical settlement contract.

7655 (12)~~(13)~~ "Related form" means any form, created by or on
7656 behalf of a licensee, which a viator or viatical settlement
7657 purchaser is required to sign or initial. The forms include, but
7658 are not limited to, a power of attorney, a release of medical
7659 information form, a suitability questionnaire, a disclosure
7660 document, or any addendum, schedule, or amendment to a viatical
7661 settlement contract or viatical settlement purchase agreement
7662 considered necessary by a provider to effectuate a viatical
7663 settlement transaction.

7664 (13)~~(14)~~ "Special purpose entity" means an entity
7665 established by a licensed viatical settlement provider or by a
7666 financing entity, which may be a corporation, partnership,
7667 trust, limited liability company, or other similar entity formed
7668 solely to provide, either directly or indirectly, access to
7669 institutional capital markets to a viatical settlement provider
7670 or financing entity. A special purpose entity shall not enter
7671 into a viatical settlement contract or a viatical settlement
7672 purchase agreement.

7673 (14)~~(15)~~ "Financing entity" means an underwriter,
7674 placement agent, lender, purchaser of securities, or purchaser
7675 of a policy or certificate from a viatical settlement provider,
7676 credit enhancer, or any entity that has direct ownership in a



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7677 policy or certificate that is the subject of a viatical
 7678 settlement contract, but whose principal activity related to the
 7679 transaction is providing funds or credit enhancement to effect
 7680 the viatical settlement or the purchase of one or more viatical
 7681 policies and who has an agreement in writing with one or more
 7682 licensed viatical settlement providers to finance the
 7683 acquisition of viatical settlement contracts. The term does not
 7684 include a nonaccredited investor, a viatical settlement
 7685 purchaser, or other natural person. A financing entity may not
 7686 enter into a viatical settlement contract.

7687 Section 179. Section 626.9912, Florida Statutes, is
 7688 amended to read:

7689 626.9912 Viatical settlement provider license required;
 7690 application for license.--

7691 (1) A person may not perform the functions of a viatical
 7692 settlement provider as defined in this act or enter into or
 7693 solicit a viatical settlement contract without first having
 7694 obtained a license from the office ~~department~~.

7695 (2) Application for a viatical settlement provider license
 7696 must be made to the office ~~department~~ by the applicant on a form
 7697 prescribed by the commission ~~department~~, under oath and signed
 7698 by the applicant. The application must be accompanied by a fee
 7699 of \$500. If the applicant is a corporation, the application must
 7700 be under oath and signed by the president and the secretary of
 7701 the corporation.

7702 (3) In the application, the applicant must provide all of
 7703 the following:



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7704 (a) The applicant's full name, age, residence address, and
 7705 business address, and all occupations engaged in by the
 7706 applicant during the 5 years preceding the date of the
 7707 application.

7708 (b) A copy of the applicant's basic organizational
 7709 documents, if any, including the articles of incorporation,
 7710 articles of association, partnership agreement, trust agreement,
 7711 or other similar documents, together with all amendments to such
 7712 documents.

7713 (c) Copies of all bylaws, rules, regulations, or similar
 7714 documents regulating the conduct of the applicant's internal
 7715 affairs.

7716 (d) A list showing the name, business and residence
 7717 addresses, and official position of each individual who is
 7718 responsible for conduct of the applicant's affairs, including,
 7719 but not limited to, any member of the applicant's board of
 7720 directors, board of trustees, executive committee, or other
 7721 governing board or committee and any other person or entity
 7722 owning or having the right to acquire 10 percent or more of the
 7723 voting securities of the applicant.

7724 (e) With respect to each individual identified under
 7725 paragraph (d):

7726 1. A sworn biographical statement on forms adopted by the
 7727 commission and supplied by the office ~~department~~.

7728 2. A set of fingerprints on forms prescribed by the
 7729 commission ~~department~~, certified by a law enforcement officer,
 7730 and accompanied by the fingerprinting fee specified in s.
 7731 624.501.



7732 3. Authority for release of information relating to the
7733 investigation of the individual's background.

7734 (f) All applications, viatical settlement contract forms,
7735 viatical settlement purchase agreement forms, escrow forms, and
7736 other related forms proposed to be used by the applicant.

7737 (g) Such other information as the commission or office
7738 ~~department~~ deems necessary to determine that the applicant and
7739 the individuals identified under paragraph (d) are competent and
7740 trustworthy and can lawfully and successfully act as a viatical
7741 settlement provider.

7742 (4) The office ~~department~~ may not issue a license to an
7743 entity other than a natural person if it is not satisfied that
7744 all officers, directors, employees, stockholders, partners, and
7745 any other persons who exercise or have the ability to exercise
7746 effective control of the entity or who have the ability to
7747 influence the transaction of business by the entity meet the
7748 standards of this act and have not violated any provision of
7749 this act or rules of the commission ~~department~~ related to the
7750 business of viatical settlement contracts or viatical settlement
7751 purchase agreements.

7752 (5) Upon the filing of a sworn application and the payment
7753 of the license fee, the office ~~department~~ shall investigate each
7754 applicant and may issue the applicant a license if the office
7755 ~~department~~ finds that the applicant:

7756 (a) Has provided a detailed plan of operation.

7757 (b) Is competent and trustworthy and intends to act in
7758 good faith in the business authorized by the license applied
7759 for.



7760 (c) Has a good business reputation and has had experience,
7761 training, or education that qualifies the applicant to conduct
7762 the business authorized by the license applied for.

7763 (d) If the applicant is a corporation, is a corporation
7764 incorporated under the laws of this state, or is a foreign
7765 corporation authorized to transact business in this state.

7766 (e) Has designated the Chief Financial Officer ~~Insurance~~
7767 ~~Commissioner and Treasurer~~ as its agent for service of process.

7768 (f) Has made the deposit required by s. 626.9913(3).

7769 Section 180. Subsections (2) and (3) of section 626.9913,
7770 Florida Statutes, are amended to read:

7771 626.9913 Viatical settlement provider license continuance;
7772 annual report; fees; deposit.--

7773 (2) Annually, on or before March 1, the viatical
7774 settlement provider licensee shall file a statement containing
7775 information the commission ~~department~~ requires and shall pay to
7776 the office ~~department~~ a license fee in the amount of \$500. A
7777 viatical settlement provider shall include in all statements
7778 filed with the office ~~department~~ all information requested by
7779 the office ~~department~~ regarding a related provider trust
7780 established by the viatical settlement provider. The office
7781 ~~department~~ may require more frequent reporting. Failure to
7782 timely file the annual statement or to timely pay the license
7783 fee is grounds for immediate suspension of the license.

7784 (3) A viatical settlement provider licensee must deposit
7785 and maintain deposited in trust with the department securities
7786 eligible for deposit under s. 625.52, having at all times a
7787 value of not less than \$100,000. As an alternative to meeting



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7788 the \$100,000 deposit requirement, the provider may deposit and
7789 maintain deposited in trust with the department such securities
7790 in the amount of \$25,000 and post with the office ~~department~~ a
7791 surety bond acceptable to the office ~~department~~ in the amount of
7792 \$75,000.

7793 Section 181. Section 626.9914, Florida Statutes, is
7794 amended to read:

7795 626.9914 Suspension, revocation, or nonrenewal of viatical
7796 settlement provider license; grounds; administrative fine.--

7797 (1) The office ~~department~~ shall suspend, revoke, or refuse
7798 to renew the license of any viatical settlement provider if the
7799 office ~~department~~ finds that the licensee:

7800 (a) Has made a misrepresentation in the application for
7801 the license;

7802 (b) Has engaged in fraudulent or dishonest practices, or
7803 otherwise has been shown to be untrustworthy or incompetent to
7804 act as a viatical settlement provider;

7805 (c) Demonstrates a pattern of unreasonable payments to
7806 viators;

7807 (d) Has been found guilty of, or has pleaded guilty or
7808 nolo contendere to, any felony, or a misdemeanor involving fraud
7809 or moral turpitude, regardless of whether a judgment of
7810 conviction has been entered by the court;

7811 (e) Has issued viatical settlement contracts that have not
7812 been approved pursuant to this act;

7813 (f) Has failed to honor contractual obligations related to
7814 the business of viatical settlement contracts;

7815 (g) Deals in bad faith with viators;



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7816 (h) Has violated any provision of the insurance code or of
7817 this act;

7818 (i) Employs any person who materially influences the
7819 licensee's conduct and who fails to meet the requirements of
7820 this act; or

7821 (j) No longer meets the requirements for initial
7822 licensure.

7823 (2) The office ~~department~~ may, in lieu of or in addition
7824 to any suspension or revocation, assess an administrative fine
7825 not to exceed \$2,500 for each nonwillful violation or \$10,000
7826 for each willful violation by a viatical settlement provider
7827 licensee. The office ~~department~~ may also place a viatical
7828 settlement provider licensee on probation for a period not to
7829 exceed 2 years.

7830 (3) If an employee of a viatical settlement provider
7831 violates any provision of this act, the office ~~department~~ may
7832 take disciplinary action against such employee as if the
7833 employee were licensed under this act, including suspending or
7834 otherwise prohibiting the employee from performing the functions
7835 of a viatical settlement provider or viatical settlement broker
7836 as defined in this act.

7837 (4) If a viatical settlement provider establishes a
7838 related provider trust as permitted by this act, the viatical
7839 settlement provider shall be liable and responsible for the
7840 performance of all obligations of the related provider trust
7841 under all viatical settlement contracts entered into by the
7842 related provider trust, and for the compliance of the related
7843 provider trust with all provisions of this act. Any violation of



7844 this act by the related provider trust shall be deemed a
 7845 violation of this act by the viatical settlement provider as
 7846 well as the related provider trust. If the related provider
 7847 trust violates any provisions of this act, the office ~~department~~
 7848 may exercise all remedies set forth in this act for such
 7849 violations against the viatical settlement provider, as well as
 7850 the related provider trust.

7851 Section 182. Subsections (1), (2), and (4) of section
 7852 626.9915, Florida Statutes, are amended to read:

7853 626.9915 Effect of suspension or revocation of viatical
 7854 settlement provider license; duration of suspension;
 7855 reinstatement.--

7856 (1) When its license is suspended or revoked, the provider
 7857 must proceed, immediately following the effective date of the
 7858 suspension or revocation, to conclude the affairs it is
 7859 transacting under its license. The provider may not solicit,
 7860 negotiate, advertise, or effectuate new contracts. The office
 7861 ~~department~~ retains jurisdiction over the provider until all
 7862 contracts have been fulfilled or canceled or have expired. A
 7863 provider whose license is suspended or revoked may continue to
 7864 maintain and service viaticated policies subject to the approval
 7865 of the office ~~department~~.

7866 (2) The suspension of the license of a viatical settlement
 7867 provider licensee may be for such period, not to exceed 2 years,
 7868 as determined by the office ~~department~~. The office ~~department~~
 7869 may shorten, rescind, or modify the suspension.

7870 (4) If, upon expiration of the suspension order, the
 7871 license has not otherwise been terminated, the office ~~department~~



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7872 must reinstate the license only upon written request by the
7873 suspended licensee unless the office ~~department~~ finds that the
7874 grounds giving rise to the suspension have not been removed or
7875 that the licensee is otherwise not in compliance with the
7876 requirements of this act. The office ~~department~~ shall give the
7877 licensee notice of its findings no later than 90 days after
7878 receipt of the request or upon expiration of the suspension
7879 order, whichever occurs later. If a license is not reinstated
7880 pursuant to the procedures set forth in this subsection, it
7881 expires at the end of the suspension or on the date it otherwise
7882 would have expired, whichever is sooner.

7883 Section 183. Subsections (7), (8), and (9) of section
7884 626.9916, Florida Statutes, are amended to read:

7885 626.9916 Viatical settlement broker license required;
7886 application for license.--

7887 (7) Upon the filing of a sworn application and the payment
7888 of the license fee and all other applicable fees under this act,
7889 the department shall investigate each applicant and may issue
7890 the applicant a license if the department finds that the
7891 applicant:

7892 (a) Is competent and trustworthy and intends to act in
7893 good faith in the business authorized by the license applied
7894 for.

7895 (b) Has a good business reputation and has had experience,
7896 training, or education that qualifies the applicant to conduct
7897 the business authorized by the license applied for.

7898 (c) Except with respect to applicants for nonresident
7899 licenses, is a bona fide resident of this state and actually



7900 resides in this state at least 180 days a year. If an applicant
 7901 holds a similar license or an insurance agent's or broker's
 7902 license in another state at the time of applying for a license
 7903 under this section, the applicant may be found to meet the
 7904 residency requirement of this paragraph only after he or she
 7905 furnishes a letter of clearance satisfactory to the department
 7906 or other proof that the applicant's resident licenses have been
 7907 canceled or changed to nonresident status and that the applicant
 7908 is in good standing with the licensing authority.

7909 (d) Is a corporation, a corporation incorporated under the
 7910 laws of this state, or a foreign corporation authorized to
 7911 transact business in this state.

7912 (e) Has designated the Chief Financial Officer ~~Insurance~~
 7913 ~~Commissioner and Treasurer~~ as its agent for service of process.

7914 (8) An applicant for a nonresident viatical settlement
 7915 broker license must, in addition to designating the Chief
 7916 Financial Officer ~~Insurance Commissioner and Treasurer~~ as agent
 7917 for service of process as required by this section, also furnish
 7918 the department with the name and address of a resident of this
 7919 state upon whom notices or orders of the department or process
 7920 affecting the applicant or licensee may be served. After
 7921 issuance of the license, the licensee must also notify the
 7922 department of change of the person to receive such notices,
 7923 orders, or process; such change is not effective until
 7924 acknowledged by the department.

7925 (9) ~~Beginning July 1, 1997,~~ The department may, by rule,
 7926 specify experience, educational, or other training standards
 7927 required for licensure under this section.



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7928 Section 184. Section 626.9919, Florida Statutes, is
7929 amended to read:

7930 626.9919 Notice of change of licensee address or
7931 name.--Each viatical settlement provider licensee, viatical
7932 settlement broker licensee, and viatical settlement sales agent
7933 licensee must provide the office or department, as applicable,
7934 at least 30 days' advance notice of any change in the licensee's
7935 name, residence address, principal business address, or mailing
7936 address.

7937 Section 185. Section 626.9921, Florida Statutes, is
7938 amended to read:

7939 626.9921 Filing of forms; required procedures; approval.--

7940 (1) A viatical settlement contract form, viatical
7941 settlement purchase agreement form, escrow form, or related form
7942 may be used in this state only after the form has been filed
7943 with the office ~~department~~ and only after the form has been
7944 approved by the office ~~department~~.

7945 (2) The viatical settlement contract form, viatical
7946 settlement purchase agreement form, escrow form, or related form
7947 must be filed with the office ~~department~~ at least 60 days before
7948 its use. The form is considered approved on the 60th day after
7949 its date of filing unless it has been previously disapproved by
7950 the office ~~department~~. The office ~~department~~ must disapprove a
7951 viatical settlement contract form, viatical settlement purchase
7952 agreement form, escrow form, or related form that is
7953 unreasonable, contrary to the public interest, discriminatory,
7954 or misleading or unfair to the viator or the purchaser.



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7955 (3) If a viatical settlement provider elects to use a
 7956 related provider trust in accordance with this act, the viatical
 7957 settlement provider shall file notice of its intention to use a
 7958 related provider trust with the office ~~department~~, including a
 7959 copy of the trust agreement of the related provider trust. The
 7960 organizational documents of the trust must be submitted to and
 7961 approved by the office ~~department~~ before the transacting of
 7962 business by the trust.

7963 (4) The commission ~~department~~ may adopt, by rule,
 7964 standardized forms to be used by licensees, at the licensee's
 7965 option in place of separately approved forms.

7966 Section 186. Section 626.9922, Florida Statutes, is
 7967 amended to read:

7968 626.9922 Examination.--

7969 (1) The office or department may examine the business and
 7970 affairs of any of its respective licensees or applicants
 7971 ~~licensee or applicant~~ for a license. The office or department
 7972 may order any such licensee or applicant to produce any records,
 7973 books, files, advertising and solicitation materials, or other
 7974 information and may take statements under oath to determine
 7975 whether the licensee or applicant is in violation of the law or
 7976 is acting contrary to the public interest. The expenses
 7977 incurred in conducting any examination or investigation must be
 7978 paid by the licensee or applicant. Examinations and
 7979 investigations must be conducted as provided in chapter 624, and
 7980 licensees are subject to all applicable provisions of the
 7981 insurance code.



7982 (2) All accounts, books and records, documents, files,
7983 contracts, and other information relating to all transactions of
7984 viatical settlement contracts or viatical settlement purchase
7985 agreements must be maintained by the licensee for a period of at
7986 least 3 years after the death of the insured and must be
7987 available to the office or department for inspection during
7988 reasonable business hours.

7989 (3) All such records or accurate copies of such records
7990 must be maintained at the licensee's home office. As used in
7991 this section, the term "home office" means the principal place
7992 of business and any other single storage facility, the street
7993 address of which shall be disclosed to the office or department
7994 within 20 days after its initial use, or within 20 days of the
7995 effective date of this subsection.

7996 (4) The originals of records required to be maintained
7997 under this section must be made available to the office or
7998 department for examination at the office's or department's
7999 request.

8000 Section 187. Subsection (2) of section 626.99235, Florida
8001 Statutes, is amended to read:

8002 626.99235 Disclosures to viatical settlement purchasers;
8003 misrepresentations.--

8004 (2) The viatical settlement provider and the viatical
8005 settlement sales agent, themselves or through another person,
8006 shall provide in writing the following disclosures to any
8007 viatical settlement purchaser or purchaser prospect:



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8008 (a) That the return represented as being available under
8009 the viatical settlement purchase agreement is directly tied to
8010 the projected life span of one or more insureds.

8011 (b) If a return is represented, the disclosure shall
8012 indicate the projected life span of the insured or insureds
8013 whose life or lives are tied to the return.

8014 (c) If required by the terms of the viatical settlement
8015 purchase agreement, that the viatical settlement purchaser shall
8016 be responsible for the payment of insurance premiums on the life
8017 of the insured, late or surrender fees, or other costs related
8018 to the life insurance policy on the life of the insured or
8019 insureds which may reduce the return.

8020 (d) The amount of any trust fees, commissions, deductions,
8021 or other expenses, if any, to be charged to the viatical
8022 settlement purchaser.

8023 (e) The name and address of the person responsible for
8024 tracking the insured.

8025 (f) That group policies may contain limitations or caps in
8026 the conversion rights, that additional premiums may have to be
8027 paid if the policy is converted, and that the party responsible
8028 for the payment of such additional premiums shall be identified.

8029 (g) That the life expectancy and rate of return are only
8030 estimates and cannot be guaranteed.

8031 (h) That the purchase of a viatical settlement contract
8032 should not be considered a liquid purchase, since it is
8033 impossible to predict the exact timing of its maturity and the
8034 funds may not be available until the death of the insured.



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8035 (i) The name and address of the person with the
8036 responsibility for paying the premium until the death of the
8037 insured.

8038
8039
8040 The written disclosure required under this subsection shall be
8041 conspicuously displayed in any viatical settlement purchase
8042 agreement, and in any solicitation material furnished to the
8043 viatical settlement purchaser by such viatical settlement
8044 provider, related provider trust, or person, and shall be in
8045 contrasting color and in not less than 10-point type or no
8046 smaller than the largest type on the page if larger than 10-
8047 point type. The commission ~~may department is authorized to~~ adopt
8048 by rule the disclosure form to be used. The disclosures need not
8049 be furnished in an invitation to inquire, the objective of which
8050 is to create a desire to inquire further about entering into a
8051 viatical settlement purchase agreement. The invitation to
8052 inquire may not quote rates of return, may not include material
8053 attendant to the execution of any specific viatical settlement
8054 purchase agreement, and may not relate to any specific viator.

8055 Section 188. Section 626.99245, Florida Statutes, is
8056 amended to read:

8057 626.99245 Conflict of regulation of viaticals.--

8058 (1) A viatical settlement provider who from this state
8059 enters into a viatical settlement purchase agreement with a
8060 purchaser who is a resident of another state that has enacted
8061 statutes or adopted regulations governing viatical settlement
8062 purchase agreements, shall be governed in the effectuation of



8063 | that viatical settlement purchase agreement by the statutes and
 8064 | regulations of the purchaser's state of residence. If the state
 8065 | in which the purchaser is a resident has not enacted statutes or
 8066 | regulations governing viatical settlement purchase agreements,
 8067 | the provider shall give the purchaser notice that neither
 8068 | Florida nor his or her state regulates the transaction upon
 8069 | which he or she is entering. For transactions in these states,
 8070 | however, the viatical settlement provider is to maintain all
 8071 | records required as if the transactions were executed in
 8072 | Florida. However, the forms used in those states need not be
 8073 | approved by the office ~~department~~.

8074 | (2) A viatical settlement provider who from this state
 8075 | enters into a viatical settlement contract with a viator who is
 8076 | a resident of another state that has enacted statutes or adopted
 8077 | regulations governing viatical settlement contracts shall be
 8078 | governed in the effectuation of that viatical settlement
 8079 | contract by the statutes and regulations of the viator's state
 8080 | of residence. If the state in which the viator is a resident has
 8081 | not enacted statutes or regulations governing viatical
 8082 | settlement agreements, the provider shall give the viator notice
 8083 | that neither Florida nor his or her state regulates the
 8084 | transaction upon which he or she is entering. For transactions
 8085 | in those states, however, the viatical settlement provider is to
 8086 | maintain all records required as if the transactions were
 8087 | executed in Florida. The forms used in those states need not be
 8088 | approved by the office ~~department~~.

8089 | (3) This section does not affect the requirement of ss.
 8090 | 626.9911(5)~~(6)~~ and 626.9912(1) that a viatical settlement



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8091 provider doing business from this state must obtain a viatical
 8092 settlement license from the office ~~department~~. As used in this
 8093 subsection, the term "doing business from this state" includes
 8094 effectuating viatical settlement contracts and effectuating
 8095 viatical settlement purchase agreements from offices in this
 8096 state, regardless of the state of residence of the viator or the
 8097 viatical settlement purchaser.

8098 Section 189. Section 626.9925, Florida Statutes, is
 8099 amended to read:

8100 626.9925 Rules.--The commission ~~department~~ may adopt rules
 8101 to administer this act, including rules establishing standards
 8102 for evaluating advertising by licensees; rules providing for the
 8103 collection of data, for disclosures to viators or purchasers,
 8104 and for the reporting of life expectancies; and rules defining
 8105 terms used in this act and prescribing recordkeeping
 8106 requirements relating to executed viatical settlement contracts
 8107 and viatical settlement purchase agreements.

8108 Section 190. Section 626.9926, Florida Statutes, is
 8109 amended to read:

8110 626.9926 Rate regulation not authorized.--Nothing in this
 8111 act shall be construed to authorize the office or department to
 8112 directly or indirectly regulate the amount paid as consideration
 8113 for entry into a viatical settlement contract or viatical
 8114 settlement purchase agreement.

8115 Section 191. Subsection (2) of section 626.9927, Florida
 8116 Statutes, is amended to read:

8117 626.9927 Unfair trade practices; cease and desist;
 8118 injunctions; civil remedy.--



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8119 (2) In addition to the penalties and other enforcement
8120 provisions of this act, if any person violates this act or any
8121 rule implementing this act, the office or department, as
8122 appropriate, may seek an injunction in the circuit court of the
8123 county where the person resides or has a principal place of
8124 business and may apply for temporary and permanent orders that
8125 the office or department determines necessary to restrain the
8126 person from committing the violation.

8127 Section 192. Section 626.99272, Florida Statutes, is
8128 amended to read:

8129 626.99272 Cease and desist orders and fines.--

8130 (1) The office or department as appropriate may issue a
8131 cease and desist order upon a person that violates any provision
8132 of this part, any rule or order adopted by the commission,
8133 office, or department, or any written agreement entered into
8134 with the office or department.

8135 (2) When the office or department finds that such an
8136 action presents an immediate danger to the public which requires
8137 an immediate final order, it may issue an emergency cease and
8138 desist order reciting with particularity the facts underlying
8139 such findings. The emergency cease and desist order is effective
8140 immediately upon service of a copy of the order on the
8141 respondent and remains effective for 90 days. If the office or
8142 department begins nonemergency cease and desist proceedings
8143 under subsection(1), the emergency cease and desist order
8144 remains effective, absent an order by an appellate court of
8145 competent jurisdiction pursuant to s. 120.68, until the
8146 conclusion of proceedings under ss. 120.569 and 120.57.



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8147 (3) The office or department may impose and collect an
8148 administrative fine not to exceed \$10,000 for each nonwillful
8149 violation and \$25,000 for each willful violation of any
8150 provision of this part.

8151 Section 193. Section 626.99285, Florida Statutes, is
8152 amended to read:

8153 626.99285 Applicability of insurance code.--In addition to
8154 other applicable provisions cited in the insurance code, the
8155 office or department, as appropriate, has the authority granted
8156 under ss. 624.310, 626.901, and 626.989 to regulate viatical
8157 settlement providers, viatical settlement brokers, viatical
8158 settlement sales agents, viatical settlement contracts, viatical
8159 settlement purchase agreements, and viatical settlement
8160 transactions.

8161 Section 194. Section 626.99295, Florida Statutes, is
8162 amended to read:

8163 626.99295 Grace period.--An unlicensed viatical settlement
8164 provider or viatical settlement broker that was legally
8165 transacting business in this state on June 30, 2000, may
8166 continue to transact such business, in the absence of any orders
8167 by the office, department, or the former Department of Insurance
8168 to the contrary, until the office or department, as applicable,
8169 approves or disapproves the viatical settlement provider's
8170 application for licensure if the viatical settlement provider or
8171 viatical settlement broker filed ~~files~~ with the former
8172 department an application for licensure no later than August 1,
8173 2000, and if the viatical settlement provider or viatical
8174 settlement broker complies with all other provisions of this



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8175 act. Any form for which former department approval was ~~is~~
 8176 required under this part must have been ~~be~~ filed by August 1,
 8177 2000, and may continue to be used until disapproved by the
 8178 office or department.

8179 Section 195. Paragraphs (a), (b), and (c) of subsection
 8180 (2) and paragraph (c) of subsection(3) of section 627.0628,
 8181 Florida Statutes, are amended to read:

8182 627.0628 Florida Commission on Hurricane Loss Projection
 8183 Methodology.--

8184 (2) COMMISSION CREATED.--

8185 (a) There is created the Florida Commission on Hurricane
 8186 Loss Projection Methodology, which is assigned to the State
 8187 Board of Administration. For the purposes of this section, the
 8188 term "commission" means the Florida Commission on Hurricane Loss
 8189 Projection Methodology. The commission shall be administratively
 8190 housed within the State Board of Administration, but it shall
 8191 independently exercise the powers and duties specified in this
 8192 section.

8193 (b) The commission shall consist of the following 11
 8194 members:

- 8195 1. The insurance consumer advocate.
- 8196 2. The senior employee of the State Board of
 8197 Administration responsible for operations ~~Chief Operating~~
 8198 ~~Officer~~ of the Florida Hurricane Catastrophe Fund.
- 8199 3. The Executive Director of the Citizens Property
 8200 Insurance Corporation ~~Residential Property and Casualty Joint~~
 8201 ~~Underwriting Association.~~



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8202 4. The Director of the Division of Emergency Management of
8203 the Department of Community Affairs.

8204 5. The actuary member of the Florida Hurricane Catastrophe
8205 Fund Advisory Council.

8206 6. Six members appointed by the Chief Financial Officer
8207 ~~Insurance Commissioner~~, as follows:

8208 a. An employee of the office ~~Department of Insurance~~ who
8209 is an actuary responsible for property insurance rate filings.

8210 b. An actuary who is employed full time by a property and
8211 casualty insurer which was responsible for at least 1 percent of
8212 the aggregate statewide direct written premium for homeowner's
8213 insurance in the calendar year preceding the member's
8214 appointment to the commission.

8215 c. An expert in insurance finance who is a full time
8216 member of the faculty of the State University System and who has
8217 a background in actuarial science.

8218 d. An expert in statistics who is a full time member of
8219 the faculty of the State University System and who has a
8220 background in insurance.

8221 e. An expert in computer system design who is a full time
8222 member of the faculty of the State University System.

8223 f. An expert in meteorology who is a full time member of
8224 the faculty of the State University System and who specializes
8225 in hurricanes.

8226 (c) Members designated under subparagraphs (b)1.-5. shall
8227 serve on the commission as long as they maintain the respective
8228 offices designated in subparagraphs (b)1.-5. Members appointed
8229 by the Chief Financial Officer ~~Insurance Commissioner~~ under



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8230 subparagraph (b)6. shall serve on the commission until the end
 8231 of the term of office of the Chief Financial Officer ~~Insurance~~
 8232 ~~Commissioner~~ who appointed them, unless earlier removed by the
 8233 Chief Financial Officer ~~Insurance Commissioner~~ for cause.
 8234 Vacancies on the commission shall be filled in the same manner
 8235 as the original appointment.

8236 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

8237 (c) With respect to a rate filing under s. 627.062, an
 8238 insurer may employ actuarial methods, principles, standards,
 8239 models, or output ranges found by the commission to be accurate
 8240 or reliable to determine hurricane loss factors for use in a
 8241 rate filing under s. 627.062, which findings and factors are
 8242 admissible and relevant in consideration of a rate filing by the
 8243 office ~~department~~ or in any arbitration or administrative or
 8244 judicial review.

8245 Section 196. Paragraph (b) of subsection (2) and
 8246 subsections (5), (6), and (9) of section 627.0629, Florida
 8247 Statutes, are amended to read:

8248 627.0629 Residential property insurance; rate filings.--

8249 (2)

8250 (b) A rate filing for residential property insurance made
 8251 more than 150 days after approval by the office ~~department~~ of a
 8252 building code rating factor plan submitted by a statewide rating
 8253 organization shall include positive and negative rate factors
 8254 that reflect the manner in which building code enforcement in a
 8255 particular jurisdiction addresses risk of wind damage. The rate
 8256 filing shall include variations from standard rate factors on an
 8257 individual basis based on inspection of a particular structure



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8258 by a licensed home inspector. If an inspection is requested by
8259 the insured, the insurer may require the insured to pay the
8260 reasonable cost of the inspection. This paragraph applies to
8261 structures constructed or renovated after the implementation of
8262 this paragraph.

8263 (5) In order to provide an appropriate transition period,
8264 an insurer may, in its sole discretion, implement an approved
8265 rate filing for residential property insurance over a period of
8266 years. An insurer electing to phase in its rate filing must
8267 provide an informational notice to the office ~~department~~ setting
8268 out its schedule for implementation of the phased-in rate
8269 filing.

8270 (6) An insurer may not write a residential property
8271 insurance policy without providing windstorm coverage or
8272 hurricane coverage as defined in s. 627.4025. This subsection
8273 does not apply with respect to risks located in an area eligible
8274 for coverage under the high-risk account of the Citizens
8275 Property Insurance Corporation pursuant to s. 627.351(6) ~~Florida~~
8276 ~~Windstorm Underwriting Association under s. 627.351(2).~~

8277 (9) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
8278 SOUNDNESS.--

8279 (a) It is the intent of the Legislature to provide a
8280 program whereby homeowners may obtain an evaluation of the wind
8281 resistance of their homes with respect to preventing damage from
8282 hurricanes, together with a recommendation of reasonable steps
8283 that may be taken to upgrade their homes to better withstand
8284 hurricane force winds.



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8285 (b) To the extent that funds are provided for this purpose
8286 in the General Appropriations Act, the Legislature hereby
8287 authorizes the establishment of a program to be administered by
8288 the Citizens Property Insurance Corporation for homeowners
8289 insured in the high-risk account ~~Florida Windstorm Underwriting~~
8290 ~~Association~~.

8291 (c) The program shall provide grants to homeowners, for
8292 the purpose of providing homeowner applicants with funds to
8293 conduct an evaluation of the integrity of their homes with
8294 respect to withstanding hurricane force winds, recommendations
8295 to retrofit the homes to better withstand damage from such
8296 winds, and the estimated cost to make the recommended retrofits.

8297 (d) The Department of Community Affairs shall establish by
8298 rule standards to govern the quality of the evaluation, the
8299 quality of the recommendations for retrofitting, the eligibility
8300 of the persons conducting the evaluation, and the selection of
8301 applicants under the program. In establishing the rule, the
8302 Department of Community Affairs shall consult with the advisory
8303 committee to minimize the possibility of fraud or abuse in the
8304 evaluation and retrofitting process, and to ensure that funds
8305 spent by homeowners acting on the recommendations achieve
8306 positive results.

8307 (e) The Citizens Property Insurance Corporation ~~Florida~~
8308 ~~Windstorm Underwriting Association~~ shall identify areas of this
8309 state with the greatest wind risk to residential properties and
8310 recommend annually to the Department of Community Affairs
8311 priority target areas for such evaluations and inclusion with
8312 the associated residential construction mitigation program.



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8313 Section 197. Subsections (2) and (3) and paragraphs (a),
8314 (b), (c), (e), (f), and (g) of subsection (4) of section
8315 627.311, Florida Statutes, are amended to read:

8316 627.311 Joint underwriters and joint reinsurers.--

8317 (2) If the office ~~department~~ finds that any activity or
8318 practice of any such group, association, or other organization
8319 is unfair or unreasonable or otherwise inconsistent with the
8320 provisions of this chapter, it may issue a written order
8321 specifying in what respects such activity or practice is unfair
8322 or unreasonable or otherwise inconsistent with the provisions of
8323 this chapter, and requiring the discontinuance of such activity
8324 or practice.

8325 (3) The office ~~department~~ may, after consultation with
8326 insurers licensed to write automobile insurance in this state,
8327 approve a joint underwriting plan for purposes of equitable
8328 apportionment or sharing among insurers of automobile liability
8329 insurance and other motor vehicle insurance, as an alternate to
8330 the plan required in s. 627.351(1). All insurers authorized to
8331 write automobile insurance in this state shall subscribe to the
8332 plan and participate therein. The plan shall be subject to
8333 continuous review by the office ~~department~~ which may at any time
8334 disapprove the entire plan or any part thereof if it determines
8335 that conditions have changed since prior approval and that in
8336 view of the purposes of the plan changes are warranted. Any
8337 disapproval by the office ~~department~~ shall be subject to the
8338 provisions of chapter 120. If adopted, the plan and the
8339 association created under the plan:



8340 (a) Must be subject to all provisions of s. 627.351(1),
8341 except apportionment of applicants.

8342 (b) May provide for one or more designated insurers, able
8343 and willing to provide policy and claims service, to act on
8344 behalf of all other insurers to provide insurance for applicants
8345 who are in good faith entitled to, but unable to, procure
8346 insurance through the voluntary insurance market at standard
8347 rates.

8348 (c) Must provide that designated insurers will issue
8349 policies of insurance and provide policyholder and claims
8350 service on behalf of all insurers for the joint underwriting
8351 association.

8352 (d) Must provide for the equitable apportionment among
8353 insurers of losses and expenses incurred.

8354 (e) Must provide that the joint underwriting association
8355 will operate subject to the supervision and approval of a board
8356 of governors consisting of 11 individuals, including 1 who will
8357 be elected as chair. Five members of the board must be appointed
8358 by the Chief Financial Officer ~~Insurance Commissioner~~. Two of
8359 the Chief Financial Officer's ~~commissioner's~~ appointees must be
8360 chosen from the insurance industry. Any board member appointed
8361 by the Chief Financial Officer ~~Insurance Commissioner~~ may be
8362 removed and replaced by her or him at any time without cause.
8363 Six members of the board must be appointed by the participating
8364 insurers, two of whom must be from the insurance agents'
8365 associations. All board members, including the chair, must be
8366 appointed to serve for 2-year terms beginning annually on a date
8367 designated by the plan.



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8368 (f) Must provide that an agent appointed to a servicing
8369 carrier must be a licensed general lines agent of an insurer
8370 which is authorized to write automobile liability and physical
8371 damage insurance in the state and which is actively writing such
8372 coverage in the county in which the agent is located, or the
8373 immediately adjoining counties, or an agent who places a volume
8374 of other property and casualty insurance in an amount equal to
8375 the premium volume placed with the Florida Joint Underwriting
8376 Association. The office ~~department~~ may, however, determine that
8377 an agent may be appointed to a servicing carrier if, after
8378 public hearing, the office ~~department~~ finds that consumers in
8379 the agent's operating area would not have adequate and
8380 reasonable access to the purchase of automobile insurance if the
8381 agent were not appointed to a servicing carrier.

8382 (g) Must make available noncancelable coverage as provided
8383 in s. 627.7275(2).

8384 (h) Must provide for the furnishing of a list of insureds
8385 and their mailing addresses upon the request of a member of the
8386 association or an insurance agent licensed to place business
8387 with an association member. The list must indicate whether the
8388 insured is currently receiving a good driver discount from the
8389 association. The plan may charge a reasonable fee to cover the
8390 cost incurred in providing the list.

8391 (i) Must not provide a renewal credit or discount or any
8392 other inducement designed to retain a risk.

8393 (j) Must not provide any other good driver credit or
8394 discount that is not actuarially sound. In addition to other
8395 criteria that the plan may specify, to be eligible for a good



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8396 driver credit, an insured must not have any criminal traffic
8397 violations within the most recent 36-month period preceding the
8398 date the discount is received.

8399 (k) Shall have no liability, and no cause of action of any
8400 nature shall arise against, any member insurer or its agents or
8401 employees, agents or employees of the association, members of
8402 the board of governors of the association, the Chief Financial
8403 Officer, or the office ~~department~~ or its representatives, for
8404 any action taken by them in the performance of their duties or
8405 responsibilities under this subsection. Such immunity does not
8406 apply to actions for or arising out of breach of any contract or
8407 agreement pertaining to insurance, or any willful tort.

8408 (l)1. Shall be subject to the public records requirements
8409 of chapter 119 and the public meeting requirements of s.
8410 286.011. However, the following records of the Florida
8411 Automobile Joint Underwriting Association are confidential and
8412 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
8413 Constitution:

8414 a. Underwriting files, except that a policyholder or an
8415 applicant shall have access to his or her own underwriting
8416 files.

8417 b. Claims files, until termination of all litigation and
8418 settlement of all claims arising out of the same incident,
8419 although portions of the claims files may remain exempt, as
8420 otherwise provided by law. Confidential and exempt claims file
8421 records may be released to other governmental agencies upon
8422 written request and demonstration of need; such records held by



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8423 the receiving agency remain confidential and exempt as provided
8424 by this paragraph.

8425 c. Records obtained or generated by an internal auditor
8426 pursuant to a routine audit, until the audit is completed or, if
8427 the audit is conducted as part of an investigation, until the
8428 investigation is closed or ceases to be active. An
8429 investigation is considered "active" while the investigation is
8430 being conducted with a reasonable, good faith belief that it
8431 could lead to the filing of administrative, civil, or criminal
8432 proceedings.

8433 d. Matters reasonably encompassed in privileged attorney-
8434 client communications.

8435 e. Proprietary information licensed to the association
8436 under contract when the contract provides for the
8437 confidentiality of such proprietary information.

8438 f. All information relating to the medical condition or
8439 medical status of an association employee which is not relevant
8440 to the employee's capacity to perform his or her duties, except
8441 as otherwise provided in this paragraph. Information which is
8442 exempt shall include, but is not limited to, information
8443 relating to workers' compensation, insurance benefits, and
8444 retirement or disability benefits.

8445 g. All records relative to an employee's participation in
8446 an employee assistance program designed to assist any employee
8447 who has a behavioral or medical disorder, substance abuse
8448 problem, or emotional difficulty which affects the employee's
8449 job performance, except as otherwise provided in s.

8450 112.0455(11).



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8451 h. Information relating to negotiations for financing,
8452 reinsurance, depopulation, or contractual services, until the
8453 conclusion of the negotiations.

8454 i. Minutes of closed meetings regarding underwriting
8455 files, and minutes of closed meetings regarding an open claims
8456 file until termination of all litigation and settlement of all
8457 claims with regard to that claim, except that information
8458 otherwise confidential or exempt by law must be redacted.

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8461 When an authorized insurer is considering underwriting a risk
8462 insured by the association, relevant underwriting files and
8463 confidential claims files may be released to the insurer
8464 provided the insurer agrees in writing, notarized and under
8465 oath, to maintain the confidentiality of such files. When a
8466 file is transferred to an insurer, that file is no longer a
8467 public record because it is not held by an agency subject to the
8468 provisions of the public records law. The association may make
8469 the following information obtained from underwriting files and
8470 confidential claims files available to licensed general lines
8471 insurance agents: name, address, and telephone number of the
8472 automobile owner or insured; location of the risk; rating
8473 information; loss history; and policy type. The receiving
8474 licensed general lines insurance agent must retain the
8475 confidentiality of the information received.

8476 2. Portions of meetings of the Florida Automobile Joint
8477 Underwriting Association during which confidential underwriting
8478 files or confidential open claims files are discussed are exempt



8479 from the provisions of s. 286.011 and s. 24(b), Art. I of the
 8480 State Constitution. All portions of association meetings which
 8481 are closed to the public shall be recorded by a court reporter.
 8482 The court reporter shall record the times of commencement and
 8483 termination of the meeting, all discussion and proceedings, the
 8484 names of all persons present at any time, and the names of all
 8485 persons speaking. No portion of any closed meeting shall be off
 8486 the record. Subject to the provisions of this paragraph and s.
 8487 119.07(2)(a), the court reporter's notes of any closed meeting
 8488 shall be retained by the association for a minimum of 5 years.
 8489 A copy of the transcript, less any exempt matters, of any closed
 8490 meeting during which claims are discussed shall become public as
 8491 to individual claims after settlement of the claim.

8492
 8493
 8494 This paragraph is subject to the Open Government Sunset Review
 8495 Act of 1995 in accordance with s. 119.15, and shall stand
 8496 repealed on October 2, 2003, unless reviewed and saved from
 8497 repeal through reenactment by the Legislature.

8498 (4)(a) ~~Effective upon this act becoming a law,~~ The office
 8499 ~~department~~ shall, after consultation with insurers, approve a
 8500 joint underwriting plan of insurers which shall operate as a
 8501 nonprofit entity. For the purposes of this subsection, the term
 8502 "insurer" includes group self-insurance funds authorized by s.
 8503 624.4621, commercial self-insurance funds authorized by s.
 8504 624.462, assessable mutual insurers authorized under s.
 8505 628.6011, and insurers licensed to write workers' compensation
 8506 and employer's liability insurance in this state. The purpose of



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8507 the plan is to provide workers' compensation and employer's
8508 liability insurance to applicants who are required by law to
8509 maintain workers' compensation and employer's liability
8510 insurance and who are in good faith entitled to but who are
8511 unable to purchase such insurance through the voluntary market.
8512 ~~The joint underwriting plan shall issue policies beginning~~
8513 ~~January 1, 1994.~~ The plan must have actuarially sound rates that
8514 assure that the plan is self-supporting.

8515 (b) The operation of the plan is subject to the
8516 supervision of a 13-member board of governors. The board of
8517 governors shall be comprised of:

8518 1. Five of the 20 domestic insurers, as defined in s.
8519 624.06(1), having the largest voluntary direct premiums written
8520 in this state for workers' compensation and employer's liability
8521 insurance, which shall be elected by those 20 domestic insurers;

8522 2. Five of the 20 foreign insurers as defined in s.
8523 624.06(2) having the largest voluntary direct premiums written
8524 in this state for workers' compensation and employer's liability
8525 insurance, which shall be elected by those 20 foreign insurers;

8526 3. One person, who shall serve as the chair, appointed by
8527 the Chief Financial Officer ~~Insurance Commissioner~~;

8528 4. One person appointed by the largest property and
8529 casualty insurance agents' association in this state; and

8530 5. The consumer advocate appointed under s. 627.0613 or
8531 the consumer advocate's designee.

8532
8533



8534 Each board member shall serve a 4-year term and may serve
 8535 consecutive terms. No board member shall be an insurer which
 8536 provides service to the plan or which has an affiliate which
 8537 provides services to the plan or which is serviced by a service
 8538 company or third-party administrator which provides services to
 8539 the plan or which has an affiliate which provides services to
 8540 the plan. The minutes, audits, and procedures of the board of
 8541 governors are subject to chapter 119.

8542 (c) The operation of the plan shall be governed by a plan
 8543 of operation that is prepared at the direction of the board of
 8544 governors. The plan of operation may be changed at any time by
 8545 the board of governors or upon request of the office ~~department~~.
 8546 The plan of operation and all changes thereto are subject to the
 8547 approval of the office ~~department~~. The plan of operation shall:

8548 1. Authorize the board to engage in the activities
 8549 necessary to implement this subsection, including, but not
 8550 limited to, borrowing money.

8551 2. Develop criteria for eligibility for coverage by the
 8552 plan, including, but not limited to, documented rejection by at
 8553 least two insurers which reasonably assures that insureds
 8554 covered under the plan are unable to acquire coverage in the
 8555 voluntary market. Any insured may voluntarily elect to accept
 8556 coverage from an insurer for a premium equal to or greater than
 8557 the plan premium if the insurer writing the coverage adheres to
 8558 the provisions of s. 627.171.

8559 3. Require notice from the agent to the insured at the
 8560 time of the application for coverage that the application is for
 8561 coverage with the plan and that coverage may be available



8562 through an insurer, group self-insurers' fund, commercial self-
 8563 insurance fund, or assessable mutual insurer through another
 8564 agent at a lower cost.

8565 4. Establish programs to encourage insurers to provide
 8566 coverage to applicants of the plan in the voluntary market and
 8567 to insureds of the plan, including, but not limited to:

8568 a. Establishing procedures for an insurer to use in
 8569 notifying the plan of the insurer's desire to provide coverage
 8570 to applicants to the plan or existing insureds of the plan and
 8571 in describing the types of risks in which the insurer is
 8572 interested. The description of the desired risks must be on a
 8573 form developed by the plan.

8574 b. Developing forms and procedures that provide an insurer
 8575 with the information necessary to determine whether the insurer
 8576 wants to write particular applicants to the plan or insureds of
 8577 the plan.

8578 c. Developing procedures for notice to the plan and the
 8579 applicant to the plan or insured of the plan that an insurer
 8580 will insure the applicant or the insured of the plan, and notice
 8581 of the cost of the coverage offered; and developing procedures
 8582 for the selection of an insuring entity by the applicant or
 8583 insured of the plan.

8584 d. Provide for a market-assistance plan to assist in the
 8585 placement of employers. All applications for coverage in the
 8586 plan received 45 days before the effective date for coverage
 8587 shall be processed through the market-assistance plan. A market-
 8588 assistance plan specifically designed to serve the needs of



8589 small good policyholders as defined by the board must be
8590 finalized by January 1, 1994.

8591 5. Provide for policy and claims services to the insureds
8592 of the plan of the nature and quality provided for insureds in
8593 the voluntary market.

8594 6. Provide for the review of applications for coverage
8595 with the plan for reasonableness and accuracy, using any
8596 available historic information regarding the insured.

8597 7. Provide for procedures for auditing insureds of the
8598 plan which are based on reasonable business judgment and are
8599 designed to maximize the likelihood that the plan will collect
8600 the appropriate premiums.

8601 8. Authorize the plan to terminate the coverage of and
8602 refuse future coverage for any insured that submits a fraudulent
8603 application to the plan or provides fraudulent or grossly
8604 erroneous records to the plan or to any service provider of the
8605 plan in conjunction with the activities of the plan.

8606 9. Establish service standards for agents who submit
8607 business to the plan.

8608 10. Establish criteria and procedures to prohibit any
8609 agent who does not adhere to the established service standards
8610 from placing business with the plan or receiving, directly or
8611 indirectly, any commissions for business placed with the plan.

8612 11. Provide for the establishment of reasonable safety
8613 programs for all insureds in the plan.

8614 12. Authorize the plan to terminate the coverage of and
8615 refuse future coverage to any insured who fails to pay premiums
8616 or surcharges when due; who, at the time of application, is



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8617 delinquent in payments of workers' compensation or employer's
8618 liability insurance premiums or surcharges owed to an insurer,
8619 group self-insurers' fund, commercial self-insurance fund, or
8620 assessable mutual insurer licensed to write such coverage in
8621 this state; or who refuses to substantially comply with any
8622 safety programs recommended by the plan.

8623 13. Authorize the board of governors to provide the
8624 services required by the plan through staff employed by the
8625 plan, through reasonably compensated service providers who
8626 contract with the plan to provide services as specified by the
8627 board of governors, or through a combination of employees and
8628 service providers.

8629 14. Provide for service standards for service providers,
8630 methods of determining adherence to those service standards,
8631 incentives and disincentives for service, and procedures for
8632 terminating contracts for service providers that fail to adhere
8633 to service standards.

8634 15. Provide procedures for selecting service providers and
8635 standards for qualification as a service provider that
8636 reasonably assure that any service provider selected will
8637 continue to operate as an ongoing concern and is capable of
8638 providing the specified services in the manner required.

8639 16. Provide for reasonable accounting and data-reporting
8640 practices.

8641 17. Provide for annual review of costs associated with the
8642 administration and servicing of the policies issued by the plan
8643 to determine alternatives by which costs can be reduced.



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8644 18. Authorize the acquisition of such excess insurance or
8645 reinsurance as is consistent with the purposes of the plan.

8646 19. Provide for an annual report to the office ~~department~~
8647 on a date specified by the office ~~department~~ and containing such
8648 information as the office ~~department~~ reasonably requires.

8649 20. Establish multiple rating plans for various
8650 classifications of risk which reflect risk of loss, hazard
8651 grade, actual losses, size of premium, and compliance with loss
8652 control. At least one of such plans must be a preferred-rating
8653 plan to accommodate small-premium policyholders with good
8654 experience as defined in sub-subparagraph 22.a.

8655 21. Establish agent commission schedules.

8656 22. Establish three subplans as follows:

8657 a. Subplan "A" must include those insureds whose annual
8658 premium does not exceed \$2,500 and who have neither incurred any
8659 lost-time claims nor incurred medical-only claims exceeding 50
8660 percent of their premium for the immediate 2 years.

8661 b. Subplan "B" must include insureds that are employers
8662 identified by the board of governors as high-risk employers due
8663 solely to the nature of the operations being performed by those
8664 insureds and for whom no market exists in the voluntary market,
8665 and whose experience modifications are less than 1.00.

8666 c. Subplan "C" must include all other insureds within the
8667 plan.

8668 (e) The plan shall establish and use its rates and rating
8669 plans, and the plan may establish and use changes in rating
8670 plans at any time, but no more frequently than two times per any
8671 rating class for any calendar year. By December 1, 1993, and



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8672 December 1 of each year thereafter, the board shall establish
8673 and use actuarially sound rates for use by the plan to assure
8674 that the plan is self-funding while those rates are in effect.
8675 Such rates and rating plans must be filed with the office
8676 ~~department~~ within 30 calendar days after their effective dates,
8677 and shall be considered a "use and file" filing. Any disapproval
8678 by the office ~~department~~ must have an effective date that is at
8679 least 60 days from the date of disapproval of the rates and
8680 rating plan and must have prospective effect only. The plan may
8681 not be subject to any order by the office ~~department~~ to return
8682 to policyholders any portion of the rates disapproved by the
8683 office ~~department~~. The office ~~department~~ may not disapprove any
8684 rates or rating plans unless it demonstrates that such rates and
8685 rating plans are excessive, inadequate, or unfairly
8686 discriminatory.

8687 (f) No later than June 1 of each year, the plan shall
8688 obtain an independent actuarial certification of the results of
8689 the operations of the plan for prior years, and shall furnish a
8690 copy of the certification to the office ~~department~~. If, after
8691 the effective date of the plan, the projected ultimate incurred
8692 losses and expenses and dividends for prior years exceed
8693 collected premiums, accrued net investment income, and prior
8694 assessments for prior years, the certification is subject to
8695 review and approval by the office ~~department~~ before it becomes
8696 final.

8697 (g) Whenever a deficit exists, the plan shall, within 90
8698 days, provide the office ~~department~~ with a program to eliminate
8699 the deficit within a reasonable time. The deficit may be funded



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8700 through increased premiums charged to insureds of the plan for
8701 subsequent years, through the use of policyholder surplus
8702 attributable to any year, and through assessments on insureds in
8703 the plan if the plan uses assessable policies.

8704 Section 198. Section 627.3111, Florida Statutes, is
8705 amended to read:

8706 627.3111 Public records exemption.--All bank account
8707 numbers and debit, charge, and credit card numbers, and all
8708 other personal financial and health information of a consumer
8709 held by the department or office ~~of Insurance~~ or their ~~its~~
8710 service providers or agents, relating to a consumer's complaint
8711 or inquiry regarding a matter or activity regulated under the
8712 Florida Insurance Code, are confidential and exempt from s.
8713 119.07(1) and s. 24(a), Art. I of the State Constitution. For
8714 the purpose of this section, the term "consumer" includes but is
8715 not limited to a prospective purchaser, purchaser, or
8716 beneficiary of, or applicant for, any product or service
8717 regulated under the Florida Insurance Code, and a family member
8718 or dependent of a consumer, a subscriber under a group policy,
8719 or a policyholder. This information shall be redacted from
8720 records that contain nonexempt information prior to disclosure.
8721 This exemption applies to information made confidential and
8722 exempt by this section held by the department or office ~~of~~
8723 ~~Insurance~~ or their ~~its~~ service providers or agents before, on,
8724 or after the effective date of this exemption. Such confidential
8725 and exempt information may be disclosed to another governmental
8726 entity, if disclosure is necessary for the receiving entity to
8727 perform its duties and responsibilities, and may be disclosed to



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8728 the National Association of Insurance Commissioners. The
8729 receiving governmental entity and the association must maintain
8730 the confidential and exempt status of such information. The
8731 information made confidential and exempt by this section may be
8732 used in a criminal, civil, or administrative proceeding so long
8733 as the confidential and exempt status of such information is
8734 maintained. This exemption does not include the name and address
8735 of an inquirer or complainant to the department or office or the
8736 name of an insurer or other regulated entity which is the
8737 subject of the inquiry or complaint. This section is subject to
8738 the Open Government Sunset Review Act of 1995 in accordance with
8739 s. 119.15 and shall stand repealed on October 2, 2007, unless
8740 reviewed and saved from repeal through reenactment by the
8741 Legislature.

8742 Section 199. Subsection (1), paragraphs (a) and (c) of
8743 subsection (3), paragraphs (a), (c), and (d) of subsection (4),
8744 and subsections (5) and (6) of section 627.351, Florida
8745 Statutes, are amended, and paragraph (f) is added to subsection
8746 (2) of that section to read:

8747 627.351 Insurance risk apportionment plans.--

8748 (1) MOTOR VEHICLE INSURANCE RISK
8749 APPORTIONMENT.--Agreements may be made among casualty and surety
8750 insurers with respect to the equitable apportionment among them
8751 of insurance which may be afforded applicants who are in good
8752 faith entitled to, but are unable to, procure such insurance
8753 through ordinary methods, and such insurers may agree among
8754 themselves on the use of reasonable rate modifications for such
8755 insurance. Such agreements and rate modifications shall be



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8756 subject to the approval of the office ~~department~~. The office
8757 ~~department~~ shall, after consultation with the insurers licensed
8758 to write automobile liability insurance in this state, adopt a
8759 reasonable plan or plans for the equitable apportionment among
8760 such insurers of applicants for such insurance who are in good
8761 faith entitled to, but are unable to, procure such insurance
8762 through ordinary methods, and, when such plan has been adopted,
8763 all such insurers shall subscribe thereto and shall participate
8764 therein. Such plan or plans shall include rules for
8765 classification of risks and rates therefor. The plan or plans
8766 shall make available noncancelable coverage as provided in s.
8767 627.7275(2). Any insured placed with the plan shall be notified
8768 of the fact that insurance coverage is being afforded through
8769 the plan and not through the private market, and such
8770 notification shall be given in writing within 10 days of such
8771 placement. To assure that plan rates are made adequate to pay
8772 claims and expenses, insurers shall develop a means of obtaining
8773 loss and expense experience at least annually, and the plan
8774 shall file such experience, when available, with the office
8775 ~~department~~ in sufficient detail to make a determination of rate
8776 adequacy. Prior to the filing of such experience with the office
8777 ~~department~~, the plan shall poll each member insurer as to the
8778 need for an actuary who is a member of the Casualty Actuarial
8779 Society and who is not affiliated with the plan's statistical
8780 agent to certify the plan's rate adequacy. If a majority of
8781 those insurers responding indicate a need for such
8782 certification, the plan shall include the certification as part
8783 of its experience filing. Such experience shall be filed with



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8784 the office ~~department~~ not more than 9 months following the end
8785 of the annual statistical period under review, together with a
8786 rate filing based on said experience. The office ~~department~~
8787 shall initiate proceedings to disapprove the rate and so notify
8788 the plan or shall finalize its review within 60 days of receipt
8789 of the filing. Notification to the plan by the office ~~department~~
8790 of its preliminary findings, which include a point of entry to
8791 the plan pursuant to chapter 120, shall toll the 60-day period
8792 during any such proceedings and subsequent judicial review. The
8793 rate shall be deemed approved if the office ~~department~~ does not
8794 issue notice to the plan of its preliminary findings within 60
8795 days of the filing. In addition to provisions for claims and
8796 expenses, the ratemaking formula shall include a factor for
8797 projected claims trending and 5 percent for contingencies. In no
8798 instance shall the formula include a renewal discount for plan
8799 insureds. However, the plan shall reunderwrite each insured on
8800 an annual basis, based upon all applicable rating factors
8801 approved by the office ~~department~~. Trend factors shall not be
8802 found to be inappropriate if not in excess of trend factors
8803 normally used in the development of residual market rates by the
8804 appropriate licensed rating organization. Each application for
8805 coverage in the plan shall include, in boldfaced 12-point type
8806 immediately preceding the applicant's signature, the following
8807 statement:

8808

8809 "THIS INSURANCE IS BEING AFFORDED THROUGH THE FLORIDA JOINT
8810 UNDERWRITING ASSOCIATION AND NOT THROUGH THE PRIVATE MARKET.
8811 PLEASE BE ADVISED THAT COVERAGE WITH A PRIVATE INSURER MAY BE



8812 AVAILABLE FROM ANOTHER AGENT AT A LOWER COST. AGENT AND COMPANY
8813 LISTINGS ARE AVAILABLE IN THE LOCAL YELLOW PAGES."
8814

8815 The plan shall annually report to the office ~~department~~ the
8816 number and percentage of plan insureds who are not surcharged
8817 due to their driving record.

8818 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

8819 (f) As used in this subsection, the term "department"
8820 means the former Department of Insurance.

8821 (3) POLITICAL SUBDIVISION; CASUALTY INSURANCE RISK
8822 APPORTIONMENT.--

8823 (a) The office ~~department~~ shall, after consultation with
8824 the casualty insurers licensed in this state, adopt a plan or
8825 plans for the equitable apportionment among them of casualty
8826 insurance coverage which may be afforded political subdivisions
8827 which are in good faith entitled to, but are unable to, procure
8828 such coverage through the voluntary market at standard rates or
8829 through a statutorily approved plan authorized by the office
8830 ~~department~~. The office ~~department~~ may adopt a joint underwriting
8831 plan which shall provide for one or more designated insurers
8832 able and willing to provide policyholder and claims service,
8833 including the issuance of insurance policies, to act on behalf
8834 of all other insurers required to participate in the joint
8835 underwriting plan. Any joint underwriting plan adopted shall
8836 provide for the equitable apportionment of any profits realized,
8837 or of losses and expenses incurred, among participating
8838 insurers. The plan shall include, but shall not be limited to:



8839 | 1. Rules for the classification of risks and rates which
8840 | reflect the past loss experience and prospective loss experience
8841 | in different geographic areas.

8842 | 2. A rating plan which reasonably reflects the prior
8843 | claims experience of the insureds.

8844 | 3. Excess coverage by insurers if the office ~~Insurance~~
8845 | ~~Commissioner~~, in its ~~his or her~~ discretion, requires such
8846 | coverage by insurers participating in the joint underwriting
8847 | plan.

8848 | (c) Any deficit sustained under the plan shall first be
8849 | recovered through a premium contingency assessment.
8850 | Concurrently, the rates for insureds shall be adjusted for the
8851 | next year so as to be actuarially sound in conformance with
8852 | rules adopted by ~~of the commission~~ department.

8853 | (4) MEDICAL MALPRACTICE RISK APPORTIONMENT.--

8854 | (a) The office ~~department~~ shall, after consultation with
8855 | insurers as set forth in paragraph (b), adopt a joint
8856 | underwriting plan as set forth in paragraph (d).

8857 | (c) The Joint Underwriting Association shall operate
8858 | subject to the supervision and approval of a board of governors
8859 | consisting of representatives of five of the insurers
8860 | participating in the Joint Underwriting Association, an attorney
8861 | to be named by The Florida Bar, a physician to be named by the
8862 | Florida Medical Association, a dentist to be named by the
8863 | Florida Dental Association, and a hospital representative to be
8864 | named by the Florida Hospital Association. The board of
8865 | governors shall choose, during the first meeting of the board
8866 | after June 30 of each year, one of its members to serve as chair



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8867 of the board and another member to serve as vice chair of the
8868 board. There shall be no liability on the part of, and no cause
8869 of action of any nature shall arise against, any member insurer,
8870 self-insurer, or its agents or employees, the Joint Underwriting
8871 Association or its agents or employees, members of the board of
8872 governors, or the office ~~department~~ or its representatives for
8873 any action taken by them in the performance of their powers and
8874 duties under this subsection.

8875 (d) The plan shall provide coverage for claims arising out
8876 of the rendering of, or failure to render, medical care or
8877 services and, in the case of health care facilities, coverage
8878 for bodily injury or property damage to the person or property
8879 of any patient arising out of the insured's activities, in
8880 appropriate policy forms for all health care providers as
8881 defined in paragraph (h). The plan shall include, but shall not
8882 be limited to:

8883 1. Classifications of risks and rates which reflect past
8884 and prospective loss and expense experience in different areas
8885 of practice and in different geographical areas. To assure that
8886 plan rates are adequate to pay claims and expenses, the Joint
8887 Underwriting Association shall develop a means of obtaining loss
8888 and expense experience; and the plan shall file such experience,
8889 when available, with the office ~~department~~ in sufficient detail
8890 to make a determination of rate adequacy. Within 60 days after a
8891 rate filing, the office ~~department~~ shall approve such rates or
8892 rate revisions as are fully supported by the filing. In addition
8893 to provisions for claims and expenses, the ratemaking formula
8894 may include a factor for projected claims trending and a margin



8895 | for contingencies. The use of trend factors shall not be found
8896 | to be inappropriate.

8897 | 2. A rating plan which reasonably recognizes the prior
8898 | claims experience of insureds.

8899 | 3. Provisions as to rates for:

8900 | a. Insureds who are retired or semiretired.

8901 | b. The estates of deceased insureds.

8902 | c. Part-time professionals.

8903 | 4. Protection in an amount not to exceed \$250,000 per
8904 | claim, \$750,000 annual aggregate for health care providers other
8905 | than hospitals and in an amount not to exceed \$1.5 million per
8906 | claim, \$5 million annual aggregate for hospitals. Such coverage
8907 | for health care providers other than hospitals shall be
8908 | available as primary coverage and as excess coverage for the
8909 | layer of coverage between the primary coverage and the total
8910 | limits of \$250,000 per claim, \$750,000 annual aggregate. The
8911 | plan shall also provide tail coverage in these amounts to
8912 | insureds whose claims-made coverage with another insurer or
8913 | trust has or will be terminated. Such tail coverage shall
8914 | provide coverage for incidents that occurred during the claims-
8915 | made policy period for which a claim is made after the policy
8916 | period.

8917 | 5. A risk management program for insureds of the
8918 | association. This program shall include, but not be limited to:
8919 | investigation and analysis of frequency, severity, and causes of
8920 | adverse or untoward medical injuries; development of measures to
8921 | control these injuries; systematic reporting of medical
8922 | incidents; investigation and analysis of patient complaints; and



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8923 auditing of association members to assure implementation of this
8924 program. The plan may refuse to insure any insured who refuses
8925 or fails to comply with the risk management program implemented
8926 by the association. Prior to cancellation or refusal to renew
8927 an insured, the association shall provide the insured 60 days'
8928 notice of intent to cancel or nonrenew and shall further notify
8929 the insured of any action which must be taken to be in
8930 compliance with the risk management program.

8931 (5) PROPERTY AND CASUALTY INSURANCE RISK
8932 APPORTIONMENT.--The commission ~~department~~ shall adopt by rule a
8933 joint underwriting plan to equitably apportion among insurers
8934 authorized in this state to write property insurance as defined
8935 in s. 624.604 or casualty insurance as defined in s. 624.605,
8936 the underwriting of one or more classes of property insurance or
8937 casualty insurance, except for the types of insurance that are
8938 included within property insurance or casualty insurance for
8939 which an equitable apportionment plan, assigned risk plan, or
8940 joint underwriting plan is authorized under s. 627.311 or
8941 subsection (1), subsection (2), subsection(3), subsection (4),
8942 or subsection (6) and except for risks eligible for flood
8943 insurance written through the federal flood insurance program to
8944 persons with risks eligible under subparagraph (a)1. and who are
8945 in good faith entitled to, but are unable to, obtain such
8946 property or casualty insurance coverage, including excess
8947 coverage, through the voluntary market. For purposes of this
8948 subsection, an adequate level of coverage means that coverage
8949 which is required by state law or by responsible or prudent
8950 business practices. The Joint Underwriting Association shall not



8951 | be required to provide coverage for any type of risk for which
 8952 | there are no insurers providing similar coverage in this state.
 8953 | The office ~~department~~ may designate one or more participating
 8954 | insurers who agree to provide policyholder and claims service,
 8955 | including the issuance of policies, on behalf of the
 8956 | participating insurers.

8957 | (a) The plan shall provide:

8958 | 1. A means of establishing eligibility of a risk for
 8959 | obtaining insurance through the plan, which provides that:

8960 | a. A risk shall be eligible for such property insurance or
 8961 | casualty insurance as is required by Florida law if the
 8962 | insurance is unavailable in the voluntary market, including the
 8963 | market assistance program and the surplus lines market.

8964 | b. A commercial risk not eligible under sub-subparagraph
 8965 | a. shall be eligible for property or casualty insurance if:

8966 | (I) The insurance is unavailable in the voluntary market,
 8967 | including the market assistance plan and the surplus lines
 8968 | market;

8969 | (II) Failure to secure the insurance would substantially
 8970 | impair the ability of the entity to conduct its affairs; and

8971 | (III) The risk is not determined by the Risk Underwriting
 8972 | Committee to be uninsurable.

8973 | c. In the event the Federal Government terminates the
 8974 | Federal Crime Insurance Program established under 44 C.F.R. ss.
 8975 | 80-83, Florida commercial and residential risks previously
 8976 | insured under the federal program shall be eligible under the
 8977 | plan.



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8978 d.(I) In the event a risk is eligible under this paragraph
8979 and in the event the market assistance plan receives a minimum
8980 of 100 applications for coverage within a 3-month period, or 200
8981 applications for coverage within a 1-year period or less, for a
8982 given class of risk contained in the classification system
8983 defined in the plan of operation of the Joint Underwriting
8984 Association, and unless the market assistance plan provides a
8985 quotation for at least 80 percent of such applicants, such
8986 classification shall immediately be eligible for coverage in the
8987 Joint Underwriting Association.

8988 (II) Any market assistance plan application which is
8989 rejected because an individual risk is so hazardous as to be
8990 practically uninsurable, considering whether the likelihood of a
8991 loss for such a risk is substantially higher than for other
8992 risks of the same class due to individual risk characteristics,
8993 prior loss experience, unwillingness to cooperate with a prior
8994 insurer, physical characteristics and physical location shall
8995 not be included in the minimum percentage calculation provided
8996 above. In the event that there is any legal or administrative
8997 challenge to a determination by the office ~~department~~ that the
8998 conditions of this subparagraph have been met for eligibility
8999 for coverage in the Joint Underwriting Association for a given
9000 classification, any eligible risk may obtain coverage during the
9001 pendency of any such challenge.

9002 e. In order to qualify as a quotation for the purpose of
9003 meeting the minimum percentage calculation in this subparagraph,
9004 the quoted premium must meet the following criteria:



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9005 (I) In the case of an admitted carrier, the quoted premium
9006 must not exceed the premium available for a given classification
9007 currently in use by the Joint Underwriting Association or the
9008 premium developed by using the rates and rating plans on file
9009 with the office ~~department~~ by the quoting insurer, whichever is
9010 greater.

9011 (II) In the case of an authorized surplus lines insurer,
9012 the quoted premium must not exceed the premium available for a
9013 given classification currently in use by the Joint Underwriting
9014 Association by more than 25 percent, after consideration of any
9015 individual risk surcharge or credit.

9016 f. Any agent who falsely certifies the unavailability of
9017 coverage as provided by sub-subparagraphs a. and b., is subject
9018 to the penalties provided in s. 626.611.

9019 2. A means for the equitable apportionment of profits or
9020 losses and expenses among participating insurers.

9021 3. Rules for the classification of risks and rates which
9022 reflect the past and prospective loss experience.

9023 4. A rating plan which reasonably reflects the prior
9024 claims experience of the insureds. Such rating plan shall
9025 include at least two levels of rates for risks that have
9026 favorable loss experience and risks that have unfavorable loss
9027 experience, as established by the plan.

9028 5. Reasonable limits to available amounts of insurance.
9029 Such limits may not be less than the amounts of insurance
9030 required of eligible risks by Florida law.

9031 6. Risk management requirements for insurance where such
9032 requirements are reasonable and are expected to reduce losses.



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9033 7. Deductibles as may be necessary to meet the needs of
9034 insureds.

9035 8. Policy forms which are consistent with the forms in use
9036 by the majority of the insurers providing coverage in the
9037 voluntary market for the coverage requested by the applicant.

9038 9. A means to remove risks from the plan once such risks
9039 no longer meet the eligibility requirements of this paragraph.
9040 For this purpose, the plan shall include the following
9041 requirements: At each 6-month interval after the activation of
9042 any class of insureds, the board of governors or its designated
9043 committee shall review the number of applications to the market
9044 assistance plan for that class. If, based on these latest
9045 numbers, at least 90 percent of such applications have been
9046 provided a quotation, the Joint Underwriting Association shall
9047 cease underwriting new applications for such class within 30
9048 days, and notification of this decision shall be sent to the
9049 office ~~Insurance Commissioner~~, the major agents' associations,
9050 and the board of directors of the market assistance plan. A
9051 quotation for the purpose of this subparagraph shall meet the
9052 same criteria for a quotation as provided in sub-subparagraph
9053 1.e ~~sub-subparagraph d~~. All policies which were previously
9054 written for that class shall continue in force until their
9055 normal expiration date, at which time, subject to the required
9056 timely notification of nonrenewal by the Joint Underwriting
9057 Association, the insured may then elect to reapply to the Joint
9058 Underwriting Association according to the requirements of
9059 eligibility. If, upon reapplication, those previously insured
9060 Joint Underwriting Association risks meet the eligibility



9061 requirements, the Joint Underwriting Association shall provide
9062 the coverage requested.

9063 10. A means for providing credits to insurers against any
9064 deficit assessment levied pursuant to paragraph (c), for risks
9065 voluntarily written through the market assistance plan by such
9066 insurers.

9067 11. That the Joint Underwriting Association shall operate
9068 subject to the supervision and approval of a board of governors
9069 consisting of 13 individuals appointed by the Chief Financial
9070 Officer ~~Insurance Commissioner~~, and shall have an executive or
9071 underwriting committee. At least four of the members shall be
9072 representatives of insurance trade associations as follows: one
9073 member from the American Insurance Association, one member from
9074 the Alliance of American Insurers, one member from the National
9075 Association of Independent Insurers, and one member from an
9076 unaffiliated insurer writing coverage on a national basis. Two
9077 representatives shall be from two of the statewide agents'
9078 associations. Each board member shall be appointed to serve for
9079 2-year terms beginning on a date designated by the plan and
9080 shall serve at the pleasure of the Chief Financial Officer
9081 ~~commissioner~~. Members may be reappointed for subsequent terms.

9082 (b) Rates used by the Joint Underwriting Association shall
9083 be actuarially sound. To the extent applicable, the rate
9084 standards set forth in s. 627.062 shall be considered by the
9085 office ~~department~~ in establishing rates to be used by the joint
9086 underwriting plan. The initial rate level shall be determined
9087 using the rates, rules, rating plans, and classifications
9088 contained in the most current Insurance Services Office (ISO)



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9089 filing with the office ~~department~~ or the filing of other
9090 licensed rating organizations with an additional increment of 25
9091 percent of premium. For any type of coverage or classification
9092 which lends itself to manual rating for which the Insurance
9093 Services Office or another licensed rating organization does not
9094 file or publish a rate, the Joint Underwriting Association shall
9095 file and use an initial rate based on the average current market
9096 rate. The initial rate level for the rate plan shall also be
9097 subject to an experience and schedule rating plan which may
9098 produce a maximum of 25 percent debits or credits. For any risk
9099 which does not lend itself to manual rating and for which no
9100 rate has been promulgated under the rate plan, the board shall
9101 develop and file with the office ~~commissioner~~, subject to its
9102 ~~his or her~~ approval, appropriate criteria and factors for rating
9103 the individual risk. Such criteria and factors shall include,
9104 but not be limited to, loss rating plans, composite rating
9105 plans, and unique and unusual risk rating plans. The initial
9106 rates required under this paragraph shall be adjusted in
9107 conformity with future filings by the Insurance Services Office
9108 with the office ~~department~~ and shall remain in effect until such
9109 time as the Joint Underwriting Association has sufficient data
9110 as to independently justify an actuarially sound change in such
9111 rates.

9112 (c)1. In the event an underwriting deficit exists for any
9113 policy year the plan is in effect, any surplus which has accrued
9114 from previous years and is not projected within reasonable
9115 actuarial certainty to be needed for payment for claims in the



9116 year the surplus arose shall be used to offset the deficit to
9117 the extent available.

9118 2. As to any remaining deficit, the board of governors of
9119 the Joint Underwriting Association shall levy and collect an
9120 assessment in an amount sufficient to offset such deficit. Such
9121 assessment shall be levied against the insurers participating in
9122 the plan during the year giving rise to the assessment. Any
9123 assessments against insurers for the lines of property and
9124 casualty insurance issued to commercial risks shall be recovered
9125 from the participating insurers in the proportion that the net
9126 direct premium of each insurer for commercial risks written
9127 during the preceding calendar year bears to the aggregate net
9128 direct premium written for commercial risks by all members of
9129 the plan for the lines of insurance included in the plan. Any
9130 assessments against insurers for the lines of property and
9131 casualty insurance issued to personal risks eligible under sub-
9132 subparagraph (a)1.a. or sub-subparagraph (a)1.c. shall be
9133 recovered from the participating insurers in the proportion that
9134 the net direct premium of each insurer for personal risks
9135 written during the preceding calendar year bears to the
9136 aggregate net direct premium written for personal risks by all
9137 members of the plan for the lines of insurance included in the
9138 plan.

9139 3. The board shall take all reasonable and prudent steps
9140 necessary to collect the amount of assessment due from each
9141 participating insurer and policyholder, including, if prudent,
9142 filing suit to collect such assessment. If the board is unable
9143 to collect an assessment from any insurer, the uncollected



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9144 assessments shall be levied as an additional assessment against
9145 the participating insurers and any participating insurer
9146 required to pay an additional assessment as a result of such
9147 failure to pay shall have a cause of action against such
9148 nonpaying insurer.

9149 4. Any funds or entitlements that the state may be
9150 eligible to receive by virtue of the Federal Government's
9151 termination of the Federal Crime Insurance Program referenced in
9152 sub-subparagraph (a)1.c. may be used under the plan to offset
9153 any subsequent underwriting deficits that may occur from risks
9154 previously insured with the Federal Crime Insurance Program.

9155 5. Assessments shall be included as an appropriate factor
9156 in the making of rates as provided in s. 627.3512.

9157 6.a. The Legislature finds that the potential for
9158 unlimited assessments under this paragraph may induce insurers
9159 to attempt to reduce their writings in the voluntary market, and
9160 that such actions would worsen the availability problems that
9161 the association was created to remedy. It is the intent of the
9162 Legislature that insurers remain fully responsible for covering
9163 any deficits of the association; however, it is also the intent
9164 of the Legislature to provide a means by which assessment
9165 liabilities may be amortized over a period of years.

9166 b. The total amount of deficit assessments under this
9167 paragraph with respect to any year may not exceed 10 percent of
9168 the statewide total gross written premium for all insurers for
9169 the coverages referred to in the introductory language of this
9170 subsection for the prior year, except that if the deficit with
9171 respect to any plan year exceeds such amount and bonds are



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9172 issued under sub-subparagraph c. to defray the deficit, the
9173 total amount of assessments with respect to such deficit may not
9174 in any year exceed 10 percent of the deficit, or such lesser
9175 percentage as is sufficient to retire the bonds as determined by
9176 the board, and shall continue annually until the bonds are
9177 retired.

9178 c. The governing body of any unit of local government, any
9179 residents or businesses of which are insured by the association,
9180 may issue bonds as defined in s. 125.013 or s. 166.101 from time
9181 to time to fund an assistance program, in conjunction with the
9182 association, for the purpose of defraying deficits of the
9183 association. Revenue bonds may not be issued until validated
9184 pursuant to chapter 75, unless a state of emergency is declared
9185 by executive order or proclamation of the Governor pursuant to
9186 s. 252.36 making such findings as are necessary to determine
9187 that it is in the best interests of, and necessary for, the
9188 protection of the public health, safety, and general welfare of
9189 residents of this state and the protection and preservation of
9190 the economic stability of insurers operating in this state, and
9191 declaring it an essential public purpose to permit certain
9192 municipalities or counties to issue such bonds as will provide
9193 relief to claimants and policyholders of the joint underwriting
9194 association and insurers responsible for apportionment of
9195 association losses. The unit of local government shall enter
9196 into such contracts with the association as are necessary to
9197 carry out this paragraph. Any bonds issued under this sub-
9198 subparagraph shall be payable from and secured by moneys
9199 received by the association from assessments under this



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9200 paragraph, and assigned and pledged to or on behalf of the unit
9201 of local government for the benefit of the holders of such
9202 bonds. The funds, credit, property, and taxing power of the
9203 state or of the unit of local government shall not be pledged
9204 for the payment of such bonds. If any of the bonds remain unsold
9205 60 days after issuance, the office ~~department~~ shall require all
9206 insurers subject to assessment to purchase the bonds, which
9207 shall be treated as admitted assets; each insurer shall be
9208 required to purchase that percentage of the unsold portion of
9209 the bond issue that equals the insurer's relative share of
9210 assessment liability under this subsection. An insurer shall not
9211 be required to purchase the bonds to the extent that the office
9212 ~~department~~ determines that the purchase would endanger or impair
9213 the solvency of the insurer.

9214 7. The plan shall provide for the deferment, in whole or
9215 in part, of the assessment of an insurer if the office
9216 ~~department~~ finds that payment of the assessment would endanger
9217 or impair the solvency of the insurer. In the event an
9218 assessment against an insurer is deferred in whole or in part,
9219 the amount by which such assessment is deferred may be assessed
9220 against the other member insurers in a manner consistent with
9221 the basis for assessments set forth in subparagraph 2.

9222 (d) Upon adoption of the plan, all insurers authorized in
9223 this state to underwrite property or casualty insurance shall
9224 participate in the plan.

9225 (e) A Risk Underwriting Committee of the Joint
9226 Underwriting Association composed of three members experienced
9227 in evaluating insurance risks is created to review risks



9228 | rejected by the voluntary market for which application is made
 9229 | for insurance through the joint underwriting plan. The committee
 9230 | shall consist of a representative of the market assistance plan
 9231 | created under s. 627.3515, a member selected by the insurers
 9232 | participating in the Joint Underwriting Association, and a
 9233 | member named by the Chief Financial Officer Insurance
 9234 | ~~Commissioner~~. The Risk Underwriting Committee shall appoint such
 9235 | advisory committees as are provided for in the plan and are
 9236 | necessary to conduct its functions. The salaries and expenses of
 9237 | the members of the Risk Underwriting Committee and its advisory
 9238 | committees shall be paid by the joint underwriting plan. The
 9239 | plan approved by the office ~~department~~ shall establish criteria
 9240 | and procedures for use by the Risk Underwriting Committee for
 9241 | determining whether an individual risk is so hazardous as to be
 9242 | uninsurable. In making this determination and in establishing
 9243 | the criteria and procedures, the following shall be considered:
 9244 | 1. Whether the likelihood of a loss for the individual
 9245 | risk is substantially higher than for other risks of the same
 9246 | class; and
 9247 | 2. Whether the uncertainty associated with the individual
 9248 | risk is such that an appropriate premium cannot be determined.
 9249 |
 9250 |
 9251 | The acceptance or rejection of a risk by the underwriting
 9252 | committee shall be construed as the private placement of
 9253 | insurance, and the provisions of chapter 120 shall not apply.
 9254 | (f) There shall be no liability on the part of, and no
 9255 | cause of action of any nature shall arise against, any member



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9256 insurer or its agents or employees, the Florida Property and
9257 Casualty Joint Underwriting Association or its agents or
9258 employees, members of the board of governors, the Chief
9259 Financial Officer, or the office ~~department~~ or its
9260 representatives for any action taken by them in the performance
9261 of their duties under this subsection. Such immunity does not
9262 apply to actions for breach of any contract or agreement
9263 pertaining to insurance, or any other willful tort.

9264 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

9265 (a)1. The Legislature finds that actual and threatened
9266 catastrophic losses to property in this state from hurricanes
9267 have caused insurers to be unwilling or unable to provide
9268 property insurance coverage to the extent sought and needed. It
9269 is in the public interest and a public purpose to assist in
9270 assuring that property in the state is insured so as to
9271 facilitate the remediation, reconstruction, and replacement of
9272 damaged or destroyed property in order to reduce or avoid the
9273 negative effects otherwise resulting to the public health,
9274 safety, and welfare; to the economy of the state; and to the
9275 revenues of the state and local governments needed to provide
9276 for the public welfare. It is necessary, therefore, to provide
9277 property insurance to applicants who are in good faith entitled
9278 to procure insurance through the voluntary market but are unable
9279 to do so. The Legislature intends by this subsection that
9280 property insurance be provided and that it continues, as long as
9281 necessary, through an entity organized to achieve efficiencies
9282 and economies, all toward the achievement of the foregoing
9283 public purposes. Because it is essential for the corporation to



9284 have the maximum financial resources to pay claims following a
 9285 catastrophic hurricane, it is the intent of the Legislature that
 9286 the income of the corporation be exempt from federal income
 9287 taxation and that interest on the debt obligations issued by the
 9288 corporation be exempt from federal income taxation.

9289 2. The Residential Property and Casualty Joint
 9290 Underwriting Association originally created by this statute
 9291 shall be known, as of July 1, 2002, as the Citizens Property
 9292 Insurance Corporation. The corporation shall provide insurance
 9293 for residential and commercial property, for applicants who are
 9294 in good faith entitled, but are unable, to procure insurance
 9295 through the voluntary market. The corporation shall operate
 9296 pursuant to a plan of operation approved by order of the office
 9297 ~~department~~. The plan is subject to continuous review by the
 9298 office ~~department~~. The office ~~department~~ may, by order, withdraw
 9299 approval of all or part of a plan if the office ~~department~~
 9300 determines that conditions have changed since approval was
 9301 granted and that the purposes of the plan require changes in the
 9302 plan. For the purposes of this subsection, residential coverage
 9303 includes both personal lines residential coverage, which
 9304 consists of the type of coverage provided by homeowner's, mobile
 9305 home owner's, dwelling, tenant's, condominium unit owner's, and
 9306 similar policies, and commercial lines residential coverage,
 9307 which consists of the type of coverage provided by condominium
 9308 association, apartment building, and similar policies.

9309 (b)1. All insurers authorized to write one or more subject
 9310 lines of business in this state are subject to assessment by the
 9311 corporation and, for the purposes of this subsection, are



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9312 referred to collectively as "assessable insurers." Insurers
9313 writing one or more subject lines of business in this state
9314 pursuant to part VIII of chapter 626 are not assessable
9315 insurers, but insureds who procure one or more subject lines of
9316 business in this state pursuant to part VIII of chapter 626 are
9317 subject to assessment by the corporation and are referred to
9318 collectively as "assessable insureds." An authorized insurer's
9319 assessment liability shall begin on the first day of the
9320 calendar year following the year in which the insurer was issued
9321 a certificate of authority to transact insurance for subject
9322 lines of business in this state and shall terminate 1 year after
9323 the end of the first calendar year during which the insurer no
9324 longer holds a certificate of authority to transact insurance
9325 for subject lines of business in this state.

9326 2.a. All revenues, assets, liabilities, losses, and
9327 expenses of the corporation shall be divided into three separate
9328 accounts as follows:

9329 (I) A personal lines account for personal residential
9330 policies issued by the corporation or issued by the Residential
9331 Property and Casualty Joint Underwriting Association and renewed
9332 by the corporation that provide comprehensive, multiperil
9333 coverage on risks that are not located in areas eligible for
9334 coverage in the Florida Windstorm Underwriting Association as
9335 those areas were defined on January 1, 2002 and for such
9336 policies that do not provide coverage for the peril of wind on
9337 risks that are located in such areas;

9338 (II) A commercial lines account for commercial residential
9339 policies issued by the corporation or issued by the Residential



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9340 Property and Casualty Joint Underwriting Association and renewed
9341 by the corporation that provide coverage for basic property
9342 perils on risks that are not located in areas eligible for
9343 coverage in the Florida Windstorm Underwriting Association as
9344 those areas were defined on January 1, 2002, and for such
9345 policies that do not provide coverage for the peril of wind on
9346 risks that are located in such areas; and

9347 (III) A high-risk account for personal residential
9348 policies and commercial residential and commercial
9349 nonresidential property policies issued by the corporation or
9350 transferred to the corporation that provide coverage for the
9351 peril of wind on risks that are located in areas eligible for
9352 coverage in the Florida Windstorm Underwriting Association as
9353 those areas were defined on January 1, 2002. The high-risk
9354 account must also include quota share primary insurance under
9355 subparagraph (c)2. The area eligible for coverage under the
9356 high-risk account also includes the area within Port Canaveral,
9357 which is bordered on the south by the City of Cape Canaveral,
9358 bordered on the west by the Banana River, and bordered on the
9359 north by Federal Government property. The office ~~department~~ may
9360 remove territory from the area eligible for wind-only and quota
9361 share coverage if, after a public hearing, the office ~~department~~
9362 finds that authorized insurers in the voluntary market are
9363 willing and able to write sufficient amounts of personal and
9364 commercial residential coverage for all perils in the territory,
9365 including coverage for the peril of wind, such that risks
9366 covered by wind-only policies in the removed territory could be
9367 issued a policy by the corporation in either the personal lines



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9368 | or commercial lines account without a significant increase in
9369 | the corporation's probable maximum loss in such account. Removal
9370 | of territory from the area eligible for wind-only or quota share
9371 | coverage does not alter the assignment of wind coverage written
9372 | in such areas to the high-risk account.

9373 | b. The three separate accounts must be maintained as long
9374 | as financing obligations entered into by the Florida Windstorm
9375 | Underwriting Association or Residential Property and Casualty
9376 | Joint Underwriting Association are outstanding, in accordance
9377 | with the terms of the corresponding financing documents. When
9378 | the financing obligations are no longer outstanding, in
9379 | accordance with the terms of the corresponding financing
9380 | documents, the corporation may use a single account for all
9381 | revenues, assets, liabilities, losses, and expenses of the
9382 | corporation.

9383 | c. Creditors of the Residential Property and Casualty
9384 | Joint Underwriting Association shall have a claim against, and
9385 | recourse to, the accounts referred to in sub-sub-subparagraphs
9386 | a.(I) and (II) and shall have no claim against, or recourse to,
9387 | the account referred to in sub-sub-subparagraph a.(III).
9388 | Creditors of the Florida Windstorm Underwriting Association
9389 | shall have a claim against, and recourse to, the account
9390 | referred to in sub-sub-subparagraph a.(III) and shall have no
9391 | claim against, or recourse to, the accounts referred to in sub-
9392 | sub-subparagraphs a.(I) and (II).

9393 | d. Revenues, assets, liabilities, losses, and expenses not
9394 | attributable to particular accounts shall be prorated among the
9395 | accounts.



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9396 e. The Legislature finds that the revenues of the
9397 corporation are revenues that are necessary to meet the
9398 requirements set forth in documents authorizing the issuance of
9399 bonds under this subsection.

9400 f. No part of the income of the corporation may inure to
9401 the benefit of any private person.

9402 3. With respect to a deficit in an account:

9403 a. When the deficit incurred in a particular calendar year
9404 is not greater than 10 percent of the aggregate statewide direct
9405 written premium for the subject lines of business for the prior
9406 calendar year, the entire deficit shall be recovered through
9407 regular assessments of assessable insurers under paragraph (g)
9408 and assessable insureds.

9409 b. When the deficit incurred in a particular calendar year
9410 exceeds 10 percent of the aggregate statewide direct written
9411 premium for the subject lines of business for the prior calendar
9412 year, the corporation shall levy regular assessments on
9413 assessable insurers under paragraph (g) and on assessable
9414 insureds in an amount equal to the greater of 10 percent of the
9415 deficit or 10 percent of the aggregate statewide direct written
9416 premium for the subject lines of business for the prior calendar
9417 year. Any remaining deficit shall be recovered through emergency
9418 assessments under sub-subparagraph d.

9419 c. Each assessable insurer's share of the amount being
9420 assessed under sub-subparagraph a. or sub-subparagraph b. shall
9421 be in the proportion that the assessable insurer's direct
9422 written premium for the subject lines of business for the year
9423 preceding the assessment bears to the aggregate statewide direct



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9424 written premium for the subject lines of business for that year.
9425 The assessment percentage applicable to each assessable insured
9426 is the ratio of the amount being assessed under sub-subparagraph
9427 a. or sub-subparagraph b. to the aggregate statewide direct
9428 written premium for the subject lines of business for the prior
9429 year. Assessments levied by the corporation on assessable
9430 insurers under sub-subparagraphs a. and b. shall be paid as
9431 required by the corporation's plan of operation and paragraph
9432 (g). Assessments levied by the corporation on assessable
9433 insureds under sub-subparagraphs a. and b. shall be collected by
9434 the surplus lines agent at the time the surplus lines agent
9435 collects the surplus lines tax required by s. 626.932 and shall
9436 be paid to the Florida Surplus Lines Service Office at the time
9437 the surplus lines agent pays the surplus lines tax to the
9438 Florida Surplus Lines Service Office. Upon receipt of regular
9439 assessments from surplus lines agents, the Florida Surplus Lines
9440 Service Office shall transfer the assessments directly to the
9441 corporation as determined by the corporation.

9442 d. Upon a determination by the board of governors that a
9443 deficit in an account exceeds the amount that will be recovered
9444 through regular assessments under sub-subparagraph a. or sub-
9445 subparagraph b., the board shall levy, after verification by the
9446 office ~~department~~, emergency assessments, for as many years as
9447 necessary to cover the deficits, to be collected by assessable
9448 insurers and the corporation and collected from assessable
9449 insureds upon issuance or renewal of policies for subject lines
9450 of business, excluding National Flood Insurance policies. The
9451 amount of the emergency assessment collected in a particular



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9452 | year shall be a uniform percentage of that year's direct written
9453 | premium for subject lines of business and all accounts of the
9454 | corporation, excluding National Flood Insurance Program policy
9455 | premiums, as annually determined by the board and verified by
9456 | the office ~~department~~. The office ~~department~~ shall verify the
9457 | arithmetic calculations involved in the board's determination
9458 | within 30 days after receipt of the information on which the
9459 | determination was based. Notwithstanding any other provision of
9460 | law, the corporation and each assessable insurer that writes
9461 | subject lines of business shall collect emergency assessments
9462 | from its policyholders without such obligation being affected by
9463 | any credit, limitation, exemption, or deferment. Emergency
9464 | assessments levied by the corporation on assessable insureds
9465 | shall be collected by the surplus lines agent at the time the
9466 | surplus lines agent collects the surplus lines tax required by
9467 | s. 626.932 and shall be paid to the Florida Surplus Lines
9468 | Service Office at the time the surplus lines agent pays the
9469 | surplus lines tax to the Florida Surplus Lines Service Office.
9470 | The emergency assessments so collected shall be transferred
9471 | directly to the corporation on a periodic basis as determined by
9472 | the corporation and shall be held by the corporation solely in
9473 | the applicable account. The aggregate amount of emergency
9474 | assessments levied for an account under this sub-subparagraph in
9475 | any calendar year may not exceed the greater of 10 percent of
9476 | the amount needed to cover the original deficit, plus interest,
9477 | fees, commissions, required reserves, and other costs associated
9478 | with financing of the original deficit, or 10 percent of the
9479 | aggregate statewide direct written premium for subject lines of



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9480 business and for all accounts of the corporation for the prior
9481 year, plus interest, fees, commissions, required reserves, and
9482 other costs associated with financing the original deficit.

9483 e. The corporation may pledge the proceeds of assessments,
9484 projected recoveries from the Florida Hurricane Catastrophe
9485 Fund, other insurance and reinsurance recoverables, market
9486 equalization surcharges and other surcharges, and other funds
9487 available to the corporation as the source of revenue for and to
9488 secure bonds issued under paragraph (g), bonds or other
9489 indebtedness issued under subparagraph (c)3., or lines of credit
9490 or other financing mechanisms issued or created under this
9491 subsection, or to retire any other debt incurred as a result of
9492 deficits or events giving rise to deficits, or in any other way
9493 that the board determines will efficiently recover such
9494 deficits. The purpose of the lines of credit or other financing
9495 mechanisms is to provide additional resources to assist the
9496 corporation in covering claims and expenses attributable to a
9497 catastrophe. As used in this subsection, the term "assessments"
9498 includes regular assessments under sub-subparagraph a., sub-
9499 subparagraph b., or subparagraph (g)1. and emergency assessments
9500 under sub-subparagraph d. Emergency assessments collected under
9501 sub-subparagraph d. are not part of an insurer's rates, are not
9502 premium, and are not subject to premium tax, fees, or
9503 commissions; however, failure to pay the emergency assessment
9504 shall be treated as failure to pay premium. The emergency
9505 assessments under sub-subparagraph d. shall continue as long as
9506 any bonds issued or other indebtedness incurred with respect to
9507 a deficit for which the assessment was imposed remain



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9508 outstanding, unless adequate provision has been made for the
9509 payment of such bonds or other indebtedness pursuant to the
9510 documents governing such bonds or other indebtedness.

9511 f. As used in this subsection, the term "subject lines of
9512 business" means insurance written by assessable insurers or
9513 procured by assessable insureds on real or personal property, as
9514 defined in s. 624.604, including insurance for fire, industrial
9515 fire, allied lines, farmowners multiperil, homeowners
9516 multiperil, commercial multiperil, and mobile homes, and
9517 including liability coverage on all such insurance, but
9518 excluding inland marine as defined in s. 624.607(3) and
9519 excluding vehicle insurance as defined in s. 624.605(1) other
9520 than insurance on mobile homes used as permanent dwellings.

9521 g. The Florida Surplus Lines Service Office shall
9522 determine annually the aggregate statewide written premium in
9523 subject lines of business procured by assessable insureds and
9524 shall report that information to the corporation in a form and
9525 at a time the corporation specifies to ensure that the
9526 corporation can meet the requirements of this subsection and the
9527 corporation's financing obligations.

9528 h. The Florida Surplus Lines Service Office shall verify
9529 the proper application by surplus lines agents of assessment
9530 percentages for regular assessments and emergency assessments
9531 levied under this subparagraph on assessable insureds and shall
9532 assist the corporation in ensuring the accurate, timely
9533 collection and payment of assessments by surplus lines agents as
9534 required by the corporation.

9535 (c) The plan of operation of the corporation:



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9536 1. Must provide for adoption of residential property and
9537 casualty insurance policy forms and commercial residential and
9538 nonresidential property insurance forms, which forms must be
9539 approved by the office ~~department~~ prior to use. The corporation
9540 shall adopt the following policy forms:

9541 a. Standard personal lines policy forms that are
9542 comprehensive multiperil policies providing full coverage of a
9543 residential property equivalent to the coverage provided in the
9544 private insurance market under an HO-3, HO-4, or HO-6 policy.

9545 b. Basic personal lines policy forms that are policies
9546 similar to an HO-8 policy or a dwelling fire policy that provide
9547 coverage meeting the requirements of the secondary mortgage
9548 market, but which coverage is more limited than the coverage
9549 under a standard policy.

9550 c. Commercial lines residential policy forms that are
9551 generally similar to the basic perils of full coverage
9552 obtainable for commercial residential structures in the admitted
9553 voluntary market.

9554 d. Personal lines and commercial lines residential
9555 property insurance forms that cover the peril of wind only. The
9556 forms are applicable only to residential properties located in
9557 areas eligible for coverage under the high-risk account referred
9558 to in sub-subparagraph (b)2.a.

9559 e. Commercial lines nonresidential property insurance
9560 forms that cover the peril of wind only. The forms are
9561 applicable only to nonresidential properties located in areas
9562 eligible for coverage under the high-risk account referred to in
9563 sub-subparagraph (b)2.a.



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9564 2.a. Must provide that the corporation adopt a program in
9565 which the corporation and authorized insurers enter into quota
9566 share primary insurance agreements for hurricane coverage, as
9567 defined in s. 627.4025(2)(a), for eligible risks, and adopt
9568 property insurance forms for eligible risks which cover the
9569 peril of wind only. As used in this subsection, the term:

9570 (I) "Quota share primary insurance" means an arrangement
9571 in which the primary hurricane coverage of an eligible risk is
9572 provided in specified percentages by the corporation and an
9573 authorized insurer. The corporation and authorized insurer are
9574 each solely responsible for a specified percentage of hurricane
9575 coverage of an eligible risk as set forth in a quota share
9576 primary insurance agreement between the corporation and an
9577 authorized insurer and the insurance contract. The
9578 responsibility of the corporation or authorized insurer to pay
9579 its specified percentage of hurricane losses of an eligible
9580 risk, as set forth in the quota share primary insurance
9581 agreement, may not be altered by the inability of the other
9582 party to the agreement to pay its specified percentage of
9583 hurricane losses. Eligible risks that are provided hurricane
9584 coverage through a quota share primary insurance arrangement
9585 must be provided policy forms that set forth the obligations of
9586 the corporation and authorized insurer under the arrangement,
9587 clearly specify the percentages of quota share primary insurance
9588 provided by the corporation and authorized insurer, and
9589 conspicuously and clearly state that neither the authorized
9590 insurer nor the corporation may be held responsible beyond its
9591 specified percentage of coverage of hurricane losses.



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9592 (II) "Eligible risks" means personal lines residential and
9593 commercial lines residential risks that meet the underwriting
9594 criteria of the corporation and are located in areas that were
9595 eligible for coverage by the Florida Windstorm Underwriting
9596 Association on January 1, 2002.

9597 b. The corporation may enter into quota share primary
9598 insurance agreements with authorized insurers at corporation
9599 coverage levels of 90 percent and 50 percent.

9600 c. If the corporation determines that additional coverage
9601 levels are necessary to maximize participation in quota share
9602 primary insurance agreements by authorized insurers, the
9603 corporation may establish additional coverage levels. However,
9604 the corporation's quota share primary insurance coverage level
9605 may not exceed 90 percent.

9606 d. Any quota share primary insurance agreement entered
9607 into between an authorized insurer and the corporation must
9608 provide for a uniform specified percentage of coverage of
9609 hurricane losses, by county or territory as set forth by the
9610 corporation board, for all eligible risks of the authorized
9611 insurer covered under the quota share primary insurance
9612 agreement.

9613 e. Any quota share primary insurance agreement entered
9614 into between an authorized insurer and the corporation is
9615 subject to review and approval by the office ~~department~~.
9616 However, such agreement shall be authorized only as to insurance
9617 contracts entered into between an authorized insurer and an
9618 insured who is already insured by the corporation for wind
9619 coverage.



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9620 f. For all eligible risks covered under quota share
9621 primary insurance agreements, the exposure and coverage levels
9622 for both the corporation and authorized insurers shall be
9623 reported by the corporation to the Florida Hurricane Catastrophe
9624 Fund. For all policies of eligible risks covered under quota
9625 share primary insurance agreements, the corporation and the
9626 authorized insurer shall maintain complete and accurate records
9627 for the purpose of exposure and loss reimbursement audits as
9628 required by Florida Hurricane Catastrophe Fund rules. The
9629 corporation and the authorized insurer shall each maintain
9630 duplicate copies of policy declaration pages and supporting
9631 claims documents.

9632 g. The corporation board shall establish in its plan of
9633 operation standards for quota share agreements which ensure that
9634 there is no discriminatory application among insurers as to the
9635 terms of quota share agreements, pricing of quota share
9636 agreements, incentive provisions if any, and consideration paid
9637 for servicing policies or adjusting claims.

9638 h. The quota share primary insurance agreement between the
9639 corporation and an authorized insurer must set forth the
9640 specific terms under which coverage is provided, including, but
9641 not limited to, the sale and servicing of policies issued under
9642 the agreement by the insurance agent of the authorized insurer
9643 producing the business, the reporting of information concerning
9644 eligible risks, the payment of premium to the corporation, and
9645 arrangements for the adjustment and payment of hurricane claims
9646 incurred on eligible risks by the claims adjuster and personnel
9647 of the authorized insurer. Entering into a quota sharing



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9648 | insurance agreement between the corporation and an authorized
9649 | insurer shall be voluntary and at the discretion of the
9650 | authorized insurer.

9651 | 3. May provide that the corporation may employ or
9652 | otherwise contract with individuals or other entities to provide
9653 | administrative or professional services that may be appropriate
9654 | to effectuate the plan. The corporation shall have the power to
9655 | borrow funds, by issuing bonds or by incurring other
9656 | indebtedness, and shall have other powers reasonably necessary
9657 | to effectuate the requirements of this subsection. The
9658 | corporation may, but is not required to, seek judicial
9659 | validation of its bonds or other indebtedness under chapter 75.
9660 | The corporation may issue bonds or incur other indebtedness, or
9661 | have bonds issued on its behalf by a unit of local government
9662 | pursuant to subparagraph(g)2., in the absence of a hurricane or
9663 | other weather-related event, upon a determination by the
9664 | corporation, subject to approval by the office ~~department~~, that
9665 | such action would enable it to efficiently meet the financial
9666 | obligations of the corporation and that such financings are
9667 | reasonably necessary to effectuate the requirements of this
9668 | subsection. The corporation is authorized to take all actions
9669 | needed to facilitate tax-free status for any such bonds or
9670 | indebtedness, including formation of trusts or other affiliated
9671 | entities. The corporation shall have the authority to pledge
9672 | assessments, projected recoveries from the Florida Hurricane
9673 | Catastrophe Fund, other reinsurance recoverables, market
9674 | equalization and other surcharges, and other funds available to
9675 | the corporation as security for bonds or other indebtedness. In



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9676 recognition of s. 10, Art. I of the State Constitution,
9677 prohibiting the impairment of obligations of contracts, it is
9678 the intent of the Legislature that no action be taken whose
9679 purpose is to impair any bond indenture or financing agreement
9680 or any revenue source committed by contract to such bond or
9681 other indebtedness.

9682 4.a. Must require that the corporation operate subject to
9683 the supervision and approval of a board of governors consisting
9684 of 7 individuals who are residents of this state, from different
9685 geographical areas of this state, appointed by the Chief
9686 Financial Officer ~~Treasurer~~. The Chief Financial Officer
9687 ~~Treasurer~~ shall designate one of the appointees as chair. All
9688 board members serve at the pleasure of the Chief Financial
9689 Officer ~~Treasurer~~. All board members, including the chair, must
9690 be appointed to serve for 3-year terms beginning annually on a
9691 date designated by the plan. Any board vacancy shall be filled
9692 for the unexpired term by the Chief Financial Officer ~~Treasurer~~.
9693 The Chief Financial Officer ~~Treasurer~~ shall appoint a technical
9694 advisory group to provide information and advice to the board of
9695 governors in connection with the board's duties under this
9696 subsection. The executive director and senior managers of the
9697 corporation shall be engaged by the Chief Financial Officer
9698 ~~Treasurer~~ and serve at the pleasure of the Chief Financial
9699 Officer ~~Treasurer~~. The executive director is responsible for
9700 employing other staff as the corporation may require, subject to
9701 review and concurrence by the Office of the Chief Financial
9702 Officer ~~Treasurer~~.



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9703 ~~b. To ensure the effective and efficient implementation of~~
9704 ~~this subsection, the Treasurer shall appoint the board of~~
9705 ~~governors by July 1, 2002. The board of governors shall work in~~
9706 ~~conjunction with the Residential Property Insurance Market~~
9707 ~~Coordinating Council to address appropriate organizational,~~
9708 ~~operational, and financial matters relating to the corporation.~~
9709 ~~In addition, after consultation with the Residential Property~~
9710 ~~Insurance Market Coordinating Council, the bond trustees and~~
9711 ~~rating agencies, the Treasurer may postpone for a period not to~~
9712 ~~exceed 180 days after the effective date, the implementation of~~
9713 ~~the corporation or the implementation of one or more of the~~
9714 ~~provisions relating to transfer of Florida Windstorm~~
9715 ~~Underwriting Association policies, obligations, rights, assets,~~
9716 ~~and liabilities into the high risk accounts and such other~~
9717 ~~provisions that may be affected thereby if the Treasurer~~
9718 ~~determines that postponement is necessary:~~

9719 ~~(I) Due to emergency conditions;~~

9720 ~~(II) To ensure the effective and efficient implementation~~
9721 ~~of the corporation's operations; or~~

9722 ~~(III) To maintain existing financing arrangements without~~
9723 ~~a material adverse effect on the creditors of the Residential~~
9724 ~~Property and Casualty Joint Underwriting Association or the~~
9725 ~~Florida Windstorm Underwriting Association.~~

9726 5. Must provide a procedure for determining the
9727 eligibility of a risk for coverage, as follows:

9728 a. Subject to the provisions of s. 627.3517, with respect
9729 to personal lines residential risks, if the risk is offered
9730 coverage from an authorized insurer at the insurer's approved



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9731 rate under either a standard policy including wind coverage or,
 9732 if consistent with the insurer's underwriting rules as filed
 9733 with the office ~~department~~, a basic policy including wind
 9734 coverage, the risk is not eligible for any policy issued by the
 9735 corporation ~~association~~. If the risk is not able to obtain any
 9736 such offer, the risk is eligible for either a standard policy
 9737 including wind coverage or a basic policy including wind
 9738 coverage issued by the corporation ~~association~~; however, if the
 9739 risk could not be insured under a standard policy including wind
 9740 coverage regardless of market conditions, the risk shall be
 9741 eligible for a basic policy including wind coverage unless
 9742 rejected under subparagraph 8. The corporation ~~association~~ shall
 9743 determine the type of policy to be provided on the basis of
 9744 objective standards specified in the underwriting manual and
 9745 based on generally accepted underwriting practices.

9746 (I) If the risk accepts an offer of coverage through the
 9747 market assistance plan or an offer of coverage through a
 9748 mechanism established by the corporation ~~association~~ before a
 9749 policy is issued to the risk by the corporation ~~association~~ or
 9750 during the first 30 days of coverage by the corporation
 9751 ~~association~~, and the producing agent who submitted the
 9752 application to the plan or to the corporation ~~association~~ is not
 9753 currently appointed by the insurer, the insurer shall:

9754 (A) Pay to the producing agent of record of the policy,
 9755 for the first year, an amount that is the greater of the
 9756 insurer's usual and customary commission for the type of policy
 9757 written or a fee equal to the usual and customary commission of
 9758 the corporation ~~association~~; or



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9759 (B) Offer to allow the producing agent of record of the
 9760 policy to continue servicing the policy for a period of not less
 9761 than 1 year and offer to pay the agent the greater of the
 9762 insurer's or the corporation's ~~association's~~ usual and customary
 9763 commission for the type of policy written.

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 9766 If the producing agent is unwilling or unable to accept
 9767 appointment, the new insurer shall pay the agent in accordance
 9768 with sub-sub-sub-subparagraph (A).

9769 (II) When the corporation ~~association~~ enters into a
 9770 contractual agreement for a take-out plan, the producing agent
 9771 of record of the corporation ~~association~~ policy is entitled to
 9772 retain any unearned commission on the policy, and the insurer
 9773 shall:

9774 (A) Pay to the producing agent of record of the
 9775 corporation ~~association~~ policy, for the first year, an amount
 9776 that is the greater of the insurer's usual and customary
 9777 commission for the type of policy written or a fee equal to the
 9778 usual and customary commission of the corporation ~~association~~;
 9779 or

9780 (B) Offer to allow the producing agent of record of the
 9781 corporation ~~association~~ policy to continue servicing the policy
 9782 for a period of not less than 1 year and offer to pay the agent
 9783 the greater of the insurer's or the corporation's ~~association's~~
 9784 usual and customary commission for the type of policy written.

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9787 If the producing agent is unwilling or unable to accept
 9788 appointment, the new insurer shall pay the agent in accordance
 9789 with sub-sub-sub-subparagraph (A).

9790 b. With respect to commercial lines residential risks, if
 9791 the risk is offered coverage under a policy including wind
 9792 coverage from an authorized insurer at its approved rate, the
 9793 risk is not eligible for any policy issued by the corporation
 9794 ~~association~~. If the risk is not able to obtain any such offer,
 9795 the risk is eligible for a policy including wind coverage issued
 9796 by the corporation association.

9797 (I) If the risk accepts an offer of coverage through the
 9798 market assistance plan or an offer of coverage through a
 9799 mechanism established by the corporation association before a
 9800 policy is issued to the risk by the corporation association or
 9801 during the first 30 days of coverage by the corporation
 9802 ~~association~~, and the producing agent who submitted the
 9803 application to the plan or the corporation association is not
 9804 currently appointed by the insurer, the insurer shall:

9805 (A) Pay to the producing agent of record of the policy,
 9806 for the first year, an amount that is the greater of the
 9807 insurer's usual and customary commission for the type of policy
 9808 written or a fee equal to the usual and customary commission of
 9809 the corporation association; or

9810 (B) Offer to allow the producing agent of record of the
 9811 policy to continue servicing the policy for a period of not less
 9812 than 1 year and offer to pay the agent the greater of the
 9813 insurer's or the corporation's association's usual and customary
 9814 commission for the type of policy written.



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If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) When the corporation ~~association~~ enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation ~~association~~ policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record of the corporation ~~association~~ policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation ~~association~~; or

(B) Offer to allow the producing agent of record of the corporation ~~association~~ policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the corporation's ~~association's~~ usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

~~e. This subparagraph does not require the association to provide wind coverage or hurricane coverage in any area in which~~



9843 ~~such coverage is available through the Florida Windstorm~~
 9844 ~~Underwriting Association.~~

9845 6. Must include rules for classifications of risks and
 9846 rates therefor.

9847 7. Must provide that if premium and investment income for
 9848 an account attributable to a particular calendar year are in
 9849 excess of projected losses and expenses for the account
 9850 attributable to that year, such excess shall be held in surplus
 9851 in the account. Such surplus shall be available to defray
 9852 deficits in that account as to future years and shall be used
 9853 for that purpose prior to assessing assessable insurers and
 9854 assessable insureds as to any calendar year.

9855 8. Must provide objective criteria and procedures to be
 9856 uniformly applied for all applicants in determining whether an
 9857 individual risk is so hazardous as to be uninsurable. In making
 9858 this determination and in establishing the criteria and
 9859 procedures, the following shall be considered:

9860 a. Whether the likelihood of a loss for the individual
 9861 risk is substantially higher than for other risks of the same
 9862 class; and

9863 b. Whether the uncertainty associated with the individual
 9864 risk is such that an appropriate premium cannot be determined.

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9867 The acceptance or rejection of a risk by the corporation shall
 9868 be construed as the private placement of insurance, and the
 9869 provisions of chapter 120 shall not apply.



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9870 9. Must provide that the corporation shall make its best
9871 efforts to procure catastrophe reinsurance at reasonable rates,
9872 as determined by the board of governors.

9873 10. Must provide that in the event of regular deficit
9874 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
9875 (b)3.b., in the personal lines account, the commercial lines
9876 residential account, or the high-risk account, the corporation
9877 shall levy upon corporation policyholders in its next rate
9878 filing, or by a separate rate filing solely for this purpose, a
9879 market equalization surcharge arising from a regular assessment
9880 in such account in a percentage equal to the total amount of
9881 such regular assessments divided by the aggregate statewide
9882 direct written premium for subject lines of business for the
9883 prior calendar year. Market equalization surcharges under this
9884 subparagraph are not considered premium and are not subject to
9885 commissions, fees, or premium taxes; however, failure to pay a
9886 market equalization surcharge shall be treated as failure to pay
9887 premium.

9888 11. The policies issued by the corporation must provide
9889 that, if the corporation or the market assistance plan obtains
9890 an offer from an authorized insurer to cover the risk at its
9891 approved rates, the risk is no longer eligible for renewal
9892 through the corporation.

9893 12. Corporation policies and applications must include a
9894 notice that the corporation policy could, under this section, be
9895 replaced with a policy issued by an authorized insurer that does
9896 not provide coverage identical to the coverage provided by the
9897 corporation. The notice shall also specify that acceptance of



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9898 corporation coverage creates a conclusive presumption that the
9899 applicant or policyholder is aware of this potential.

9900 13. May establish, subject to approval by the office
9901 ~~department~~, different eligibility requirements and operational
9902 procedures for any line or type of coverage for any specified
9903 county or area if the board determines that such changes to the
9904 eligibility requirements and operational procedures are
9905 justified due to the voluntary market being sufficiently stable
9906 and competitive in such area or for such line or type of
9907 coverage and that consumers who, in good faith, are unable to
9908 obtain insurance through the voluntary market through ordinary
9909 methods would continue to have access to coverage from the
9910 corporation. When coverage is sought in connection with a real
9911 property transfer, such requirements and procedures shall not
9912 provide for an effective date of coverage later than the date of
9913 the closing of the transfer as established by the transferor,
9914 the transferee, and, if applicable, the lender.

9915 14. Must provide that, with respect to the high-risk
9916 account, any assessable insurer with a surplus as to
9917 policyholders of \$25 million or less writing 25 percent or more
9918 of its total countrywide property insurance premiums in this
9919 state may petition the office ~~department~~, within the first 90
9920 days of each calendar year, to qualify as a limited
9921 apportionment company. In no event shall a limited apportionment
9922 company be required to participate in the portion of any
9923 assessment, within the high-risk account, pursuant to sub-
9924 subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the
9925 aggregate which exceeds \$50 million after payment of available



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9926 high-risk account funds in any calendar year. However, a limited
 9927 apportionment company shall collect from its policyholders any
 9928 emergency assessment imposed under sub-subparagraph (b)3.d. The
 9929 plan shall provide that, if the office ~~department~~ determines
 9930 that any regular assessment will result in an impairment of the
 9931 surplus of a limited apportionment company, the office
 9932 ~~department~~ may direct that all or part of such assessment be
 9933 deferred as provided in subparagraph (g)4. However, there shall
 9934 be no limitation or deferment of an emergency assessment to be
 9935 collected from policyholders under sub-subparagraph(b)3.d.

9936 15. Must provide that the corporation appoint as its
 9937 licensed agents only those agents who also hold an appointment
 9938 as defined in s. 626.104 with an insurer who at the time of the
 9939 agent's initial appointment by the corporation is authorized to
 9940 write and is actually writing personal lines residential
 9941 property coverage, commercial residential property coverage, or
 9942 commercial nonresidential property coverage within the state.

9943 (d)1. It is the intent of the Legislature that the rates
 9944 for coverage provided by the corporation be actuarially sound
 9945 and not competitive with approved rates charged in the admitted
 9946 voluntary market, so that the corporation functions as a
 9947 residual market mechanism to provide insurance only when the
 9948 insurance cannot be procured in the voluntary market. Rates
 9949 shall include an appropriate catastrophe loading factor that
 9950 reflects the actual catastrophic exposure of the corporation.

9951 2. For each county, the average rates of the corporation
 9952 for each line of business for personal lines residential
 9953 policies excluding rates for wind-only policies shall be no



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9954 | lower than the average rates charged by the insurer that had the
9955 | highest average rate in that county among the 20 insurers with
9956 | the greatest total direct written premium in the state for that
9957 | line of business in the preceding year, except that with respect
9958 | to mobile home coverages, the average rates of the corporation
9959 | shall be no lower than the average rates charged by the insurer
9960 | that had the highest average rate in that county among the 5
9961 | insurers with the greatest total written premium for mobile home
9962 | owner's policies in the state in the preceding year.

9963 | 3. Rates for personal lines residential wind-only policies
9964 | must be actuarially sound and not competitive with approved
9965 | rates charged by authorized insurers. However, for personal
9966 | lines residential wind-only policies issued or renewed between
9967 | July 1, 2002, and June 30, 2003, the maximum premium increase
9968 | must be no greater than 10 percent of the Florida Windstorm
9969 | Underwriting Association premium for that policy in effect on
9970 | June 30, 2002, as adjusted for coverage changes and seasonal
9971 | occupancy surcharges. The personal lines residential wind-only
9972 | rates for the corporation effective July 1, 2003, must be based
9973 | on a rate filing by the corporation which establishes rates
9974 | which are actuarially sound and not competitive with approved
9975 | rates charged by authorized insurers. Corporation rate manuals
9976 | shall include a rate surcharge for seasonal occupancy. To
9977 | ensure that personal lines residential wind-only rates effective
9978 | on or after July 1, 2003, are not competitive with approved
9979 | rates charged by authorized insurers, the office ~~department~~, by
9980 | March 1 of each year, shall provide the corporation, for each
9981 | county in which there are geographical areas in which personal



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9982 | lines residential wind-only policies may be issued, the average
 9983 | rates charged by the insurer that had the highest average rate
 9984 | in that county for wind coverage in that insurer's rating
 9985 | territories which most closely approximate the geographical area
 9986 | in that county in which personal lines residential wind-only
 9987 | policies may be written by the corporation. The average rates
 9988 | provided must be from an insurer among the 20 insurers with the
 9989 | greatest total direct written premium in the state for personal
 9990 | lines residential property insurance for the preceding year.
 9991 | With respect to mobile homes, the five insurers with the
 9992 | greatest total written premium for that line of business in the
 9993 | preceding year shall be used. The corporation shall certify to
 9994 | the office department that its average personal lines
 9995 | residential wind-only rates are no lower in each county than the
 9996 | average rates provided by the office department. The commission
 9997 | ~~may department is authorized to~~ adopt rules to establish
 9998 | reporting requirements to obtain the necessary wind-only rate
 9999 | information from insurers to implement this provision.

10000 | 4. Rates for commercial lines coverage shall not be
 10001 | subject to the requirements of subparagraph 2., but shall be
 10002 | subject to all other requirements of this paragraph and s.
 10003 | 627.062.

10004 | 5. Nothing in this paragraph shall require or allow the
 10005 | corporation to adopt a rate that is inadequate under s. 627.062.

10006 | 6. The corporation shall make a rate filing at least once
 10007 | a year, but no more often than quarterly.

10008 | 7. In addition to the rates otherwise determined pursuant
 10009 | to this paragraph, the corporation shall impose and collect an



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10010 amount equal to the premium tax provided for in s. 624.509 to
10011 augment the financial resources of the corporation.

10012 (e) If coverage in an account is deactivated pursuant to
10013 paragraph (f), coverage through the corporation shall be
10014 reactivated by order of the office ~~department~~ only under one of
10015 the following circumstances:

10016 1. If the market assistance plan receives a minimum of 100
10017 applications for coverage within a 3-month period, or 200
10018 applications for coverage within a 1-year period or less for
10019 residential coverage, unless the market assistance plan provides
10020 a quotation from admitted carriers at their filed rates for at
10021 least 90 percent of such applicants. Any market assistance plan
10022 application that is rejected because an individual risk is so
10023 hazardous as to be uninsurable using the criteria specified in
10024 subparagraph (c)8. shall not be included in the minimum
10025 percentage calculation provided herein. In the event that there
10026 is a legal or administrative challenge to a determination by the
10027 office ~~department~~ that the conditions of this subparagraph have
10028 been met for eligibility for coverage in the corporation, any
10029 eligible risk may obtain coverage during the pendency of such
10030 challenge.

10031 2. In response to a state of emergency declared by the
10032 Governor under s. 252.36, the office ~~department~~ may activate
10033 coverage by order for the period of the emergency upon a finding
10034 by the office ~~department~~ that the emergency significantly
10035 affects the availability of residential property insurance.

10036 (f)1. The corporation shall file with the office
10037 ~~department~~ quarterly statements of financial condition, an



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10038 annual statement of financial condition, and audited financial
10039 statements in the manner prescribed by law. In addition, the
10040 corporation shall report to the office ~~department~~ monthly on the
10041 types, premium, exposure, and distribution by county of its
10042 policies in force, and shall submit other reports as the office
10043 ~~department~~ requires to carry out its oversight of the
10044 corporation.

10045 2. The activities of the corporation shall be reviewed at
10046 least annually by the office ~~department~~ to determine whether
10047 coverage shall be deactivated in an account on the basis that
10048 the conditions giving rise to its activation no longer exist.

10049 (g)1. The corporation shall certify to the office
10050 ~~department~~ its needs for annual assessments as to a particular
10051 calendar year, and for any interim assessments that it deems to
10052 be necessary to sustain operations as to a particular year
10053 pending the receipt of annual assessments. Upon verification,
10054 the office ~~department~~ shall approve such certification, and the
10055 corporation shall levy such annual or interim assessments. Such
10056 assessments shall be prorated as provided in paragraph (b). The
10057 corporation shall take all reasonable and prudent steps
10058 necessary to collect the amount of assessment due from each
10059 assessable insurer, including, if prudent, filing suit to
10060 collect such assessment. If the corporation is unable to collect
10061 an assessment from any assessable insurer, the uncollected
10062 assessments shall be levied as an additional assessment against
10063 the assessable insurers and any assessable insurer required to
10064 pay an additional assessment as a result of such failure to pay
10065 shall have a cause of action against such nonpaying assessable



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10066 insurer. Assessments shall be included as an appropriate factor
 10067 in the making of rates. The failure of a surplus lines agent to
 10068 collect and remit any regular or emergency assessment levied by
 10069 the corporation is considered to be a violation of s. 626.936
 10070 and subjects the surplus lines agent to the penalties provided
 10071 in that section.

10072 2. The governing body of any unit of local government, any
 10073 residents of which are insured by the corporation, may issue
 10074 bonds as defined in s. 125.013 or s. 166.101 from time to time
 10075 to fund an assistance program, in conjunction with the
 10076 corporation, for the purpose of defraying deficits of the
 10077 corporation. In order to avoid needless and indiscriminate
 10078 proliferation, duplication, and fragmentation of such assistance
 10079 programs, any unit of local government, any residents of which
 10080 are insured by the corporation, may provide for the payment of
 10081 losses, regardless of whether or not the losses occurred within
 10082 or outside of the territorial jurisdiction of the local
 10083 government. Revenue bonds under this subparagraph may not be
 10084 issued until validated pursuant to chapter 75, unless a state of
 10085 emergency is declared by executive order or proclamation of the
 10086 Governor pursuant to s. 252.36 making such findings as are
 10087 necessary to determine that it is in the best interests of, and
 10088 necessary for, the protection of the public health, safety, and
 10089 general welfare of residents of this state and declaring it an
 10090 essential public purpose to permit certain municipalities or
 10091 counties to issue such bonds as will permit relief to claimants
 10092 and policyholders of the corporation. Any such unit of local
 10093 government may enter into such contracts with the corporation



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10094 and with any other entity created pursuant to this subsection as
 10095 are necessary to carry out this paragraph. Any bonds issued
 10096 under this subparagraph shall be payable from and secured by
 10097 moneys received by the corporation from emergency assessments
 10098 under sub-subparagraph (b)3.d., and assigned and pledged to or
 10099 on behalf of the unit of local government for the benefit of the
 10100 holders of such bonds. The funds, credit, property, and taxing
 10101 power of the state or of the unit of local government shall not
 10102 be pledged for the payment of such bonds. If any of the bonds
 10103 remain unsold 60 days after issuance, the office ~~department~~
 10104 shall require all insurers subject to assessment to purchase the
 10105 bonds, which shall be treated as admitted assets; each insurer
 10106 shall be required to purchase that percentage of the unsold
 10107 portion of the bond issue that equals the insurer's relative
 10108 share of assessment liability under this subsection. An insurer
 10109 shall not be required to purchase the bonds to the extent that
 10110 the office ~~department~~ determines that the purchase would
 10111 endanger or impair the solvency of the insurer.

10112 3.a. The corporation shall adopt one or more programs
 10113 subject to approval by the office ~~department~~ for the reduction
 10114 of both new and renewal writings in the corporation. The
 10115 corporation may consider any prudent and not unfairly
 10116 discriminatory approach to reducing corporation writings, and
 10117 may adopt a credit against assessment liability or other
 10118 liability that provides an incentive for insurers to take risks
 10119 out of the corporation and to keep risks out of the corporation
 10120 by maintaining or increasing voluntary writings in counties or
 10121 areas in which corporation risks are highly concentrated and a



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10122 program to provide a formula under which an insurer voluntarily
10123 taking risks out of the corporation by maintaining or increasing
10124 voluntary writings will be relieved wholly or partially from
10125 assessments under sub-subparagraphs (b)3.a. and b. When the
10126 corporation enters into a contractual agreement for a take-out
10127 plan, the producing agent of record of the corporation policy is
10128 entitled to retain any unearned commission on such policy, and
10129 the insurer shall either:

10130 (I) Pay to the producing agent of record of the policy,
10131 for the first year, an amount which is the greater of the
10132 insurer's usual and customary commission for the type of policy
10133 written or a policy fee equal to the usual and customary
10134 commission of the corporation; or

10135 (II) Offer to allow the producing agent of record of the
10136 policy to continue servicing the policy for a period of not less
10137 than 1 year and offer to pay the agent the insurer's usual and
10138 customary commission for the type of policy written. If the
10139 producing agent is unwilling or unable to accept appointment by
10140 the new insurer, the new insurer shall pay the agent in
10141 accordance with sub-sub-subparagraph (I).

10142 b. Any credit or exemption from regular assessments
10143 adopted under this subparagraph shall last no longer than the 3
10144 years following the cancellation or expiration of the policy by
10145 the corporation. With the approval of the office ~~department~~, the
10146 board may extend such credits for an additional year if the
10147 insurer guarantees an additional year of renewability for all
10148 policies removed from the corporation, or for 2 additional years



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10149 | if the insurer guarantees 2 additional years of renewability for
10150 | all policies so removed.

10151 | c. There shall be no credit, limitation, exemption, or
10152 | deferment from emergency assessments to be collected from
10153 | policyholders pursuant to sub-subparagraph (b)3.d.

10154 | 4. The plan shall provide for the deferment, in whole or
10155 | in part, of the assessment of an assessable insurer, other than
10156 | an emergency assessment collected from policyholders pursuant to
10157 | sub-subparagraph (b)3.d., if the office ~~department~~ finds that
10158 | payment of the assessment would endanger or impair the solvency
10159 | of the insurer. In the event an assessment against an assessable
10160 | insurer is deferred in whole or in part, the amount by which
10161 | such assessment is deferred may be assessed against the other
10162 | assessable insurers in a manner consistent with the basis for
10163 | assessments set forth in paragraph (b).

10164 | (h) Nothing in this subsection shall be construed to
10165 | preclude the issuance of residential property insurance coverage
10166 | pursuant to part VIII of chapter 626.

10167 | (i) There shall be no liability on the part of, and no
10168 | cause of action of any nature shall arise against, any
10169 | assessable insurer or its agents or employees, the corporation
10170 | or its agents or employees, members of the board of governors or
10171 | their respective designees at a board meeting, corporation
10172 | committee members, or the office ~~department~~ or its
10173 | representatives, for any action taken by them in the performance
10174 | of their duties or responsibilities under this subsection. Such
10175 | immunity does not apply to:



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10176 1. Any of the foregoing persons or entities for any
 10177 willful tort;
 10178 2. The corporation or its producing agents for breach of
 10179 any contract or agreement pertaining to insurance coverage;
 10180 3. The corporation with respect to issuance or payment of
 10181 debt; or
 10182 4. Any assessable insurer with respect to any action to
 10183 enforce an assessable insurer's obligations to the corporation
 10184 under this subsection.
 10185 (j) For the purposes of s. 199.183(1), the corporation
 10186 shall be considered a political subdivision of the state and
 10187 shall be exempt from the corporate income tax. The premiums,
 10188 assessments, investment income, and other revenue of the
 10189 corporation are funds received for providing property insurance
 10190 coverage as required by this subsection, paying claims for
 10191 Florida citizens insured by the corporation, securing and
 10192 repaying debt obligations issued by the corporation, and
 10193 conducting all other activities of the corporation, and shall
 10194 not be considered taxes, fees, licenses, or charges for services
 10195 imposed by the Legislature on individuals, businesses, or
 10196 agencies outside state government. Bonds and other debt
 10197 obligations issued by or on behalf of the corporation are not to
 10198 be considered "state bonds" within the meaning of s.
 10199 215.58(8)~~(10)~~. The corporation is not subject to the procurement
 10200 provisions of chapter 287, and policies and decisions of the
 10201 corporation relating to incurring debt, levying of assessments
 10202 and the sale, issuance, continuation, terms and claims under
 10203 corporation policies, and all services relating thereto, are not



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10204 subject to the provisions of chapter 120. The corporation is not
 10205 required to obtain or to hold a certificate of authority issued
 10206 by the office ~~department~~, nor is it required to participate as a
 10207 member insurer of the Florida Insurance Guaranty Association.
 10208 However, the corporation is required to pay, in the same manner
 10209 as an authorized insurer, assessments pledged by the Florida
 10210 Insurance Guaranty Association to secure bonds issued or other
 10211 indebtedness incurred to pay covered claims arising from insurer
 10212 insolvencies caused by, or proximately related to, hurricane
 10213 losses. It is the intent of the Legislature that the tax
 10214 exemptions provided in this paragraph will augment the financial
 10215 resources of the corporation to better enable the corporation to
 10216 fulfill its public purposes. Any bonds issued by the
 10217 corporation, their transfer, and the income therefrom, including
 10218 any profit made on the sale thereof, shall at all times be free
 10219 from taxation of every kind by the state and any political
 10220 subdivision or local unit or other instrumentality thereof;
 10221 however, this exemption does not apply to any tax imposed by
 10222 chapter 220 ~~chapter 200~~ on interest, income, or profits on debt
 10223 obligations owned by corporations other than the corporation.

10224 (k) Upon a determination by the office ~~department~~ that the
 10225 conditions giving rise to the establishment and activation of
 10226 the corporation no longer exist, the corporation is dissolved.
 10227 Upon dissolution, the assets of the corporation ~~association~~
 10228 shall be applied first to pay all debts, liabilities, and
 10229 obligations of the corporation, including the establishment of
 10230 reasonable reserves for any contingent liabilities or
 10231 obligations, and all remaining assets of the corporation shall



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10232 become property of the state and be deposited in the Florida
10233 Hurricane Catastrophe Fund. However, no dissolution shall take
10234 effect as long as the corporation has bonds or other financial
10235 obligations outstanding unless adequate provision has been made
10236 for the payment of the bonds or other financial obligations
10237 pursuant to the documents authorizing the issuance of the bonds
10238 or other financial obligations.

10239 (1)1. Effective July 1, 2002, policies of the Residential
10240 Property and Casualty Joint Underwriting Association shall
10241 become policies of the corporation. All obligations, rights,
10242 assets and liabilities of the Residential Property and Casualty
10243 Joint Underwriting Association, including bonds, note and debt
10244 obligations, and the financing documents pertaining to them
10245 become those of the corporation as of July 1, 2002. The
10246 corporation is not required to issue endorsements or
10247 certificates of assumption to insureds during the remaining term
10248 of in-force transferred policies.

10249 2. Effective July 1, 2002, policies of the Florida
10250 Windstorm Underwriting Association are transferred to the
10251 corporation and shall become policies of the corporation. All
10252 obligations, rights, assets, and liabilities of the Florida
10253 Windstorm Underwriting Association, including bonds, note, and
10254 debt obligations, and the financing documents pertaining to them
10255 are transferred to and assumed by the corporation on July 1,
10256 2002. The corporation is not required to issue endorsement or
10257 certificates of assumption to insureds during the remaining term
10258 of in-force transferred policies.



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10259 | 3. The Florida Windstorm Underwriting Association and the
10260 | Residential Property and Casualty Joint Underwriting Association
10261 | shall take all actions as may be proper to further evidence the
10262 | transfers and shall provide the documents and instruments of
10263 | further assurance as may reasonably be requested by the
10264 | corporation for that purpose. The corporation shall execute
10265 | assumptions and instruments as the trustees or other parties to
10266 | the financing documents of the Florida Windstorm Underwriting
10267 | Association or the Residential Property and Casualty Joint
10268 | Underwriting Association may reasonably request to further
10269 | evidence the transfers and assumptions, which transfers and
10270 | assumptions, however, are effective on the date provided under
10271 | this paragraph whether or not, and regardless of the date on
10272 | which, the assumptions or instruments are executed by the
10273 | corporation. Subject to the relevant financing documents
10274 | pertaining to their outstanding bonds, notes, indebtedness, or
10275 | other financing obligations, the moneys, investments,
10276 | receivables, choses in action, and other intangibles of the
10277 | Florida Windstorm Underwriting Association shall be credited to
10278 | the high-risk account of the corporation, and those of the
10279 | personal lines residential coverage account and the commercial
10280 | lines residential coverage account of the Residential Property
10281 | and Casualty Joint Underwriting Association shall be credited to
10282 | the personal lines account and the commercial lines account,
10283 | respectively, of the corporation.

10284 | 4. Effective July 1, 2002, a new applicant for property
10285 | insurance coverage who would otherwise have been eligible for
10286 | coverage in the Florida Windstorm Underwriting Association is



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10287 eligible for coverage from the corporation as provided in this
10288 subsection.

10289 5. The transfer of all policies, obligations, rights,
10290 assets, and liabilities from the Florida Windstorm Underwriting
10291 Association to the corporation and the renaming of the
10292 Residential Property and Casualty Joint Underwriting Association
10293 as the corporation shall in no way affect the coverage with
10294 respect to covered policies as defined in s. 215.555(2)(c)
10295 provided to these entities by the Florida Hurricane Catastrophe
10296 Fund. The coverage provided by the Florida Hurricane Catastrophe
10297 Fund to the Florida Windstorm Underwriting Association based on
10298 its exposures as of June 30, 2002, and each June 30 thereafter
10299 shall be redesignated as coverage for the high-risk account of
10300 the corporation. Notwithstanding any other provision of law, the
10301 coverage provided by the Florida Hurricane Catastrophe Fund to
10302 the Residential Property and Casualty Joint Underwriting
10303 Association based on its exposures as of June 30, 2002, and each
10304 June 30 thereafter shall be transferred to the personal lines
10305 account and the commercial lines account of the corporation.
10306 Notwithstanding any other provision of law, the high-risk
10307 account shall be treated, for all Florida Hurricane Catastrophe
10308 Fund purposes, as if it were a separate participating insurer
10309 with its own exposures, reimbursement premium, and loss
10310 reimbursement. Likewise, the personal lines and commercial lines
10311 accounts shall be viewed together, for all Florida Hurricane
10312 Catastrophe Fund purposes, as if the two accounts were one and
10313 represent a single, separate participating insurer with its own
10314 exposures, reimbursement premium, and loss reimbursement. The



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10315 coverage provided by the Florida Hurricane Catastrophe Fund to
 10316 the corporation shall constitute and operate as a full transfer
 10317 of coverage from the Florida Windstorm Underwriting Association
 10318 and Residential Property and Casualty Joint Underwriting to the
 10319 corporation.

10320 (m) Notwithstanding any other provision of law:

10321 1. The pledge or sale of, the lien upon, and the security
 10322 interest in any rights, revenues, or other assets of the
 10323 corporation created or purported to be created pursuant to any
 10324 financing documents to secure any bonds or other indebtedness of
 10325 the corporation shall be and remain valid and enforceable,
 10326 notwithstanding the commencement of and during the continuation
 10327 of, and after, any rehabilitation, insolvency, liquidation,
 10328 bankruptcy, receivership, conservatorship, reorganization, or
 10329 similar proceeding against the corporation under the laws of
 10330 this state.

10331 2. No such proceeding shall relieve the corporation of its
 10332 obligation, or otherwise affect its ability to perform its
 10333 obligation, to continue to collect, or levy and collect,
 10334 assessments, market equalization or other surcharges under
 10335 subparagraph (c)10., or any other rights, revenues, or other
 10336 assets of the corporation pledged pursuant to any financing
 10337 documents.

10338 3. Each such pledge or sale of, lien upon, and security
 10339 interest in, including the priority of such pledge, lien, or
 10340 security interest, any such assessments, market equalization or
 10341 other surcharges, or other rights, revenues, or other assets
 10342 which are collected, or levied and collected, after the



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10343 commencement of and during the pendency of, or after, any such
10344 proceeding shall continue unaffected by such proceeding. As
10345 used in this subsection, the term "financing documents" means
10346 any agreement or agreements, instrument or instruments, or other
10347 document or documents now existing or hereafter created
10348 evidencing any bonds or other indebtedness of the corporation or
10349 pursuant to which any such bonds or other indebtedness has been
10350 or may be issued and pursuant to which any rights, revenues, or
10351 other assets of the corporation are pledged or sold to secure
10352 the repayment of such bonds or indebtedness, together with the
10353 payment of interest on such bonds or such indebtedness, or the
10354 payment of any other obligation or financial product, as defined
10355 in the plan of operation of the corporation related to such
10356 bonds or indebtedness.

10357 4. Any such pledge or sale of assessments, revenues,
10358 contract rights, or other rights or assets of the corporation
10359 shall constitute a lien and security interest, or sale, as the
10360 case may be, that is immediately effective and attaches to such
10361 assessments, revenues, or contract rights or other rights or
10362 assets, whether or not imposed or collected at the time the
10363 pledge or sale is made. Any such pledge or sale is effective,
10364 valid, binding, and enforceable against the corporation or other
10365 entity making such pledge or sale, and valid and binding against
10366 and superior to any competing claims or obligations owed to any
10367 other person or entity, including policyholders in this state,
10368 asserting rights in any such assessments, revenues, or contract
10369 rights or other rights or assets to the extent set forth in and
10370 in accordance with the terms of the pledge or sale contained in



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10371 the applicable financing documents, whether or not any such
10372 person or entity has notice of such pledge or sale and without
10373 the need for any physical delivery, recordation, filing, or
10374 other action.

10375 (n)1. The following records of the corporation are
10376 confidential and exempt from the provisions of s. 119.07(1) and
10377 s. 24(a), Art. I of the State Constitution:

10378 a. Underwriting files, except that a policyholder or an
10379 applicant shall have access to his or her own underwriting
10380 files.

10381 b. Claims files, until termination of all litigation and
10382 settlement of all claims arising out of the same incident,
10383 although portions of the claims files may remain exempt, as
10384 otherwise provided by law. Confidential and exempt claims file
10385 records may be released to other governmental agencies upon
10386 written request and demonstration of need; such records held by
10387 the receiving agency remain confidential and exempt as provided
10388 for herein.

10389 c. Records obtained or generated by an internal auditor
10390 pursuant to a routine audit, until the audit is completed, or if
10391 the audit is conducted as part of an investigation, until the
10392 investigation is closed or ceases to be active. An
10393 investigation is considered "active" while the investigation is
10394 being conducted with a reasonable, good faith belief that it
10395 could lead to the filing of administrative, civil, or criminal
10396 proceedings.

10397 d. Matters reasonably encompassed in privileged attorney-
10398 client communications.



10399 e. Proprietary information licensed to the corporation
10400 under contract and the contract provides for the confidentiality
10401 of such proprietary information.

10402 f. All information relating to the medical condition or
10403 medical status of a corporation employee which is not relevant
10404 to the employee's capacity to perform his or her duties, except
10405 as otherwise provided in this paragraph. Information which is
10406 exempt shall include, but is not limited to, information
10407 relating to workers' compensation, insurance benefits, and
10408 retirement or disability benefits.

10409 g. Upon an employee's entrance into the employee
10410 assistance program, a program to assist any employee who has a
10411 behavioral or medical disorder, substance abuse problem, or
10412 emotional difficulty which affects the employee's job
10413 performance, all records relative to that participation shall be
10414 confidential and exempt from the provisions of s. 119.07(1) and
10415 s. 24(a), Art. I of the State Constitution, except as otherwise
10416 provided in s. 112.0455(11).

10417 h. Information relating to negotiations for financing,
10418 reinsurance, depopulation, or contractual services, until the
10419 conclusion of the negotiations.

10420 i. Minutes of closed meetings regarding underwriting
10421 files, and minutes of closed meetings regarding an open claims
10422 file until termination of all litigation and settlement of all
10423 claims with regard to that claim, except that information
10424 otherwise confidential or exempt by law will be redacted.

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10427 When an authorized insurer is considering underwriting a risk
10428 insured by the corporation, relevant underwriting files and
10429 confidential claims files may be released to the insurer
10430 provided the insurer agrees in writing, notarized and under
10431 oath, to maintain the confidentiality of such files. When a
10432 file is transferred to an insurer that file is no longer a
10433 public record because it is not held by an agency subject to the
10434 provisions of the public records law. Underwriting files and
10435 confidential claims files may also be released to staff of and
10436 the board of governors of the market assistance plan established
10437 pursuant to s. 627.3515, who must retain the confidentiality of
10438 such files, except such files may be released to authorized
10439 insurers that are considering assuming the risks to which the
10440 files apply, provided the insurer agrees in writing, notarized
10441 and under oath, to maintain the confidentiality of such files.
10442 Finally, the corporation or the board or staff of the market
10443 assistance plan may make the following information obtained from
10444 underwriting files and confidential claims files available to
10445 licensed general lines insurance agents: name, address, and
10446 telephone number of the residential property owner or insured;
10447 location of the risk; rating information; loss history; and
10448 policy type. The receiving licensed general lines insurance
10449 agent must retain the confidentiality of the information
10450 received.

10451 2. Portions of meetings of the corporation are exempt from
10452 the provisions of s. 286.011 and s. 24(b), Art. I of the State
10453 Constitution wherein confidential underwriting files or
10454 confidential open claims files are discussed. All portions of



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10455 corporation meetings which are closed to the public shall be
10456 recorded by a court reporter. The court reporter shall record
10457 the times of commencement and termination of the meeting, all
10458 discussion and proceedings, the names of all persons present at
10459 any time, and the names of all persons speaking. No portion of
10460 any closed meeting shall be off the record. Subject to the
10461 provisions hereof and s. 119.07(2)(a), the court reporter's
10462 notes of any closed meeting shall be retained by the corporation
10463 for a minimum of 5 years. A copy of the transcript, less any
10464 exempt matters, of any closed meeting wherein claims are
10465 discussed shall become public as to individual claims after
10466 settlement of the claim.

10467 (o) It is the intent of the Legislature that the
10468 amendments to this subsection enacted in 2002 should, over time,
10469 reduce the probable maximum windstorm losses in the residual
10470 markets and should reduce the potential assessments to be levied
10471 on property insurers and policyholders statewide. In
10472 furtherance of this intent:

10473 1. The board shall, on or before February 1 of each year,
10474 provide a report to the President of the Senate and the Speaker
10475 of the House of Representatives showing the reduction or
10476 increase in the 100-year probable maximum loss attributable to
10477 wind-only coverages and the quota share program under this
10478 subsection combined, as compared to the benchmark 100-year
10479 probable maximum loss of the Florida Windstorm Underwriting
10480 Association. For purposes of this paragraph, the benchmark 100-
10481 year probable maximum loss of the Florida Windstorm Underwriting
10482 Association shall be the calculation dated February 2001 and



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10483 based on November 30, 2000, exposures. In order to ensure
10484 comparability of data, the board shall use the same methods for
10485 calculating its probable maximum loss as were used to calculate
10486 the benchmark probable maximum loss.

10487 2. Beginning February 1, 2007, if the report under
10488 subparagraph 1. for any year indicates that the 100-year
10489 probable maximum loss attributable to wind-only coverages and
10490 the quota share program combined does not reflect a reduction of
10491 at least 25 percent from the benchmark, the board shall reduce
10492 the boundaries of the high-risk area eligible for wind-only
10493 coverages under this subsection in a manner calculated to reduce
10494 such probable maximum loss to an amount at least 25 percent
10495 below the benchmark.

10496 3. Beginning February 1, 2012, if the report under
10497 subparagraph 1. for any year indicates that the 100-year
10498 probable maximum loss attributable to wind-only coverages and
10499 the quota share program combined does not reflect a reduction of
10500 at least 50 percent from the benchmark, the boundaries of the
10501 high-risk area eligible for wind-only coverages under this
10502 subsection shall be reduced by the elimination of any area that
10503 is not seaward of a line 1,000 feet inland from the Intracoastal
10504 Waterway.

10505 (p) In enacting the provisions of this section, the
10506 Legislature recognizes that both the Florida Windstorm
10507 Underwriting Association and the Residential Property and
10508 Casualty Joint Underwriting Association have entered into
10509 financing arrangements that obligate each entity to service its
10510 debts and maintain the capacity to repay funds secured under



10511 | these financing arrangements. It is the intent of the
 10512 | Legislature that nothing in this section be construed to
 10513 | compromise, diminish, or interfere with the rights of creditors
 10514 | under such financing arrangements. It is further the intent of
 10515 | the Legislature to preserve the obligations of the Florida
 10516 | Windstorm Underwriting Association and Residential Property and
 10517 | Casualty Joint Underwriting Association with regard to
 10518 | outstanding financing arrangements, with such obligations
 10519 | passing entirely and unchanged to the corporation and,
 10520 | specifically, to the applicable account of the corporation. So
 10521 | long as any bonds, notes, indebtedness, or other financing
 10522 | obligations of the Florida Windstorm Underwriting Association or
 10523 | the Residential Property and Casualty Joint Underwriting
 10524 | Association are outstanding, under the terms of the financing
 10525 | documents pertaining to them, the governing board of the
 10526 | corporation shall have and shall exercise the authority to levy,
 10527 | charge, collect, and receive all premiums, assessments,
 10528 | surcharges, charges, revenues, and receipts that the
 10529 | associations had authority to levy, charge, collect, or receive
 10530 | under the provisions of subsection (2) and this subsection,
 10531 | respectively, as they existed on January 1, 2002, to provide
 10532 | moneys, without exercise of the authority provided by this
 10533 | subsection, in at least the amounts, and by the times, as would
 10534 | be provided under those former provisions of subsection (2) or
 10535 | this subsection, respectively, so that the value, amount, and
 10536 | collectability of any assets, revenues, or revenue source
 10537 | pledged or committed to, or any lien thereon securing such
 10538 | outstanding bonds, notes, indebtedness, or other financing



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10539 obligations will not be diminished, impaired, or adversely
 10540 affected by the amendments made by this act and to permit
 10541 compliance with all provisions of financing documents pertaining
 10542 to such bonds, notes, indebtedness, or other financing
 10543 obligations, or the security or credit enhancement for them, and
 10544 any reference in this subsection to bonds, notes, indebtedness,
 10545 financing obligations, or similar obligations, of the
 10546 corporation shall include like instruments or contracts of the
 10547 Florida Windstorm Underwriting Association and the Residential
 10548 Property and Casualty Joint Underwriting Association to the
 10549 extent not inconsistent with the provisions of the financing
 10550 documents pertaining to them.

10551 ~~(q) Effective January 7, 2003, any reference in this~~
 10552 ~~subsection to the Treasurer shall be deemed to be a reference to~~
 10553 ~~the Chief Financial Officer and any reference to the Department~~
 10554 ~~of Insurance shall be deemed to be a reference to the Department~~
 10555 ~~of Insurance and Financial Services or other successor to the~~
 10556 ~~Department of Insurance specified by law.~~

10557 (q)~~(r)~~ The corporation shall not require the securing of
 10558 flood insurance as a condition of coverage if the insured or
 10559 applicant executes a form approved by the office ~~department~~
 10560 affirming that flood insurance is not provided by the
 10561 corporation and that if flood insurance is not secured by the
 10562 applicant or insured in addition to coverage by the corporation,
 10563 the risk will not be covered for flood damage. A corporation
 10564 policyholder electing not to secure flood insurance and
 10565 executing a form as provided herein making a claim for water
 10566 damage against the corporation shall have the burden of proving



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10567 the damage was not caused by flooding. Notwithstanding other
 10568 provisions of this subsection, the corporation may deny coverage
 10569 to an applicant or insured who refuses to execute the form
 10570 described herein.

10571 Section 200. Section 627.3511, Florida Statutes, is
 10572 amended to read:

10573 627.3511 Depopulation of Citizens Property Insurance
 10574 Corporation Residential Property and Casualty Joint Underwriting
 10575 Association.--

10576 (1) LEGISLATIVE INTENT.--The Legislature finds that the
 10577 public policy of this state requires the maintenance of a
 10578 residual market for residential property insurance. It is the
 10579 intent of the Legislature to provide a variety of financial
 10580 incentives to encourage the replacement of the highest possible
 10581 number of Citizens Property Insurance Corporation Residential
 10582 Property and Casualty Joint Underwriting Association policies
 10583 with policies written by admitted insurers at approved rates.

10584 (2) TAKE-OUT BONUS.--The Citizens Property Insurance
 10585 Corporation Residential Property and Casualty Joint Underwriting
 10586 Association shall pay the sum of up to \$100 to an insurer for
 10587 each risk that the insurer removes from the corporation
 10588 association, either by issuance of a policy upon expiration or
 10589 cancellation of the corporation association policy or by
 10590 assumption of the corporation's association's obligations with
 10591 respect to an in-force policy. Such payment is subject to
 10592 approval of the corporation association board. In order to
 10593 qualify for the bonus under this subsection, the take-out plan
 10594 must include a minimum of 25,000 policies. Within 30 days after



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10595 approval by the board, the office ~~department~~ may reject the
 10596 insurer's take-out plan and disqualify the insurer from the
 10597 bonus, based on the following criteria:

10598 (a) The capacity of the insurer to absorb the policies
 10599 proposed to be taken out of the corporation ~~association~~ and the
 10600 concentration of risks of those policies.

10601 (b) Whether the geographic and risk characteristics of
 10602 policies in the proposed take-out plan serve to reduce the
 10603 exposure of the corporation ~~association~~ sufficiently to justify
 10604 the bonus.

10605 (c) Whether coverage for risks to be taken out otherwise
 10606 exists in the admitted voluntary market.

10607 (d) The degree to which the take-out bonus is promoting
 10608 new capital being allocated by the insurer to Florida
 10609 residential property coverage.

10610 (3) EXEMPTION FROM DEFICIT ASSESSMENTS.--

10611 (a) The calculation of an insurer's assessment liability
 10612 under s. 627.351(6)(b)3.a. or b. shall, for an insurer that in
 10613 any calendar year removes 50,000 or more risks from the Citizens
 10614 Property Insurance Corporation Residential Property and Casualty
 10615 ~~Joint Underwriting Association~~, either by issuance of a policy
 10616 upon expiration or cancellation of the corporation ~~association~~
 10617 policy or by assumption of the corporation's ~~association's~~
 10618 obligations with respect to in-force policies, exclude such
 10619 removed policies for the succeeding 3 years, as follows:

10620 1. In the first year following removal of the risks, the
 10621 risks are excluded from the calculation to the extent of 100
 10622 percent.



10623 2. In the second year following removal of the risks, the
10624 risks are excluded from the calculation to the extent of 75
10625 percent.

10626 3. In the third year following removal of the risks, the
10627 risks are excluded from the calculation to the extent of 50
10628 percent.

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10631 If the removal of risks is accomplished through assumption of
10632 obligations with respect to in-force policies, the corporation
10633 ~~association~~ shall pay to the assuming insurer all unearned
10634 premium with respect to such policies less any policy
10635 acquisition costs agreed to by the corporation ~~association~~ and
10636 assuming insurer. The term "policy acquisition costs" is defined
10637 as costs of issuance of the policy by the corporation
10638 ~~association~~ which includes agent commissions, servicing company
10639 fees, and premium tax. This paragraph does not apply to an
10640 insurer that, at any time within 5 years before removing the
10641 risks, had a market share in excess of 0.1 percent of the
10642 statewide aggregate gross direct written premium for any line of
10643 property insurance, or to an affiliate of such an insurer. This
10644 paragraph does not apply unless either at least 40 percent of
10645 the risks removed from the corporation ~~association~~ are located
10646 in Dade, Broward, and Palm Beach Counties, or at least 30
10647 percent of the risks removed from the corporation ~~association~~
10648 are located in such counties and an additional 50 percent of the
10649 risks removed from the corporation ~~association~~ are located in
10650 other coastal counties.



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10651 (b) An insurer that first wrote personal lines residential
 10652 property coverage in this state on or after July 1, 1994, is
 10653 exempt from regular deficit assessments imposed pursuant to s.
 10654 627.351(6)(b)3.a. and b., but not emergency assessments
 10655 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,
 10656 of the Citizens Property Insurance Corporation Residential
 10657 ~~Property and Casualty Joint Underwriting Association~~ until the
 10658 earlier of the following:

10659 1. The end of the calendar year in which it first wrote
 10660 0.5 percent or more of the statewide aggregate direct written
 10661 premium for any line of residential property coverage; or

10662 2. December 31, 1997, or December 31 of the third year in
 10663 which it wrote such coverage in this state, whichever is later.

10664 (c) Other than an insurer that is exempt under paragraph
 10665 (b), an insurer that in any calendar year increases its total
 10666 structure exposure subject to wind coverage by 25 percent or
 10667 more over its exposure for the preceding calendar year is, with
 10668 respect to that year, exempt from deficit assessments imposed
 10669 pursuant to s. 627.351(6)(b)3.a. and b., but not emergency
 10670 assessments collected from policyholders pursuant to s.
 10671 627.351(6)(b)3.d., of the Citizens Property Insurance
 10672 Corporation Residential Property and Casualty Joint Underwriting
 10673 ~~Association~~ attributable to such increase in exposure.

10674 (d) Any exemption or credit from regular assessments
 10675 authorized by this section shall last no longer than 3 years
 10676 following the cancellation or expiration of the policy by the
 10677 corporation association. With the approval of the office
 10678 ~~department~~, the board may extend such credits for an additional



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10679 | year if the insurer guarantees an additional year of
 10680 | renewability for all policies removed from the corporation
 10681 | ~~association~~, or for 2 additional years if the insurer guarantees
 10682 | 2 additional years of renewability for all policies so removed.

10683 | (4) AGENT BONUS.--When the corporation ~~Residential~~
 10684 | ~~Property and Casualty Joint Underwriting Association~~ enters into
 10685 | a contractual agreement for a take-out plan that provides a
 10686 | bonus to the insurer, the producing agent of record of the
 10687 | corporation ~~association~~ policy is entitled to retain any
 10688 | unearned commission on such policy, and the insurer shall
 10689 | either:

10690 | (a) Pay to the producing agent of record of the
 10691 | association policy, for the first year, an amount that is the
 10692 | greater of the insurer's usual and customary commission for the
 10693 | type of policy written or a fee equal to the usual and customary
 10694 | commission of the corporation ~~association~~; or

10695 | (b) Offer to allow the producing agent of record of the
 10696 | corporation ~~association~~ policy to continue servicing the policy
 10697 | for a period of not less than 1 year and offer to pay the agent
 10698 | the greater of the insurer's or the corporation's ~~association's~~
 10699 | usual and customary commission for the type of policy written.

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 10701 |
 10702 | If the producing agent is unwilling or unable to accept
 10703 | appointment, the new insurer shall pay the agent in accordance
 10704 | with paragraph (a). The requirement of this subsection that the
 10705 | producing agent of record is entitled to retain the unearned
 10706 | commission on an association policy does not apply to a policy



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10707 for which coverage has been provided in the association for 30
 10708 days or less or for which a cancellation notice has been issued
 10709 pursuant to s. 627.351(6)(c)11. during the first 30 days of
 10710 coverage.

10711 (5) APPLICABILITY.--

10712 (a) The take-out bonus provided by subsection (2) and the
 10713 exemption from assessment provided by paragraph (3)(a) apply
 10714 only if the corporation ~~association~~ policy is replaced by either
 10715 a standard policy including wind coverage or, if consistent with
 10716 the insurer's underwriting rules as filed with the office
 10717 ~~department~~, a basic policy including wind coverage; however,
 10718 with respect to risks located in areas where coverage through
 10719 the high-risk account of the corporation ~~Florida Windstorm~~
 10720 ~~Underwriting Association~~ is available, the replacement policy
 10721 need not provide wind coverage. The insurer must renew the
 10722 replacement policy at approved rates on substantially similar
 10723 terms for two additional 1-year terms, unless canceled by the
 10724 insurer for a lawful reason other than reduction of hurricane
 10725 exposure. If an insurer assumes the corporation's ~~association's~~
 10726 obligations for a policy, it must issue a replacement policy for
 10727 a 1-year term upon expiration of the corporation ~~association~~
 10728 policy and must renew the replacement policy at approved rates
 10729 on substantially similar terms for two additional 1-year terms,
 10730 unless canceled by the insurer for a lawful reason other than
 10731 reduction of hurricane exposure. For each replacement policy
 10732 canceled or nonrenewed by the insurer for any reason during the
 10733 3-year coverage period required by this paragraph, the insurer
 10734 must remove from the corporation ~~association~~ one additional



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10735 policy covering a risk similar to the risk covered by the
 10736 canceled or nonrenewed policy. In addition to these
 10737 requirements, the corporation ~~association~~ must place the bonus
 10738 moneys in escrow for a period of 3 years; such moneys may be
 10739 released from escrow only to pay claims. A take-out bonus
 10740 provided by subsection (2) or subsection (6) shall not be
 10741 considered premium income for purposes of taxes and assessments
 10742 under the Florida Insurance Code and shall remain the property
 10743 of the corporation ~~Residential Property and Casualty Joint~~
 10744 ~~Underwriting Association~~, subject to the prior security interest
 10745 of the insurer under the escrow agreement until it is released
 10746 from escrow, and after it is released from escrow it shall be
 10747 considered an asset of the insurer and credited to the insurer's
 10748 capital and surplus.

10749 (b) It is the intent of the Legislature that an insurer
 10750 eligible for the exemption under paragraph (3)(a) establish a
 10751 preference in appointment of agents for those agents who lose a
 10752 substantial amount of business as a result of risks being
 10753 removed from the corporation ~~association~~.

10754 (6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.--

10755 (a) The corporation ~~Residential Property and Casualty~~
 10756 ~~Joint Underwriting Association~~ shall pay a bonus to an insurer
 10757 for each commercial residential policy that the insurer removes
 10758 from the corporation ~~association~~ pursuant to an approved take-
 10759 out plan, either by issuance of a new policy upon expiration of
 10760 the corporation ~~association~~ policy or by assumption of the
 10761 corporation's ~~association's~~ obligations with respect to an in-
 10762 force policy. The corporation ~~association~~ board shall determine



10763 | the amount of the bonus based on such factors as the coverage
 10764 | provided, relative hurricane risk, the length of time that the
 10765 | property has been covered by the corporation ~~association~~, and
 10766 | the criteria specified in paragraphs (b) and (c). The amount of
 10767 | the bonus with respect to a particular policy may not exceed 25
 10768 | percent of the corporation's ~~association's~~ 1-year premium for
 10769 | the policy. Such payment is subject to approval of the
 10770 | corporation ~~association~~ board. In order to qualify for the bonus
 10771 | under this subsection, the take-out plan must include policies
 10772 | reflecting at least \$100 million in structure exposure.

10773 | (b) In order for a plan to qualify for approval:

10774 | 1. At least 40 percent of the policies removed from the
 10775 | corporation ~~association~~ under the plan must be located in Dade,
 10776 | Broward, and Palm Beach Counties, or at least 30 percent of the
 10777 | policies removed from the corporation ~~association~~ under the plan
 10778 | must be located in such counties and an additional 50 percent of
 10779 | the policies removed from the corporation ~~association~~ must be
 10780 | located in other coastal counties.

10781 | 2. The insurer must renew the replacement policy at
 10782 | approved rates on substantially similar terms for two additional
 10783 | 1-year terms, unless canceled or nonrenewed by the insurer for a
 10784 | lawful reason other than reduction of hurricane exposure. If an
 10785 | insurer assumes the corporation's ~~association's~~ obligations for
 10786 | a policy, it must issue a replacement policy for a 1-year term
 10787 | upon expiration of the corporation ~~association~~ policy and must
 10788 | renew the replacement policy at approved rates on substantially
 10789 | similar terms for two additional 1-year terms, unless canceled
 10790 | by the insurer for a lawful reason other than reduction of



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10791 hurricane exposure. For each replacement policy canceled or
10792 nonrenewed by the insurer for any reason during the 3-year
10793 coverage period required by this subparagraph, the insurer must
10794 remove from the corporation ~~association~~ one additional policy
10795 covering a risk similar to the risk covered by the canceled or
10796 nonrenewed policy.

10797 (c) A take-out plan is deemed approved unless the office
10798 ~~department~~, within 120 days after the board votes to recommend
10799 the plan, disapproves the plan based on:

10800 1. The capacity of the insurer to absorb the policies
10801 proposed to be taken out of the corporation ~~association~~ and the
10802 concentration of risks of those policies.

10803 2. Whether the geographic and risk characteristics of
10804 policies in the proposed take-out plan serve to reduce the
10805 exposure of the corporation ~~association~~ sufficiently to justify
10806 the bonus.

10807 3. Whether coverage for risks to be taken out otherwise
10808 exists in the admitted voluntary market.

10809 4. The degree to which the take-out bonus is promoting new
10810 capital being allocated by the insurer to residential property
10811 coverage in this state.

10812 (d) The calculation of an insurer's regular assessment
10813 liability under s. 627.351(b)3.a. and b., but not emergency
10814 assessments collected from policyholders pursuant to s.
10815 627.351(6)(b)3.d., shall, with respect to commercial residential
10816 policies removed from the corporation ~~association~~ under an
10817 approved take-out plan, exclude such removed policies for the
10818 succeeding 3 years, as follows:



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10819 | 1. In the first year following removal of the policies,
10820 | the policies are excluded from the calculation to the extent of
10821 | 100 percent.

10822 | 2. In the second year following removal of the policies,
10823 | the policies are excluded from the calculation to the extent of
10824 | 75 percent.

10825 | 3. In the third year following removal of the policies,
10826 | the policies are excluded from the calculation to the extent of
10827 | 50 percent.

10828 | (e) An insurer that first wrote commercial residential
10829 | property coverage in this state on or after June 1, 1996, is
10830 | exempt from regular assessments under s. 627.351(6)(b)3.a. and
10831 | b., but not emergency assessments collected from policyholders
10832 | pursuant to s. 627.351(6)(b)3.d., with respect to commercial
10833 | residential policies until the earlier of:

10834 | 1. The end of the calendar year in which such insurer
10835 | first wrote 0.5 percent or more of the statewide aggregate
10836 | direct written premium for commercial residential property
10837 | coverage; or

10838 | 2. December 31 of the third year in which such insurer
10839 | wrote commercial residential property coverage in this state.

10840 | (f) An insurer that is not otherwise exempt from regular
10841 | assessments under s. 627.351(6)(b)3.a. and b. with respect to
10842 | commercial residential policies is, for any calendar year in
10843 | which such insurer increased its total commercial residential
10844 | hurricane exposure by 25 percent or more over its exposure for
10845 | the preceding calendar year, exempt from regular assessments
10846 | under s. 627.351(6)(b)3.a. and b., but not emergency assessments



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10847 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,
10848 attributable to such increased exposure.

10849 (7) A minority business, which is at least 51 percent
10850 owned by minority persons as described in s. 288.703(3),
10851 desiring to operate or become licensed as a property and
10852 casualty insurer may exempt up to \$50 of the escrow requirements
10853 of the take-out bonus, as described in this section. Such
10854 minority business, which has applied for a certificate of
10855 authority to engage in business as a property and casualty
10856 insurer, may simultaneously file the business' proposed take-out
10857 plan, as described in this section, with the corporation ~~to the~~
10858 ~~Residential Property and Casualty Joint Underwriting~~
10859 ~~Association.~~

10860 Section 201. Section 627.3513, Florida Statutes, is
10861 amended to read:

10862 627.3513 Standards for sale of bonds by Citizens Property
10863 Insurance Corporation ~~underwriting associations.~~--

10864 (1)(a) The purpose of this section is to provide standards
10865 for the sale of bonds pursuant to s. 627.351(2) and (6).

10866 (b) The term "corporation," as used in this section, means
10867 the Citizens Property Insurance Corporation. ~~"Association" or~~
10868 ~~"associations," for purposes of this section, means the Florida~~
10869 ~~Windstorm Underwriting Association and the Residential Property~~
10870 ~~and Casualty Joint Underwriting Association as established~~
10871 ~~pursuant to s. 627.351(2) and (6), and any corporation or other~~
10872 ~~entity established pursuant to those subsections.~~

10873 (2) The plan of operation of the corporation ~~each~~
10874 ~~association~~ shall provide for the selection of financial



10875 services providers and underwriters. Such provisions shall
 10876 include the method for publicizing or otherwise providing
 10877 reasonable notice to potential financial services providers,
 10878 underwriters, and other interested parties, which may include
 10879 expedited procedures and methods for emergency situations. The
 10880 corporation ~~associations~~ shall not engage the services of any
 10881 person or firm as a securities broker or bond underwriter that
 10882 is not eligible to be engaged by the state under the provisions
 10883 of s. 215.684. The corporation ~~associations~~ shall make all
 10884 selections of financial service providers and managing
 10885 underwriters at a noticed public meeting.

10886 (3) The plan of operation of the corporation ~~each~~
 10887 ~~association~~ shall provide for any managing underwriter or
 10888 financial adviser to provide to the corporation ~~association~~ a
 10889 disclosure statement containing at least the following
 10890 information:

10891 (a) An itemized list setting forth the nature and
 10892 estimated amounts of expenses to be incurred by the managing
 10893 underwriter in connection with the issuance of such bonds.
 10894 Notwithstanding the foregoing, any such list may include an item
 10895 for miscellaneous expenses, provided such item includes only
 10896 minor items of expense which cannot be easily categorized
 10897 elsewhere in the statement.

10898 (b) The names, addresses, and estimated amounts of
 10899 compensation of any finders connected with the issuance of the
 10900 bonds.



10901 (c) The amount of underwriting spread expected to be
 10902 realized and the amount of fees and expenses expected to be paid
 10903 to the financial adviser.

10904 (d) Any management fee charged by the managing
 10905 underwriter.

10906 (e) Any other fee, bonus, or compensation estimated to be
 10907 paid by the managing underwriter in connection with the bond
 10908 issue to any person not regularly employed or retained by it.

10909 (f) The name and address of each financial adviser or
 10910 managing underwriter, if any, connected with the bond issue.

10911 (g) Any other disclosure which the corporation ~~association~~
 10912 may require.

10913 (4)(a) No underwriter, commercial bank, investment banker,
 10914 or financial consultant or adviser shall pay any finder any
 10915 bonus, fee, or gratuity in connection with the sale of bonds
 10916 issued by the corporation ~~association~~ unless full disclosure is
 10917 made in writing to the corporation ~~association~~ prior to or
 10918 concurrently with the submission of a purchase proposal for
 10919 bonds by the underwriter, commercial bank, investment banker, or
 10920 financial consultant or adviser, providing the name and address
 10921 of any finder and the amount of bonus, fee, or gratuity paid to
 10922 such finder. A violation of this subsection shall not affect the
 10923 validity of the bond issue.

10924 (b) As used in this subsection, the term "finder" means a
 10925 person who is neither regularly employed by, nor a partner or
 10926 officer of, an underwriter, bank, banker, or financial
 10927 consultant or adviser and who enters into an understanding with
 10928 either the issuer or the managing underwriter, or both, for any



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10929 | paid or promised compensation or valuable consideration,
10930 | directly or indirectly, expressed or implied, to act solely as
10931 | an intermediary between such issuer and managing underwriter for
10932 | the purpose of influencing any transaction in the purpose of
10933 | such bonds.

10934 | (5) This section is not intended to restrict or prohibit
10935 | the employment of professional services relating to bonds issued
10936 | under s. 627.351(6) ~~s. 627.351(2) or (6)~~ or the issuance of
10937 | bonds by the corporation ~~associations~~.

10938 | (6) The failure of the corporation ~~association~~ to comply
10939 | with one or more provisions of this section shall not affect the
10940 | validity of the bond issue; however, the failure of the
10941 | corporation ~~either association~~ to comply in good faith both with
10942 | this section and with the plan as amended shall be a violation
10943 | of its plan of operation and a violation of the insurance code.

10944 | Section 202. Section 627.3515, Florida Statutes, is
10945 | amended to read:

10946 | 627.3515 Market assistance plan; property and casualty
10947 | risks.--

10948 | (1) The office ~~department~~ shall adopt a market assistance
10949 | plan to assist in the placement of risks of applicants who are
10950 | unable to procure property insurance as defined in s. 624.604 or
10951 | casualty insurance as defined in s. 624.605(1)(b), (e), (f),
10952 | (g), or (h) from authorized insurers when such insurance is
10953 | otherwise generally available from insurers authorized to
10954 | transact and actually writing that kind and class of insurance
10955 | in this state. Through such measures as are found appropriate by
10956 | the board of governors, the market assistance plan shall take



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10957 affirmative steps to assist in the removal from the Citizens
 10958 Property Insurance Corporation ~~Residential Property and Casualty~~
 10959 ~~Joint Underwriting Association~~ any risk that can be placed in
 10960 the voluntary market. All property and casualty insurers
 10961 licensed in this state shall participate in the plan.

10962 (2)(a) Each person serving as a member of the board of
 10963 governors of the Citizens Property Insurance Corporation
 10964 ~~Residential Property and Casualty Joint Underwriting Association~~
 10965 shall also serve as a member of the board of governors of the
 10966 market assistance plan.

10967 (b) The plan shall be funded through payments from the
 10968 Citizens Property Insurance Corporation ~~Residential Property and~~
 10969 ~~Casualty Joint Underwriting Association~~ and annual assessments
 10970 of residential property insurers in the amount of \$450.

10971 (c) The plan is not required to assist in the placement of
 10972 any workers' compensation, employer's liability, malpractice, or
 10973 motor vehicle insurance coverage.

10974 Section 203. Subsections (2), (4), and (6), paragraphs (c)
 10975 and (h) of subsection (7), and subsection (8) of section
 10976 627.357, Florida Statutes, are amended to read:

10977 627.357 Medical malpractice self-insurance.--

10978 (2) A group or association of health care providers
 10979 composed of any number of members, is authorized to self-insure
 10980 against claims arising out of the rendering of, or failure to
 10981 render, medical care or services, or against claims for injury
 10982 or death to the insured's patients arising out of the insured's
 10983 activities, upon obtaining approval from the office ~~department~~
 10984 and upon complying with the following conditions:



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10985 (a) Establishment of a Medical Malpractice Risk Management
10986 Trust Fund to provide coverage against professional medical
10987 malpractice liability.

10988 (b) Employment of professional consultants for loss
10989 prevention and claims management coordination under a risk
10990 management program.

10991 (4) The fund is subject to regulation and investigation by
10992 the office ~~department~~. The fund is subject to rules of the
10993 commission ~~department~~ and to part IX of chapter 626, relating to
10994 trade practices and frauds.

10995 (6) The commission ~~department~~ shall adopt rules to
10996 implement this section, including rules that ensure that a trust
10997 fund maintains a sufficient reserve to cover contingent
10998 liabilities under subsection (7) in the event of its
10999 dissolution.

11000 (7)

11001 (c) The trust fund may from time to time assess members of
11002 the fund liable therefor under the terms of their policies and
11003 pursuant to this section. The office ~~department~~ may assess the
11004 members in the event of liquidation of the fund.

11005 (h) If the trust fund fails to make an assessment as
11006 required by paragraph(g), the office ~~department~~ shall order the
11007 fund to do so. If the deficiency is not sufficiently made up
11008 within 60 days after the date of the order, the fund is deemed
11009 insolvent and grounds exist to proceed against the fund as
11010 provided for in part I of chapter 631.

11011 (8) The expense factors associated with rates used by a
11012 fund shall be filed with the office ~~department~~ at least 30 days



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11013 prior to use and may not be used until approved by the office
 11014 ~~department~~. The office ~~department~~ shall disapprove the rates
 11015 unless the filed expense factors associated therewith are
 11016 justified and reasonable for the benefits and services provided.

11017 Section 204. Paragraph (a) of subsection (3) of section
 11018 627.4236, Florida Statutes, is amended to read:

11019 627.4236 Coverage for bone marrow transplant procedures.--

11020 (3)(a) The Agency for Health Care Administration shall
 11021 adopt rules specifying the bone marrow transplant procedures
 11022 that are accepted within the appropriate oncological specialty
 11023 and are not experimental for purposes of this section. The rules
 11024 must be based upon recommendations of an advisory panel
 11025 appointed by the secretary of the agency, composed of:

- 11026 1. One adult oncologist, selected from a list of three
 11027 names recommended by the Florida Medical Association;
- 11028 2. One pediatric oncologist, selected from a list of three
 11029 names recommended by the Florida Pediatric Society;
- 11030 3. One representative of the J. Hillis Miller Health
 11031 Center at the University of Florida;
- 11032 4. One representative of the H. Lee Moffitt Cancer Center
 11033 and Research Institute, Inc.;
- 11034 5. One consumer representative, selected from a list of
 11035 three names recommended by the Chief Financial Officer ~~Insurance~~
 11036 ~~Commissioner~~;
- 11037 6. One representative of the Health Insurance Association
 11038 of America;
- 11039 7. Two representatives of health insurers, one of whom
 11040 represents the insurer with the largest Florida health insurance



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11041 premium volume and one of whom represents the insurer with the
 11042 second largest Florida health insurance premium volume; and
 11043 8. One representative of the insurer with the largest
 11044 Florida small group health insurance premium volume.

11045 Section 205. Paragraphs (a) and (e) of subsection (2),
 11046 subsection (3), paragraphs (e), (j), and (k) of subsection (4),
 11047 and subsection (6) of section 627.6488, Florida Statutes, are
 11048 amended to read:

11049 627.6488 Florida Comprehensive Health Association.--

11050 (2)(a) The association shall operate subject to the
 11051 supervision and approval of a three-member board of directors.
 11052 The board of directors shall be appointed by the Chief Financial
 11053 Officer ~~Insurance Commissioner~~ as follows:

11054 1. The chair of the board shall be the Chief Financial
 11055 Officer ~~Insurance Commissioner~~ or his or her designee.

11056 2. One representative of policyholders who is not
 11057 associated with the medical profession, a hospital, or an
 11058 insurer.

11059 3. One representative of insurers.

11060
 11061
 11062 The administrator or his or her affiliate shall not be a member
 11063 of the board. Any board member appointed by the Chief Financial
 11064 Officer ~~commissioner~~ may be removed and replaced by him or her
 11065 at any time without cause.

11066 (e) There shall be no liability on the part of, and no
 11067 cause of action of any nature shall arise against, any member
 11068 insurer, or its agents or employees, agents or employees of the



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11069 association, members of the board of directors of the
 11070 association, or the Chief Financial Officer's ~~departmental~~
 11071 representatives for any act or omission taken by them in the
 11072 performance of their powers and duties under this act, unless
 11073 such act or omission by such person is in intentional disregard
 11074 of the rights of the claimant.

11075 (3) The association shall adopt a plan pursuant to this
 11076 act and submit its articles, bylaws, and operating rules to the
 11077 office ~~department~~ for approval. If the association fails to
 11078 adopt such plan and suitable articles, bylaws, and operating
 11079 rules within 180 days after the appointment of the board, the
 11080 commission ~~department~~ shall adopt rules to effectuate the
 11081 provisions of this act; and such rules shall remain in effect
 11082 until superseded by a plan and articles, bylaws, and operating
 11083 rules submitted by the association and approved by the office
 11084 ~~department~~.

11085 (4) The association shall:

11086 (e) Require that all policy forms issued by the
 11087 association conform to standard forms developed by the
 11088 association. The forms shall be approved by the office
 11089 ~~department~~.

11090 (j) Make a report to the Governor, the office ~~Insurance~~
 11091 ~~Commissioner~~, the President of the Senate, the Speaker of the
 11092 House of Representatives, and the Minority Leaders of the Senate
 11093 and House of Representatives, not later than 45 days after the
 11094 close of each calendar quarter, which includes, for the prior
 11095 quarter, current data and estimates of net written and earned
 11096 premiums, the expenses of administration, and the paid and



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11097 incurred losses. The report shall identify any statutorily
11098 mandated program that has not been fully implemented by the
11099 board.

11100 (k) To facilitate preparation of assessments and for other
11101 purposes, the board shall direct preparation of annual audited
11102 financial statements for each calendar year as soon as feasible
11103 following the conclusion of that calendar year, and shall,
11104 within 30 days after rendition of such statements, file with the
11105 office ~~department~~ the annual report containing such information
11106 as required by the office ~~department~~ to be filed on March 1 of
11107 each year.

11108 (6) The office ~~department~~ shall examine and investigate
11109 the association in the manner provided in part II of chapter
11110 624.

11111 Section 206. Paragraph (a) of subsection (3), paragraphs
11112 (c), (d), (e), and (i) of subsection (5), paragraphs (a) and (b)
11113 of subsection (6), paragraphs (b), (c), and (d) of subsection
11114 (8), paragraphs (a) and (b) of subsection (9), subsection (10),
11115 paragraphs (b), (c), (d), (e), (g), (h), (j), and (m) of
11116 subsection (11), subsection (12), paragraph (i) of subsection
11117 (13), paragraph(a) of subsection (15), and subsection (16) of
11118 section 627.6699, Florida Statutes, are amended to read:

11119 627.6699 Employee Health Care Access Act.--

11120 (3) DEFINITIONS.--As used in this section, the term:

11121 (a) "Actuarial certification" means a written statement,
11122 by a member of the American Academy of Actuaries or another
11123 person acceptable to the office ~~department~~, that a small
11124 employer carrier is in compliance with subsection (6), based



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11125 upon the person's examination, including a review of the
11126 appropriate records and of the actuarial assumptions and methods
11127 used by the carrier in establishing premium rates for applicable
11128 health benefit plans.

11129 (5) AVAILABILITY OF COVERAGE.--

11130 (c) Every small employer carrier must, as a condition of
11131 transacting business in this state:

11132 1. ~~Beginning July 1, 2000,~~ Offer and issue all small
11133 employer health benefit plans on a guaranteed-issue basis to
11134 every eligible small employer, with 2 to 50 eligible employees,
11135 that elects to be covered under such plan, agrees to make the
11136 required premium payments, and satisfies the other provisions of
11137 the plan. A rider for additional or increased benefits may be
11138 medically underwritten and may only be added to the standard
11139 health benefit plan. The increased rate charged for the
11140 additional or increased benefit must be rated in accordance with
11141 this section.

11142 ~~2. Beginning July 1, 2000, and until July 31, 2001, offer~~
11143 ~~and issue basic and standard small employer health benefit plans~~
11144 ~~on a guaranteed-issue basis to every eligible small employer~~
11145 ~~which is eligible for guaranteed renewal, has less than two~~
11146 ~~eligible employees, is not formed primarily for the purpose of~~
11147 ~~buying health insurance, elects to be covered under such plan,~~
11148 ~~agrees to make the required premium payments, and satisfies the~~
11149 ~~other provisions of the plan. A rider for additional or~~
11150 ~~increased benefits may be medically underwritten and may be~~
11151 ~~added only to the standard benefit plan. The increased rate~~
11152 ~~charged for the additional or increased benefit must be rated in~~



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11153 ~~accordance with this section. For purposes of this subparagraph,~~
11154 ~~a person, his or her spouse, and his or her dependent children~~
11155 ~~shall constitute a single eligible employee if that person and~~
11156 ~~spouse are employed by the same small employer and either one~~
11157 ~~has a normal work week of less than 25 hours.~~

11158 2.3. ~~Beginning August 1, 2001,~~ Offer and issue basic and
11159 standard small employer health benefit plans on a guaranteed-
11160 issue basis, during a 31-day open enrollment period of August 1
11161 through August 31 of each year, to every eligible small
11162 employer, with fewer than two eligible employees, which small
11163 employer is not formed primarily for the purpose of buying
11164 health insurance and which elects to be covered under such plan,
11165 agrees to make the required premium payments, and satisfies the
11166 other provisions of the plan. Coverage provided under this
11167 subparagraph shall begin on October 1 of the same year as the
11168 date of enrollment, unless the small employer carrier and the
11169 small employer agree to a different date. A rider for additional
11170 or increased benefits may be medically underwritten and may only
11171 be added to the standard health benefit plan. The increased
11172 rate charged for the additional or increased benefit must be
11173 rated in accordance with this section. For purposes of this
11174 subparagraph, a person, his or her spouse, and his or her
11175 dependent children constitute a single eligible employee if that
11176 person and spouse are employed by the same small employer and
11177 either that person or his or her spouse has a normal work week
11178 of less than 25 hours.

11179 3.4. ~~This paragraph does not limit a carrier's ability to~~
11180 ~~offer other health benefit plans to small employers if the~~



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11181 standard and basic health benefit plans are offered and
11182 rejected.

11183 (d) A small employer carrier must file with the office
11184 ~~department~~, in a format and manner prescribed by the committee,
11185 a standard health care plan and a basic health care plan to be
11186 used by the carrier.

11187 (e) The office ~~department~~ at any time may, after providing
11188 notice and an opportunity for a hearing, disapprove the
11189 continued use by the small employer carrier of the standard or
11190 basic health benefit plan on the grounds that such plan does not
11191 meet the requirements of this section.

11192 (i)1. A small employer carrier need not offer coverage or
11193 accept applications pursuant to paragraph (a):

11194 a. To a small employer if the small employer is not
11195 physically located in an established geographic service area of
11196 the small employer carrier, provided such geographic service
11197 area shall not be less than a county;

11198 b. To an employee if the employee does not work or reside
11199 within an established geographic service area of the small
11200 employer carrier; or

11201 c. To a small employer group within an area in which the
11202 small employer carrier reasonably anticipates, and demonstrates
11203 to the satisfaction of the office ~~department~~, that it cannot,
11204 within its network of providers, deliver service adequately to
11205 the members of such groups because of obligations to existing
11206 group contract holders and enrollees.

11207 2. A small employer carrier that cannot offer coverage
11208 pursuant to sub-subparagraph 1.c. may not offer coverage in the



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11209 applicable area to new cases of employer groups having more than
11210 50 eligible employees or small employer groups until the later
11211 of 180 days following each such refusal or the date on which the
11212 carrier notifies the office ~~department~~ that it has regained its
11213 ability to deliver services to small employer groups.

11214 3.a. A small employer carrier may deny health insurance
11215 coverage in the small-group market if the carrier has
11216 demonstrated to the office ~~department~~ that:

11217 (I) It does not have the financial reserves necessary to
11218 underwrite additional coverage; and

11219 (II) It is applying this sub-subparagraph uniformly to all
11220 employers in the small-group market in this state consistent
11221 with this section and without regard to the claims experience of
11222 those employers and their employees and their dependents or any
11223 health-status-related factor that relates to such employees and
11224 dependents.

11225 b. A small employer carrier, upon denying health insurance
11226 coverage in connection with health benefit plans in accordance
11227 with sub-subparagraph a., may not offer coverage in connection
11228 with group health benefit plans in the small-group market in
11229 this state for a period of 180 days after the date such coverage
11230 is denied or until the insurer has demonstrated to the office
11231 ~~department~~ that the insurer has sufficient financial reserves to
11232 underwrite additional coverage, whichever is later. The office
11233 ~~department~~ may provide for the application of this sub-
11234 subparagraph on a service-area-specific basis.

11235 4. ~~Beginning in 1994,~~ The commission ~~department~~ shall, by
11236 rule, require each small employer carrier to report, on or



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11237 before March 1 of each year, its gross annual premiums for all
 11238 health benefit plans issued to small employers during the
 11239 previous calendar year, and also to report its gross annual
 11240 premiums for new, but not renewal, standard and basic health
 11241 benefit plans subject to this section issued during the previous
 11242 calendar year. No later than May 1 of each year, the office
 11243 ~~department~~ shall calculate each carrier's percentage of all
 11244 small employer group health premiums for the previous calendar
 11245 year and shall calculate the aggregate gross annual premiums for
 11246 new, but not renewal, standard and basic health benefit plans
 11247 for the previous calendar year.

11248 (6) RESTRICTIONS RELATING TO PREMIUM RATES.--

11249 (a) The commission ~~department~~ may, by rule, establish
 11250 regulations to administer this section and to assure that rating
 11251 practices used by small employer carriers are consistent with
 11252 the purpose of this section, including assuring that differences
 11253 in rates charged for health benefit plans by small employer
 11254 carriers are reasonable and reflect objective differences in
 11255 plan design, not including differences due to the nature of the
 11256 groups assumed to select particular health benefit plans.

11257 (b) For all small employer health benefit plans that are
 11258 subject to this section and are issued by small employer
 11259 carriers on or after January 1, 1994, premium rates for health
 11260 benefit plans subject to this section are subject to the
 11261 following:

11262 1. Small employer carriers must use a modified community
 11263 rating methodology in which the premium for each small employer
 11264 must be determined solely on the basis of the eligible



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11265 employee's and eligible dependent's gender, age, family
11266 composition, tobacco use, or geographic area as determined under
11267 paragraph (5)(j) and in which the premium may be adjusted as
11268 permitted by this paragraph.

11269 2. Rating factors related to age, gender, family
11270 composition, tobacco use, or geographic location may be
11271 developed by each carrier to reflect the carrier's experience.
11272 The factors used by carriers are subject to office ~~department~~
11273 review and approval.

11274 3. Small employer carriers may not modify the rate for a
11275 small employer for 12 months from the initial issue date or
11276 renewal date, unless the composition of the group changes or
11277 benefits are changed. However, a small employer carrier may
11278 modify the rate one time prior to 12 months after the initial
11279 issue date for a small employer who enrolls under a previously
11280 issued group policy that has a common anniversary date for all
11281 employers covered under the policy if:

11282 a. The carrier discloses to the employer in a clear and
11283 conspicuous manner the date of the first renewal and the fact
11284 that the premium may increase on or after that date.

11285 b. The insurer demonstrates to the office ~~department~~ that
11286 efficiencies in administration are achieved and reflected in the
11287 rates charged to small employers covered under the policy.

11288 4. A carrier may issue a group health insurance policy to
11289 a small employer health alliance or other group association with
11290 rates that reflect a premium credit for expense savings
11291 attributable to administrative activities being performed by the
11292 alliance or group association if such expense savings are



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11293 specifically documented in the insurer's rate filing and are
11294 approved by the office ~~department~~. Any such credit may not be
11295 based on different morbidity assumptions or on any other factor
11296 related to the health status or claims experience of any person
11297 covered under the policy. Nothing in this subparagraph exempts
11298 an alliance or group association from licensure for any
11299 activities that require licensure under the insurance code. A
11300 carrier issuing a group health insurance policy to a small
11301 employer health alliance or other group association shall allow
11302 any properly licensed and appointed agent of that carrier to
11303 market and sell the small employer health alliance or other
11304 group association policy. Such agent shall be paid the usual and
11305 customary commission paid to any agent selling the policy.

11306 5. Any adjustments in rates for claims experience, health
11307 status, or duration of coverage may not be charged to individual
11308 employees or dependents. For a small employer's policy, such
11309 adjustments may not result in a rate for the small employer
11310 which deviates more than 15 percent from the carrier's approved
11311 rate. Any such adjustment must be applied uniformly to the rates
11312 charged for all employees and dependents of the small employer.
11313 A small employer carrier may make an adjustment to a small
11314 employer's renewal premium, not to exceed 10 percent annually,
11315 due to the claims experience, health status, or duration of
11316 coverage of the employees or dependents of the small employer.
11317 Semiannually, small group carriers shall report information on
11318 forms adopted by rule by the commission ~~department~~, to enable
11319 the office ~~department~~ to monitor the relationship of aggregate
11320 adjusted premiums actually charged policyholders by each carrier



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11321 to the premiums that would have been charged by application of
11322 the carrier's approved modified community rates. If the
11323 aggregate resulting from the application of such adjustment
11324 exceeds the premium that would have been charged by application
11325 of the approved modified community rate by 5 percent for the
11326 current reporting period, the carrier shall limit the
11327 application of such adjustments only to minus adjustments
11328 beginning not more than 60 days after the report is sent to the
11329 office ~~department~~. For any subsequent reporting period, if the
11330 total aggregate adjusted premium actually charged does not
11331 exceed the premium that would have been charged by application
11332 of the approved modified community rate by 5 percent, the
11333 carrier may apply both plus and minus adjustments. A small
11334 employer carrier may provide a credit to a small employer's
11335 premium based on administrative and acquisition expense
11336 differences resulting from the size of the group. Group size
11337 administrative and acquisition expense factors may be developed
11338 by each carrier to reflect the carrier's experience and are
11339 subject to office ~~department~~ review and approval.

11340 6. A small employer carrier rating methodology may include
11341 separate rating categories for one dependent child, for two
11342 dependent children, and for three or more dependent children for
11343 family coverage of employees having a spouse and dependent
11344 children or employees having dependent children only. A small
11345 employer carrier may have fewer, but not greater, numbers of
11346 categories for dependent children than those specified in this
11347 subparagraph.



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11348 7. Small employer carriers may not use a composite rating
11349 methodology to rate a small employer with fewer than 10
11350 employees. For the purposes of this subparagraph, a "composite
11351 rating methodology" means a rating methodology that averages the
11352 impact of the rating factors for age and gender in the premiums
11353 charged to all of the employees of a small employer.

11354 8.a. A carrier may separate the experience of small
11355 employer groups with less than 2 eligible employees from the
11356 experience of small employer groups with 2-50 eligible employees
11357 for purposes of determining an alternative modified community
11358 rating.

11359 b. If a carrier separates the experience of small employer
11360 groups as provided in sub-subparagraph a., the rate to be
11361 charged to small employer groups of less than 2 eligible
11362 employees may not exceed 150 percent of the rate determined for
11363 small employer groups of 2-50 eligible employees. However, the
11364 carrier may charge excess losses of the experience pool
11365 consisting of small employer groups with less than 2 eligible
11366 employees to the experience pool consisting of small employer
11367 groups with 2-50 eligible employees so that all losses are
11368 allocated and the 150-percent rate limit on the experience pool
11369 consisting of small employer groups with less than 2 eligible
11370 employees is maintained. Notwithstanding s. 627.411(1), the rate
11371 to be charged to a small employer group of fewer than 2 eligible
11372 employees, insured as of July 1, 2002, may be up to 125 percent
11373 of the rate determined for small employer groups of 2-50
11374 eligible employees for the first annual renewal and 150 percent
11375 for subsequent annual renewals.



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11376 (8) MAINTENANCE OF RECORDS.--

11377 (b) Each small employer carrier must file with the office
 11378 ~~department~~ on or before March 15 of each year an actuarial
 11379 certification that the carrier is in compliance with this
 11380 section and that the rating methods of the carrier are
 11381 actuarially sound. The certification must be in a form and
 11382 manner and contain the information prescribed by the commission
 11383 ~~department~~. The carrier must retain a copy of the certification
 11384 at its principal place of business.

11385 (c) A small employer carrier must make the information and
 11386 documentation described in paragraph (a) available to the office
 11387 ~~department~~ upon request. The information constitutes
 11388 proprietary and trade secret information and may not be
 11389 disclosed by the office department to persons outside the office
 11390 ~~department~~, except as agreed to by the carrier or as ordered by
 11391 a court of competent jurisdiction.

11392 (d) Each small employer carrier must file with the office
 11393 ~~department~~ quarterly an enrollment report as directed by the
 11394 office department. Such report shall not constitute proprietary
 11395 or trade secret information.

11396 (9) SMALL EMPLOYER CARRIER'S ELECTION TO BECOME A RISK-
 11397 ASSUMING CARRIER OR A REINSURING CARRIER.--

11398 (a) A small employer carrier must elect to become either a
 11399 risk-assuming carrier or a reinsuring carrier. Each small
 11400 employer carrier must make an initial election, binding through
 11401 January 1, 1994. The carrier's initial election must be made no
 11402 later than October 31, 1992. By October 31, 1993, all small
 11403 employer carriers must file a final election, which is binding



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11404 for 2 years, from January 1, 1994, through December 31, 1995,
 11405 after which an election shall be binding for a period of 5
 11406 years. Any carrier that is not a small employer carrier on
 11407 October 31, 1992, and intends to become a small employer carrier
 11408 after October 31, 1992, must file its designation when it files
 11409 the forms and rates it intends to use for small employer group
 11410 health insurance; such designation shall be binding for 2 years
 11411 after the date of approval of the forms and rates, and any
 11412 subsequent designation is binding for 5 years. The office
 11413 ~~department~~ may permit a carrier to modify its election at any
 11414 time for good cause shown, after a hearing.

11415 (b) The commission ~~department~~ shall establish an
 11416 application process for small employer carriers seeking to
 11417 change their status under this subsection.

11418 (10) ELECTION PROCESS TO BECOME A RISK-ASSUMING CARRIER.--

11419 (a)1. A small employer carrier may become a risk-assuming
 11420 carrier by filing with the office ~~department~~ a designation of
 11421 election under subsection (9) in a format and manner prescribed
 11422 by the commission ~~department~~. The office ~~department~~ shall
 11423 approve the election of a small employer carrier to become a
 11424 risk-assuming carrier if the office ~~department~~ finds that the
 11425 carrier is capable of assuming that status pursuant to the
 11426 criteria set forth in paragraph (b).

11427 2. The office ~~department~~ must approve or disapprove any
 11428 designation as a risk-assuming carrier within 60 days after
 11429 filing.



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11430 (b) In determining whether to approve an application by a
 11431 small employer carrier to become a risk-assuming carrier, the
 11432 office department shall consider:

11433 1. The carrier's financial ability to support the
 11434 assumption of the risk of small employer groups.

11435 2. The carrier's history of rating and underwriting small
 11436 employer groups.

11437 3. The carrier's commitment to market fairly to all small
 11438 employers in the state or its service area, as applicable.

11439 4. The carrier's ability to assume and manage the risk of
 11440 enrolling small employer groups without the protection of the
 11441 reinsurance program provided in subsection (11).

11442 (c) A small employer carrier that becomes a risk-assuming
 11443 carrier pursuant to this subsection is not subject to the
 11444 assessment provisions of subsection(11).

11445 (d) The office department shall provide public notice of a
 11446 small employer carrier's designation of election under
 11447 subsection(9) to become a risk-assuming carrier and shall
 11448 provide at least a 21-day period for public comment prior to
 11449 making a decision on the election. The office department shall
 11450 hold a hearing on the election at the request of the carrier.

11451 (e) The office department may rescind the approval granted
 11452 to a risk-assuming carrier under this subsection if the office
 11453 ~~department~~ finds that the carrier no longer meets the criteria
 11454 of paragraph (b).

11455 (11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.--

11456 (b)1. The program shall operate subject to the supervision
 11457 and control of the board.



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11458 2. Effective upon this act becoming a law, the board shall
11459 consist of the Chief Financial Officer ~~commissioner~~ or his or
11460 her designee, who shall serve as the chairperson, and 13
11461 additional members who are representatives of carriers and
11462 insurance agents and are appointed by the Chief Financial
11463 Officer ~~commissioner~~ and serve as follows:

11464 a. The Chief Financial Officer ~~commissioner~~ shall include
11465 representatives of small employer carriers subject to assessment
11466 under this subsection. If two or more carriers elect to be
11467 risk-assuming carriers, the membership must include at least two
11468 representatives of risk-assuming carriers; if one carrier is
11469 risk-assuming, one member must be a representative of such
11470 carrier. At least one member must be a carrier who is subject
11471 to the assessments, but is not a small employer carrier.
11472 Subject to such restrictions, at least five members shall be
11473 selected from individuals recommended by small employer carriers
11474 pursuant to procedures provided by rule of the commission
11475 ~~department~~. Three members shall be selected from a list of
11476 health insurance carriers that issue individual health insurance
11477 policies. At least two of the three members selected must be
11478 reinsuring carriers. Two members shall be selected from a list
11479 of insurance agents who are actively engaged in the sale of
11480 health insurance.

11481 b. A member appointed under this subparagraph shall serve
11482 a term of 4 years and shall continue in office until the
11483 member's successor takes office, except that, in order to
11484 provide for staggered terms, the Chief Financial Officer
11485 ~~commissioner~~ shall designate two of the initial appointees under



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11486 this subparagraph to serve terms of 2 years and shall designate
11487 three of the initial appointees under this subparagraph to serve
11488 terms of 3 years.

11489 3. The Chief Financial Officer ~~commissioner~~ may remove a
11490 member for cause.

11491 4. Vacancies on the board shall be filled in the same
11492 manner as the original appointment for the unexpired portion of
11493 the term.

11494 5. The Chief Financial Officer ~~commissioner~~ may require an
11495 entity that recommends persons for appointment to submit
11496 additional lists of recommended appointees.

11497 (c)1. ~~No later than August 15, 1992,~~ The board shall
11498 submit to the office ~~department~~ a plan of operation to assure
11499 the fair, reasonable, and equitable administration of the
11500 program. The board may at any time submit to the office
11501 ~~department~~ any amendments to the plan that the board finds to be
11502 necessary or suitable.

11503 2. ~~No later than September 15, 1992,~~ The office ~~department~~
11504 shall, after notice and hearing, approve the plan of operation
11505 if it determines that the plan submitted by the board is
11506 suitable to assure the fair, reasonable, and equitable
11507 administration of the program and provides for the sharing of
11508 program gains and losses equitably and proportionately in
11509 accordance with paragraph (j).

11510 3. The plan of operation, or any amendment thereto,
11511 becomes effective upon written approval of the office
11512 ~~department~~.

11513 (d) The plan of operation must, among other things:



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- 11514 1. Establish procedures for handling and accounting for
 11515 program assets and moneys and for an annual fiscal reporting to
 11516 the office ~~department~~.
- 11517 2. Establish procedures for selecting an administering
 11518 carrier and set forth the powers and duties of the administering
 11519 carrier.
- 11520 3. Establish procedures for reinsuring risks.
- 11521 4. Establish procedures for collecting assessments from
 11522 participating carriers to provide for claims reinsured by the
 11523 program and for administrative expenses, other than amounts
 11524 payable to the administrative carrier, incurred or estimated to
 11525 be incurred during the period for which the assessment is made.
- 11526 5. Provide for any additional matters at the discretion of
 11527 the board.
- 11528 (e) The board shall recommend to the office ~~department~~
 11529 market conduct requirements and other requirements for carriers
 11530 and agents, including requirements relating to:
- 11531 1. Registration by each carrier with the office ~~department~~
 11532 of its intention to be a small employer carrier under this
 11533 section;
- 11534 2. Publication by the office ~~department~~ of a list of all
 11535 small employer carriers, including a requirement applicable to
 11536 agents and carriers that a health benefit plan may not be sold
 11537 by a carrier that is not identified as a small employer carrier;
- 11538 3. The availability of a broadly publicized, toll-free
 11539 telephone number for access by small employers to information
 11540 concerning this section;



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11541 4. Periodic reports by carriers and agents concerning
11542 health benefit plans issued; and

11543 5. Methods concerning periodic demonstration by small
11544 employer carriers and agents that they are marketing or issuing
11545 health benefit plans to small employers.

11546 (g) A reinsuring carrier may reinsure with the program
11547 coverage of an eligible employee of a small employer, or any
11548 dependent of such an employee, subject to each of the following
11549 provisions:

11550 1. With respect to a standard and basic health care plan,
11551 the program must reinsure the level of coverage provided; and,
11552 with respect to any other plan, the program must reinsure the
11553 coverage up to, but not exceeding, the level of coverage
11554 provided under the standard and basic health care plan.

11555 2. Except in the case of a late enrollee, a reinsuring
11556 carrier may reinsure an eligible employee or dependent within 60
11557 days after the commencement of the coverage of the small
11558 employer. A newly employed eligible employee or dependent of a
11559 small employer may be reinsured within 60 days after the
11560 commencement of his or her coverage.

11561 3. A small employer carrier may reinsure an entire
11562 employer group within 60 days after the commencement of the
11563 group's coverage under the plan. The carrier may choose to
11564 reinsure newly eligible employees and dependents of the
11565 reinsured group pursuant to subparagraph 1.

11566 4. The program may not reimburse a participating carrier
11567 with respect to the claims of a reinsured employee or dependent
11568 until the carrier has paid incurred claims of at least \$5,000 in



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11569 a calendar year for benefits covered by the program. In
11570 addition, the reinsuring carrier shall be responsible for 10
11571 percent of the next \$50,000 and 5 percent of the next \$100,000
11572 of incurred claims during a calendar year and the program shall
11573 reinsure the remainder.

11574 5. The board annually shall adjust the initial level of
11575 claims and the maximum limit to be retained by the carrier to
11576 reflect increases in costs and utilization within the standard
11577 market for health benefit plans within the state. The adjustment
11578 shall not be less than the annual change in the medical
11579 component of the "Consumer Price Index for All Urban Consumers"
11580 of the Bureau of Labor Statistics of the Department of Labor,
11581 unless the board proposes and the office ~~department~~ approves a
11582 lower adjustment factor.

11583 6. A small employer carrier may terminate reinsurance for
11584 all reinsured employees or dependents on any plan anniversary.

11585 7. The premium rate charged for reinsurance by the program
11586 to a health maintenance organization that is approved by the
11587 Secretary of Health and Human Services as a federally qualified
11588 health maintenance organization pursuant to 42 U.S.C. s.
11589 300e(c)(2)(A) and that, as such, is subject to requirements that
11590 limit the amount of risk that may be ceded to the program, which
11591 requirements are more restrictive than subparagraph 4., shall be
11592 reduced by an amount equal to that portion of the risk, if any,
11593 which exceeds the amount set forth in subparagraph 4. which may
11594 not be ceded to the program.

11595 8. The board may consider adjustments to the premium rates
11596 charged for reinsurance by the program for carriers that use



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11597 effective cost containment measures, including high-cost case
11598 management, as defined by the board.

11599 9. A reinsuring carrier shall apply its case-management
11600 and claims-handling techniques, including, but not limited to,
11601 utilization review, individual case management, preferred
11602 provider provisions, other managed care provisions or methods of
11603 operation, consistently with both reinsured business and
11604 nonreinsured business.

11605 (h)1. The board, as part of the plan of operation, shall
11606 establish a methodology for determining premium rates to be
11607 charged by the program for reinsuring small employers and
11608 individuals pursuant to this section. The methodology shall
11609 include a system for classification of small employers that
11610 reflects the types of case characteristics commonly used by
11611 small employer carriers in the state. The methodology shall
11612 provide for the development of basic reinsurance premium rates,
11613 which shall be multiplied by the factors set for them in this
11614 paragraph to determine the premium rates for the program. The
11615 basic reinsurance premium rates shall be established by the
11616 board, subject to the approval of the office ~~department~~, and
11617 shall be set at levels which reasonably approximate gross
11618 premiums charged to small employers by small employer carriers
11619 for health benefit plans with benefits similar to the standard
11620 and basic health benefit plan. The premium rates set by the
11621 board may vary by geographical area, as determined under this
11622 section, to reflect differences in cost. The multiplying
11623 factors must be established as follows:



11624 a. The entire group may be reinsured for a rate that is
11625 1.5 times the rate established by the board.

11626 b. An eligible employee or dependent may be reinsured for
11627 a rate that is 5 times the rate established by the board.

11628 2. The board periodically shall review the methodology
11629 established, including the system of classification and any
11630 rating factors, to assure that it reasonably reflects the claims
11631 experience of the program. The board may propose changes to the
11632 rates which shall be subject to the approval of the office
11633 department.

11634 (j)1. Before March 1 of each calendar year, the board
11635 shall determine and report to the office ~~department~~ the program
11636 net loss for the previous year, including administrative
11637 expenses for that year, and the incurred losses for the year,
11638 taking into account investment income and other appropriate
11639 gains and losses.

11640 2. Any net loss for the year shall be recouped by
11641 assessment of the carriers, as follows:

11642 a. The operating losses of the program shall be assessed
11643 in the following order subject to the specified limitations.
11644 The first tier of assessments shall be made against reinsuring
11645 carriers in an amount which shall not exceed 5 percent of each
11646 reinsuring carrier's premiums from health benefit plans covering
11647 small employers. If such assessments have been collected and
11648 additional moneys are needed, the board shall make a second tier
11649 of assessments in an amount which shall not exceed 0.5 percent
11650 of each carrier's health benefit plan premiums. Except as
11651 provided in paragraph (n), risk-assuming carriers are exempt



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11652 from all assessments authorized pursuant to this section. The
 11653 amount paid by a reinsuring carrier for the first tier of
 11654 assessments shall be credited against any additional assessments
 11655 made.

11656 b. The board shall equitably assess carriers for operating
 11657 losses of the plan based on market share. The board shall
 11658 annually assess each carrier a portion of the operating losses
 11659 of the plan. The first tier of assessments shall be determined
 11660 by multiplying the operating losses by a fraction, the numerator
 11661 of which equals the reinsuring carrier's earned premium
 11662 pertaining to direct writings of small employer health benefit
 11663 plans in the state during the calendar year for which the
 11664 assessment is levied, and the denominator of which equals the
 11665 total of all such premiums earned by reinsuring carriers in the
 11666 state during that calendar year. The second tier of assessments
 11667 shall be based on the premiums that all carriers, except risk-
 11668 assuming carriers, earned on all health benefit plans written in
 11669 this state. The board may levy interim assessments against
 11670 carriers to ensure the financial ability of the plan to cover
 11671 claims expenses and administrative expenses paid or estimated to
 11672 be paid in the operation of the plan for the calendar year prior
 11673 to the association's anticipated receipt of annual assessments
 11674 for that calendar year. Any interim assessment is due and
 11675 payable within 30 days after receipt by a carrier of the interim
 11676 assessment notice. Interim assessment payments shall be credited
 11677 against the carrier's annual assessment. Health benefit plan
 11678 premiums and benefits paid by a carrier that are less than an



11679 amount determined by the board to justify the cost of collection
11680 may not be considered for purposes of determining assessments.

11681 c. Subject to the approval of the office ~~department~~, the
11682 board shall make an adjustment to the assessment formula for
11683 reinsuring carriers that are approved as federally qualified
11684 health maintenance organizations by the Secretary of Health and
11685 Human Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the
11686 extent, if any, that restrictions are placed on them that are
11687 not imposed on other small employer carriers.

11688 3. Before March 1 of each year, the board shall determine
11689 and file with the office ~~department~~ an estimate of the
11690 assessments needed to fund the losses incurred by the program in
11691 the previous calendar year.

11692 4. If the board determines that the assessments needed to
11693 fund the losses incurred by the program in the previous calendar
11694 year will exceed the amount specified in subparagraph 2., the
11695 board shall evaluate the operation of the program and report its
11696 findings, including any recommendations for changes to the plan
11697 of operation, to the office ~~department~~ within 90 days following
11698 the end of the calendar year in which the losses were incurred.
11699 The evaluation shall include an estimate of future assessments,
11700 the administrative costs of the program, the appropriateness of
11701 the premiums charged and the level of carrier retention under
11702 the program, and the costs of coverage for small employers. If
11703 the board fails to file a report with the office ~~department~~
11704 within 90 days following the end of the applicable calendar
11705 year, the office ~~department~~ may evaluate the operations of the
11706 program and implement such amendments to the plan of operation



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11707 the office ~~department~~ deems necessary to reduce future losses
11708 and assessments.

11709 5. If assessments exceed the amount of the actual losses
11710 and administrative expenses of the program, the excess shall be
11711 held as interest and used by the board to offset future losses
11712 or to reduce program premiums. As used in this paragraph, the
11713 term "future losses" includes reserves for incurred but not
11714 reported claims.

11715 6. Each carrier's proportion of the assessment shall be
11716 determined annually by the board, based on annual statements and
11717 other reports considered necessary by the board and filed by the
11718 carriers with the board.

11719 7. Provision shall be made in the plan of operation for
11720 the imposition of an interest penalty for late payment of an
11721 assessment.

11722 8. A carrier may seek, from the office ~~commissioner~~, a
11723 deferment, in whole or in part, from any assessment made by the
11724 board. The office ~~department~~ may defer, in whole or in part,
11725 the assessment of a carrier if, in the opinion of the office
11726 ~~department~~, the payment of the assessment would place the
11727 carrier in a financially impaired condition. If an assessment
11728 against a carrier is deferred, in whole or in part, the amount
11729 by which the assessment is deferred may be assessed against the
11730 other carriers in a manner consistent with the basis for
11731 assessment set forth in this section. The carrier receiving such
11732 deferment remains liable to the program for the amount deferred
11733 and is prohibited from reinsuring any individuals or groups in
11734 the program if it fails to pay assessments.



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11735 (m) The board shall monitor compliance with this section,
 11736 including the market conduct of small employer carriers, and
 11737 shall report to the office ~~department~~ any unfair trade practices
 11738 and misleading or unfair conduct by a small employer carrier
 11739 that has been reported to the board by agents, consumers, or any
 11740 other person. The office ~~department~~ shall investigate all
 11741 reports and, upon a finding of noncompliance with this section
 11742 or of unfair or misleading practices, shall take action against
 11743 the small employer carrier as permitted under the insurance code
 11744 or chapter 641. The board is not given investigatory or
 11745 regulatory powers, but must forward all reports of cases or
 11746 abuse or misrepresentation to the office ~~department~~.

11747 (12) STANDARD, BASIC, AND LIMITED HEALTH BENEFIT PLANS.--

11748 (a)1. ~~By May 15, 1993,~~ The Chief Financial Officer
 11749 ~~commissioner~~ shall appoint a health benefit plan committee
 11750 composed of four representatives of carriers which shall include
 11751 at least two representatives of HMOs, at least one of which is a
 11752 staff model HMO, two representatives of agents, four
 11753 representatives of small employers, and one employee of a small
 11754 employer. The carrier members shall be selected from a list of
 11755 individuals recommended by the board. The Chief Financial
 11756 Officer ~~commissioner~~ may require the board to submit additional
 11757 recommendations of individuals for appointment.

11758 2. The plans shall comply with all of the requirements of
 11759 this subsection.

11760 3. The plans must be filed with and approved by the office
 11761 ~~department~~ prior to issuance or delivery by any small employer
 11762 carrier.



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11763 4. After approval of the revised health benefit plans, if
11764 the office department determines that modifications to a plan
11765 might be appropriate, the Chief Financial Officer ~~commissioner~~
11766 shall appoint a new health benefit plan committee in the manner
11767 provided in subparagraph 1. to submit recommended modifications
11768 to the office department for approval.

11769 (b)1. Each small employer carrier issuing new health
11770 benefit plans shall offer to any small employer, upon request, a
11771 standard health benefit plan and a basic health benefit plan
11772 that meets the criteria set forth in this section.

11773 2. For purposes of this subsection, the terms "standard
11774 health benefit plan" and "basic health benefit plan" mean
11775 policies or contracts that a small employer carrier offers to
11776 eligible small employers that contain:

11777 a. An exclusion for services that are not medically
11778 necessary or that are not covered preventive health services;
11779 and

11780 b. A procedure for preauthorization by the small employer
11781 carrier, or its designees.

11782 3. A small employer carrier may include the following
11783 managed care provisions in the policy or contract to control
11784 costs:

11785 a. A preferred provider arrangement or exclusive provider
11786 organization or any combination thereof, in which a small
11787 employer carrier enters into a written agreement with the
11788 provider to provide services at specified levels of
11789 reimbursement or to provide reimbursement to specified
11790 providers. Any such written agreement between a provider and a



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11791 small employer carrier must contain a provision under which the
 11792 parties agree that the insured individual or covered member has
 11793 no obligation to make payment for any medical service rendered
 11794 by the provider which is determined not to be medically
 11795 necessary. A carrier may use preferred provider arrangements or
 11796 exclusive provider arrangements to the same extent as allowed in
 11797 group products that are not issued to small employers.

11798 b. A procedure for utilization review by the small
 11799 employer carrier or its designees.

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11802 This subparagraph does not prohibit a small employer carrier
 11803 from including in its policy or contract additional managed care
 11804 and cost containment provisions, subject to the approval of the
 11805 office department, which have potential for controlling costs in
 11806 a manner that does not result in inequitable treatment of
 11807 insureds or subscribers. The carrier may use such provisions to
 11808 the same extent as authorized for group products that are not
 11809 issued to small employers.

11810 4. The standard health benefit plan shall include:

11811 a. Coverage for inpatient hospitalization;

11812 b. Coverage for outpatient services;

11813 c. Coverage for newborn children pursuant to s. 627.6575;

11814 d. Coverage for child care supervision services pursuant
 11815 to s. 627.6579;

11816 e. Coverage for adopted children upon placement in the
 11817 residence pursuant to s. 627.6578;

11818 f. Coverage for mammograms pursuant to s. 627.6613;



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11819 g. Coverage for handicapped children pursuant to s.
11820 627.6615;

11821 h. Emergency or urgent care out of the geographic service
11822 area; and

11823 i. Coverage for services provided by a hospice licensed
11824 under s. 400.602 in cases where such coverage would be the most
11825 appropriate and the most cost-effective method for treating a
11826 covered illness.

11827 5. The standard health benefit plan and the basic health
11828 benefit plan may include a schedule of benefit limitations for
11829 specified services and procedures. If the committee develops
11830 such a schedule of benefits limitation for the standard health
11831 benefit plan or the basic health benefit plan, a small employer
11832 carrier offering the plan must offer the employer an option for
11833 increasing the benefit schedule amounts by 4 percent annually.

11834 6. The basic health benefit plan shall include all of the
11835 benefits specified in subparagraph 4.; however, the basic health
11836 benefit plan shall place additional restrictions on the benefits
11837 and utilization and may also impose additional cost containment
11838 measures.

11839 7. Sections 627.419(2), (3), and (4), 627.6574, 627.6612,
11840 627.66121, 627.66122, 627.6616, 627.6618, 627.668, and 627.66911
11841 apply to the standard health benefit plan and to the basic
11842 health benefit plan. However, notwithstanding said provisions,
11843 the plans may specify limits on the number of authorized
11844 treatments, if such limits are reasonable and do not
11845 discriminate against any type of provider.



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11846 8. Each small employer carrier that provides for inpatient
11847 and outpatient services by allopathic hospitals may provide as
11848 an option of the insured similar inpatient and outpatient
11849 services by hospitals accredited by the American Osteopathic
11850 Association when such services are available and the osteopathic
11851 hospital agrees to provide the service.

11852 (c) If a small employer rejects, in writing, the standard
11853 health benefit plan and the basic health benefit plan, the small
11854 employer carrier may offer the small employer a limited benefit
11855 policy or contract.

11856 (d)1. Upon offering coverage under a standard health
11857 benefit plan, a basic health benefit plan, or a limited benefit
11858 policy or contract for any small employer, the small employer
11859 carrier shall provide such employer group with a written
11860 statement that contains, at a minimum:

11861 a. An explanation of those mandated benefits and providers
11862 that are not covered by the policy or contract;

11863 b. An explanation of the managed care and cost control
11864 features of the policy or contract, along with all appropriate
11865 mailing addresses and telephone numbers to be used by insureds
11866 in seeking information or authorization; and

11867 c. An explanation of the primary and preventive care
11868 features of the policy or contract.

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11871 Such disclosure statement must be presented in a clear and
11872 understandable form and format and must be separate from the



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11873 policy or certificate or evidence of coverage provided to the
11874 employer group.

11875 2. Before a small employer carrier issues a standard
11876 health benefit plan, a basic health benefit plan, or a limited
11877 benefit policy or contract, it must obtain from the prospective
11878 policyholder a signed written statement in which the prospective
11879 policyholder:

11880 a. Certifies as to eligibility for coverage under the
11881 standard health benefit plan, basic health benefit plan, or
11882 limited benefit policy or contract;

11883 b. Acknowledges the limited nature of the coverage and an
11884 understanding of the managed care and cost control features of
11885 the policy or contract;

11886 c. Acknowledges that if misrepresentations are made
11887 regarding eligibility for coverage under a standard health
11888 benefit plan, a basic health benefit plan, or a limited benefit
11889 policy or contract, the person making such misrepresentations
11890 forfeits coverage provided by the policy or contract; and

11891 d. If a limited plan is requested, acknowledges that the
11892 prospective policyholder had been offered, at the time of
11893 application for the insurance policy or contract, the
11894 opportunity to purchase any health benefit plan offered by the
11895 carrier and that the prospective policyholder had rejected that
11896 coverage.

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11899 A copy of such written statement shall be provided to the
11900 prospective policyholder no later than at the time of delivery



11901 of the policy or contract, and the original of such written
 11902 statement shall be retained in the files of the small employer
 11903 carrier for the period of time that the policy or contract
 11904 remains in effect or for 5 years, whichever period is longer.

11905 3. Any material statement made by an applicant for
 11906 coverage under a health benefit plan which falsely certifies as
 11907 to the applicant's eligibility for coverage serves as the basis
 11908 for terminating coverage under the policy or contract.

11909 4. Each marketing communication that is intended to be
 11910 used in the marketing of a health benefit plan in this state
 11911 must be submitted for review by the office ~~department~~ prior to
 11912 use and must contain the disclosures stated in this subsection.

11913 (e) A small employer carrier may not use any policy,
 11914 contract, form, or rate under this section, including
 11915 applications, enrollment forms, policies, contracts,
 11916 certificates, evidences of coverage, riders, amendments,
 11917 endorsements, and disclosure forms, until the insurer has filed
 11918 it with the office ~~department~~ and the office ~~department~~ has
 11919 approved it under ss. 627.410 and 627.411 and this section.

11920 (13) STANDARDS TO ASSURE FAIR MARKETING.--

11921 (i) The commission ~~department~~ may establish regulations
 11922 setting forth additional standards to provide for the fair
 11923 marketing and broad availability of health benefit plans to
 11924 small employers in this state.

11925 (15) APPLICABILITY OF OTHER STATE LAWS.--

11926 (a) Except as expressly provided in this section, a law
 11927 requiring coverage for a specific health care service or
 11928 benefit, or a law requiring reimbursement, utilization, or



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11929 | consideration of a specific category of licensed health care
 11930 | practitioner, does not apply to a standard or basic health
 11931 | benefit plan policy or contract or a limited benefit policy or
 11932 | contract offered or delivered to a small employer unless that
 11933 | law is made expressly applicable to such policies or contracts.
 11934 | A law restricting or limiting deductibles, coinsurance,
 11935 | copayments, or annual or lifetime maximum payments does not
 11936 | apply to any health plan policy, including a standard or basic
 11937 | health benefit plan policy or contract, offered or delivered to
 11938 | a small employer unless such law is made expressly applicable to
 11939 | such policy or contract. However, every small employer carrier
 11940 | must offer to eligible small employers the standard benefit plan
 11941 | and the basic benefit plan, as required by subsection (5), as
 11942 | such plans have been approved by the office ~~department~~ pursuant
 11943 | to subsection (12).

11944 | (16) RULEMAKING AUTHORITY.--The commission ~~department~~ may
 11945 | adopt rules to administer this section, including rules
 11946 | governing compliance by small employer carriers and small
 11947 | employers.

11948 | Section 207. Section 627.7015, Florida Statutes, is
 11949 | amended to read:

11950 | 627.7015 Alternative procedure for resolution of disputed
 11951 | property insurance claims.--

11952 | (1) PURPOSE AND SCOPE.--This section sets forth a
 11953 | nonadversarial alternative dispute resolution procedure for a
 11954 | mediated claim resolution conference prompted by the need for
 11955 | effective, fair, and timely handling of property insurance
 11956 | claims. There is a particular need for an informal,



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11957 | nonthreatening forum for helping parties who elect this
11958 | procedure to resolve their claims disputes because most
11959 | homeowner's insurance policies obligate insureds to participate
11960 | in a potentially expensive and time-consuming adversarial
11961 | appraisal process prior to litigation. The procedure set forth
11962 | in this section is designed to bring the parties together for a
11963 | mediated claims settlement conference without any of the
11964 | trappings or drawbacks of an adversarial process. Before
11965 | resorting to these procedures, insureds and insurers are
11966 | encouraged to resolve claims as quickly and fairly as possible.
11967 | This section is available with respect to claims under personal
11968 | lines policies for all claimants and insurers prior to
11969 | commencing the appraisal process, or commencing litigation. If
11970 | requested by the insured, participation by legal counsel shall
11971 | be permitted. Mediation under this section is also available to
11972 | litigants referred to the department by a county court or
11973 | circuit court. This section does not apply to commercial
11974 | coverages, to private passenger motor vehicle insurance
11975 | coverages, or to disputes relating to liability coverages in
11976 | policies of property insurance.

11977 | (2) At the time a first-party claim within the scope of
11978 | this section is filed, the insurer shall notify all first-party
11979 | claimants of their right to participate in the mediation program
11980 | under this section. The department shall prepare a consumer
11981 | information pamphlet for distribution to persons participating
11982 | in mediation under this section.

11983 | (3) The costs of mediation shall be reasonable, and the
11984 | insurer shall bear all of the cost of conducting mediation



11985 conferences, except as otherwise provided in this section. If an
 11986 insured fails to appear at the conference, the conference shall
 11987 be rescheduled upon the insured's payment of the costs of a
 11988 rescheduled conference. If the insurer fails to appear at the
 11989 conference, the insurer shall pay the insured's actual cash
 11990 expenses incurred in attending the conference if the insurer's
 11991 failure to attend was not due to a good cause acceptable to the
 11992 department. An insurer will be deemed to have failed to appear
 11993 if the insurer's representative lacks authority to settle the
 11994 full value of the claim. The insurer shall incur an additional
 11995 fee for a rescheduled conference necessitated by the insurer's
 11996 failure to appear at a scheduled conference. The fees assessed
 11997 by the administrator shall include a charge necessary to defray
 11998 the expenses of the department related to its duties under this
 11999 section and shall be deposited in the Insurance ~~Commissioner's~~
 12000 Regulatory Trust Fund.

12001 (4) The department shall adopt by rule a property
 12002 insurance mediation program to be administered by the department
 12003 or its designee. The department may also adopt special rules
 12004 which are applicable in cases of an emergency within the state.
 12005 The rules shall be modeled after practices and procedures set
 12006 forth in mediation rules of procedure adopted by the Supreme
 12007 Court. The rules shall provide for:

12008 (a) Reasonable requirement for processing and scheduling
 12009 of requests for mediation.

12010 (b) Qualifications of mediators as provided in s. 627.745
 12011 and in the Florida Rules of Certified and Court Appointed
 12012 Mediators, and for such other individuals as are qualified by



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12013 education, training, or experience as the department determines
12014 to be appropriate.

12015 (c) Provisions governing who may attend mediation
12016 conferences.

12017 (d) Selection of mediators.

12018 (e) Criteria for the conduct of mediation conferences.

12019 (f) Right to legal counsel.

12020 (5) All statements made and documents produced at a
12021 mediation conference shall be deemed to be settlement
12022 negotiations in anticipation of litigation within the scope of
12023 s. 90.408. All parties to the mediation must negotiate in good
12024 faith and must have the authority to immediately settle the
12025 claim. Mediators are deemed to be agents of the department and
12026 shall have the immunity from suit provided in s. 44.107.

12027 (6) Mediation is nonbinding; however, if a written
12028 settlement is reached, the insured has 3 business days within
12029 which the insured may rescind the settlement unless the insured
12030 has cashed or deposited any check or draft disbursed to the
12031 insured for the disputed matters as a result of the conference.
12032 If a settlement agreement is reached and is not rescinded, it
12033 shall be binding and act as a release of all specific claims
12034 that were presented in that mediation conference.

12035 (7) If the insurer requests the mediation, and the
12036 mediation results are rejected by either party, the insured
12037 shall not be required to submit to or participate in any
12038 contractual loss appraisal process of the property loss damage
12039 as a precondition to legal action for breach of contract against



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12040 the insurer for its failure to pay the policyholder's claims
12041 covered by the policy.

12042 (8) The department may designate an entity or person to
12043 serve as administrator to carry out any of the provisions of
12044 this section and may take this action by means of a written
12045 contract or agreement.

12046 Section 208. Section 627.745, Florida Statutes, is amended
12047 to read:

12048 627.745 Mediation of claims.--

12049 (1)(a) In any claim filed with an insurer for personal
12050 injury in an amount of \$10,000 or less or any claim for property
12051 damage in any amount, arising out of the ownership, operation,
12052 use, or maintenance of a motor vehicle, either party may demand
12053 mediation of the claim prior to the institution of litigation.

12054 (b) A request for mediation shall be filed with the office
12055 ~~department~~ on a form approved by the office ~~department~~. The
12056 request for mediation shall state the reason for the request for
12057 mediation and the issues in dispute which are to be mediated.
12058 The filing of a request for mediation tolls the applicable time
12059 requirements for filing suit for a period of 60 days following
12060 the conclusion of the mediation process or the time prescribed
12061 in s. 95.11, whichever is later.

12062 (c) The insurance policy must specify in detail the terms
12063 and conditions for mediation of a first-party claim.

12064 (d) The mediation shall be conducted as an informal
12065 process in which formal rules of evidence and procedure need not
12066 be observed. Any party participating in a mediation must have



12067 | the authority to make a binding decision. All parties must
12068 | mediate in good faith.

12069 | (e) The office ~~department~~ shall randomly select mediators.
12070 | Each party may once reject the mediator selected, either
12071 | originally or after the opposing side has exercised its option
12072 | to reject a mediator.

12073 | (f) Costs of mediation shall be borne equally by both
12074 | parties unless the mediator determines that one party has not
12075 | mediated in good faith.

12076 | (g) Only one mediation may be requested for each claim,
12077 | unless all parties agree to further mediation.

12078 | (2) Upon receipt of a request for mediation, the office
12079 | ~~department~~ shall refer the request to a mediator. The mediator
12080 | shall notify the applicant and all interested parties, as
12081 | identified by the applicant, and any other parties the mediator
12082 | believes may have an interest in the mediation, of the date,
12083 | time, and place of the mediation conference. The conference may
12084 | be held by telephone, if feasible. The mediation conference
12085 | shall be held within 45 days after the request for mediation.

12086 | (3)(a) The office ~~department~~ shall approve mediators to
12087 | conduct mediations pursuant to this section. All mediators must
12088 | file an application under oath for approval as a mediator.

12089 | (b) To qualify for approval as a mediator, a person must
12090 | meet the following qualifications:

12091 | 1. Possess a masters or doctorate degree in psychology,
12092 | counseling, business, accounting, or economics, be a member of
12093 | The Florida Bar, be licensed as a certified public accountant,
12094 | or demonstrate that the applicant for approval has been actively



12095 engaged as a qualified mediator for at least 4 years prior to
12096 July 1, 1990.

12097 2. Within 4 years immediately preceding the date the
12098 application for approval is filed with the office ~~department~~,
12099 have completed a minimum of a 40-hour training program approved
12100 by the office ~~department~~ and successfully passed a final
12101 examination included in the training program and approved by the
12102 office ~~department~~. The training program shall include and
12103 address all of the following:

- 12104 a. Mediation theory.
- 12105 b. Mediation process and techniques.
- 12106 c. Standards of conduct for mediators.
- 12107 d. Conflict management and intervention skills.
- 12108 e. Insurance nomenclature.

12109 (4) The commission ~~department~~ must adopt rules of
12110 procedure for claims mediation, taking into consideration a
12111 system which:

- 12112 (a) Is fair.
- 12113 (b) Promotes settlement.
- 12114 (c) Avoids delay.
- 12115 (d) Is nonadversarial.
- 12116 (e) Uses a framework for modern mediating technique.
- 12117 (f) Controls costs and expenses of mediation.

12118 (5) Disclosures and information divulged in the mediation
12119 process are not admissible in any subsequent action or
12120 proceeding relating to the claim or to the cause of action
12121 giving rise to the claim. A person demanding mediation under



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12122 | this section may not demand or request mediation after a suit is
12123 | filed relating to the same facts already mediated.

12124 | Section 209. Section 628.4615, Florida Statutes, is
12125 | amended to read:

12126 | 628.4615 Specialty insurers; acquisition of controlling
12127 | stock, ownership interest, assets, or control; merger or
12128 | consolidation.--

12129 | (1) For the purposes of this section, the term "specialty
12130 | insurer" means any person holding a license or certificate of
12131 | authority as:

12132 | (a) A motor vehicle service agreement company authorized
12133 | to issue motor vehicle service agreements as those terms are
12134 | defined in s. 634.011~~(7)(8)~~ and~~(8)(9)~~;

12135 | (b) A home warranty association authorized to issue "home
12136 | warranties" as those terms are defined in s. 634.301~~(3)(4)~~ and
12137 | ~~(4)(5)~~;

12138 | (c) A service warranty association authorized to issue
12139 | "service warranties" as those terms are defined in s.
12140 | 634.401~~(13)(14)~~ and ~~(14)(15)~~;

12141 | (d) A prepaid limited health service organization
12142 | authorized to issue prepaid limited health service contracts, as
12143 | those terms are defined in chapter 636 ~~An optometric service~~
12144 | ~~plan corporation authorized to issue optometric service plan~~
12145 | ~~contracts as those terms are defined in s. 637.001(2) and (3);~~

12146 | ~~(e) A pharmaceutical service plan corporation authorized~~
12147 | ~~to issue pharmaceutical service plan contracts as those terms~~
12148 | ~~are defined in s. 637.1701(2) and (3);~~



12149 ~~(f)~~ A dental service plan corporation licensed to issue
 12150 contracts for dental services pursuant to a dental service plan
 12151 as that term is defined in s. ~~637.401(1)~~;

12152 ~~(g)~~ An ambulance service association authorized to issue
 12153 ambulance service contracts as those terms are defined in s.
 12154 ~~638.021(1) and (2)~~;

12155 (e)~~(h)~~ An authorized health maintenance organization
 12156 operating pursuant to s. 641.21;

12157 (f)~~(i)~~ An authorized prepaid health clinic operating
 12158 pursuant to s. 641.405;

12159 (g)~~(j)~~ A legal expense insurance corporation authorized to
 12160 engage in a legal expense insurance business pursuant to s.
 12161 642.021;

12162 (h)~~(k)~~ A provider which is licensed to operate a facility
 12163 which undertakes to provide continuing care as those terms are
 12164 defined in s. 651.011(2), (4), (5), and (6), ~~and (7)~~;

12165 (i)~~(l)~~ A multiple-employer welfare arrangement operating
 12166 pursuant to ss. 624.436-624.446;

12167 (j)~~(m)~~ A premium finance company authorized to finance
 12168 insurance premiums pursuant to s. 627.828; or

12169 (k)~~(n)~~ A corporation authorized to accept donor annuity
 12170 agreements pursuant to s. 627.481.

12171 (2) No person shall, individually or in conjunction with
 12172 any affiliated person of such person, directly or indirectly,
 12173 conclude a tender offer or exchange offer for, enter into any
 12174 agreement to exchange securities for, or otherwise finally
 12175 acquire, 10 percent or more of the outstanding voting securities
 12176 of a specialty insurer which is a stock corporation or of a



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12177 controlling company of a specialty insurer which is a stock
 12178 corporation; or conclude an acquisition of, or otherwise finally
 12179 acquire, 10 percent or more of the ownership interest of a
 12180 specialty insurer which is not a stock corporation or of a
 12181 controlling company of a specialty insurer which is not a stock
 12182 corporation, unless:

12183 (a) The person or affiliated person has filed with the
 12184 office department and sent by registered mail to the principal
 12185 office of the specialty insurer and controlling company an
 12186 application, signed under oath and prepared on forms prescribed
 12187 by the commission department, that contains the information
 12188 specified in subsection(4) no later than 5 days after any form
 12189 of tender offer or exchange offer is proposed, or no later than
 12190 5 days after the acquisition of the securities or ownership
 12191 interest if no tender offer or exchange offer is involved.

12192 (b) The office department has approved the tender offer or
 12193 exchange offer, or acquisition if no tender offer or exchange
 12194 offer is involved.

12195 (3) This section does not apply to any acquisition of
 12196 voting securities or ownership interest of a specialty insurer
 12197 or of a controlling company by any person who, on July 9, 1986,
 12198 is the owner of a majority of such voting securities or
 12199 ownership interest or who, on or after July 9, 1986, becomes the
 12200 owner of a majority of such voting securities or ownership
 12201 interest with the approval of the office department pursuant to
 12202 this section.

12203 (4) The application to be filed with the office department
 12204 and furnished to the specialty insurer and controlling company



12205 shall contain the following information and any additional
 12206 information as the office deems ~~department may deem~~ necessary to
 12207 determine the character, experience, ability, and other
 12208 qualifications of the person or affiliated person of such person
 12209 for the protection of the insureds of the insurer and of the
 12210 public:

12211 (a)1. The identity of, and the background information
 12212 specified in subsection (5) on, each natural person by whom, or
 12213 on whose behalf, the acquisition is to be made; and,

12214 2. If the acquisition is to be made by, or on behalf of, a
 12215 person other than a natural person and as to any person who
 12216 controls, either directly or indirectly, such other person, the
 12217 identity of, and the background information specified in
 12218 subsection (5) on:

12219 a. Each director, officer, or trustee, if a corporation,
 12220 or

12221 b. Each partner, owner, manager, or joint venturer, or
 12222 other person performing duties similar to those of persons in
 12223 the aforementioned positions, if not a corporation,

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 12225
 12226 for the person.

12227 (b) The source and amount of the funds or other
 12228 consideration used, or to be used, in making the acquisition.

12229 (c) Any plans or proposals which such persons may have
 12230 made to liquidate the specialty insurer, to sell any of its
 12231 assets or merge or consolidate it with any person, or to make
 12232 any other major change in its business or corporate structure or



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12233 management; and any plans or proposals which such persons may
12234 have made to liquidate any controlling company of the specialty
12235 insurer, to sell any of its assets or merge or consolidate it
12236 with any person, or to make any other major change in its
12237 business or corporate structure or management.

12238 (d) The nature and the extent of the controlling interest
12239 which the person or affiliated person of such person proposes to
12240 acquire, the terms of the proposed acquisition, and the manner
12241 in which the controlling interest is to be acquired of a
12242 specialty insurer or controlling company which is not a stock
12243 corporation.

12244 (e) The number of shares or other securities which the
12245 person or affiliated person of such person proposes to acquire,
12246 the terms of the proposed acquisition, and the manner in which
12247 the securities are to be acquired.

12248 (f) Information as to any contract, arrangement, or
12249 understanding with any party with respect to any of the
12250 securities of the specialty insurer or controlling company,
12251 including, but not limited to, information relating to the
12252 transfer of any of the securities, option arrangements, puts or
12253 calls, or the giving or withholding of proxies, which
12254 information names the party with whom the contract, arrangement,
12255 or understanding has been entered into and gives the details
12256 thereof.

12257 (5)(a) The information as to the background and identity
12258 of each natural person, which information is required to be
12259 furnished pursuant to paragraph(4)(a), shall include:



- 12260 | 1. The natural person's occupations, positions of
12261 | employment, and offices held during the past 10 years.
- 12262 | 2. The principal business and address of any business,
12263 | corporation, or organization in which each such office of the
12264 | natural person was held, or in which each such occupation or
12265 | position of employment was carried on.
- 12266 | 3. Whether the natural person was, at any time during such
12267 | 10-year period, convicted of any crime other than a traffic
12268 | violation.
- 12269 | 4. Whether the natural person has been, during such 10-
12270 | year period, the subject of any proceeding for the revocation of
12271 | any license and, if so, the nature of the proceeding and the
12272 | disposition of the proceeding.
- 12273 | 5. Whether, during the 10-year period, the natural person
12274 | has been the subject of any proceeding under the federal
12275 | Bankruptcy Act; or whether, during the 10-year period, any
12276 | person or other business or organization in which the natural
12277 | person was a director, officer, trustee, partner, owner,
12278 | manager, or other official has been subject to any such
12279 | proceeding, either during the time in which the natural person
12280 | was a director, officer, or trustee, if a corporation, or a
12281 | partner, owner, manager, joint venturer, or other official, if
12282 | not a corporation, or within 12 months thereafter.
- 12283 | 6. Whether, during the 10-year period, the natural person
12284 | has been enjoined, either temporarily or permanently, by a court
12285 | of competent jurisdiction from violating any federal or state
12286 | law regulating the business of insurance, securities, or
12287 | banking, or from carrying out any particular practice or



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12288 practices in the course of the business of insurance,
 12289 securities, or banking, together with details as to any such
 12290 event.
 12291 7. Fingerprints of each person referred to in subsection
 12292 (4).
 12293 (b) Any person filing the statement required by this
 12294 section shall give all required information that is within the
 12295 knowledge of:
 12296 1. The directors, officers, or trustees, if a corporation,
 12297 or
 12298 2. The partners, owners, managers, or joint venturers, or
 12299 others performing functions similar to those of a director,
 12300 officer, or trustee, if not a corporation,
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 12303 of the person making the filing and of any person controlling
 12304 either directly or indirectly such person. If any material
 12305 change occurs in the facts set forth in the application filed
 12306 with the office ~~department~~ pursuant to this section, an
 12307 amendment setting forth such changes shall be filed immediately
 12308 with the office ~~department~~, and a copy of the amendment shall be
 12309 sent by registered mail to the principal office of the specialty
 12310 insurer and to the principal office of the controlling company.
 12311 (6)(a) The acquisition application shall be reviewed in
 12312 accordance with chapter 120. The office ~~department~~ may on its
 12313 own initiate, or, if requested to do so in writing by a
 12314 substantially affected person, shall conduct, a proceeding to
 12315 consider the appropriateness of the proposed filing. Time



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12316 periods for purposes of chapter 120 shall be tolled during the
12317 pendency of the proceeding. Any written request for a proceeding
12318 must be filed with the office ~~department~~ within 10 days of the
12319 date notice of the filing is given. During the pendency of the
12320 proceeding or review period by the office ~~department~~, any person
12321 or affiliated person complying with the filing requirements of
12322 this section may proceed and take all steps necessary to
12323 conclude the acquisition so long as the acquisition becoming
12324 final is conditioned upon obtaining office ~~departmental~~
12325 approval. The office ~~department~~ shall, however, at any time it
12326 finds an immediate danger to the public health, safety, and
12327 welfare of the insureds exists, immediately order, pursuant to
12328 s. 120.569(2)(n), the proposed acquisition disapproved and any
12329 further steps to conclude the acquisition ceased.

12330 (b) During the pendency of the office's ~~department's~~
12331 review of any acquisition subject to the provisions of this
12332 section, the acquiring person shall not make any material change
12333 in the operation of the specialty insurer or controlling company
12334 unless the office ~~department~~ has specifically approved the
12335 change nor shall the acquiring person make any material change
12336 in the management of the specialty insurer unless advance
12337 written notice of the change in management is furnished to the
12338 office ~~department~~. A material change in the operation of the
12339 specialty insurer is a transaction which disposes of or
12340 obligates 5 percent or more of the capital and surplus of the
12341 specialty insurer. A material change in the management of the
12342 specialty insurer is any change in management involving officers
12343 or directors of the specialty insurer or any person of the



12344 specialty insurer or controlling company having authority to
 12345 dispose of or obligate 5 percent or more of the specialty
 12346 insurer's capital or surplus. The office ~~department~~ shall
 12347 approve a material change in operations if it finds the
 12348 applicable provisions of subsection (8) have been met. The
 12349 office ~~department~~ may disapprove a material change in management
 12350 if it finds that the applicable provisions of subsection (8)
 12351 have not been met and in such case the specialty insurer shall
 12352 promptly change management as acceptable to the office
 12353 ~~department~~.

12354 (c) If a request for a proceeding is filed, the proceeding
 12355 shall be conducted within 60 days after the date the written
 12356 request for a proceeding is received by the office ~~department~~. A
 12357 recommended order shall be issued within 20 days of the date of
 12358 the close of the proceedings. A final order shall be issued
 12359 within 20 days of the date of the recommended order or, if
 12360 exceptions to the recommended order are filed, within 20 days of
 12361 the date the exceptions are filed.

12362 (7) The office ~~department~~ may disapprove any acquisition
 12363 subject to the provisions of this section by any person or any
 12364 affiliated person of such person who:

12365 (a) Willfully violates this section;

12366 (b) In violation of an order of the office ~~department~~
 12367 issued pursuant to subsection (11), fails to divest himself or
 12368 herself of any stock or ownership interest obtained in violation
 12369 of this section or fails to divest himself or herself of any
 12370 direct or indirect control of such stock or ownership interest,
 12371 within 25 days after such order; or



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12372 (c) In violation of an order issued by the office
 12373 ~~department~~ pursuant to subsection (11), acquires an additional
 12374 stock or ownership interest in a specialty insurer or
 12375 controlling company or direct or indirect control of such stock
 12376 or ownership interest, without complying with this section.

12377 (8) The person or persons filing the application required
 12378 by subsection(2) shall have the burden of proof. The office
 12379 ~~department~~ shall approve any such acquisition if it finds, on
 12380 the basis of the record made during any proceeding or on the
 12381 basis of the filed application if no proceeding is conducted,
 12382 that:

12383 (a) Upon completion of the acquisition, the specialty
 12384 insurer will be able to satisfy the requirements for the
 12385 issuance of a license or certificate to write the line of
 12386 insurance for which it is presently licensed or certificated.

12387 (b) The financial condition of the acquiring person or
 12388 persons will not jeopardize the financial stability of the
 12389 specialty insurer or prejudice the interests of its insureds or
 12390 the public.

12391 (c) Any plan or proposal which the acquiring person has,
 12392 or acquiring persons have, made:

12393 1. To liquidate the specialty insurer, sell its assets, or
 12394 merge or consolidate it with any person, or to make any other
 12395 major change in its business or corporate structure or
 12396 management, or

12397 2. To liquidate any controlling company, sell its assets,
 12398 or merge or consolidate it with any person, or to make any major



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12399 | change in its business or corporate structure or management
12400 | which would have an effect upon the specialty insurer,

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12403 | is fair and free of prejudice to the insureds of the specialty
12404 | insurer or to the public.

12405 | (d) The competence, experience, and integrity of those
12406 | persons who will control directly or indirectly the operation of
12407 | the specialty insurer indicate that the acquisition is in the
12408 | best interest of the insureds of the insurer and in the public
12409 | interest.

12410 | (e) The natural persons for whom background information is
12411 | required to be furnished pursuant to this section have such
12412 | backgrounds as to indicate that it is in the best interests of
12413 | the insureds of the specialty insurer and in the public interest
12414 | to permit such persons to exercise control over the specialty
12415 | insurer.

12416 | (f) The directors and officers, if such specialty insurer
12417 | or controlling company is a stock corporation, or the trustees,
12418 | partners, owners, managers, or joint venturers or other persons
12419 | performing duties similar to those of persons in the
12420 | aforementioned positions, if such specialty insurer or
12421 | controlling company is not a stock corporation, to be employed
12422 | after the acquisition have sufficient insurance experience and
12423 | ability to assure reasonable promise of successful operation.

12424 | (g) The management of the specialty insurer after the
12425 | acquisition will be competent and trustworthy, and will possess
12426 | sufficient managerial experience so as to make the proposed



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12427 operation of the specialty insurer not hazardous to the
12428 insurance-buying public.

12429 (h) The management of the specialty insurer after the
12430 acquisition shall not include any person who has directly or
12431 indirectly through ownership, control, reinsurance transactions,
12432 or other insurance or business relations unlawfully manipulated
12433 the assets, accounts, finances, or books of any insurer or
12434 otherwise acted in bad faith with respect thereto.

12435 (i) The acquisition is not likely to be hazardous or
12436 prejudicial to the insureds of the insurer or to the public.

12437 (j) The effect of the acquisition would not substantially
12438 lessen competition in the line of insurance for which the
12439 specialty insurer is licensed or certified in this state or
12440 would not tend to create a monopoly therein.

12441 (9) No vote by the stockholder of record, or by any other
12442 person, of any security acquired in contravention of the
12443 provisions of this section is valid. Any acquisition contrary
12444 to the provisions of this section is void. Upon the petition of
12445 the specialty insurer or the controlling company, the circuit
12446 court for the county in which the principal office of the
12447 specialty insurer is located may, without limiting the
12448 generality of its authority, order the issuance or entry of an
12449 injunction or other order to enforce the provisions of this
12450 section. There shall be a private right of action in favor of
12451 the specialty insurer or controlling company to enforce the
12452 provisions of this section. No demand upon the office
12453 ~~department~~ that it perform its functions shall be required as a
12454 prerequisite to any suit by the specialty insurer or controlling



12455 company against any other person, and in no case shall the
 12456 office department be deemed a necessary party to any action by
 12457 the specialty insurer or controlling company to enforce the
 12458 provisions of this section. Any person who makes or proposes an
 12459 acquisition requiring the filing of an application pursuant to
 12460 this section, or who files such an application, shall be deemed
 12461 to have thereby designated the Chief Financial Officer Insurance
 12462 ~~Commissioner and Treasurer~~, or his or her assistant or deputy or
 12463 another person in charge of his or her office, as such person's
 12464 agent for service of process under this section and shall
 12465 thereby be deemed to have submitted himself or herself to the
 12466 administrative jurisdiction of the office department and to the
 12467 jurisdiction of the circuit court.

12468 (10) Any approval by the office department under this
 12469 section does not constitute a recommendation by the office
 12470 ~~department~~ of the tender offer or exchange offer, or
 12471 acquisition, if no tender offer or exchange offer is involved.
 12472 It is unlawful for a person to represent that the office's
 12473 ~~department's~~ approval constitutes a recommendation. A person who
 12474 violates the provisions of this subsection commits a felony of
 12475 the third degree, punishable as provided in s. 775.082, s.
 12476 775.083, or s. 775.084. The statute-of-limitations period for
 12477 the prosecution of an offense committed under this subsection is
 12478 5 years.

12479 (11) If the office department determines that any person
 12480 or any affiliated person of such person has acquired 10 percent
 12481 or more of the outstanding voting securities of a specialty
 12482 insurer or controlling company which is a stock corporation, or



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12483 10 percent or more of the ownership interest of a specialty
 12484 insurer or controlling company which is not a stock corporation,
 12485 without complying with the provisions of this section, the
 12486 office department may order that the person and any affiliated
 12487 person of such person cease acquisition of the specialty insurer
 12488 or controlling company and, if appropriate, divest itself of any
 12489 stock or ownership interest acquired in violation of this
 12490 section.

12491 (12)(a) The office department shall, if necessary to
 12492 protect the public interest, suspend or revoke the certificate
 12493 of authority of any specialty insurer or controlling company
 12494 acquired in violation of this section.

12495 (b) If any specialty insurer is subject to suspension or
 12496 revocation pursuant to paragraph (a), the specialty insurer
 12497 shall be deemed to be in such condition, or to be using or to
 12498 have been subject to such methods or practices in the conduct of
 12499 its business, as to render its further transaction of insurance
 12500 presently or prospectively hazardous to its insureds, creditors,
 12501 or stockholders or to the public.

12502 (13)(a) For the purpose of this section, the term
 12503 "acquisition" includes:

12504 1. A tender offer or exchange offer for securities,
 12505 assets, or other ownership interest;

12506 2. An agreement to exchange securities for other
 12507 securities, assets, or other ownership interest;

12508 3. A merger of a person or affiliated person into a
 12509 specialty insurer or a merger of any person with a specialty
 12510 insurer;



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- 12511 4. A consolidation; or
- 12512 5. Any other form of change of control

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12515 whereby any person or affiliated person acquires or attempts to
 12516 acquire, directly or indirectly, 10 percent or more of the
 12517 ownership interest or assets of a specialty insurer or of a
 12518 controlling company. However, in the case of a health
 12519 maintenance organization organized as a for-profit corporation,
 12520 the provisions of s. 628.451 shall govern with respect to any
 12521 merger or consolidation, and, in the case of a health
 12522 maintenance organization organized as a not-for-profit
 12523 corporation, the provisions of s. 628.471 shall govern with
 12524 respect to any merger or consolidation.

12525 (b) For the purpose of this section, the term "affiliated
 12526 person" of another person includes:

- 12527 1. The spouse of such other natural person;
- 12528 2. The parents of such other natural person and their
 12529 lineal descendants and the parents of such other natural
 12530 person's spouse and their lineal descendants;
- 12531 3. Any person who directly or indirectly owns or controls,
 12532 or holds with power to vote, 10 percent or more of the
 12533 outstanding voting securities of such other person;
- 12534 4. Any person who directly or indirectly owns 10 percent
 12535 or more of the outstanding voting securities which are directly
 12536 or indirectly owned or controlled, or held with power to vote,
 12537 by such other person;



12538 5. Any person or group of persons who directly or
12539 indirectly control, are controlled by, or are under common
12540 control with such other person;

12541 6. Any director, officer, trustee, partner, owner,
12542 manager, joint venturer, or employee, or other person performing
12543 duties similar to those of persons in the aforementioned
12544 positions, of such other person;

12545 7. If such other person is an investment company, any
12546 investment adviser of such company or any member of an advisory
12547 board of such company;

12548 8. If such other person is an unincorporated investment
12549 company not having a board of directors, the depositor of such
12550 company; or

12551 9. Any person who has entered into an agreement, written
12552 or unwritten, to act in concert with such other person in
12553 acquiring, or limiting the disposition of, securities of a
12554 specialty insurer or controlling company which is a stock
12555 corporation or in acquiring, or limiting the disposition of, an
12556 ownership interest of a specialty insurer or controlling company
12557 which is not a stock corporation.

12558 (c) For the purposes of this section, the term
12559 "controlling company" means any corporation, trust, or
12560 association owning, directly or indirectly, 25 percent or more
12561 of the voting securities of one or more specialty insurance
12562 companies which are stock corporations, or 25 percent or more of
12563 the ownership interest of one or more specialty insurance
12564 companies which are not stock corporations.



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12565 (d) For the purpose of this section, the term "natural
12566 person" means an individual.

12567 (e) For the purpose of this section, the term "person"
12568 includes a natural person, corporation, association, trust,
12569 general partnership, limited partnership, joint venture, firm,
12570 proprietorship, or any other entity which may hold a license or
12571 certificate as a specialty insurer.

12572 (14) The commission ~~may department is authorized to~~ adopt,
12573 amend, or repeal rules that are necessary to implement the
12574 provisions of this section, pursuant to chapter 120.

12575 Section 210. Section 628.917, Florida Statutes, is amended
12576 to read:

12577 628.917 Insolvency and liquidation.--In the event that a
12578 captive insurer is insolvent as defined in chapter 631, the
12579 office ~~department~~ shall liquidate the captive insurer pursuant
12580 to the provisions of part I of chapter 631; except that the
12581 office ~~department~~ shall make no attempt to rehabilitate such
12582 insurer.

12583 Section 211. Subsection (3) of section 631.021, Florida
12584 Statutes, is amended to

12585 631.021 Jurisdiction of delinquency proceeding; venue;
12586 change of venue; exclusiveness of remedy; appeal.--

12587 (3) A delinquency proceeding pursuant to this chapter
12588 constitutes the sole and exclusive method of liquidating,
12589 rehabilitating, reorganizing, or conserving an insurer. No court
12590 shall entertain a petition for the commencement of such a
12591 proceeding unless the petition has been filed in the name of the
12592 state on the relation of the office ~~department~~. The Florida



12593 Insurance Guaranty Association, Incorporated, the Florida
 12594 Workers' Compensation Insurance Guaranty Association,
 12595 Incorporated, and the Florida Life and Health Guaranty
 12596 Association, Incorporated, shall be given reasonable written
 12597 notice by the office ~~department~~ of all hearings which pertain to
 12598 an adjudication of insolvency of a member insurer.

12599 Section 212. Section 631.025, Florida Statutes, is amended
 12600 to read:

12601 631.025 Persons subject to this part.--Delinquency
 12602 proceedings authorized by this part may be initiated against any
 12603 insurer, as defined in s. 631.011(15), if the statutory grounds
 12604 are present as to that insurer, and the court may exercise
 12605 jurisdiction over any person required to cooperate with the
 12606 department and office pursuant to s. 631.391 and over all
 12607 persons made subject to the court's jurisdiction by other
 12608 provisions of law. Such persons include, but are not limited to:

12609 (1) A person transacting, or that has transacted,
 12610 insurance business in or from this state and against whom claims
 12611 arising from that business may exist now or in the future.

12612 (2) A person purporting to transact an insurance business
 12613 in this state and any person who acts as an insurer, transacts
 12614 insurance, or otherwise engages in insurance activities in or
 12615 from this state, with or without a certificate of authority or
 12616 proper authority from the office ~~department~~, against whom claims
 12617 arising from that business may exist now or in the future.

12618 (3) An insurer with policyholders resident in this state.



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12619 (4) All other persons organized or in the process of
12620 organizing with the intent to transact an insurance business in
12621 this state.

12622 Section 213. Section 631.031, Florida Statutes, is amended
12623 to read:

12624 631.031 Commencement of delinquency proceeding.--The
12625 office ~~department~~ may commence any such proceeding by
12626 application to the court for an order directing the insurer to
12627 show cause why the office ~~department~~ should not have the relief
12628 prayed for. On the return of such order to show cause, and after
12629 a full hearing, the court shall either deny the application or
12630 grant the application, together with such other relief as the
12631 nature of the case and the interests of the policyholders,
12632 creditors, stockholders, members, subscribers, or public may
12633 require. The office ~~department~~ may also commence any such
12634 proceeding by application to the court by petition for the entry
12635 of a consent order of conservation, rehabilitation, or
12636 liquidation.

12637 Section 214. Subsections (2), (3), (4), and (5) of section
12638 631.041, Florida Statutes, are amended to read:

12639 631.041 Automatic stay; relief from stay; injunctions.--

12640 (2) Upon written request of a person or entity subject to
12641 the stay against obtaining or enforcing a judgment against an
12642 insurer or affiliate provided in paragraph (1)(b) the court,
12643 with notice to the office and department and upon hearing, may
12644 grant relief from the stay provided the movant, who has the
12645 burden of proof, establishes by clear and convincing evidence
12646 that the judgment is not voidable or void by a receiver and that



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12647 | property from which the judgment would be satisfied does not
 12648 | constitute premium funds or another asset which belongs to the
 12649 | insurer.

12650 | (3) Upon application by the office or department pursuant
 12651 | to this part for an order to show cause or upon petition, or at
 12652 | any time thereafter, the court may without notice issue an
 12653 | injunction restraining the insurer and its officers, directors,
 12654 | stockholders, members, subscribers, and agents and all other
 12655 | persons from the transaction of its business or the waste or
 12656 | disposition of its property until the further order of the
 12657 | court.

12658 | (4) The court may without notice at any time during a
 12659 | proceeding under this chapter issue such other injunctions or
 12660 | orders as may be deemed necessary to prevent interference with
 12661 | the office or department or the proceeding; waste of the assets
 12662 | of the insurer; the commencement or prosecution of any actions;
 12663 | the obtaining of preferences, judgments, attachments, or other
 12664 | liens; or the making of any levy against the insurer or against
 12665 | its assets or any part thereof.

12666 | (5) Notwithstanding any other provision of law, no bond
 12667 | shall be required of the office or department as a prerequisite
 12668 | for the issuance of any injunction or restraining order pursuant
 12669 | to this section.

12670 | Section 215. Subsections (1) and (4) of section 631.042,
 12671 | Florida Statutes, are amended to read:

12672 | 631.042 Extension of time.--

12673 | (1) With respect to any action by or against an insurer,
 12674 | no statute of limitations or defense of laches shall run between



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12675 the date the office ~~department~~ files a petition for a
 12676 delinquency proceeding against an insurer and the date the court
 12677 enters an order granting or denying that petition. If the
 12678 petition is denied, any action against the insurer that might
 12679 have been commenced when the petition was filed may be commenced
 12680 no later than 60 days after the order denying such relief or the
 12681 remaining unexpired time under the applicable statute of
 12682 limitations or defense of laches that was available on the day
 12683 the petition was filed, whichever is longer.

12684 (4) For actions not covered by subsection (2), if any
 12685 unexpired time period is fixed by any agreement or in any
 12686 proceeding for doing any act for the benefit of the estate, the
 12687 receiver shall have 180 days, or for good cause shown more than
 12688 180 days as allowed by the court, from the date the court enters
 12689 the order granting the office's ~~department's~~ petition for a
 12690 delinquency proceeding.

12691 Section 216. Section 631.051, Florida Statutes, is amended
 12692 to read:

12693 631.051 Grounds for rehabilitation; domestic
 12694 insurers.--The office ~~department~~ may petition for an order
 12695 directing it to rehabilitate a domestic insurer or an alien
 12696 insurer domiciled in this state on any one or more of the
 12697 following grounds, that the insurer:

- 12698 (1) Is impaired or insolvent;
- 12699 (2) Has failed to comply with an order of the office
 12700 ~~department~~ to make good an impairment of capital or surplus or
 12701 both;



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12702 (3) Is found by the office ~~department~~ to be in such
12703 condition or is using or has been subject to such methods or
12704 practices in the conduct of its business, as to render its
12705 further transaction of insurance presently or prospectively
12706 hazardous to its policyholders, creditors, stockholders, or the
12707 public;

12708 (4) Has failed, or its parent corporation, subsidiary, or
12709 affiliated person controlled by either the insurer or the parent
12710 corporation has failed, to submit its books, documents,
12711 accounts, records, and affairs pertaining to the insurer to the
12712 reasonable inspection or examination of the office ~~department~~ or
12713 its authorized representative; or any individual exercising any
12714 executive authority in the affairs of the insurer, or parent
12715 corporation, or subsidiary, or affiliated person has refused to
12716 be examined under oath by the office ~~department~~ or its
12717 authorized representative, whether within this state or
12718 otherwise, concerning the pertinent affairs of the insurer, or
12719 parent corporation or subsidiary or affiliated person; or if
12720 examined under oath refuses to divulge pertinent information
12721 reasonably known to her or him; or officers, directors, agents,
12722 employees, or other representatives of the insurer or parent
12723 corporation, subsidiary, or affiliated person have failed to
12724 comply promptly with the reasonable requests of the office
12725 ~~department~~ or its authorized representative for the purposes of,
12726 and during the conduct of, any such examination;

12727 (5) Has concealed or removed records or assets or
12728 otherwise violated s. 628.271 or s. 628.281;



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12729 (6) Through its board of directors or governing body is
 12730 deadlocked in the management of the insurer's affairs and that
 12731 the members of a mutual, reciprocal, or any other type of
 12732 organization or stockholders are unable to break the deadlock
 12733 and that irreparable injury to the insurer, its creditors, its
 12734 policyholders, its members or subscribers, or the public is
 12735 threatened by reason thereof;

12736 (7) Has transferred or attempted to transfer substantially
 12737 its entire property or business, or has entered into any
 12738 transaction the effect of which is to merge substantially its
 12739 entire property or business into that of any other insurer or
 12740 entity without having first obtained the written approval of the
 12741 office ~~department~~ under the provisions of s. 628.451, s.
 12742 628.461, or s. 628.4615, as the case may be;

12743 (8) Has willfully violated its charter or certificate of
 12744 incorporation or any law of this state;

12745 (9) Is in such a position that control of it, whether by
 12746 stock ownership or otherwise, and whether direct or indirect, is
 12747 in one or more persons found by the office ~~department~~ after
 12748 notice and hearing to be dishonest or untrustworthy; or that the
 12749 insurer has failed, upon order of the office ~~department~~ and
 12750 expiration of such reasonable time for such removal as the
 12751 office ~~department~~ shall specify in the order, to remove any
 12752 person who in fact has executive authority, directly or
 12753 indirectly, in the insurer, whether as an officer, director,
 12754 manager, agent, employee, or otherwise, and if such person has
 12755 been found by the office ~~department~~ after notice and hearing, to
 12756 be incompetent, dishonest, untrustworthy, or so lacking in



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12757 insurance company managerial experience as to be hazardous to
12758 the insurance-buying public;

12759 (10) Has been or is the subject of an application for the
12760 appointment of a receiver, trustee, custodian, or sequestrator
12761 of the insurer or its property otherwise than pursuant to the
12762 provisions of this code, but only if such an appointment has
12763 been made or is imminent;

12764 (11) Has consented to such an order through a majority of
12765 its directors, stockholders, members, or subscribers;

12766 (12) Has failed to pay a final judgment rendered against
12767 it in this state upon any insurance contract issued or assumed
12768 by it, within 60 days after the judgment became final, within 60
12769 days after the time for taking an appeal has expired, or within
12770 30 days after dismissal of an appeal before final determination,
12771 whichever date is the later;

12772 (13) Has been the victim of embezzlement, wrongful
12773 sequestration, conversion, diversion, or encumbering of its
12774 assets; forgery or fraud affecting it; or other illegal conduct
12775 in, by, or with respect to it, which if established would
12776 threaten its solvency; or that the office ~~department~~ has
12777 reasonable cause to so believe any of the foregoing has occurred
12778 or may occur;

12779 (14) Is engaging in a systematic practice of reaching
12780 settlements with and obtaining releases from policyholders or
12781 third-party claimants and then unreasonably delaying payment of,
12782 or failing to pay, the agreed-upon settlements; or



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12783 (15) Within the previous 12 months has systematically
12784 attempted to compromise with creditors on the ground that it is
12785 financially unable to pay its claims in full.

12786 Section 217. Section 631.0515, Florida Statutes, is
12787 amended to read:

12788 631.0515 Appointment of receiver; insurance holding
12789 company.--A delinquency proceeding pursuant to this chapter
12790 constitutes the sole and exclusive method of dissolving,
12791 liquidating, rehabilitating, reorganizing, conserving, or
12792 appointing a receiver of a Florida corporation which is not
12793 insolvent as defined by s. 607.01401(16); which through its
12794 shareholders, board of directors, or governing body is
12795 deadlocked in the management of its affairs; and which directly
12796 or indirectly owns all of the stock of a Florida domestic
12797 insurer. The office ~~department~~ may petition for an order
12798 directing the department ~~it~~ to rehabilitate such corporation if
12799 the interests of policyholders or the public will be harmed as a
12800 result of the deadlock. The department shall use due diligence
12801 to resolve the deadlock. Whether or not the office ~~department~~
12802 petitions for an order, the circuit court shall not have
12803 jurisdiction pursuant to s. 607.271, s. 607.274, or s. 607.277
12804 to dissolve, liquidate, or appoint receivers with respect to, a
12805 Florida corporation which directly or indirectly owns all of the
12806 stock of a Florida domestic insurer and which is not insolvent
12807 as defined by s. 607.01401(16).

12808 Section 218. Section 631.061, Florida Statutes, is amended
12809 to read:



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12810 631.061 Grounds for liquidation.--The office department
12811 may apply to the court for an order appointing the department ~~it~~
12812 as receiver (if its appointment as receiver is not then in
12813 effect) and directing the department ~~it~~ to liquidate the
12814 business of a domestic insurer or of the United States branch of
12815 an alien insurer having trusteed assets in this state,
12816 regardless of whether or not there has been a prior order
12817 directing it to rehabilitate such insurer, upon any of the
12818 grounds specified in s. 631.051, or if such insurer:

12819 (1) Is or is about to become insolvent.

12820 (2) Is an insolvent insurer and has commenced or is
12821 attempting to commence voluntary liquidation or dissolution
12822 except under this code.

12823 (3) Has not completed its organization and obtained a
12824 certificate of authority as an insurer within the time allowed
12825 therefor under any applicable law.

12826 Section 219. Section 631.071, Florida Statutes, is amended
12827 to read:

12828 631.071 Grounds for conservation; foreign insurers.--The
12829 office department may apply to the court for an order appointing
12830 the department ~~it~~ as receiver or ancillary receiver, and
12831 directing it to conserve the assets within this state, of a
12832 foreign insurer upon any of the following grounds:

12833 (1) Upon any of the grounds specified in s. 631.051 or s.
12834 631.061, or

12835 (2) Upon the ground that its property has been
12836 sequestered in its domiciliary sovereignty or in any other
12837 sovereignty.



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12838 Section 220. Section 631.081, Florida Statutes, is amended
12839 to read:

12840 631.081 Grounds for conservation; alien insurers.--The
12841 office department may apply to the court for an order appointing
12842 the department ~~it~~ as receiver or ancillary receiver, and
12843 directing it to conserve the assets within this state, of any
12844 alien insurer upon any of the following grounds:

12845 (1) Upon any of the grounds specified in s. 631.051 or s.
12846 631.061;

12847 (2) Upon the ground that the insurer has failed to comply,
12848 within the time designated by the office department, with an
12849 order made by it to make good an impairment of its trustee
12850 funds; or

12851 (3) Upon the ground that the property of the insurer has
12852 been sequestered in its domiciliary sovereignty or elsewhere.

12853 Section 221. Section 631.091, Florida Statutes, is amended
12854 to read:

12855 631.091 Grounds for ancillary liquidation; foreign
12856 insurers.--The office department may apply to the circuit court
12857 for an order appointing the department ~~it~~ as ancillary receiver
12858 of, and directing it to liquidate the business and assets of, a
12859 foreign insurer which has assets, business, or claims in this
12860 state upon the appointment in the domiciliary state of such
12861 insurer of a receiver, liquidator, conservator, rehabilitator,
12862 or other officer by whatever name called for the purpose of
12863 liquidating the business of such insurer.

12864 Section 222. Subsection (3) of section 631.111, Florida
12865 Statutes, is amended to read:



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12866 631.111 Order of liquidation; domestic insurers.--
 12867 (3) The department or office may apply for and secure an
 12868 order dissolving the corporate existence of a domestic insurer
 12869 upon the its application for an order of liquidation of such
 12870 insurer or at any time after such order has been granted.
 12871 Section 223. Subsection (1) of section 631.152, Florida
 12872 Statutes, is amended to read:
 12873 631.152 Conduct of delinquency proceeding; foreign
 12874 insurers.--
 12875 (1) Whenever under this chapter an ancillary receiver is
 12876 to be appointed in a delinquency proceeding for an insurer not
 12877 domiciled in this state, the court shall appoint the department
 12878 as ancillary receiver. The office ~~department~~ shall file a
 12879 petition requesting the appointment on the grounds set forth in
 12880 s. 631.091:
 12881 (a) If it finds that there are sufficient assets of the
 12882 insurer located in this state to justify the appointment of an
 12883 ancillary receiver, or
 12884 (b) If 10 or more persons resident in this state having
 12885 claims against such insurer file a petition with the office
 12886 ~~department~~ requesting the appointment of such ancillary
 12887 receiver.
 12888 Section 224. Paragraph (d) of subsection (6) of section
 12889 631.154, Florida Statutes, is amended to read:
 12890 631.154 Funds, assets, or other property in the possession
 12891 of third person.--



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12892 (6) Should the receiver be successful in establishing its
12893 claim or any part thereof, the receiver shall be entitled to
12894 recover judgment for the following:

12895 (d) All costs, investigative and other expenses,
12896 including, but not limited to, those for department and office
12897 staff, incurred in the recovery of the property, assets, or
12898 funds, and reasonable attorney's fees. Department and office
12899 staff costs and expenses include staff salaries.

12900

12901

12902 It is the intent of this section that a person found to be
12903 holding receivership assets fully reimburse the receiver for any
12904 and all efforts made to recover those assets.

12905 Section 225. Section 631.221, Florida Statutes, is amended
12906 to read:

12907 631.221 Deposit of moneys collected.--The moneys collected
12908 by the department in a proceeding under this chapter shall be
12909 deposited in a qualified public depository as defined in s.
12910 280.02, which depository with regards to such funds shall
12911 conform to and be bound by all the provisions of chapter 280, or
12912 invested with the Chief Financial Officer ~~State Treasurer~~
12913 pursuant to chapter 18. For the purpose of accounting for the
12914 assets and transactions of the estate, the receiver shall use
12915 such accounting books, records, and systems as the court directs
12916 after it hears and considers the recommendations of the
12917 receiver.

12918 Section 226. Section 631.231, Florida Statutes, is amended
12919 to read:



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12920 631.231 Exemption from fees.--The department or office
 12921 shall not be required to pay any fee to any public officer in
 12922 this state for filing, recording, issuing a transcript or
 12923 certificate, or authenticating any paper or instrument
 12924 pertaining to the exercise by the department or office of any of
 12925 the powers or duties conferred upon it under this chapter,
 12926 whether or not such paper or instrument be executed by the
 12927 department or office or their ~~its~~ employees or attorneys of
 12928 record and whether or not it is connected with the commencement
 12929 of any action or proceeding by or against the department or
 12930 office, or with the subsequent conduct of such action or
 12931 proceeding.

12932 Section 227. Section 631.361, Florida Statutes, is amended
 12933 to read:

12934 631.361 Seizure under court order.--

12935 (1) Upon filing by the office ~~department~~ in the circuit
 12936 court in and for Leon County of its verified petition alleging
 12937 any ground for a formal delinquency proceeding against an
 12938 insurer under this chapter, alleging that the interests of the
 12939 insurer's policyholders, claimants, or creditors or the public
 12940 will be endangered or jeopardized by delay, and setting forth
 12941 the order deemed necessary by the office ~~department~~, the court
 12942 may, ex parte and without notice or hearing, issue forthwith the
 12943 requested order. The requested order may:

12944 (a) Direct the department to take possession and control
 12945 of all or part of the property, books, documents, accounts, and
 12946 other records of the insurer and the premises occupied by it for



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12947 transaction of its business and premium funds and other property
12948 of the insurer held by an affiliate; and

12949 (b) Until further order of court, enjoin the insurer and
12950 any affiliate and their officers, directors, managers, agents,
12951 and employees from removal, concealment, or other disposition of
12952 the insurer's property, books, records, or accounts and from
12953 transaction of the insurer's business except with the
12954 department's written consent.

12955 (2) The court's order shall be for such duration specified
12956 in the order as the court deems necessary to enable the office
12957 and department to ascertain the insurer's condition. Upon motion
12958 of any party or affected person, or upon its own motion, the
12959 court may hold such hearings as it deems desirable, after such
12960 notice as it deems appropriate, and may extend, shorten, or
12961 modify the terms of the order. The court shall vacate the
12962 seizure order if the office ~~department~~ fails to commence a
12963 formal proceeding under this chapter after having had a
12964 reasonable opportunity to do so, and a seizure order is
12965 automatically vacated by issuance of the court's order pursuant
12966 to a formal delinquency proceeding under this chapter.

12967 (3) Entry of a seizure order under this section shall not
12968 constitute an anticipatory breach of any contract of the
12969 insurer.

12970 Section 228. Section 631.371, Florida Statutes, is amended
12971 to read:

12972 631.371 Seizure under order of the office ~~department~~.--

12973 (1) Upon the office's ~~department~~ filing a verified
12974 petition with any circuit judge of the proper judicial circuit



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12975 as required by s. 631.021(2), which states that it believes that
 12976 the interest of policyholders, the insurer, claimants,
 12977 creditors, or the public will be endangered or jeopardized and
 12978 that prima facie grounds exist for rehabilitation, liquidation,
 12979 or conservation of an insurer under s. 631.051, s. 631.061, or
 12980 s. 631.131, the office ~~department~~ may request a seizure order
 12981 and shall be entitled to an ex parte hearing forthwith and an
 12982 appropriate seizure order from the judge or court in the
 12983 interest of protecting the public and such insurer and its
 12984 policyholders, claimants, or creditors. After a diligent effort
 12985 is made to be heard by the judges of the circuit and such judges
 12986 or the court fails or refuses to hear such petition for any
 12987 reason, the office ~~department~~ shall then file a duplicate
 12988 original of said petition and exhibits, if any, in the Circuit
 12989 Court of Leon County along with an affidavit which shall state
 12990 that a diligent effort was made to obtain such initial hearing
 12991 in the judicial circuit where such hearing was sought and that
 12992 the request to be heard was refused or that a hearing was not
 12993 granted and the reasons therefor, if known. Upon compliance with
 12994 the above and if said affidavit further states that the office
 12995 ~~department~~ believes that irreparable harm will result to the
 12996 public and the insurer and its policyholders, creditors, or
 12997 claimants as a result of further delay, it may thereafter issue
 12998 a seizure order on any ground that would justify court seizure
 12999 under s. 631.361. Such seizure order may contain any or all the
 13000 provisions of s. 631.361(1). The office ~~department~~ shall retain
 13001 possession and control until the order is vacated or is replaced
 13002 by an order of court pursuant to subsection (2) or subsection



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13003 (3) or pursuant to a formal delinquency proceeding under this
13004 chapter.

13005 (2) The office ~~department~~ may, at any time after seizure
13006 under its order, report its actions to the proper court; and, in
13007 the event that the insurer, for any reason, fails to avail
13008 itself of the judicial review provided for by law, then the
13009 office ~~department~~ shall forthwith report its actions to the
13010 proper court. The office ~~department~~ may request the court to
13011 substitute its order for the office's ~~department's~~ or it may
13012 seek any other order which it deems appropriate.

13013 (3) Every law enforcement officer of this state authorized
13014 by law shall assist the office ~~department~~ in making and
13015 enforcing any such seizure, and every such officer shall furnish
13016 it with such deputies, patrolmen, patrolwomen, or officers as
13017 are necessary to assist it in execution of its order.

13018 (4) Entry of a seizure order under this section shall not
13019 constitute an anticipatory breach of any contract of the
13020 insurer.

13021 Section 229. Section 631.391, Florida Statutes, is amended
13022 to read:

13023 631.391 Cooperation of officers and employees.--

13024 (1) Any officer, director, manager, trustee, agent,
13025 adjuster, employee, or independent contractor of any insurer or
13026 affiliate and any other person who possesses any executive
13027 authority over, or who exercises any control over, any segment
13028 of the affairs of the insurer or affiliate shall fully cooperate
13029 with the department and office in any proceeding under this
13030 chapter or any investigation preliminary or incidental to the



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13031 proceeding. An order of rehabilitation or liquidation which
13032 results in the discharge or suspension of any of the persons
13033 listed above does not operate to release such person from the
13034 duty to cooperate with the department and office as set out
13035 herein. To "cooperate" includes, but is not limited to, the
13036 following:

13037 (a) To reply promptly in writing to any inquiry from the
13038 department or office requesting such a reply;

13039 (b) Promptly to make available and deliver to the
13040 department or office any books, accounts, documents, other
13041 records, information, data processing software, or property of
13042 or pertaining to the insurer and in her or his possession,
13043 custody, or control; or

13044 (c) Promptly to provide access to all data processing
13045 records in hard copy and in electronic form and to data
13046 processing facilities and services.

13047 (2) No person shall obstruct or interfere with the
13048 department or office in the conduct of any delinquency
13049 proceeding or any investigation preliminary or incidental
13050 thereto.

13051 (3) This section does not prohibit any person from seeking
13052 legal relief from a court when aggrieved by the petition for
13053 liquidation or other delinquency proceeding or by other orders.

13054 (4) Any person referred to in subsection (1) who fails to
13055 cooperate with the department or office, or any other person who
13056 obstructs or interferes with the department or office, in the
13057 conduct of any delinquency proceeding or any investigation
13058 preliminary or incidental thereto, is guilty of a misdemeanor of



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13059 | the first degree, punishable as provided in s. 775.082 or by
13060 | fine of not more than \$10,000.

13061 | (5) Refusal by any person referred to in subsection (1) to
13062 | provide records upon the request of the department or office is
13063 | grounds for revocation of any insurance-related license,
13064 | including, but not limited to, agent and third-party
13065 | administrator licenses.

13066 | Section 230. Section 631.392, Florida Statutes, is amended
13067 | to read:

13068 | 631.392 Immunity.--There shall be no liability on the part
13069 | of, and no cause of action of any nature shall arise against,
13070 | the Chief Financial Officer, ~~Insurance Commissioner~~ or the
13071 | department, the office, or any of their ~~its~~ employees or agents
13072 | for any action taken by them in the performance of their powers
13073 | and duties under this chapter.

13074 | Section 231. Section 631.398, Florida Statutes, is amended
13075 | to read:

13076 | 631.398 Prevention of insolvencies.--To aid in the
13077 | detection and prevention of insurer insolvencies or impairments:

13078 | (1) Any member insurer; agent, employee, or member of the
13079 | board of directors; or representative of any insurance guaranty
13080 | association may make reports and recommendations to the
13081 | department or office upon any matter germane to the solvency,
13082 | liquidation, rehabilitation, or conservation of any member
13083 | insurer or germane to the solvency of any company seeking to do
13084 | an insurance business in this state. Such reports and
13085 | recommendations are confidential and exempt from the provisions



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13086 of s. 119.07(1) until the termination of a delinquency
13087 proceeding.

13088 (2) The office ~~department~~ shall:

13089 (a) Report to the board of directors of the appropriate
13090 insurance guaranty association when it has reasonable cause to
13091 believe from any examination, whether completed or in process,
13092 of any member insurer that such insurer may be an impaired or
13093 insolvent insurer.

13094 (b) Seek the advice and recommendations of the board of
13095 directors of the appropriate insurance guaranty association
13096 concerning any matter affecting the duties and responsibilities
13097 of the office ~~department~~ in relation to the financial condition
13098 of member companies and companies seeking admission to transact
13099 insurance business in this state.

13100 (3) The office and department jointly shall, no later than
13101 the conclusion of any domestic insurer insolvency proceeding,
13102 prepare a summary report containing such information as is in
13103 their ~~its~~ possession relating to the history and causes of such
13104 insolvency, including a statement of the business practices of
13105 such insurer which led to such insolvency.

13106 Section 232. Section 631.54, Florida Statutes, is amended
13107 to read:

13108 631.54 Definitions.--As used in this part:

13109 (1) "Account" means any one of the three accounts created
13110 by s. 631.55.

13111 (2) "Association" means the Florida Insurance Guaranty
13112 Association, Incorporated.



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13113 (3) "Covered claim" means an unpaid claim, including one
 13114 of unearned premiums, which arises out of, and is within the
 13115 coverage, and not in excess of, the applicable limits of an
 13116 insurance policy to which this part applies, issued by an
 13117 insurer, if such insurer becomes an insolvent insurer after
 13118 October 1, 1970, and the claimant or insured is a resident of
 13119 this state at the time of the insured event or the property from
 13120 which the claim arises is permanently located in this state.
 13121 "Covered claim" shall not include any amount due any reinsurer,
 13122 insurer, insurance pool, or underwriting association, as
 13123 subrogation, contribution, indemnification, or otherwise. Member
 13124 insurers shall have no right of subrogation against the insured
 13125 of any insolvent member.

13126 ~~— (4) "Department" means the Department of Insurance.~~

13127 (4)~~(5)~~ "Expenses in handling claims" means allocated and
 13128 unallocated expenses, including, but not limited to, general
 13129 administrative expenses and those expenses which relate to the
 13130 investigation, adjustment, defense, or settlement of specific
 13131 claims under, or arising out of, a specific policy.

13132 (5)~~(6)~~ "Insolvent insurer" means a member insurer
 13133 authorized to transact insurance in this state, either at the
 13134 time the policy was issued or when the insured event occurred,
 13135 and against which an order of liquidation with a finding of
 13136 insolvency has been entered by a court of competent jurisdiction
 13137 if such order has become final by the exhaustion of appellate
 13138 review.

13139 (6)~~(7)~~ "Member insurer" means any person who writes any
 13140 kind of insurance to which this part applies under s. 631.52,



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13141 including the exchange of reciprocal or interinsurance
13142 contracts, and is licensed to transact insurance in this state.

13143 (7)~~(8)~~ "Net direct written premiums" means direct gross
13144 premiums written in this state on insurance policies to which
13145 this part applies, less return premiums thereon and dividends
13146 paid or credited to policyholders on such direct business. "Net
13147 direct written premiums" does not include premiums on contracts
13148 between insurers or reinsurers.

13149 (8)~~(9)~~ "Person" means individuals, children, firms,
13150 associations, joint ventures, partnerships, estates, trusts,
13151 business trusts, syndicates, fiduciaries, corporations, and all
13152 other groups or combinations.

13153 Section 233. Subsection (1) of section 631.55, Florida
13154 Statutes, is amended to read:

13155 631.55 Creation of the association.--

13156 (1) There is created a nonprofit corporation to be known
13157 as the "Florida Insurance Guaranty Association, Incorporated."
13158 All insurers defined as member insurers in s. 631.54(6)~~(7)~~ shall
13159 be members of the association as a condition of their authority
13160 to transact insurance in this state, and, further, as a
13161 condition of such authority, an insurer shall agree to reimburse
13162 the association for all claim payments the association makes on
13163 said insurer's behalf if such insurer is subsequently
13164 rehabilitated. The association shall perform its functions under
13165 a plan of operation established and approved under s. 631.58 and
13166 shall exercise its powers through a board of directors
13167 established under s. 631.56. The corporation shall have all



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13168 those powers granted or permitted nonprofit corporations, as
13169 provided in chapter 617.

13170 Section 234. Subsection (1) of section 631.56, Florida
13171 Statutes, is amended to read:

13172 631.56 Board of directors.--

13173 (1) The board of directors of the association shall
13174 consist of not less than five or more than nine persons serving
13175 terms as established in the plan of operation. The department
13176 shall approve and appoint to the board persons recommended by
13177 the member insurers. In the event the department finds that any
13178 recommended person does not meet the qualifications for service
13179 on the board, the department shall request the member insurers
13180 to recommend another person. Each member shall serve for a 4-
13181 year term and may be reappointed. Vacancies on the board shall
13182 be filled for the remaining period of the term in the same
13183 manner as initial appointments. ~~If no members are selected by~~
13184 ~~November 30, 1970, the department may appoint the initial~~
13185 ~~members of the board of directors.~~

13186 Section 235. Paragraph (a) of subsection (1) and
13187 subsection (3) of section 631.57, Florida Statutes, are amended
13188 to read:

13189 631.57 Powers and duties of the association.--

13190 (1) The association shall:

13191 (a)1. Be obligated to the extent of the covered claims
13192 existing:

13193 a. Prior to adjudication of insolvency and arising within
13194 30 days after the determination of insolvency;



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13195 b. Before the policy expiration date if less than 30 days
13196 after the determination; or

13197 c. Before the insured replaces the policy or causes its
13198 cancellation, if she or he does so within 30 days of the
13199 determination.

13200 2. The obligation under subparagraph 1. shall include only
13201 that amount of each covered claim which is in excess of \$100 and
13202 is less than \$300,000, except with respect to policies covering
13203 condominium associations or homeowners' associations, which
13204 associations have a responsibility to provide insurance coverage
13205 on residential units within the association, the obligation
13206 shall include that amount of each covered property insurance
13207 claim which is less than \$100,000 multiplied by the number of
13208 condominium units or other residential units; however, as to
13209 homeowners' associations, this subparagraph applies only to
13210 claims for damage or loss to residential units and structures
13211 attached to residential units.

13212 3. In no event shall the association be obligated to a
13213 policyholder or claimant in an amount in excess of the
13214 obligation of the insolvent insurer under the policy from which
13215 the claim arises.

13216
13217 ~~The foregoing notwithstanding, the association shall have no~~
13218 ~~obligation to pay covered claims to be paid from the proceeds of~~
13219 ~~bonds issued under s. 166.111(2). However, the association shall~~
13220 ~~cause assessments to be made under paragraph (3)(c) for such~~
13221 ~~covered claims, and such assessments shall be assigned and~~
13222 ~~pledged under paragraph (3)(c) to or on behalf of the issuer of~~



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13223 ~~such bonds for the benefit of the holders of such bonds. The~~
13224 ~~association shall administer any such covered claims and present~~
13225 ~~valid covered claims for payment in accordance with the~~
13226 ~~provisions of the assistance program in connection with which~~
13227 ~~such bonds have been issued.~~

13228 (3)(a) To the extent necessary to secure the funds for the
13229 respective accounts for the payment of covered claims and also
13230 to pay the reasonable costs to administer the same, the office
13231 ~~department~~, upon certification of the board of directors, shall
13232 levy assessments in the proportion that each insurer's net
13233 direct written premiums in this state in the classes protected
13234 by the account bears to the total of said net direct written
13235 premiums received in this state by all such insurers for the
13236 preceding calendar year for the kinds of insurance included
13237 within such account. Assessments shall be remitted to and
13238 administered by the board of directors in the manner specified
13239 by the approved plan. Each insurer so assessed shall have at
13240 least 30 days' written notice as to the date the assessment is
13241 due and payable. Every assessment shall be made as a uniform
13242 percentage applicable to the net direct written premiums of each
13243 insurer in the kinds of insurance included within the account in
13244 which the assessment is made. The assessments levied against
13245 any insurer shall not exceed in any one year more than 2 percent
13246 of that insurer's net direct written premiums in this state for
13247 the kinds of insurance included within such account during the
13248 calendar year next preceding the date of such assessments.

13249 (b) If sufficient funds from such assessments, together
13250 with funds previously raised, are not available in any one year



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13251 in the respective account to make all the payments or
13252 reimbursements then owing to insurers, the funds available shall
13253 be prorated and the unpaid portion shall be paid as soon
13254 thereafter as funds become available.

13255 (c) Assessments shall be included as an appropriate factor
13256 in the making of rates.

13257 (d) No state funds of any kind shall be allocated or paid
13258 to said association or any of its accounts.

13259 ~~(e)1.a. In addition to assessments otherwise authorized in~~
13260 ~~paragraph (a), as a temporary measure related to insolvencies~~
13261 ~~caused by Hurricane Andrew, and to the extent necessary to~~
13262 ~~secure the funds for the account specified in s. 631.55(2)(c),~~
13263 ~~or to retire indebtedness, including, without limitation, the~~
13264 ~~principal, redemption premium, if any, and interest on, and~~
13265 ~~related costs of issuance of, bonds issued under s. 166.111(2),~~
13266 ~~and the funding of any reserves and other payments required~~
13267 ~~under the bond resolution or trust indenture pursuant to which~~
13268 ~~such bonds have been issued, the department, upon certification~~
13269 ~~of the board of directors, shall levy assessments upon insurers~~
13270 ~~holding a certificate of authority as follows:~~

13271 ~~(I) Except as provided in sub-sub-subparagraph (II), the~~
13272 ~~assessments payable under this paragraph by any insurer shall~~
13273 ~~not exceed in any 1 year more than 2 percent of that insurer's~~
13274 ~~direct written premiums, net of refunds, in this state during~~
13275 ~~the preceding calendar year for the kinds of insurance within~~
13276 ~~the account specified in s. 631.55(2)(c).~~

13277 ~~(II) If the amount levied under sub-sub-subparagraph (I)~~
13278 ~~is less than 2 percent of the insurer's direct written premiums,~~



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13279 ~~net of refunds, in this state during calendar year 1991 for the~~
13280 ~~kinds of insurance within the account specified in s.~~
13281 ~~631.55(2)(c), in addition to and separate from such assessment,~~
13282 ~~the assessment shall also include the difference between the~~
13283 ~~amount calculated based on calendar year 1991 and the amount~~
13284 ~~determined under sub-sub-subparagraph (I). If this sub-sub-~~
13285 ~~subparagraph is held invalid, the invalidity shall not affect~~
13286 ~~other provisions of this section, and to this end the provisions~~
13287 ~~of this section are declared severable.~~

13288 ~~(III) In addition to any other insurers subject to this~~
13289 ~~subparagraph, this subparagraph also applies to any insurer that~~
13290 ~~held a certificate of authority on August 24, 1992. If this~~
13291 ~~sub-sub-subparagraph is held invalid, the invalidity shall not~~
13292 ~~affect other provisions of this section, and to this end the~~
13293 ~~provisions of this section are declared severable.~~

13294 ~~b. Any assessments authorized under this paragraph shall~~
13295 ~~be levied by the department upon insurers referred to in sub-~~
13296 ~~subparagraph a., upon certification as to the need therefor by~~
13297 ~~the board of directors, in 1992 and in each year that bonds~~
13298 ~~issued under s. 166.111(2) are outstanding, in such amounts up~~
13299 ~~to such 2 percent limit as required in order to provide for the~~
13300 ~~full and timely payment of the principal of, redemption premium,~~
13301 ~~if any, and interest on, and related costs of, issuance of bonds~~
13302 ~~issued under s. 166.111(2). The assessments provided for in~~
13303 ~~this paragraph are hereby assigned and pledged to a municipality~~
13304 ~~issuing bonds under s. 166.111(2)(b), for the benefit of the~~
13305 ~~holders of such bonds, in order to enable such municipality to~~
13306 ~~provide for the payment of the principal of, redemption premium,~~



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13307 ~~if any, and interest on such bonds, the cost of issuance of such~~
13308 ~~bonds, and the funding of any reserves and other payments~~
13309 ~~required under the bond resolution or trust indenture pursuant~~
13310 ~~to which such bonds have been issued, without the necessity of~~
13311 ~~any further action by the association, the department, or any~~
13312 ~~other party. To the extent that bonds are issued under s.~~
13313 ~~166.111(2), the proceeds of assessments levied under this~~
13314 ~~paragraph shall be remitted directly to and administered by the~~
13315 ~~trustee appointed for such bonds.~~

13316 ~~e. Assessments under this paragraph shall be payable in 12~~
13317 ~~monthly installments with the first installment being due and~~
13318 ~~payable at the end of the month after an assessment is levied,~~
13319 ~~and subsequent installments being due not later than the end of~~
13320 ~~each succeeding month.~~

13321 ~~d. The association shall issue a monthly report on the~~
13322 ~~status of the use of the bond proceeds as related to~~
13323 ~~insolvencies caused by Hurricane Andrew. The report must contain~~
13324 ~~the number of claims paid and the amount of claims paid. The~~
13325 ~~association shall also include an analysis of the revenue~~
13326 ~~generated from the additional assessment levied under this~~
13327 ~~subsection. The report must be sent to the Legislature and the~~
13328 ~~Insurance Commissioner monthly.~~

13329 ~~2. In order to assure that insurers paying assessments~~
13330 ~~levied under this paragraph continue to charge rates that are~~
13331 ~~neither inadequate nor excessive, within 90 days after being~~
13332 ~~notified of such assessments, each insurer that is to be~~
13333 ~~assessed pursuant to this paragraph shall make a rate filing for~~
13334 ~~coverage included within the account specified in s.~~



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13335 ~~631.55(2)(c) and for which rates are required to be filed under~~
 13336 ~~s. 627.062. If the filing reflects a rate change that, as a~~
 13337 ~~percentage, is equal to the difference between the rate of such~~
 13338 ~~assessment and the rate of the previous year's assessment under~~
 13339 ~~this paragraph, the filing shall consist of a certification so~~
 13340 ~~stating and shall be deemed approved when made, subject to the~~
 13341 ~~department's continuing authority to require actuarial~~
 13342 ~~justification as to the adequacy of any rate at any time. Any~~
 13343 ~~rate change of a different percentage shall be subject to the~~
 13344 ~~standards and procedures of s. 627.062.~~

13345
 13346 Section 236. Section 631.59, Florida Statutes, is amended
 13347 to read:

13348 631.59 Duties and powers of department and office of
 13349 Insurance.--

13350 (1) The department shall:

13351 (a) Notify the association of the existence of an
 13352 insolvent insurer not later than 3 days after it receives notice
 13353 of the determination of the insolvency; and

13354 (b) Upon request of the board of directors, provide the
 13355 association with a statement of the net direct written premiums
 13356 of each member insurer.

13357 (2) The department may:

13358 ~~(a)~~ require that the association notify the insureds of
 13359 the insolvent insurer and any other interested parties of the
 13360 determination of insolvency and of their rights under this part.
 13361 Such notification shall be by mail at their last known
 13362 addresses, when available, but if sufficient information for



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13363 notification by mail is not available, notice by publication in
13364 a newspaper of general circulation shall be sufficient.

13365 (3)(b) The office may:

13366 (a) Suspend or revoke the certificate of authority to
13367 transact insurance in this state of any member insurer which
13368 fails to pay an assessment when due or fails to comply with the
13369 plan of operation. As an alternative, the office ~~department~~ may
13370 levy a fine on any member insurer which fails to pay an
13371 assessment when due. Such fine may not exceed 5 percent of the
13372 unpaid assessment per month, except that no fine shall be less
13373 than \$100 per month.

13374 (b)(e) Revoke the designation of any servicing facility if
13375 it finds claims are being handled unsatisfactorily.

13376 Section 237. Section 631.62, Florida Statutes, is amended
13377 to read:

13378 631.62 Prevention of insolvencies.--To aid in the
13379 detection and prevention of insurer insolvencies:

13380 (1) It shall be the duty of the board of directors, upon
13381 majority vote, to notify the office ~~department~~ of any
13382 information indicating any member insurer may be insolvent or in
13383 a financial condition hazardous to the policyholders or the
13384 public.

13385 (2) The board of directors may, upon majority vote,
13386 request that the office ~~department~~ order an examination of any
13387 member insurer which the board in good faith believes may be in
13388 a financial condition hazardous to the policyholders or the
13389 public. Within 30 days of the receipt of such request, the
13390 office ~~department~~ shall begin such examination. The examination



13391 | may be conducted as a National Association of Insurance
 13392 | Commissioners examination or may be conducted by such persons as
 13393 | the office ~~department~~ designates. The cost of such examination
 13394 | shall be paid by the association and the examination report
 13395 | shall be treated as are other examination reports pursuant to s.
 13396 | 624.319. In no event shall such examination report be released
 13397 | to the board of directors prior to its release to the public.
 13398 | The office ~~department~~ shall notify the board of directors when
 13399 | the examination is completed. The request for an examination
 13400 | shall be kept on file by the office ~~department~~; such request is
 13401 | confidential and exempt from the provisions of s. 119.07(1)
 13402 | until the examination report is released to the public.

13403 | (3) The board of directors may, upon majority vote, make
 13404 | reports and recommendations to the department or office upon any
 13405 | matter germane to the solvency, liquidation, rehabilitation, or
 13406 | conservation of any member insurer. Such reports and
 13407 | recommendations are confidential and exempt from the provisions
 13408 | of s. 119.07(1) until the termination of a delinquency
 13409 | proceeding.

13410 | (4) The board of directors may, upon majority vote, make
 13411 | recommendations to the office ~~department~~ for the detection and
 13412 | prevention of insurer insolvencies.

13413 | Section 238. Section 631.66, Florida Statutes, is amended
 13414 | to read:

13415 | 631.66 Immunity.--There shall be no liability on the part
 13416 | of, and no cause of action of any nature shall arise against,
 13417 | any member insurer, the association or its agents or employees,
 13418 | the board of directors, or the department or office or their ~~its~~



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13419 representatives for any action taken by them in the performance
 13420 of their powers and duties under this part. Such immunity shall
 13421 extend to the participation in any organization of one or more
 13422 other state associations of similar purposes and to any such
 13423 organization and its agents or employees.

13424 Section 239. Section 631.714, Florida Statutes, is amended
 13425 to read:

13426 631.714 Definitions.--As used in this part, the term:

13427 (1) "Account" means any of the three accounts created in
 13428 s. 631.715.

13429 (2) "Association" means the Florida Life and Health
 13430 Insurance Guaranty Association created in s. 631.715.

13431 (3) "Contractual obligation" means any obligation under
 13432 covered policies.

13433 (4) "Covered policy" means any policy or contract set out
 13434 in s. 631.713 and reduced to written, printed, or other tangible
 13435 form.

13436 ~~(5) "Department" means the Department of Insurance.~~

13437 (5)~~(6)~~ "Impaired insurer" means a member insurer deemed by
 13438 the department to be potentially unable to fulfill its
 13439 contractual obligations and not an insolvent insurer.

13440 (6)~~(7)~~ "Insolvent insurer" means a member insurer
 13441 authorized to transact insurance in this state, either at the
 13442 time the policy was issued or when the insured event occurred,
 13443 and against which an order of liquidation with a finding of
 13444 insolvency has been entered by a court of competent
 13445 jurisdiction, if such order has become final by the exhaustion
 13446 of appellate review.



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13447 (7)~~(8)~~ "Member insurer" means any person licensed to
13448 transact in this state any kind of insurance as set out in s.
13449 631.713.

13450 (8)~~(9)~~ "Premium" means any direct gross insurance premium
13451 and any annuity consideration written on covered policies, less
13452 return premium and consideration thereon and dividends paid or
13453 credited to policyholders on such direct business. "Premium"
13454 does not include premium and consideration on contracts between
13455 insurers and reinsurers.

13456 (9)~~(10)~~ "Person" means any individual, corporation,
13457 partnership, association, or voluntary organization.

13458 (10)~~(11)~~ "Resident" means any person who resides in this
13459 state at the time a member insurer is determined to be an
13460 impaired or insolvent insurer and to whom contractual
13461 obligations are owed by such impaired or insolvent member
13462 insurer.

13463 Section 240. Subsections (2) and (3) of section 631.72,
13464 Florida Statutes, are amended to read:

13465 631.72 Premium or income tax credits for assessments
13466 paid.--

13467 (2) If a member insurer ceases doing business in this
13468 state and surrenders to the office ~~department~~ its certificate of
13469 authority to transact insurance in this state, all uncredited
13470 assessments may be credited as provided in this section against
13471 either its premium or corporate income tax liabilities imposed
13472 pursuant to ss. 624.509 and 220.11 for the year it ceases doing
13473 business.



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13474 (3) Any sums acquired by refund pursuant to s. 631.718(6)
 13475 from the association which have theretofore been written off by
 13476 contributing insurers and offset against premium or corporate
 13477 income taxes as provided in subsection(1) and which are not
 13478 needed for purposes of this part shall be paid by the insurer to
 13479 the Department of Revenue for deposit with the Chief Financial
 13480 Officer ~~Treasurer~~ to the credit of the General Revenue Fund.

13481 Section 241. Section 631.722, Florida Statutes, is amended
 13482 to read:

13483 631.722 Powers and duties of department and office--

13484 (1) The office ~~department~~ shall:

13485 (a) Upon request of the board of directors, provide the
 13486 association with a statement of the premiums in each of the
 13487 appropriate states for each member insurer.

13488 (b) When an impairment is declared and the amount of the
 13489 impairment is determined, serve a demand upon the impaired
 13490 insurer to make good the impairment within a reasonable time.
 13491 Notice to the impaired insurer shall constitute notice to its
 13492 shareholders, if any. The failure of the insurer to promptly
 13493 comply with such demand shall not excuse the association from
 13494 the performance of its powers and duties under this part.

13495 (2)(e) The department shall, in any liquidation or
 13496 rehabilitation proceeding involving a domestic insurer, be
 13497 appointed as the liquidator or rehabilitator. If a foreign or
 13498 alien member insurer is subject to a liquidation proceeding in
 13499 its domiciliary jurisdiction or state of entry, the department
 13500 shall be appointed conservator.



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13501 (3)~~(2)~~ The office ~~department~~ may suspend or revoke, after
13502 notice and hearing, the certificate of authority to transact
13503 insurance in this state of any member insurer that fails to pay
13504 an assessment when due or fails to comply with the approved plan
13505 of operation of the association. As an alternative, the office
13506 ~~department~~ may levy a forfeiture on any member insurer that
13507 fails to pay an assessment when due. Such forfeiture shall not
13508 exceed 5 percent of the unpaid assessment per month, but no
13509 forfeiture shall be less than \$100 per month.

13510 (4)~~(3)~~ Any action of the board of directors or of the
13511 association may be appealed to the office ~~department~~ by any
13512 member insurer if such appeal is taken within 30 days of the
13513 action being appealed. If a member company is appealing an
13514 assessment, the amount assessed shall be paid to the association
13515 and available to meet association obligations during the
13516 pendency of the appeal. If the appeal on the assessment is
13517 upheld, the amount paid in error or excess shall be returned to
13518 the member company. Any final action or order of the office
13519 ~~department~~ shall be subject to judicial review in a court of
13520 competent jurisdiction.

13521 (5)~~(4)~~ The liquidator, rehabilitator, or conservator of
13522 any impaired insurer may notify all interested persons of the
13523 effect of this part.

13524 Section 242. Section 631.723, Florida Statutes, is amended
13525 to read:

13526 631.723 Prevention of insolvencies.--To aid in the
13527 detection and prevention of insurer insolvencies or impairments:



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13528 (1) The board of directors may, upon majority vote, make
 13529 reports and recommendations to the department or office upon any
 13530 matter germane to the solvency, liquidation, rehabilitation, or
 13531 conservation of any member insurer or germane to the solvency of
 13532 any company seeking to do an insurance business in this state.
 13533 Such reports and recommendations are confidential and exempt
 13534 from the provisions of s. 119.07(1) until the termination of a
 13535 delinquency proceeding.

13536 (2) It is the duty of the board of directors, upon a
 13537 majority vote, to notify the office ~~department~~ of any
 13538 information indicating that any member insurer may be an
 13539 impaired or insolvent insurer.

13540 (3) The board of directors may, upon majority vote,
 13541 request that the office ~~department~~ order an examination of any
 13542 member insurer which the board in good faith believes may be an
 13543 impaired or insolvent insurer. Within 30 days of the receipt of
 13544 such a request, the office ~~department~~ shall begin such an
 13545 examination. The examination may be conducted as a National
 13546 Association of Insurance Commissioners examination or may be
 13547 conducted by such persons as the office ~~Insurance Commissioner~~
 13548 designates. The cost of such examination shall be paid by the
 13549 association, and the examination report shall be treated in a
 13550 manner similar to other examination reports pursuant to s.
 13551 624.319. In no event may such examination report be released to
 13552 the board of directors before its release to the public, but
 13553 this does not preclude the office ~~department~~ from complying with
 13554 s. 631.398(2). The office ~~department~~ shall notify the board of
 13555 directors when the examination is completed. The request for an



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13556 examination shall be kept on file by the office ~~department~~; such
 13557 request is confidential and exempt from the provisions of s.
 13558 119.07(1) until the examination report is released to the
 13559 public.

13560 (4) The board of directors may, upon majority vote, make
 13561 recommendations to the office ~~department~~ for the detection and
 13562 prevention of insurer insolvencies.

13563 Section 243. Section 631.727, Florida Statutes, is amended
 13564 to read:

13565 631.727 Immunity.--There shall be no liability on the part
 13566 of, and no cause of action of any nature shall arise against,
 13567 any member insurer or its agents or employees, the association
 13568 or its agents or employees, members of the board of directors,
 13569 or the department or office or their ~~its~~ representatives for any
 13570 action taken by them in the performance of their powers and
 13571 duties under this part. Such immunity shall extend to the
 13572 participation in any organization of one or more other state
 13573 associations of similar purposes and to any such organization
 13574 and its agents or employees.

13575 Section 244. Section 631.813, Florida Statutes, is amended
 13576 to read:

13577 631.813 Application of part.--This part shall apply to HMO
 13578 contractual obligations to residents of Florida by HMOs
 13579 possessing a valid certificate of authority issued ~~by the~~
 13580 ~~Florida Department of Insurance~~ as provided by part I of chapter
 13581 641. The provisions of this part shall not apply to persons
 13582 participating in medical assistance programs under the Medicaid
 13583 program.



13584 Section 245. Section 631.814, Florida Statutes, is amended
13585 to read:

13586 631.814 Definitions.--As used in this part, the term:

13587 (1) "Plan" means the Florida Health Maintenance
13588 Organization Consumer Assistance Plan created by this part.

13589 (2) "Board" means the board of directors of the plan.

13590 (3) "Contractual obligations" means any obligation under
13591 covered health care policies.

13592 (4) "Covered policy" means any policy or contract issued
13593 by an HMO for health care services.

13594 (5) "Date of insolvency" means the effective date of an
13595 order of liquidation entered by a court of competent
13596 jurisdiction.

13597 ~~(6) "Department" means the Florida Department of~~
13598 ~~Insurance.~~

13599 (6)~~(7)~~ "Health care services" means comprehensive health
13600 care services as defined in s. 641.19.

13601 (7)~~(8)~~ "HMO" means a health maintenance organization
13602 possessing a valid certificate of authority issued by the
13603 department pursuant to part I of chapter 641.

13604 (8)~~(9)~~ "Insolvent HMO" means an HMO against which an order
13605 of rehabilitation or liquidation has been entered by a court of
13606 competent jurisdiction, with the department appointed as
13607 receiver, even if such order has not become final by the
13608 exhaustion of appellate reviews.

13609 (9)~~(10)~~ "Person" means any individual, corporation,
13610 partnership, association, or voluntary organization.



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13611 (10)~~(11)~~ "Subscriber" means any resident of this state who
13612 is enrolled for benefits provided by an HMO and who makes
13613 premium payments or for whom premium payments are made.

13614 Section 246. Section 631.821, Florida Statutes, is amended
13615 to read:

13616 631.821 Powers and duties of the department and office.--

13617 (1) The office ~~department~~ may suspend or revoke, after
13618 notice and hearing, the certificate of authority of a member HMO
13619 that fails to pay an assessment when due, fails to comply with
13620 the approved plan of operation of the plan, or fails either to
13621 timely comply with or to timely appeal pursuant to subsection
13622 (2) its appointment under s. 631.818(2).

13623 (2) Any action of the board of directors of the plan may
13624 be appealed to the department by any member HMO if such appeal
13625 is taken within 21 days of the action being appealed; however,
13626 the HMO must comply with such action pending exhaustion of
13627 appeal ~~under s. 631.818(2)~~. Any appeal shall be promptly
13628 determined by the department, and final action or order of the
13629 department shall be subject to judicial review in a court of
13630 competent jurisdiction.

13631 (3) The department may:

13632 ~~(a)~~ require that the plan notify the subscriber of the
13633 insolvent HMO and any other interested parties of the
13634 determination of insolvency and of their rights under this part.
13635 Such notification shall be by mail at their last known
13636 addresses, when available, but if sufficient information for
13637 notification by mail is not available, notice by publication in
13638 a newspaper of general circulation shall be sufficient.



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13639 ~~(4)(b)~~ The office may revoke the designation of any
13640 servicing facility or administrator if it finds claims are being
13641 handled unsatisfactorily.

13642 Section 247. Section 631.825, Florida Statutes, is amended
13643 to read:

13644 631.825 Immunity.--There shall be no liability on the part
13645 of, and no cause of action of any nature shall arise against,
13646 any member HMO or its agents or employees, the plan or its
13647 agents or employees, members of the board of directors, or the
13648 department or office or their ~~its~~ representatives for any action
13649 taken by them in the performance of their powers and duties
13650 under this part.

13651 Section 248. Section 631.904, Florida Statutes, is amended
13652 to read:

13653 631.904 Definitions.--As used in this part, the term:

13654 (1) "Corporation" means the Florida Workers' Compensation
13655 Insurance Guaranty Association, Incorporated.

13656 (2) "Covered claim" means an unpaid claim, including a
13657 claim for return of unearned premiums, which arises out of, is
13658 within the coverage of, and is not in excess of the applicable
13659 limits of, an insurance policy to which this part applies, which
13660 policy was issued by an insurer and which claim is made on
13661 behalf of a claimant or insured who was a resident of this state
13662 at the time of the injury. The term "covered claim" does not
13663 include any amount sought as a return of premium under any
13664 retrospective rating plan; any amount due any reinsurer,
13665 insurer, insurance pool, or underwriting association, as
13666 subrogation recoveries or otherwise; or any return of premium



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13667 resulting from a policy that was not in force on the date of the
 13668 final order of liquidation. Member insurers have no right of
 13669 subrogation against the insured of any insolvent insurer. This
 13670 provision shall be applied retroactively to cover claims of an
 13671 insolvent self-insurance fund resulting from accidents or losses
 13672 incurred prior to January 1, 1994, regardless of the date the
 13673 ~~Department of Insurance filed~~ a petition in circuit court was
 13674 filed alleging insolvency and the date the court entered an
 13675 order appointing a receiver.

13676 ~~(3) "Department" means the Department of Insurance.~~

13677 (3)~~(4)~~ "Insolvency" means that condition in which all of
 13678 the assets of the insurer, if made immediately available, would
 13679 not be sufficient to discharge all of its liabilities or that
 13680 condition in which the insurer is unable to pay its debts as
 13681 they become due in the usual course of business. When the
 13682 context of any provision of this part so indicates, insolvency
 13683 also includes impairment of surplus or impairment of capital.

13684 (4)~~(5)~~ "Insolvent insurer" means an insurer that was
 13685 authorized to transact insurance in this state, either at the
 13686 time the policy was issued or when the insured event occurred,
 13687 and against which an order of liquidation with a finding of
 13688 insolvency has been entered by a court of competent jurisdiction
 13689 if such order has become final by the exhaustion of appellate
 13690 review.

13691 (5)~~(6)~~ "Insurer" means an insurance carrier or self-
 13692 insurance fund authorized to insure under chapter 440. For
 13693 purposes of this act, "insurer" does not include a qualified



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13694 local government self-insurance fund, as defined in s. 624.4622,
13695 or an individual self-insurer as defined in s. 440.385.

13696 (6)~~(7)~~ "Self-insurance fund" means a group self-insurance
13697 fund authorized under s. 624.4621, a commercial self-insurance
13698 fund writing workers' compensation insurance authorized under s.
13699 624.462, or an assessable mutual insurer authorized under s.
13700 628.6011. For purposes of this act, "self-insurance fund" does
13701 not include a qualified local government self-insurance fund, as
13702 defined in s. 624.4622, or an individual self-insurer as defined
13703 in s. 440.385.

13704 Section 249. Subsection (1) of section 631.911, Florida
13705 Statutes, is amended to read:

13706 631.911 Creation of the Florida Workers' Compensation
13707 Insurance Guaranty Association, Incorporated; merger; effect of
13708 merger.--

13709 (1)(a) The Florida Self-Insurance Fund Guaranty
13710 Association established in former part V of chapter 631 and the
13711 workers' compensation insurance account, which includes excess
13712 workers' compensation insurance, established in former s.
13713 631.55(2)(a) shall be merged, ~~effective October 1, 1997, or as~~
13714 ~~provided in paragraph (b)~~, in accordance with the plan of
13715 operation adopted by the interim board of directors. The
13716 successor nonprofit corporation shall be known as the "Florida
13717 Workers' Compensation Insurance Guaranty Association,
13718 Incorporated."

13719 ~~(b) The merger may be effected prior to October 1, 1997,~~
13720 ~~if:~~



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13721 ~~1. The interim board of directors of the Workers'~~
 13722 ~~Compensation Insurance Guaranty Association provides the~~
 13723 ~~Department of Insurance with written notice of its intent to~~
 13724 ~~effectuate the merger as of a date certain and its functional~~
 13725 ~~readiness to initiate operations, such notice setting forth the~~
 13726 ~~plan or summary thereof for effecting the merger; and,~~
 13727 ~~2. The department, upon review of the plan or summary~~
 13728 ~~thereof, determines the Workers' Compensation Insurance Guaranty~~
 13729 ~~Association is functionally ready to initiate operations and so~~
 13730 ~~certifies to the interim board of directors.~~
 13731 ~~(c) Prior to the effective date of the merger, the Florida~~
 13732 ~~Self-Insurance Fund Guaranty Association shall be the entity~~
 13733 ~~responsible for the claims of insolvent self-insurance funds~~
 13734 ~~resulting from accidents or losses incurred prior to January 1,~~
 13735 ~~1994, regardless of the date the Department of Insurance filed a~~
 13736 ~~petition in circuit court alleging insolvency and the date the~~
 13737 ~~court entered an order appointing a receiver.~~
 13738 (b)(d) Upon the effective date of the merger:
 13739 1. The Florida Self-Insurance Fund Guaranty Association
 13740 and the workers' compensation insurance account within the
 13741 Florida Insurance Guaranty Association cease to exist and are
 13742 succeeded by the Florida Workers' Compensation Insurance
 13743 Guaranty Association.
 13744 2. Title to all assets of any description, all real estate
 13745 and other property, or any interest therein, owned by each party
 13746 to the merger is vested in the successor corporation without
 13747 reversion or impairment.



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13748 3. The successor corporation shall be responsible and
13749 liable for all the liabilities and obligations of each party to
13750 the merger.

13751 4. Any claim existing or action or proceeding pending by
13752 or against any party to the merger may be continued as if the
13753 merger did not occur or the successor corporation may be
13754 substituted in the proceeding for the corporation or account
13755 which ceased existence.

13756 5. Neither the rights of creditors nor any liens upon the
13757 property of any party to the merger shall be impaired by such
13758 merger.

13759 6. Outstanding assessments levied by the Florida Self-
13760 Insurance Guaranty Association or the Florida Insurance Guaranty
13761 Association on behalf of the workers' compensation insurance
13762 account remain in full force and effect and shall be paid when
13763 due.

13764 Section 250. Subsections (1) and (3) of section 631.912,
13765 Florida Statutes, are amended to read:

13766 631.912 Board of directors.--

13767 (1) The board of directors of the corporation shall
13768 consist of 11 persons, 1 of whom is the insurance consumer
13769 advocate appointed under s. 627.0613 or designee and 1 of whom
13770 is designated by the Chief Financial Officer Insurance
13771 ~~Commissioner~~. The department shall appoint to the board 6
13772 persons selected by private carriers from among the 20 workers'
13773 compensation insurers with the largest amount of net direct
13774 written premium as determined by the department, and 3 persons
13775 selected by the self-insurance funds. At least two of the



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13776 private carriers shall be foreign carriers authorized to do
 13777 business in this state. The board shall elect a chairperson from
 13778 among its members. The Chief Financial Officer ~~commissioner~~ may
 13779 remove any board member for cause. Each board member shall
 13780 serve for a 4-year term and may be reappointed, ~~except that four~~
 13781 ~~members of the initial board shall have 2-year terms so as to~~
 13782 ~~stagger the periods of service.~~ A vacancy on the board shall be
 13783 filled for the remaining period of the term in the same manner
 13784 by which the original appointment was made.

13785 ~~(3) Effective upon this act becoming a law, the persons on~~
 13786 ~~the board of directors created pursuant to s. 627.311(4)(a) who~~
 13787 ~~evidence a willingness to serve in writing, shall serve as an~~
 13788 ~~interim board of directors of the corporation until the initial~~
 13789 ~~board of directors has been appointed for the corporation in~~
 13790 ~~accordance with the provisions of subsection (1). The interim~~
 13791 ~~board of directors shall serve for a period not to exceed 6~~
 13792 ~~months. The initial meeting shall be called by the commissioner~~
 13793 ~~within 30 days after this act becomes a law. The interim board~~
 13794 ~~of directors shall establish a process for the selection of~~
 13795 ~~persons to serve on the board of the Florida Workers'~~
 13796 ~~Compensation Insurance Guaranty Association in accordance with~~
 13797 ~~the terms of subsection (1). The board of directors shall adopt~~
 13798 ~~an interim plan of operation to effect the merger in s. 631.911~~
 13799 ~~and avoid any interruption of benefit payments to injured~~
 13800 ~~workers. When necessary and upon approval of the chairs of~~
 13801 ~~their respective board of directors, the Florida Self-Insurance~~
 13802 ~~Fund Guaranty Association and the Florida Insurance Guaranty~~
 13803 ~~Association shall provide staff support to the interim board of~~



13804 ~~directors. The board shall submit the interim plan to the~~
 13805 ~~commissioner, who shall approve or disapprove the plan within 30~~
 13806 ~~days after receipt.~~

13807 Section 251. Section 631.917, Florida Statutes, is amended
 13808 to read:

13809 631.917 Prevention of insolvencies.--To aid in the
 13810 detection and prevention of insolvencies or impairments:

13811 (1)(a) The board may make reasonable and lawful
 13812 investigation into the practices of any third-party
 13813 administrator or service company for a self-insurance fund
 13814 declared insolvent by the court.

13815 (b) If the results of an investigation reasonably lead to
 13816 a finding that certain actions taken or not taken by those
 13817 handling, processing, or preparing covered claims for payment or
 13818 other benefit pursuant to any workers' compensation insurance
 13819 policy contributed to the insolvency of an insurer, such
 13820 information may, in the discretion of the board, be provided to
 13821 the department or office in an expedited manner.

13822 (2) The board of directors may make reports and
 13823 recommendations to the department or office upon any matter
 13824 germane to the solvency, liquidation, rehabilitation, or
 13825 conservation of any member insurer or germane to the solvency of
 13826 any insurer seeking to do insurance business in this state.

13827 (3) The board of directors, in its discretion, may notify
 13828 the office ~~department~~ of any information indicating that any
 13829 member insurer may be an impaired or insolvent insurer.

13830 (4) The board of directors, in its discretion, may request
 13831 that the office ~~department~~ order an examination of any member



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13832 insurer which the board in good faith believes may be an
13833 impaired or insolvent insurer. Within 30 days after receipt of
13834 such a request, the office ~~department~~ shall begin such an
13835 examination. The examination may be conducted as a National
13836 Association of Insurance Commissioners examination or may be
13837 conducted by such persons as the office ~~Insurance Commissioner~~
13838 designates. The cost of such examination shall be paid by the
13839 corporation, and the examination report shall be treated in a
13840 manner similar to other examination reports pursuant to s.
13841 624.319. In no event may such examination report be released to
13842 the board of directors before its release to the public, but
13843 this requirement does not preclude the office ~~department~~ from
13844 complying with s. 631.398(2). The office ~~department~~ shall
13845 notify the board of directors when the examination is completed.
13846 The request for an examination shall be kept on file by the
13847 office ~~department~~.

13848 (5) The board is authorized to assist and aid the
13849 department or office, in any manner consistent with existing
13850 laws and this chapter, in the department's or office's
13851 investigation or referral for prosecution of those whose action
13852 or inaction may have contributed to the impairment or insolvency
13853 of the insurer.

13854 (6) The board may make recommendations to the office
13855 ~~department~~ for the detection and prevention of insurer
13856 insolvencies.

13857 Section 252. Section 631.918, Florida Statutes, is amended
13858 to read:



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13859 631.918 Immunity.--There is no liability on the part of,
13860 and a cause of action may not arise against, the corporation,
13861 its agents or employees, or members of its board of directors,
13862 or the department or office or their ~~its~~ agents or employees,
13863 for any action taken by them in the performance of their powers
13864 and duties under this section, unless such action is found to be
13865 a violation of antitrust laws, was in bad faith, or was
13866 undertaken with malicious purpose or in a manner exhibiting
13867 wanton and willful disregard of human rights, safety, or
13868 property.

13869 Section 253. Section 631.931, Florida Statutes, is amended
13870 to read:

13871 631.931 Reports and recommendations by board; public
13872 records exemption.--Reports and recommendations made by the
13873 Board of Directors of the Florida Workers' Compensation
13874 Insurance Guaranty Association ~~to the Department of Insurance~~
13875 under s. 631.917 upon any matter germane to the solvency,
13876 liquidation, rehabilitation, or conservation of any member
13877 insurer are confidential and exempt from the provisions of s.
13878 119.07(1) and s. 24(a), Art. I of the State Constitution until
13879 the termination of a delinquency proceeding.

13880 Section 254. Subsections (3) and (4) of section 634.3284,
13881 Florida Statutes, are amended to read:

13882 634.3284 Civil remedy.--

13883 (3) As a condition precedent to bringing an action under
13884 this section, the office ~~department~~ and the insurer shall be
13885 given written notice of the violation. The notice shall state
13886 with specificity the facts which allegedly constitute the



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13887 violation and the law upon which the plaintiff is relying and
 13888 shall state that such notice is given in order to perfect the
 13889 right to pursue the civil remedy authorized by this section. No
 13890 action will lie if, within 30 days thereafter, the damages are
 13891 paid or the circumstances giving rise to the violation are
 13892 corrected.

13893 (4) This section shall not be construed to authorize a
 13894 class action suit against a home warranty association or a civil
 13895 action against the department or office or their, ~~its~~ employees,
 13896 or the Chief Financial Officer ~~Insurance Commissioner~~.

13897 Section 255. Subsection (2) of section 634.430, Florida
 13898 Statutes, is amended to read:

13899 634.430 Dissolution or liquidation.--

13900 (2) The department and office shall be notified of the
 13901 commencement of voluntary dissolution proceedings of a
 13902 manufacturer licensed under this part. As to the warranty
 13903 operations of a manufacturer in this state, the department shall
 13904 supervise the voluntary dissolution and shall require protection
 13905 of the interests of the department, office, and consumers who
 13906 have been issued service warranties by the manufacturer by the
 13907 continuation of deposits or bonds as required by this part until
 13908 that time as all warranties issued by the manufacturer are no
 13909 longer in effect or all outstanding warranties have been
 13910 assigned to another association approved by the department and
 13911 office. The notification as provided herein shall be made by the
 13912 manufacturer within 30 days of the commencement of any legal
 13913 action for dissolution.



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13914 Section 256. Subsections (3) and (4) of section 634.433,
13915 Florida Statutes, are amended to read:

13916 634.433 Civil remedy.--

13917 (3) As a condition precedent to bringing an action under
13918 this section, the office ~~department~~ and the insurer shall be
13919 given written notice of the violation. The notice shall state
13920 with specificity the facts which allegedly constitute the
13921 violation and the law upon which the plaintiff is relying and
13922 shall state that such notice is given in order to perfect the
13923 right to pursue the civil remedy authorized by this section. No
13924 action will lie if, within 30 days thereafter, the damages are
13925 paid or the circumstances giving rise to the violation are
13926 corrected.

13927 (4) This section shall not be construed to authorize a
13928 class action suit against a service warranty association or a
13929 civil action against the department, the office, their ~~its~~
13930 employees, or the Chief Financial Officer ~~Insurance~~
13931 ~~Commissioner~~.

13932 Section 257. Section 636.067, Florida Statutes, is amended
13933 to read:

13934 636.067 Rules.--The commission may ~~department has~~
13935 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54
13936 to implement the provisions of this act. A violation of any
13937 such rule subjects the violator to the provisions of s. 636.048.

13938 Section 258. Section 641.183, Florida Statutes, is amended
13939 to read:

13940 641.183 Statutory accounting procedures; transition
13941 provisions.--All health maintenance organizations, authorized to



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13942 do business under this chapter on January 1, 2001, shall elect a
13943 transition method for compliance with statutory accounting
13944 principles as follows:

13945 (1) Report assets acquired prior to June 30, 2001, in
13946 accordance with s. 641.35, Florida Statutes (2000), through
13947 December 31, 2005. Assets acquired on or after June 30, 2001,
13948 shall be accounted for in accordance with the National
13949 Association of Insurance Commissioners Accounting Practices and
13950 Procedures Manual as of 2002 ~~effective January 1, 2001~~. A health
13951 maintenance organization electing to report assets pursuant to
13952 this subsection shall maintain complete and detailed records
13953 reflecting such accounting treatment; or

13954 (2) Report all assets in accordance with the NAIC
13955 Accounting Practices and Procedures Manual as of 2002 ~~effective~~
13956 ~~January 1, 2001~~.

13957 Section 259. Section 641.185, Florida Statutes, is amended
13958 to read:

13959 641.185 Health maintenance organization subscriber
13960 protections.--

13961 (1) With respect to the provisions of this part and part
13962 III, the principles expressed in the following statements shall
13963 serve as standards to be followed by the commission, the office,
13964 the department, ~~of Insurance~~ and the Agency for Health Care
13965 Administration in exercising their powers and duties, in
13966 exercising administrative discretion, in administrative
13967 interpretations of the law, in enforcing its provisions, and in
13968 adopting rules:



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13969 (a) A health maintenance organization shall ensure that
13970 the health care services provided to its subscribers shall be
13971 rendered under reasonable standards of quality of care which are
13972 at a minimum consistent with the prevailing standards of medical
13973 practice in the community pursuant to ss. 641.495(1) and 641.51.

13974 (b) A health maintenance organization subscriber should
13975 receive quality health care from a broad panel of providers,
13976 including referrals, preventive care pursuant to s. 641.402(1),
13977 emergency screening and services pursuant to ss. 641.31(12) and
13978 641.513, and second opinions pursuant to s. 641.51.

13979 (c) A health maintenance organization subscriber should
13980 receive assurance that the health maintenance organization has
13981 been independently accredited by a national review organization
13982 pursuant to s. 641.512, and is financially secure as determined
13983 by the state pursuant to ss. 641.221, 641.225, and 641.228.

13984 (d) A health maintenance organization subscriber should
13985 receive continuity of health care, even after the provider is no
13986 longer with the health maintenance organization pursuant to s.
13987 641.51(8).

13988 (e) A health maintenance organization subscriber should
13989 receive timely, concise information regarding the health
13990 maintenance organization's reimbursement to providers and
13991 services pursuant to ss. 641.31 and 641.31015 and should receive
13992 prompt payment from the organization pursuant to s. 641.3155.

13993 (f) A health maintenance organization subscriber should
13994 receive the flexibility to transfer to another Florida health
13995 maintenance organization, regardless of health status, pursuant



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13996 to ss. 641.228, 641.3104, 641.3107, 641.3111, 641.3921, and
13997 641.3922.

13998 (g) A health maintenance organization subscriber should be
13999 eligible for coverage without discrimination against individual
14000 participants and beneficiaries of group plans based on health
14001 status pursuant to s. 641.31073.

14002 (h) A health maintenance organization that issues a group
14003 health contract must: provide coverage for preexisting
14004 conditions pursuant to s. 641.31071; guarantee renewability of
14005 coverage pursuant to s. 641.31074; provide notice of
14006 cancellation pursuant to s. 641.3108; provide extension of
14007 benefits pursuant to s. 641.3111; provide for conversion on
14008 termination of eligibility pursuant to s. 641.3921; and provide
14009 for conversion contracts and conditions pursuant to s. 641.3922.

14010 (i) A health maintenance organization subscriber should
14011 receive timely and, if necessary, urgent grievances and appeals
14012 within the health maintenance organization pursuant to ss.
14013 641.228, 641.31(5), 641.47, and 641.511.

14014 (j) A health maintenance organization should receive
14015 timely and, if necessary, urgent review by an independent state
14016 external review organization for unresolved grievances and
14017 appeals pursuant to s. 408.7056.

14018 (k) A health maintenance organization subscriber shall be
14019 given written notice at least 30 days in advance of a rate
14020 change pursuant to s. 641.31(3)(b). In the case of a group
14021 member, there may be a contractual agreement with the health
14022 maintenance organization to have the employer provide the



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14023 required notice to the individual members of the group pursuant
14024 to s. 641.31(3)(b).

14025 (1) A health maintenance organization subscriber shall be
14026 given a copy of the applicable health maintenance contract,
14027 certificate, or member handbook specifying: all the provisions,
14028 disclosure, and limitations required pursuant to s. 641.31(1)
14029 and (4); the covered services, including those services, medical
14030 conditions, and provider types specified in ss. 641.31,
14031 641.31094, 641.31095, 641.31096, 641.51(11), and 641.513; and
14032 where and in what manner services may be obtained pursuant to s.
14033 641.31(4).

14034 (2) This section shall not be construed as creating a
14035 civil cause of action by any subscriber or provider against any
14036 health maintenance organization.

14037 Section 260. Section 641.19, Florida Statutes, is amended
14038 to read:

14039 641.19 Definitions.--As used in this part, the term:

14040 (1) "Affiliate" means any entity that ~~which~~ exercises
14041 control over or is controlled by the health maintenance
14042 organization, directly or indirectly, through:

14043 (a) Equity ownership of voting securities;

14044 (b) Common managerial control; or

14045 (c) Collusive participation by the management of the
14046 health maintenance organization and affiliate in the management
14047 of the health maintenance organization or the affiliate.

14048 (2) "Agency" means the Agency for Health Care
14049 Administration.



14050 (3) "Capitation" means the fixed amount paid by an HMO to
 14051 a health care provider under contract with the health
 14052 maintenance organization in exchange for the rendering of
 14053 covered medical services.

14054 (4) "Comprehensive health care services" means services,
 14055 medical equipment, and supplies furnished by a provider, which
 14056 may include, but which are not limited to, medical, surgical,
 14057 and dental care; psychological, optometric, optic, chiropractic,
 14058 podiatric, nursing, physical therapy, and pharmaceutical
 14059 services; health education, preventive medical, rehabilitative,
 14060 and home health services; inpatient and outpatient hospital
 14061 services; extended care; nursing home care; convalescent
 14062 institutional care; technical and professional clinical
 14063 pathology laboratory services; laboratory and ambulance
 14064 services; appliances, drugs, medicines, and supplies; and any
 14065 other care, service, or treatment of disease, or correction of
 14066 defects for human beings.

14067 (5) "Copayment" means a specific dollar amount, except as
 14068 otherwise provided for by statute, that the subscriber must pay
 14069 upon receipt of covered health care services. Copayments may
 14070 not be established in an amount that will prevent a person from
 14071 receiving a covered service or benefit as specified in the
 14072 subscriber contract approved by the office ~~department~~.

14073 ~~(6) "Department" means the Department of Insurance.~~

14074 (6)~~(7)~~ "Emergency medical condition" means:

14075 (a) A medical condition manifesting itself by acute
 14076 symptoms of sufficient severity, which may include severe pain
 14077 or other acute symptoms, such that the absence of immediate



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14078 | medical attention could reasonably be expected to result in any
14079 | of the following:

14080 | 1. Serious jeopardy to the health of a patient, including
14081 | a pregnant woman or a fetus.

14082 | 2. Serious impairment to bodily functions.

14083 | 3. Serious dysfunction of any bodily organ or part.

14084 | (b) With respect to a pregnant woman:

14085 | 1. That there is inadequate time to effect safe transfer
14086 | to another hospital prior to delivery;

14087 | 2. That a transfer may pose a threat to the health and
14088 | safety of the patient or fetus; or

14089 | 3. That there is evidence of the onset and persistence of
14090 | uterine contractions or rupture of the membranes.

14091 | (7)~~(8)~~ "Emergency services and care" means medical
14092 | screening, examination, and evaluation by a physician, or, to
14093 | the extent permitted by applicable law, by other appropriate
14094 | personnel under the supervision of a physician, to determine if
14095 | an emergency medical condition exists and, if it does, the care,
14096 | treatment, or surgery for a covered service by a physician
14097 | necessary to relieve or eliminate the emergency medical
14098 | condition, within the service capability of a hospital.

14099 | (8)~~(9)~~ "Entity" means any legal entity with continuing
14100 | existence, including, but not limited to, a corporation,
14101 | association, trust, or partnership.

14102 | (9)~~(10)~~ "Geographic area" means the county or counties, or
14103 | any portion of a county or counties, within which the health
14104 | maintenance organization provides or arranges for comprehensive
14105 | health care services to be available to its subscribers.



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14106 (10)~~(11)~~ "Guaranteeing organization" is an organization
14107 that ~~which~~ is domiciled in the United States; that ~~which~~ has
14108 authorized service of process against it; and that ~~which~~ has
14109 appointed the Chief Financial Officer ~~Insurance Commissioner and~~
14110 ~~Treasurer~~ as its agent for service of process issuing upon any
14111 cause of action arising in this state, based upon any guarantee
14112 entered into under this part.

14113 (11)~~(12)~~ "Health maintenance contract" means any contract
14114 entered into by a health maintenance organization with a
14115 subscriber or group of subscribers to provide comprehensive
14116 health care services in exchange for a prepaid per capita or
14117 prepaid aggregate fixed sum.

14118 (12)~~(13)~~ "Health maintenance organization" means any
14119 organization authorized under this part which:

14120 (a) Provides emergency care, inpatient hospital services,
14121 physician care including care provided by physicians licensed
14122 under chapters 458, 459, 460, and 461, ambulatory diagnostic
14123 treatment, and preventive health care services;

14124 (b) Provides, either directly or through arrangements with
14125 other persons, health care services to persons enrolled with
14126 such organization, on a prepaid per capita or prepaid aggregate
14127 fixed-sum basis;

14128 (c) Provides, either directly or through arrangements with
14129 other persons, comprehensive health care services which
14130 subscribers are entitled to receive pursuant to a contract;

14131 (d) Provides physician services, by physicians licensed
14132 under chapters 458, 459, 460, and 461, directly through
14133 physicians who are either employees or partners of such



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14134 organization or under arrangements with a physician or any group
14135 of physicians; and

14136 (e) If offering services through a managed care system,
14137 then the managed care system must be a system in which a primary
14138 physician licensed under chapter 458 or chapter 459 and chapters
14139 460 and 461 is designated for each subscriber upon request of a
14140 subscriber requesting service by a physician licensed under any
14141 of those chapters, and is responsible for coordinating the
14142 health care of the subscriber of the respectively requested
14143 service and for referring the subscriber to other providers of
14144 the same discipline when necessary. Each female subscriber may
14145 select as her primary physician an obstetrician/gynecologist who
14146 has agreed to serve as a primary physician and is in the health
14147 maintenance organization's provider network.

14148 (13)~~(14)~~ "Insolvent" or "insolvency" means that all the
14149 statutory assets of the health maintenance organization, if made
14150 immediately available, would not be sufficient to discharge all
14151 of its liabilities or that the health maintenance organization
14152 is unable to pay its debts as they become due in the usual
14153 course of business. In the event that all the assets of the
14154 health maintenance organization, if made immediately available,
14155 would not be sufficient to discharge all of its liabilities, but
14156 the organization has a written guarantee of the type and subject
14157 to the same provisions as outlined in s. 641.225, the
14158 organization shall not be considered insolvent unless it is
14159 unable to pay its debts as they become due in the usual course
14160 of business.



14161 (14)~~(15)~~ "Provider" means any physician, hospital, or
 14162 other institution, organization, or person that furnishes health
 14163 care services and is licensed or otherwise authorized to
 14164 practice in the state.

14165 (15)~~(16)~~ "Reporting period" means the annual calendar year
 14166 accounting period or any part thereof.

14167 (16)~~(17)~~ "Statutory accounting principles" means
 14168 accounting principles as defined in the National Association of
 14169 Insurance Commissioners Accounting Practices and Procedures
 14170 Manual as of 2002 ~~effective January 1, 2001~~.

14171 (17)~~(18)~~ "Subscriber" means an entity or individual who
 14172 has contracted, or on whose behalf a contract has been entered
 14173 into, with a health maintenance organization for health care
 14174 services or other persons who also receive health care services
 14175 as a result of the contract.

14176 (18)~~(19)~~ "Surplus" means total statutory assets in excess
 14177 of total liabilities, except that assets pledged to secure debts
 14178 not reflected on the books of the health maintenance
 14179 organization shall not be included in surplus. Surplus includes
 14180 capital stock, capital in excess of par, other contributed
 14181 capital, retained earnings, and surplus notes.

14182 (19)~~(20)~~ "Uncovered expenditures" means the cost of health
 14183 care services that are covered by a health maintenance
 14184 organization, for which a subscriber would also be liable in the
 14185 event of the insolvency of the organization.

14186 (20)~~(21)~~ "Health care risk contract" means a contract
 14187 under which an individual or entity receives consideration or
 14188 other compensation in an amount greater than 1 percent of the



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14189 health maintenance organization's annual gross written premium
14190 in exchange for providing to the health maintenance organization
14191 a provider network or other services, which may include
14192 administrative services. The 1-percent threshold shall be
14193 calculated on a contract-by-contract basis for each such
14194 individual or entity and not in the aggregate for all health
14195 care risk contracts.

14196 Section 261. Section 641.2017, Florida Statutes, is
14197 amended to read:

14198 641.2017 Insurance business not authorized.--Nothing in
14199 the Florida Insurance Code or this part shall be deemed to
14200 authorize any health maintenance organization to transact any
14201 insurance business other than that of health maintenance
14202 organization type insurance or otherwise to engage in any other
14203 type of insurance unless it is authorized under a certificate of
14204 authority issued by the office ~~department~~ under the provisions
14205 of the Florida Insurance Code. However, a health maintenance
14206 organization may by contract:

14207 (1) Enter into arrangements whereby the expected cost of
14208 health care services provided directly or through arrangements
14209 with other persons by the health maintenance organization is
14210 self-funded by the person contracting with the health
14211 maintenance organization, but the health maintenance
14212 organization assumes the risks that costs will exceed that
14213 amount on a prepaid per capita or prepaid aggregate fixed-sum
14214 basis; or

14215 (2) Enter into arrangements whereby the cost of health
14216 care services provided directly or through arrangements with



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14217 other persons by the health maintenance organization is self-
14218 funded by the person contracting with the health maintenance
14219 organization.

14220 Section 262. Subsections (1) and (2) of section 641.2018,
14221 Florida Statutes, are amended to read:

14222 641.2018 Limited coverage for home health care
14223 authorized.--

14224 (1) Notwithstanding other provisions of this chapter, a
14225 health maintenance organization may issue a contract that limits
14226 coverage to home health care services only. The organization and
14227 the contract shall be subject to all of the requirements of this
14228 part that do not require or otherwise apply to specific benefits
14229 other than home care services. To this extent, all of the
14230 requirements of this part apply to any organization or contract
14231 that limits coverage to home care services, except the
14232 requirements for providing comprehensive health care services as
14233 provided in ss. 641.19(4), (11), and (12), ~~and (13)~~, and
14234 641.31(1), except ss. 641.31(9), (12), (17), (18), (19), (20),
14235 (21), and (24) and 641.31095.

14236 (2) Notwithstanding the other provisions of this chapter,
14237 a health maintenance organization may apply for and obtain a
14238 certificate of authority from the office ~~department~~ pursuant to
14239 this part and a health care provider certificate pursuant to
14240 part III, which certificate limits the authority of the
14241 organization to the issuance of contracts that limit coverage to
14242 home health care services pursuant to subsection (1). In
14243 addition to all applicable requirements of this part, as
14244 specified in subsection (1), all of the requirements of part III



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14245 apply to an organization applying for such a limited
14246 certificate, except to the extent that such requirements
14247 directly conflict with the limited nature of the coverage
14248 provided.

14249 Section 263. Subsections (1) and (2) of section 641.21,
14250 Florida Statutes, are amended to read:

14251 641.21 Application for certificate.--

14252 (1) Before any entity may operate a health maintenance
14253 organization, it shall obtain a certificate of authority from
14254 the office ~~department~~. The office ~~department~~ shall accept and
14255 shall begin its review of an application for a certificate of
14256 authority anytime after an organization has filed an application
14257 for a health care provider certificate pursuant to part III of
14258 this chapter. However, the office ~~may department shall~~ not
14259 issue a certificate of authority to any applicant which does not
14260 possess a valid health care provider certificate issued by the
14261 agency. Each application for a certificate shall be on such form
14262 as the commission ~~department~~ shall prescribe, shall be verified
14263 by the oath of two officers of the corporation and properly
14264 notarized, and shall be accompanied by the following:

14265 (a) A copy of the articles of incorporation and all
14266 amendments thereto;

14267 (b) A copy of the bylaws, rules and regulations, or
14268 similar form of document, if any, regulating the conduct of the
14269 affairs of the applicant;

14270 (c) A list of the names, addresses, and official
14271 capacities with the organization of the persons who are to be
14272 responsible for the conduct of the affairs of the health



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14273 maintenance organization, including all officers, directors, and
 14274 owners of in excess of 5 percent of the common stock of the
 14275 corporation. Such persons shall fully disclose to the office
 14276 ~~department~~ and the directors of the health maintenance
 14277 organization the extent and nature of any contracts or
 14278 arrangements between them and the health maintenance
 14279 organization, including any possible conflicts of interest;

14280 (d) A complete biographical statement on forms prescribed
 14281 by the commission ~~department~~, and an independent investigation
 14282 report and fingerprints obtained pursuant to chapter 624, of all
 14283 of the individuals referred to in paragraph (c);

14284 (e) A statement generally describing the health
 14285 maintenance organization, its operations, and its grievance
 14286 procedures;

14287 (f) Forms of all health maintenance contracts,
 14288 certificates, and member handbooks the applicant proposes to
 14289 offer the subscribers, showing the benefits to which they are
 14290 entitled, together with a table of the rates charged, or
 14291 proposed to be charged, for each form of such contract. A
 14292 certified actuary shall:

14293 1. Certify that the rates are neither inadequate nor
 14294 excessive nor unfairly discriminatory;

14295 2. Certify that the rates are appropriate for the classes
 14296 of risks for which they have been computed; and

14297 3. File an adequate description of the rating methodology
 14298 showing that such methodology follows consistent and equitable
 14299 actuarial principles;



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14300 (g) A statement describing with reasonable certainty the
14301 geographic area or areas to be served by the health maintenance
14302 organization;

14303 (h) As to any applicant whose business plan indicates that
14304 it will receive Medicaid funds, a list of all contracts and
14305 agreements and any information relative to any payment or
14306 agreement to pay, directly or indirectly, a consultant fee, a
14307 broker fee, a commission, or other fee or charge related in any
14308 way to the application for a certificate of authority or the
14309 issuance of a certificate of authority, including, but not
14310 limited to, the name of the person or entity paying the fee; the
14311 name of the person or entity receiving the fee; the date of
14312 payment; and a brief description of the work performed. The
14313 contract, agreement, and related information shall, if
14314 requested, be provided to the office ~~department~~.

14315 (i) An audited financial statement prepared on the basis
14316 of statutory accounting principles and certified by an
14317 independent certified public accountant, except that surplus
14318 notes acceptable to the office ~~department~~ and meeting the
14319 requirements of this act shall be included in the calculation of
14320 surplus; and

14321 (j) Such additional reasonable data, financial statements,
14322 and other pertinent information as the commissioner or office
14323 requires ~~department may require~~ with respect to the
14324 determination that the applicant can provide the services to be
14325 offered.

14326 (2) After submission of the application for a certificate
14327 of authority, the entity may engage in initial group marketing



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14328 activities solely with respect to employers, representatives of
14329 labor unions, professional associations, and trade associations,
14330 so long as it does not enter into, issue, deliver, or otherwise
14331 effectuate health maintenance contracts, effectuate or bind
14332 coverage or benefits, provide health care services, or collect
14333 premiums or charges until it has been issued a certificate of
14334 authority by the office ~~department~~. Any such activities, oral
14335 or written, shall include a statement that the entity does not
14336 possess a valid certificate of authority and cannot enter into
14337 health maintenance contracts until such time as it has been
14338 issued a certificate of authority by the office ~~department~~.

14339 Section 264. Section 641.215, Florida Statutes, is amended
14340 to read:

14341 641.215 Conditions precedent to issuance or maintenance of
14342 certificate of authority; effect of bankruptcy proceedings.--

14343 (1) As a condition precedent to the issuance or
14344 maintenance of a certificate of authority, a health maintenance
14345 organization insurer must file or have on file with the office
14346 ~~department~~:

14347 (a) An acknowledgment that a delinquency proceeding
14348 pursuant to part I of chapter 631, or supervision by the office
14349 ~~department~~ pursuant to ss. 624.80-624.87, constitutes the sole
14350 and exclusive method for the liquidation, rehabilitation,
14351 reorganization, or conservation of a health maintenance
14352 organization.

14353 (b) A waiver of any right to file or be subject to a
14354 bankruptcy proceeding.



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14355 (2) The commencement of a bankruptcy proceeding either by
14356 or against a health maintenance organization shall, by operation
14357 of law:

14358 (a) Terminate the health maintenance organization's
14359 certificate of authority.

14360 (b) Vest in the office ~~department~~ for the use and benefit
14361 of the subscribers of the health maintenance organization the
14362 title to any deposits of the insurer held by the department.

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14365 If the proceeding is initiated by a party other than the health
14366 maintenance organization, the operation of subsection (2) shall
14367 be stayed for a period of 60 days following the date of
14368 commencement of the proceeding.

14369 Section 265. Section 641.22, Florida Statutes, is amended
14370 to read:

14371 641.22 Issuance of certificate of authority.--The office
14372 ~~department~~ shall issue a certificate of authority to any entity
14373 filing a completed application in conformity with s. 641.21,
14374 upon payment of the prescribed fees and upon the office's
14375 ~~department's~~ being satisfied that:

14376 (1) As a condition precedent to the issuance of any
14377 certificate, the entity has obtained a health care provider
14378 certificate from the Agency for Health Care Administration
14379 pursuant to part III of this chapter.

14380 (2) The health maintenance organization is actuarially
14381 sound.



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14382 (3) The entity has met the applicable requirements
14383 specified in s. 641.225.

14384 (4) The procedures for offering comprehensive health care
14385 services and offering and terminating contracts to subscribers
14386 will not unfairly discriminate on the basis of age, sex, race,
14387 health, or economic status. However, this section does not
14388 prohibit reasonable underwriting classifications for the
14389 purposes of establishing contract rates, nor does it prohibit
14390 experience rating.

14391 (5) The entity furnishes evidence of adequate insurance
14392 coverage or an adequate plan for self-insurance to respond to
14393 claims for injuries arising out of the furnishing of
14394 comprehensive health care.

14395 (6) The ownership, control, and management of the entity
14396 is competent and trustworthy and possesses managerial experience
14397 that would make the proposed health maintenance organization
14398 operation beneficial to the subscribers. The office ~~department~~
14399 shall not grant or continue authority to transact the business
14400 of a health maintenance organization in this state at any time
14401 during which the office ~~department~~ has good reason to believe
14402 that:

14403 (a) The ownership, control, or management of the
14404 organization includes any person:

- 14405 1. Who is incompetent or untrustworthy;
- 14406 2. Who is so lacking in health maintenance organization
14407 expertise as to make the operation of the health maintenance
14408 organization hazardous to potential and existing subscribers;



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14409 | 3. Who is so lacking in health maintenance organization
14410 | experience, ability, and standing as to jeopardize the
14411 | reasonable promise of successful operation;

14412 | 4. Who is affiliated, directly or indirectly, through
14413 | ownership, control, reinsurance transactions, or other business
14414 | relations, with any person whose business operations are or have
14415 | been marked by business practices or conduct that is to the
14416 | detriment of the public, stockholders, investors, or creditors;
14417 | or

14418 | 5. Whose business operations are or have been marked by
14419 | business practices or conduct that is to the detriment of the
14420 | public, stockholders, investors, or creditors;

14421 | (b) Any person, including any stock subscriber,
14422 | stockholder, or incorporator, who exercises or has the ability
14423 | to exercise effective control of the organization, or who
14424 | influences or has the ability to influence the transaction of
14425 | the business of the health maintenance organization, does not
14426 | possess the financial standing and business experience for the
14427 | successful operation of the health maintenance organization;

14428 | (c) Any person, including any stock subscriber,
14429 | stockholder, or incorporator, who exercises or has the ability
14430 | to exercise effective control of the organization, or who
14431 | influences or has the ability to influence the transaction of
14432 | the business of the health maintenance organization, has been
14433 | found guilty of, or has pled guilty or no contest to, any felony
14434 | or crime punishable by imprisonment of 1 year or more under the
14435 | laws of the United States or any state thereof or under the laws
14436 | of any other country, which involves moral turpitude, without



14437 regard to whether a judgment or conviction has been entered by
 14438 the court having jurisdiction in such case. However, in the case
 14439 of a health maintenance organization operating under a
 14440 subsisting certificate of authority, the health maintenance
 14441 organization shall remove any such person immediately upon
 14442 discovery of the conditions set forth in this paragraph when
 14443 applicable to such person or under the order of the office
 14444 ~~department~~, and the failure to so act by the organization is
 14445 grounds for revocation or suspension of the health maintenance
 14446 organization's certificate of authority; or

14447 (d) Any person, including any stock subscriber,
 14448 stockholder, or incorporator, who exercises or has the ability
 14449 to exercise effective control of the organization, or who
 14450 influences or has the ability to influence the transaction of
 14451 the business of the health maintenance organization, is now or
 14452 was in the past affiliated, directly or indirectly, through
 14453 ownership interest of 10 percent or more, control, or
 14454 reinsurance transactions, with any business, corporation, or
 14455 other entity that has been found guilty of or has pleaded guilty
 14456 or nolo contendere to any felony or crime punishable by
 14457 imprisonment for 1 year or more under the laws of the United
 14458 States, any state, or any other country, regardless of
 14459 adjudication. In the case of a health maintenance organization
 14460 operating under a subsisting certificate of authority, the
 14461 health maintenance organization shall immediately remove such
 14462 person or immediately notify the office ~~department~~ of such
 14463 person upon discovery of the conditions set forth in this
 14464 paragraph, either when applicable to such person or upon order



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14465 of the office ~~department~~. The failure to remove such person,
14466 provide such notice, or comply with such order constitutes
14467 grounds for suspension or revocation of the health maintenance
14468 organization's certificate of authority.

14469 (7) The entity has a blanket fidelity bond in the amount
14470 of \$100,000, issued by a licensed insurance carrier in this
14471 state, that will reimburse the entity in the event that anyone
14472 handling the funds of the entity either misappropriates or
14473 absconds with the funds. All employees handling the funds shall
14474 be covered by the blanket fidelity bond. An agent licensed
14475 under the provisions of the Florida Insurance Code may either
14476 directly or indirectly represent the health maintenance
14477 organization in the solicitation, negotiation, effectuation,
14478 procurement, receipt, delivery, or forwarding of any health
14479 maintenance organization subscriber's contract or collect or
14480 forward any consideration paid by the subscriber to the health
14481 maintenance organization; and the licensed agent shall not be
14482 required to post the bond required by this subsection.

14483 (8) The entity has filed with the office ~~department~~, and
14484 obtained approval from the office ~~department~~ of, all reinsurance
14485 contracts as provided in s. 641.285.

14486 (9) The health maintenance organization has a grievance
14487 procedure that will facilitate the resolution of subscriber
14488 grievances and that includes both formal and informal steps
14489 available within the organization.

14490 Section 266. Subsections (2) and (4), and paragraphs (b)
14491 and (d) of subsection (6) of section 641.225, Florida Statutes,
14492 are amended to read:



14493 | 641.225 Surplus requirements.--

14494 | (2) The office ~~department~~ shall not issue a certificate of

14495 | authority, except as provided in subsection (3), unless the

14496 | health maintenance organization has a minimum surplus in an

14497 | amount which is the greater of:

14498 | (a) Ten percent of their total liabilities based on their

14499 | startup projection as set forth in this part;

14500 | (b) Two percent of their total projected premiums based on

14501 | their startup projection as set forth in this part; or

14502 | (c) \$1,500,000, plus all startup losses, excluding

14503 | profits, projected to be incurred on their startup projection

14504 | until the projection reflects statutory net profits for 12

14505 | consecutive months.

14506 | (4) The commission ~~department~~ may adopt rules to set

14507 | uniform standards and criteria for the early warning that the

14508 | continued operation of any health maintenance organization might

14509 | be hazardous to its subscribers, creditors, or the general

14510 | public, and to set standards for evaluating the financial

14511 | condition of any health maintenance organization.

14512 | (6) In lieu of having any minimum surplus, the health

14513 | maintenance organization may provide a written guarantee to

14514 | assure payment of covered subscriber claims and all other

14515 | liabilities of the health maintenance organization, provided

14516 | that the written guarantee is made by a guaranteeing

14517 | organization which:

14518 | (b) Submits a guarantee that is approved by the office

14519 | ~~department~~ as meeting the requirements of this part, provided

14520 | that the written guarantee contains a provision which requires



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14521 that the guarantee be irrevocable unless the guaranteeing
14522 organization can demonstrate to the office ~~department~~ that the
14523 cancellation of the guarantee will not result in the insolvency
14524 of the health maintenance organization and the office ~~department~~
14525 approves cancellation of the guarantee.

14526 (d) Submits annually, within 3 months after the end of its
14527 fiscal year, an audited financial statement certified by an
14528 independent certified public accountant, prepared in accordance
14529 with generally accepted accounting principles. The office
14530 ~~department~~ may, as it deems necessary, require quarterly
14531 financial statements from the guaranteeing organization.

14532 Section 267. Subsection (1) of section 641.227, Florida
14533 Statutes, is amended to read:

14534 641.227 Rehabilitation Administrative Expense Fund.--

14535 (1) The office ~~department~~ shall not issue or permit to
14536 exist a certificate of authority to operate a health maintenance
14537 organization in this state unless the organization has deposited
14538 with the department \$10,000 in cash for use in the
14539 Rehabilitation Administrative Expense Fund as established in
14540 subsection (2).

14541 Section 268. Subsections (1) and (3) of section 641.228,
14542 Florida Statutes, are amended to read:

14543 641.228 Florida Health Maintenance Organization Consumer
14544 Assistance Plan.--

14545 (1) The office ~~department~~ shall not issue a certificate to
14546 any health maintenance organization after July 1, 1989, until
14547 the applicant health maintenance organization has paid in full
14548 its special assessment as set forth in s. 631.819(2)(a).



14549 (3) The office ~~department~~ may suspend or revoke the
 14550 certificate of authority of any health maintenance organization
 14551 which does not timely pay its assessment to the Florida Health
 14552 Maintenance Organization Consumer Assistance Plan.

14553 Section 269. Section 641.23, Florida Statutes, is amended
 14554 to read:

14555 641.23 Revocation or cancellation of certificate of
 14556 authority; suspension of enrollment of new subscribers; terms of
 14557 suspension.--

14558 (1) The maintenance of a valid and current health care
 14559 provider certificate issued pursuant to part III of this chapter
 14560 is a condition of the maintenance of a valid and current
 14561 certificate of authority issued by the office ~~department~~ to
 14562 operate a health maintenance organization. Denial or revocation
 14563 of a health care provider certificate shall be deemed to be an
 14564 automatic and immediate cancellation of a health maintenance
 14565 organization's certificate of authority. At the discretion of
 14566 the office ~~Department of Insurance~~, nonrenewal of a health care
 14567 provider certificate may be deemed to be an automatic and
 14568 immediate cancellation of a health maintenance organization's
 14569 certificate of authority if the Agency for Health Care
 14570 Administration notifies the office ~~Department of Insurance~~, in
 14571 writing, that the health care provider certificate will not be
 14572 renewed.

14573 (2) The office ~~department~~ may suspend the authority of a
 14574 health maintenance organization to enroll new subscribers or
 14575 revoke any certificate issued to a health maintenance



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14576 organization, or order compliance within 30 days, if it finds
14577 that any of the following conditions exists:

14578 (a) The organization is not operating in compliance with
14579 this part;

14580 (b) The plan is no longer actuarially sound or the
14581 organization does not have the minimum surplus as required by
14582 this part;

14583 (c) The existing contract rates are excessive, inadequate,
14584 or unfairly discriminatory;

14585 (d) The organization has advertised, merchandised, or
14586 attempted to merchandise its services in such a manner as to
14587 misrepresent its services or capacity for service or has engaged
14588 in deceptive, misleading, or unfair practices with respect to
14589 advertising or merchandising; or

14590 (e) The organization is insolvent.

14591 (3) Whenever the financial condition of the health
14592 maintenance organization is such that, if not modified or
14593 corrected, its continued operation would result in impairment or
14594 insolvency, the office ~~department~~ may order the health
14595 maintenance organization to file with the office ~~department~~ and
14596 implement a corrective action plan designed to do one or more of
14597 the following:

14598 (a) Reduce the total amount of present potential liability
14599 for benefits by reinsurance or other means.

14600 (b) Reduce the volume of new business being accepted.

14601 (c) Reduce the expenses of the health maintenance
14602 organization by specified methods.



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14603 (d) Suspend or limit the writing of new business for a
14604 period of time.

14605 (e) Require an increase in the health maintenance
14606 organization's net worth.

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14609 If the health maintenance organization fails to submit a plan
14610 within 30 days of the office's ~~department's~~ order or submits a
14611 plan which is insufficient to correct the health maintenance
14612 organization's financial condition, the office ~~department~~ may
14613 order the health maintenance organization to implement one or
14614 more of the corrective actions listed in this subsection.

14615 (4) The office ~~department~~ shall, in its order suspending
14616 the authority of a health maintenance organization to enroll new
14617 subscribers, specify the period during which the suspension is
14618 to be in effect and the conditions, if any, which must be met by
14619 the health maintenance organization prior to reinstatement of
14620 its authority to enroll new subscribers. The order of
14621 suspension is subject to rescission or modification by further
14622 order of the office ~~department~~ prior to the expiration of the
14623 suspension period. Reinstatement shall not be made unless
14624 requested by the health maintenance organization; however, the
14625 office ~~department~~ shall not grant reinstatement if it finds that
14626 the circumstances for which the suspension occurred still exist
14627 or are likely to recur.

14628 (5) The commission ~~department~~ shall adopt ~~promulgate~~ rules
14629 establishing an actuarially sound medical loss ratio for
14630 Medicaid. In determining the appropriate medical loss ratio,



14631 | the commission ~~department~~ shall consider factors, including but
 14632 | not limited to, plan age, plan structure, geographic service
 14633 | area, product mix, provider network, medical inflation, provider
 14634 | services, other professional services, out of network referrals
 14635 | and expenditures, in and out of network emergency room
 14636 | expenditures, inpatient expenditures, other medical
 14637 | expenditures, incentive pool adjustments, copayments,
 14638 | coordination of benefits, subrogation, and any other expenses
 14639 | associated with the delivery of medical benefits. The
 14640 | commission ~~department~~ shall utilize assistance from the Agency
 14641 | for Health Care Administration, the State University System, an
 14642 | independent actuary, and representatives from health maintenance
 14643 | organizations in developing the rule for appropriate medical
 14644 | loss ratios.

14645 | (6) The office ~~department~~ shall calculate and publish at
 14646 | least annually the medical loss ratios of all licensed health
 14647 | maintenance organizations. The publication shall include an
 14648 | explanation of what the medical loss ratio means and shall
 14649 | disclose that the medical loss ratio is not a direct reflection
 14650 | of quality, but must be looked at along with patient
 14651 | satisfaction and other standards that define quality.

14652 | Section 270. Subsections (1), (2), and (3) of section
 14653 | 641.234, Florida Statutes, are amended to read:

14654 | 641.234 Administrative, provider, and management
 14655 | contracts.--

14656 | (1) The office ~~department~~ may require a health maintenance
 14657 | organization to submit any contract for administrative services,
 14658 | contract with a provider other than an individual physician,



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14659 contract for management services, and contract with an
14660 affiliated entity to the office ~~department~~.

14661 (2) After review of a contract the office ~~department~~ may
14662 order the health maintenance organization to cancel the contract
14663 in accordance with the terms of the contract and applicable law
14664 if it determines:

14665 (a) That the fees to be paid by the health maintenance
14666 organization under the contract are so unreasonably high as
14667 compared with similar contracts entered into by the health
14668 maintenance organization or as compared with similar contracts
14669 entered into by other health maintenance organizations in
14670 similar circumstances that the contract is detrimental to the
14671 subscribers, stockholders, investors, or creditors of the health
14672 maintenance organization; or

14673 (b) That the contract is with an entity that is not
14674 licensed under state statutes, if such license is required, or
14675 is not in good standing with the applicable regulatory agency.

14676 (3) All contracts for administrative services, management
14677 services, provider services other than individual physician
14678 contracts, and with affiliated entities entered into or renewed
14679 by a health maintenance organization on or after October 1,
14680 1988, shall contain a provision that the contract shall be
14681 canceled upon issuance of an order by the office ~~department~~
14682 pursuant to this section.

14683 Section 271. Section 641.2342, Florida Statutes, is
14684 amended to read:

14685 641.2342 Contract providers.--Each health maintenance
14686 organization shall file, upon the request of the office



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14687 ~~department~~, financial statements for all contract providers of
 14688 comprehensive health care services who have assumed, through
 14689 capitation or other means, more than 10 percent of the health
 14690 care risks of the health maintenance organization. However,
 14691 this provision shall not apply to any individual physician.

14692 Section 272. Section 641.25, Florida Statutes, is amended
 14693 to read:

14694 641.25 Administrative penalty in lieu of suspension or
 14695 revocation.--If the office ~~department~~ finds that one or more
 14696 grounds exist for the revocation or suspension of a certificate
 14697 issued under this part, the office ~~department~~ may, in lieu of
 14698 revocation or suspension, impose a fine upon the health
 14699 maintenance organization. With respect to any nonwillful
 14700 violation, the fine must not exceed \$2,500 per violation. Such
 14701 fines may not exceed an aggregate amount of \$25,000 for all
 14702 nonwillful violations arising out of the same action. With
 14703 respect to any knowing and willful violation of a lawful order
 14704 or rule of the office or commission ~~department~~ or a provision of
 14705 this part, the office ~~department~~ may impose upon the
 14706 organization a fine in an amount not to exceed \$20,000 for each
 14707 such violation. Such fines may not exceed an aggregate amount
 14708 of \$250,000 for all knowing and willful violations arising out
 14709 of the same action. The commission ~~department~~ must adopt by
 14710 rule ~~by January 1, 1997,~~ penalty categories that specify varying
 14711 ranges of monetary fines for willful violations and for
 14712 nonwillful violations.

14713 Section 273. Subsection (2) of section 641.255, Florida
 14714 Statutes, is amended to read:



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14715 641.255 Acquisition, merger, or consolidation.--
 14716 (2) In addition to the requirements set forth in ss.
 14717 628.451, 628.4615, and 628.471, each party to any transaction
 14718 involving any licensee which, as indicated in its most recent
 14719 quarterly or annual statement, derives income from Medicaid
 14720 funds shall in the filing made with the office ~~department~~
 14721 identify:
 14722 (a) Any person who has received any payment from either
 14723 party or any person on that party's behalf; or
 14724 (b) The existence of any agreement entered into by either
 14725 party or by any person on that party's behalf to pay a
 14726 consultant fee, a broker fee, a commission, or other fee or
 14727 charge,
 14728
 14729
 14730 which in any way relates to the acquisition, merger, or
 14731 consolidation. The commission ~~department~~ may adopt a form to be
 14732 made part of the application which is to be sworn to by an
 14733 officer of the entity which made or will make the payment. The
 14734 form shall include the name of the person or entity paying the
 14735 fee; the name of the person or entity receiving the fee; the
 14736 date of payment; and a brief description of the work performed.
 14737 Section 274. Section 641.26, Florida Statutes, is amended
 14738 to read:
 14739 641.26 Annual and quarterly reports.--
 14740 (1) Every health maintenance organization shall, annually
 14741 within 3 months after the end of its fiscal year, or within an
 14742 extension of time therefor as the office ~~department~~, for good



14743 cause, may grant, in a form prescribed by the commission
 14744 ~~department~~, file a report with the office ~~department~~, verified
 14745 by the oath of two officers of the organization or, if not a
 14746 corporation, of two persons who are principal managing directors
 14747 of the affairs of the organization, properly notarized, showing
 14748 its condition on the last day of the immediately preceding
 14749 reporting period. Such report shall include:

14750 (a) A financial statement of the health maintenance
 14751 organization filed on a computer diskette using a format
 14752 acceptable to the office ~~department~~.

14753 (b) A financial statement of the health maintenance
 14754 organization filed on forms acceptable to the office ~~department~~.

14755 (c) An audited financial statement of the health
 14756 maintenance organization, including its balance sheet and a
 14757 statement of operations for the preceding year certified by an
 14758 independent certified public accountant, prepared in accordance
 14759 with statutory accounting principles.

14760 (d) The number of health maintenance contracts issued and
 14761 outstanding and the number of health maintenance contracts
 14762 terminated.

14763 (e) The number and amount of damage claims for medical
 14764 injury initiated against the health maintenance organization and
 14765 any of the providers engaged by it during the reporting year,
 14766 broken down into claims with and without formal legal process,
 14767 and the disposition, if any, of each such claim.

14768 (f) An actuarial certification that:

14769 1. The health maintenance organization is actuarially
 14770 sound, which certification shall consider the rates, benefits,



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14771 and expenses of, and any other funds available for the payment
14772 of obligations of, the organization.

14773 2. The rates being charged or to be charged are
14774 actuarially adequate to the end of the period for which rates
14775 have been guaranteed.

14776 3. Incurred but not reported claims and claims reported
14777 but not fully paid have been adequately provided for.

14778 4. The health maintenance organization has adequately
14779 provided for all obligations required by s. 641.35(3)(a).

14780 (g) A report prepared by the certified public accountant
14781 and filed with the office ~~department~~ describing material
14782 weaknesses in the health maintenance organization's internal
14783 control structure as noted by the certified public accountant
14784 during the audit. The report must be filed with the annual
14785 audited financial report as required in paragraph (c). The
14786 health maintenance organization shall provide a description of
14787 remedial actions taken or proposed to correct material
14788 weaknesses, if the actions are not described in the independent
14789 certified public accountant's report.

14790 (h) Such other information relating to the performance of
14791 health maintenance organizations as is required by the
14792 commission or office ~~department~~.

14793 (2) The office ~~department~~ may require updates of the
14794 actuarial certification as to a particular health maintenance
14795 organization if the office ~~department~~ has reasonable cause to
14796 believe that such reserves are understated to the extent of
14797 materially misstating the financial position of the health
14798 maintenance organization. Workpapers in support of the



14799 | statement of the updated actuarial certification must be
 14800 | provided to the office ~~department~~ upon request.

14801 | (3) Every health maintenance organization shall file
 14802 | quarterly, for the first three calendar quarters of each year,
 14803 | an unaudited financial statement of the organization as
 14804 | described in paragraphs (1)(a) and (b). The statement for the
 14805 | quarter ending March 31 shall be filed on or before May 15, the
 14806 | statement for the quarter ending June 30 shall be filed on or
 14807 | before August 15, and the statement for the quarter ending
 14808 | September 30 shall be filed on or before November 15. The
 14809 | quarterly report shall be verified by the oath of two officers
 14810 | of the organization, properly notarized.

14811 | (4) Any health maintenance organization that neglects to
 14812 | file an annual report or quarterly report in the form and within
 14813 | the time required by this section shall forfeit up to \$1,000 for
 14814 | each day for the first 10 days during which the neglect
 14815 | continues and shall forfeit up to \$2,000 for each day after the
 14816 | first 10 days during which the neglect continues; and, upon
 14817 | notice by the office ~~department~~ to that effect, the
 14818 | organization's authority to enroll new subscribers or to do
 14819 | business in this state shall cease while such default continues.
 14820 | The office ~~department~~ shall deposit all sums collected by it
 14821 | under this section to the credit of the Insurance ~~Commissioner's~~
 14822 | Regulatory Trust Fund. The office ~~department~~ shall not collect
 14823 | more than \$100,000 for each report.

14824 | (5) Each authorized health maintenance organization shall
 14825 | retain an independent certified public accountant, referred to
 14826 | in this section as "CPA," who agrees by written contract with



14827 | the health maintenance organization to comply with the
14828 | provisions of this part.

14829 | (a) The CPA shall provide to the HMO audited financial
14830 | statements consistent with this part.

14831 | (b) Any determination by the CPA that the health
14832 | maintenance organization does not meet minimum surplus
14833 | requirements as set forth in this part shall be stated by the
14834 | CPA, in writing, in the audited financial statement.

14835 | (c) The completed work papers and any written
14836 | communications between the CPA firm and the health maintenance
14837 | organization relating to the audit of the health maintenance
14838 | organization shall be made available for review on a visual-
14839 | inspection-only basis by the office department at the offices of
14840 | the health maintenance organization, at the office department,
14841 | or at any other reasonable place as mutually agreed between the
14842 | office department and the health maintenance organization. The
14843 | CPA must retain for review the work papers and written
14844 | communications for a period of not less than 6 years.

14845 | (d) The CPA shall provide to the office department a
14846 | written report describing material weaknesses in the health
14847 | maintenance organization's internal control structure as noted
14848 | during the audit.

14849 | (6) To facilitate uniformity in financial statements and
14850 | to facilitate office department analysis, the commission
14851 | ~~department~~ may by rule adopt the form for financial statements
14852 | of a health maintenance organization, including supplements as
14853 | approved by the National Association of Insurance Commissioners
14854 | in 1995, and may adopt subsequent amendments thereto if the



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14855 methodology remains substantially consistent, and may by rule
14856 require each health maintenance organization to submit to the
14857 office ~~department~~ all or part of the information contained in
14858 the annual statement in a computer-readable form compatible with
14859 the electronic data processing system specified by the office
14860 ~~department~~.

14861 (7) In addition to information called for and furnished in
14862 connection with its annual or quarterly statements, the health
14863 maintenance organization shall furnish to the office ~~department~~
14864 as soon as reasonably possible such information as to its
14865 material transactions which, in the office's ~~department's~~
14866 opinion, may have a material adverse effect on the health
14867 maintenance organization's financial condition, as the office
14868 requests ~~department may request~~ in writing. All such information
14869 furnished pursuant to the office's ~~department's~~ request must be
14870 verified by the oath of two executive officers of the health
14871 maintenance organization.

14872 (8) Each health maintenance organization shall file one
14873 copy of its annual statement convention blank in electronic
14874 form, along with such additional filings as prescribed by the
14875 commission ~~department~~ for the preceding calendar year or
14876 quarter, with the National Association of Insurance
14877 Commissioners. Each health maintenance organization shall pay
14878 fees assessed by the National Association of Insurance
14879 Commissioners to cover costs associated with the filing and
14880 analysis of the documents by the National Association of
14881 Insurance Commissioners.



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14882 Section 275. Section 641.27, Florida Statutes, is amended
14883 to read:

14884 641.27 Examination by the department.--

14885 (1) The office ~~department~~ shall examine the affairs,
14886 transactions, accounts, business records, and assets of any
14887 health maintenance organization as often as it deems it
14888 expedient for the protection of the people of this state, but
14889 not less frequently than once every 3 years. In lieu of making
14890 its own financial examination, the office ~~department~~ may accept
14891 an independent certified public accountant's audit report
14892 prepared on a statutory accounting basis consistent with this
14893 part. However, except when the medical records are requested
14894 and copies furnished pursuant to s. 456.057, medical records of
14895 individuals and records of physicians providing service under
14896 contract to the health maintenance organization shall not be
14897 subject to audit, although they may be subject to subpoena by
14898 court order upon a showing of good cause. For the purpose of
14899 examinations, the office ~~department~~ may administer oaths to and
14900 examine the officers and agents of a health maintenance
14901 organization concerning its business and affairs. The
14902 examination of each health maintenance organization by the
14903 office ~~department~~ shall be subject to the same terms and
14904 conditions as apply to insurers under chapter 624. In no event
14905 shall expenses of all examinations exceed a maximum of \$20,000
14906 for any 1-year period. Any rehabilitation, liquidation,
14907 conservation, or dissolution of a health maintenance
14908 organization shall be conducted under the supervision of the
14909 department, which shall have all power with respect thereto



14910 granted to it under the laws governing the rehabilitation,
 14911 liquidation, reorganization, conservation, or dissolution of
 14912 life insurance companies.

14913 (2) The office ~~department~~ may contract, at reasonable fees
 14914 for work performed, with qualified, impartial outside sources to
 14915 perform audits or examinations or portions thereof pertaining to
 14916 the qualification of an entity for issuance of a certificate of
 14917 authority or to determine continued compliance with the
 14918 requirements of this part, in which case the payment must be
 14919 made directly to the contracted examiner by the health
 14920 maintenance organization examined, in accordance with the rates
 14921 and terms agreed to by the office ~~department~~ and the examiner.
 14922 Any contracted assistance shall be under the direct supervision
 14923 of the office ~~department~~. The results of any contracted
 14924 assistance shall be subject to the review of, and approval,
 14925 disapproval, or modification by, the office ~~department~~.

14926 Section 276. Section 641.28, Florida Statutes, is amended
 14927 to read:

14928 641.28 Civil remedy.--In any civil action brought to
 14929 enforce the terms and conditions of a health maintenance
 14930 organization contract, the prevailing party is entitled to
 14931 recover reasonable attorney's fees and court costs. This section
 14932 shall not be construed to authorize a civil action against the
 14933 commission, office, or department, their ~~its~~ employees, or the
 14934 Chief Financial Officer ~~Insurance Commissioner~~ or against the
 14935 Agency for Health Care Administration, its employees, or the
 14936 director of the agency.



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14937 Section 277. Section 641.281, Florida Statutes, is amended
14938 to read:

14939 641.281 Injunction.--In addition to the penalties and
14940 other enforcement provisions of this part, the office and
14941 department, within the scope of their regulatory jurisdictions,
14942 are ~~is~~ vested with the power to seek both temporary and
14943 permanent injunctive relief when:

14944 (1) A health maintenance organization is being operated by
14945 any person or entity without a subsisting certificate of
14946 authority.

14947 (2) Any person, entity, or health maintenance organization
14948 has engaged in any activity prohibited by this part or any rule
14949 adopted pursuant thereto.

14950 (3) Any health maintenance organization, person, or entity
14951 is renewing, issuing, or delivering a health maintenance
14952 contract or contracts without a subsisting certificate of
14953 authority.

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14956 The office's and department's authority to seek injunctive
14957 relief shall not be conditioned on having conducted any
14958 proceeding pursuant to chapter 120.

14959 Section 278. Section 641.284, Florida Statutes, is amended
14960 to read:

14961 641.284 Liquidation, rehabilitation, reorganization, and
14962 conservation; exclusive methods of remedy.--A delinquency
14963 proceeding under part I of chapter 631, or supervision by the
14964 office ~~department~~ under ss. 624.80-624.87, constitute the sole



14965 and exclusive means of liquidating, reorganizing,
14966 rehabilitating, or conserving a health maintenance organization.

14967 Section 279. Subsections (1), (2), and (3) of section
14968 641.285, Florida Statutes, are amended to read:

14969 641.285 Insolvency protection.--

14970 (1) Each health maintenance organization shall deposit
14971 with the department cash or securities of the type eligible
14972 under s. 625.52, which shall have at all times a market value in
14973 the amount set forth in this subsection. The amount of the
14974 deposit shall be reviewed annually, or more often, as the office
14975 ~~department~~ deems necessary. The market value of the deposit
14976 shall be a minimum of \$300,000.

14977 (2) If securities or assets deposited by a health
14978 maintenance organization under this part are subject to material
14979 fluctuations in market value, the office ~~department~~ may, in its
14980 discretion, require the organization to deposit and maintain on
14981 deposit additional securities or assets in an amount as may be
14982 reasonably necessary to assure that the deposit will at all
14983 times have a market value of not less than the amount specified
14984 under this section. If for any reason the market value of assets
14985 and securities of a health maintenance organization held on
14986 deposit in this state under this code falls below the amount
14987 required, the organization shall promptly deposit other or
14988 additional assets or securities eligible for deposit sufficient
14989 to cure the deficiency. If the health maintenance organization
14990 has failed to cure the deficiency within 30 days after receipt
14991 of notice thereof by registered or certified mail from the



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14992 | office department, the office department may revoke the
 14993 | certificate of authority of the health maintenance organization.

14994 | (3) Whenever the office department determines that the
 14995 | financial condition of a health maintenance organization has
 14996 | deteriorated to the point that the policyholders' or
 14997 | subscribers' best interests are not being preserved by the
 14998 | activities of a health maintenance organization, the office
 14999 | ~~department~~ may require such health maintenance organization to
 15000 | deposit and maintain deposited in trust with the department for
 15001 | the protection of the health maintenance organization's
 15002 | policyholders, subscribers, and creditors, for such time as the
 15003 | office department deems necessary, securities eligible for such
 15004 | deposit under s. 625.52 having a market value of not less than
 15005 | the amount that the office department determines is necessary,
 15006 | which amount must not be less than \$100,000 or greater than \$2
 15007 | million. The deposit required under this subsection is in
 15008 | addition to any other deposits required of a health maintenance
 15009 | organization pursuant to subsections (1) and (2).

15010 | Section 280. Section 641.29, Florida Statutes, is amended
 15011 | to read:

15012 | 641.29 Fees.--Every health maintenance organization shall
 15013 | pay to the office department the following fees:

15014 | (1) For filing a copy of its application for a certificate
 15015 | of authority or amendment thereto, a nonrefundable fee in the
 15016 | amount of \$1,000.

15017 | (2) For filing each annual report, which must be filed on
 15018 | computer diskettes, \$150.



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15019 Section 281. Paragraph (b) of subsection (4) of section
15020 641.3007, Florida Statutes, is amended to read:

15021 641.3007 HIV infection and AIDS for contract

15022 (4) UTILIZATION OF MEDICAL TESTS.--

15023 (b) Prior to testing, the health maintenance organization
15024 must disclose its intent to test the person for the HIV
15025 infection or for a specific sickness or medical condition
15026 derived therefrom and must obtain the person's written informed
15027 consent to administer the test. Written informed consent shall
15028 include a fair explanation of the test, including its purpose,
15029 potential uses, and limitations, and the meaning of its results
15030 and the right to confidential treatment of information. Use of
15031 a form approved by the office ~~department~~ shall raise a
15032 conclusive presumption of informed consent.

15033 Section 282. Section 641.305, Florida Statutes, is amended
15034 to read:

15035 641.305 Language used in contracts and advertisements;
15036 translations.--

15037 (1)(a) All health maintenance contracts or forms shall be
15038 printed in English.

15039 (b) If the negotiations by a health maintenance
15040 organization with a member leading up to the effectuation of a
15041 health maintenance contract are conducted in a language other
15042 than English, the health maintenance organization shall supply
15043 to the member a written translation of the contract, which
15044 translation accurately reflects the substance of the contract
15045 and is in the language used to negotiate the contract. The
15046 written translation shall be affixed to and shall become a part



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15047 of the contract or form. Any such translation shall be
15048 furnished to the office ~~department~~ as part of the filing of the
15049 health maintenance contract form. No translation of a health
15050 maintenance contract form shall be approved by the department
15051 unless the translation accurately reflects the substance of the
15052 health maintenance contract form in translation.

15053 (2) The text of all advertisements by a health maintenance
15054 organization, if printed or broadcast in a language other than
15055 English, also shall be available in English and shall be
15056 furnished to the office ~~department~~ upon request. As used in
15057 this subsection, the term "advertisement" means any
15058 advertisement, circular, pamphlet, brochure, or other printed
15059 material disclosing or disseminating advertising material or
15060 information by a health maintenance organization to prospective
15061 or existing subscribers and includes any radio or television
15062 transmittal of an advertisement or information.

15063 Section 283. Subsections (2), (3), (5), and (12) and
15064 paragraphs (c) and (e) of subsection (38) of section 641.31,
15065 Florida Statutes, are amended to read:

15066 641.31 Health maintenance contracts.--

15067 (2) The rates charged by any health maintenance
15068 organization to its subscribers shall not be excessive,
15069 inadequate, or unfairly discriminatory or follow a rating
15070 methodology that is inconsistent, indeterminate, or ambiguous or
15071 encourages misrepresentation or misunderstanding. The
15072 commission ~~department~~, in accordance with generally accepted
15073 actuarial practice as applied to health maintenance
15074 organizations, may define by rule what constitutes excessive,



15075 inadequate, or unfairly discriminatory rates and may require
 15076 whatever information it deems necessary to determine that a rate
 15077 or proposed rate meets the requirements of this subsection.

15078 (3)(a) If a health maintenance organization desires to
 15079 amend any contract with its subscribers or any certificate or
 15080 member handbook, or desires to change any basic health
 15081 maintenance contract, certificate, grievance procedure, or
 15082 member handbook form, or application form where written
 15083 application is required and is to be made a part of the
 15084 contract, or printed amendment, addendum, rider, or endorsement
 15085 form or form of renewal certificate, it may do so, upon filing
 15086 with the office ~~department~~ the proposed change or amendment.
 15087 Any proposed change shall be effective immediately, subject to
 15088 disapproval by the office ~~department~~. Following receipt of
 15089 notice of such disapproval or withdrawal of approval, no health
 15090 maintenance organization shall issue or use any form disapproved
 15091 by the office ~~department~~ or as to which the office ~~department~~
 15092 has withdrawn approval.

15093 (b) Any change in the rate is subject to paragraph (d) and
 15094 requires at least 30 days' advance written notice to the
 15095 subscriber. In the case of a group member, there may be a
 15096 contractual agreement with the health maintenance organization
 15097 to have the employer provide the required notice to the
 15098 individual members of the group.

15099 (c) The office ~~department~~ shall disapprove any form filed
 15100 under this subsection, or withdraw any previous approval
 15101 thereof, if the form:



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15102 | 1. Is in any respect in violation of, or does not comply
15103 | with, any provision of this part or rule adopted thereunder.

15104 | 2. Contains or incorporates by reference, where such
15105 | incorporation is otherwise permissible, any inconsistent,
15106 | ambiguous, or misleading clauses or exceptions and conditions
15107 | which deceptively affect the risk purported to be assumed in the
15108 | general coverage of the contract.

15109 | 3. Has any title, heading, or other indication of its
15110 | provisions which is misleading.

15111 | 4. Is printed or otherwise reproduced in such a manner as
15112 | to render any material provision of the form substantially
15113 | illegible.

15114 | 5. Contains provisions which are unfair, inequitable, or
15115 | contrary to the public policy of this state or which encourage
15116 | misrepresentation.

15117 | 6. Excludes coverage for human immunodeficiency virus
15118 | infection or acquired immune deficiency syndrome or contains
15119 | limitations in the benefits payable, or in the terms or
15120 | conditions of such contract, for human immunodeficiency virus
15121 | infection or acquired immune deficiency syndrome which are
15122 | different than those which apply to any other sickness or
15123 | medical condition.

15124 | (d) Any change in rates charged for the contract must be
15125 | filed with the office ~~department~~ not less than 30 days in
15126 | advance of the effective date. At the expiration of such 30
15127 | days, the rate filing shall be deemed approved unless prior to
15128 | such time the filing has been affirmatively approved or
15129 | disapproved by order of the office ~~department~~. The approval of



15130 the filing by the office ~~department~~ constitutes a waiver of any
 15131 unexpired portion of such waiting period. The office ~~department~~
 15132 may extend by not more than an additional 15 days the period
 15133 within which it may so affirmatively approve or disapprove any
 15134 such filing, by giving notice of such extension before
 15135 expiration of the initial 30-day period. At the expiration of
 15136 any such period as so extended, and in the absence of such prior
 15137 affirmative approval or disapproval, any such filing shall be
 15138 deemed approved.

15139 (e) It is not the intent of this subsection to restrict
 15140 unduly the right to modify rates in the exercise of reasonable
 15141 business judgment.

15142 (5) Every subscriber shall receive a clear and
 15143 understandable description of the method of the health
 15144 maintenance organization for resolving subscriber grievances,
 15145 and the method shall be set forth in the contract, certificate,
 15146 and member handbook. The organization shall also furnish, at
 15147 the time of initial enrollment and when necessary due to
 15148 substantial changes to the grievance process a separate and
 15149 additional communication prepared or approved by the office
 15150 ~~department~~ notifying the contract holder of a group contract or
 15151 subscriber of an individual contract of their rights and
 15152 responsibilities under the grievance process.

15153 (12) Each health maintenance contract, certificate, or
 15154 member handbook shall state that emergency services and care
 15155 shall be provided to subscribers in emergency situations not
 15156 permitting treatment through the health maintenance
 15157 organization's providers, without prior notification to and



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15158 approval of the organization. Not less than 75 percent of the
15159 reasonable charges for covered services and supplies shall be
15160 paid by the organization, up to the subscriber contract benefit
15161 limits. Payment also may be subject to additional applicable
15162 copayment provisions, not to exceed \$100 per claim. The health
15163 maintenance contract, certificate, or member handbook shall
15164 contain the definitions of "emergency services and care" and
15165 "emergency medical condition" as specified in s. 641.19(6)(7)
15166 and (7)(8), shall describe procedures for determination by the
15167 health maintenance organization of whether the services qualify
15168 for reimbursement as emergency services and care, and shall
15169 contain specific examples of what does constitute an emergency.
15170 In providing for emergency services and care as a covered
15171 service, a health maintenance organization shall be governed by
15172 s. 641.513.

15173 (38)

15174 (c) Premiums paid in for the point-of-service riders may
15175 not exceed 15 percent of total premiums for all health plan
15176 products sold by the health maintenance organization offering
15177 the rider. If the premiums paid for point-of-service riders
15178 exceed 15 percent, the health maintenance organization must
15179 notify the office ~~department~~ and, once this fact is known, must
15180 immediately cease offering such a rider until it is in
15181 compliance with the rider premium cap.

15182 (e) The term "point of service" may not be used by a
15183 health maintenance organization except with riders permitted
15184 under this section or with forms approved by the office



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15185 | ~~department~~ in which a point-of-service product is offered with
15186 | an indemnity carrier.

15187 | Section 284. Subsection (2) of section 641.3105, Florida
15188 | Statutes, is amended to read:

15189 | 641.3105 Validity of noncomplying contracts.--

15190 | (2) Any health maintenance contract delivered or issued
15191 | for delivery in this state covering a subscriber, which
15192 | subscriber, pursuant to the provisions of this part, the
15193 | organization may not lawfully cover under the contract, shall be
15194 | cancelable at any time by the organization, any provision of the
15195 | contract to the contrary notwithstanding; and the organization
15196 | shall promptly cancel the contract in accordance with the
15197 | request of the office ~~department~~ therefor. No such illegality
15198 | or cancellation shall be deemed to relieve the organization of
15199 | any liability incurred by it under the contract while in force
15200 | or to prohibit the organization from retaining the pro rata
15201 | earned premium or rate thereon. This provision does not relieve
15202 | the organization from any penalty otherwise incurred by the
15203 | organization under this part on account of any such violation.

15204 | Section 285. Subsection (5), paragraph (b) of subsection
15205 | (7), paragraphs (a) and (e) of subsection (8), paragraph (c) of
15206 | subsection (9), and paragraph (b) of subsection (10) of section
15207 | 641.31071, Florida Statutes, are amended to read:

15208 | 641.31071 Preexisting conditions.--

15209 | (5)(a) The term "creditable coverage" means, with respect
15210 | to an individual, coverage of the individual under any of the
15211 | following:



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- 15212 | 1. A group health plan, as defined in s. 2791 of the
 15213 | Public Health Service Act.
- 15214 | 2. Health insurance coverage consisting of medical care,
 15215 | provided directly, through insurance or reimbursement or
 15216 | otherwise, and including terms and services paid for as medical
 15217 | care, under any hospital or medical service policy or
 15218 | certificate, hospital or medical service plan contract, or
 15219 | health maintenance contract offered by a health insurance
 15220 | issuer.
- 15221 | 3. Part A or part B of Title XVIII of the Social Security
 15222 | Act.
- 15223 | 4. Title XIX of the Social Security Act, other than
 15224 | coverage consisting solely of benefits under s. 1928.
- 15225 | 5. Chapter 55 of Title 10, United States Code.
- 15226 | 6. A medical care program of the Indian Health Service or
 15227 | of a tribal organization.
- 15228 | 7. The Florida Comprehensive Health Association or another
 15229 | state health benefit risk pool.
- 15230 | 8. A health plan offered under chapter 89 of Title 5,
 15231 | United States Code.
- 15232 | 9. A public health plan as defined by rule of the
 15233 | commission ~~department~~. To the greatest extent possible, such
 15234 | rules must be consistent with regulations adopted by the United
 15235 | States Department of Health and Human Services.
- 15236 | 10. A health benefit plan under s. 5(e) of the Peace Corps
 15237 | Act (22 U.S.C. s. 2504(e)).



15238 (b) Creditable coverage does not include coverage that
 15239 consists solely of one or more or any combination thereof of the
 15240 following excepted benefits:

- 15241 1. Coverage only for accident, or disability income
- 15242 insurance, or any combination thereof.
- 15243 2. Coverage issued as a supplement to liability insurance.
- 15244 3. Liability insurance, including general liability
- 15245 insurance and automobile liability insurance.
- 15246 4. Workers' compensation or similar insurance.
- 15247 5. Automobile medical payment insurance.
- 15248 6. Credit-only insurance.
- 15249 7. Coverage for onsite medical clinics.
- 15250 8. Other similar insurance coverage, specified in rules
- 15251 adopted by the commission ~~department~~, under which benefits for
- 15252 medical care are secondary or incidental to other insurance
- 15253 benefits. To the greatest extent possible, such rules must be
- 15254 consistent with regulations adopted by the United States
- 15255 Department of Health and Human Services.

15256 (c) The following benefits are not subject to the
 15257 creditable coverage requirements, if offered separately;

- 15258 1. Limited scope dental or vision benefits.
- 15259 2. Benefits or long-term care, nursing home care, home
- 15260 health care, community-based care, or any combination of these.
- 15261 3. Such other similar, limited benefits as are specified
- 15262 in rules adopted by the commission ~~department~~. To the greatest
- 15263 extent possible, such rules must be consistent with regulations
- 15264 adopted by the United States Department of Health and Human
- 15265 Services.



15266 (d) The following benefits are not subject to creditable
15267 coverage requirements if offered as independent, noncoordinated
15268 benefits:

- 15269 1. Coverage only for a specified disease or illness.
- 15270 2. Hospital indemnity or other fixed indemnity insurance.

15271 (e) Benefits provided through Medicare supplemental health
15272 insurance, as defined under s. 1882(g)(1) of the Social Security
15273 Act, coverage supplemental to the coverage provided under
15274 chapter 55 of Title 10, United States Code, and similar
15275 supplemental coverage provided to coverage under a group health
15276 plan are not considered creditable coverage if offered as a
15277 separate insurance policy.

15278 (7)

15279 (b) A health maintenance organization may elect to count
15280 as creditable coverage, coverage of benefits within each of
15281 several classes or categories of benefits specified in rules
15282 adopted by the commission ~~department~~ rather than as provided
15283 under paragraph (a). Such election shall be made on a uniform
15284 basis for all participants and beneficiaries. Under such
15285 election, a health maintenance organization shall count a period
15286 of creditable coverage with respect to any class or category of
15287 benefits if any level of benefits is covered within such class
15288 or category.

15289 (8)(a) Periods of creditable coverage with respect to an
15290 individual shall be established through presentation of
15291 certifications described in this subsection or in such other
15292 manner as may be specified in rules adopted by the commission
15293 ~~department~~.



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15294 (e) The commission ~~department~~ shall adopt rules to prevent
 15295 an insurer's or health maintenance organization's failure to
 15296 provide information under this subsection with respect to
 15297 previous coverage of an individual from adversely affecting any
 15298 subsequent coverage of the individual under another group health
 15299 plan or health maintenance organization coverage.

15300 (9)

15301 (c) As an alternative to the method authorized by
 15302 paragraph (a), a health maintenance organization may address
 15303 adverse selection in a method approved by the office ~~department~~.

15304 (10)

15305 (b) The commission ~~department~~ shall adopt rules that
 15306 provide a process whereby individuals who need to establish
 15307 creditable coverage for periods before July 1, 1996, and who
 15308 would have such coverage credited but for paragraph (a), may be
 15309 given credit for creditable coverage for such periods through
 15310 the presentation of documents or other means.

15311 Section 286. Paragraph (b) of subsection (3) of section
 15312 641.31074, Florida Statutes, is amended to read:

15313 641.31074 Guaranteed renewability of coverage.--

15314 (3)

15315 (b)1. In any case in which a health maintenance
 15316 organization elects to discontinue offering all coverage in the
 15317 small group market or the large group market, or both, in this
 15318 state, coverage may be discontinued by the insurer only if:

15319 a. The health maintenance organization provides notice to
 15320 the office ~~department~~ and to each contract holder, and
 15321 participants and beneficiaries covered under such coverage, of



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15322 such discontinuation at least 180 days prior to the date of the
15323 nonrenewal of such coverage; and

15324 b. All health insurance issued or delivered for issuance
15325 in this state in such market is discontinued and coverage under
15326 such health insurance coverage in such market is not renewed.

15327 2. In the case of a discontinuation under subparagraph 1.
15328 in a market, the health maintenance organization may not provide
15329 for the issuance of any health maintenance organization contract
15330 coverage in the market in this state during the 5-year period
15331 beginning on the date of the discontinuation of the last
15332 insurance contract not renewed.

15333 Section 287. Subsection (2) of section 641.315, Florida
15334 Statutes, is amended to read:

15335 641.315 Provider contracts.--

15336 (2)(a) For all provider contracts executed after October
15337 1, 1991, and within 180 days after October 1, 1991, for
15338 contracts in existence as of October 1, 1991:

15339 1. The contracts must require the provider to give 60
15340 days' advance written notice to the health maintenance
15341 organization and the office ~~department~~ before canceling the
15342 contract with the health maintenance organization for any
15343 reason; and

15344 2. The contract must also provide that nonpayment for
15345 goods or services rendered by the provider to the health
15346 maintenance organization is not a valid reason for avoiding the
15347 60-day advance notice of cancellation.

15348 (b) All provider contracts must provide that the health
15349 maintenance organization will provide 60 days' advance written



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15350 notice to the provider and the office ~~department~~ before
15351 canceling, without cause, the contract with the provider, except
15352 in a case in which a patient's health is subject to imminent
15353 danger or a physician's ability to practice medicine is
15354 effectively impaired by an action by the Board of Medicine or
15355 other governmental agency.

15356 Section 288. Subsections (4) and (5) of section 641.3154,
15357 Florida Statutes, are amended to read:

15358 641.3154 Organization liability; provider billing
15359 prohibited.--

15360 (4) A provider or any representative of a provider,
15361 regardless of whether the provider is under contract with the
15362 health maintenance organization, may not collect or attempt to
15363 collect money from, maintain any action at law against, or
15364 report to a credit agency a subscriber of an organization for
15365 payment of services for which the organization is liable, if the
15366 provider in good faith knows or should know that the
15367 organization is liable. This prohibition applies during the
15368 pendency of any claim for payment made by the provider to the
15369 organization for payment of the services and any legal
15370 proceedings or dispute resolution process to determine whether
15371 the organization is liable for the services if the provider is
15372 informed that such proceedings are taking place. It is presumed
15373 that a provider does not know and should not know that an
15374 organization is liable unless:

15375 (a) The provider is informed by the organization that it
15376 accepts liability;



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15377 (b) A court of competent jurisdiction determines that the
15378 organization is liable;

15379 (c) The office ~~department~~ or agency makes a final
15380 determination that the organization is required to pay for such
15381 services subsequent to a recommendation made by the Statewide
15382 Provider and Subscriber Assistance Panel pursuant to s.
15383 408.7056; or

15384 (d) The agency issues a final order that the organization
15385 is required to pay for such services subsequent to a
15386 recommendation made by a resolution organization pursuant to s.
15387 408.7057.

15388 (5) An organization, the office, and the department shall
15389 report any suspected violation of this section by a health care
15390 practitioner to the Department of Health and by a facility to
15391 the agency, which shall take such action as authorized by law.

15392 Section 289. Subsection (12) of section 641.3155, Florida
15393 Statutes, is amended to read:

15394 641.3155 Prompt payment of claims.--

15395 (12) A permissible error ratio of 5 percent is established
15396 for health maintenance organizations' claims payment violations
15397 of paragraphs (3)(a), (b), (c), and (e) and (4)(a), (b), (c), and
15398 (e). If the error ratio of a particular insurer does not exceed
15399 the permissible error ratio of 5 percent for an audit period, no
15400 fine shall be assessed for the noted claims violations for the
15401 audit period. The error ratio shall be determined by dividing
15402 the number of claims with violations found on a statistically
15403 valid sample of claims for the audit period by the total number
15404 of claims in the sample. If the error ratio exceeds the



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15405 permissible error ratio of 5 percent, a fine may be assessed
15406 according to s. 624.4211 for those claims payment violations
15407 which exceed the error ratio. Notwithstanding the provisions of
15408 this section, the office ~~department~~ may fine a health
15409 maintenance organization for claims payment violations of
15410 paragraphs (3)(e) and (4)(e) which create an uncontestable
15411 obligation to pay the claim. The office ~~department~~ shall not
15412 fine organizations for violations which the office ~~department~~
15413 determines were due to circumstances beyond the organization's
15414 control.

15415 Section 290. Subsection (4), (6), and (7) of section
15416 641.316, Florida Statutes, are amended to read:

15417 641.316 Fiscal intermediary services.--

15418 (4) A fiscal intermediary services organization, as
15419 described in subsection (3), shall secure and maintain a surety
15420 bond on file with the office ~~department~~, naming the intermediary
15421 as principal. The bond must be obtained from a company
15422 authorized to write surety insurance in the state, and the
15423 office ~~department~~ shall be obligee on behalf of itself and third
15424 parties. The penal sum of the bond may not be less than 5
15425 percent of the funds handled by the intermediary in connection
15426 with its fiscal and fiduciary services during the prior year or
15427 \$250,000, whichever is less. The minimum bond amount must be
15428 \$10,000. The condition of the bond must be that the intermediary
15429 shall register with the office ~~department~~ and shall not
15430 misappropriate funds within its control or custody as a fiscal
15431 intermediary or fiduciary. The aggregate liability of the surety
15432 for any and all breaches of the conditions of the bond may not



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15433 exceed the penal sum of the bond. The bond must be continuous in
15434 form, must be renewed annually by a continuation certificate,
15435 and may be terminated by the surety upon its giving 30 days'
15436 written notice of termination to the office ~~department~~.

15437 (6) Any fiscal intermediary services organization, other
15438 than a fiscal intermediary services organization owned,
15439 operated, or controlled by a hospital licensed under chapter
15440 395, an insurer licensed under chapter 624, a third-party
15441 administrator licensed under chapter 626, a prepaid limited
15442 health service organization licensed under chapter 636, a health
15443 maintenance organization licensed under this chapter, or
15444 physician group practices as defined in s. 456.053(3)(h), must
15445 register with the office ~~department~~ and meet the requirements of
15446 this section. In order to register as a fiscal intermediary
15447 services organization, the organization must comply with ss.
15448 641.21(1)(c) and (d) and 641.22(6). Should the office ~~department~~
15449 determine that the fiscal intermediary services organization
15450 does not meet the requirements of this section, the registration
15451 shall be denied. In the event that the registrant fails to
15452 maintain compliance with the provisions of this section, the
15453 office ~~department~~ may revoke or suspend the registration. In
15454 lieu of revocation or suspension of the registration, the office
15455 ~~department~~ may levy an administrative penalty in accordance with
15456 s. 641.25.

15457 (7) The commission ~~department~~ shall adopt rules necessary
15458 to administer this section.

15459 Section 291. Subsections (1), (2), (3), and (4), paragraph
15460 (b) of subsection (6), subsection (8), paragraph (c) of



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15461 subsection (10), subsections (11) and (12), paragraph (a) of
 15462 subsection (14), and subsections (15), (16), and (17) of section
 15463 641.35, Florida Statutes, are amended to read:

15464 641.35 Assets, liabilities, and investments.--

15465 (1) ASSETS.--In any determination of the financial
 15466 condition of a health maintenance organization, there shall be
 15467 allowed as "assets" only those assets that are owned by the
 15468 health maintenance organization and that consist of:

15469 (a) Cash or cash equivalents in the possession of the
 15470 health maintenance organization, or in transit under its
 15471 control, including the true balance of any deposit in a solvent
 15472 bank, savings and loan association, or trust company which is
 15473 domiciled in the United States. Cash equivalents are short-term,
 15474 highly liquid investments, with original maturities of 3 months
 15475 or less, which are both readily convertible to known amounts of
 15476 cash and so near their maturity that they present insignificant
 15477 risk of changes in value because of changes in interest rates.

15478 (b) Investments, securities, properties, and loans
 15479 acquired or held in accordance with this part, and in connection
 15480 therewith the following items:

15481 1. Interest due or accrued on any bond or evidence of
 15482 indebtedness which is not in default and which is not valued on
 15483 a basis including accrued interest.

15484 2. Declared and unpaid dividends on stock and shares,
 15485 unless the amount of the dividends has otherwise been allowed as
 15486 an asset.



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15487 3. Interest due or accrued upon a collateral loan which is
15488 not in default in an amount not to exceed 1 year's interest
15489 thereon.

15490 4. Interest due or accrued on deposits or certificates of
15491 deposit in solvent banks, savings and loan associations, and
15492 trust companies domiciled in the United States, and interest due
15493 or accrued on other assets, if such interest is in the judgment
15494 of the office ~~department~~ a collectible asset.

15495 5. Interest due or accrued on current mortgage loans, in
15496 an amount not exceeding in any event the amount, if any, of the
15497 excess of the value of the property less delinquent taxes
15498 thereon over the unpaid principal; but in no event shall
15499 interest accrued for a period in excess of 90 days be allowed as
15500 an asset.

15501 (c) Premiums in the course of collection, not more than 3
15502 months past due, less commissions payable thereon. The
15503 foregoing limitation shall not apply to premiums payable
15504 directly or indirectly by any governmental body in the United
15505 States or by any of their instrumentalities.

15506 (d) The full amount of reinsurance recoverable from a
15507 solvent reinsurer, which reinsurance is authorized under s.
15508 624.610.

15509 (e) Pharmaceutical and medical supply inventories.

15510 (f) Goodwill created by acquisitions and mergers occurring
15511 on or after January 1, 2001.

15512 (g) Loans or advances by a health maintenance organization
15513 to its parent or principal owner if approved by the office
15514 ~~department~~.



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15515 (h) Other assets, not inconsistent with the provisions of
 15516 this section, deemed by the office ~~department~~ to be available
 15517 for the payment of losses and claims, at values to be determined
 15518 by it.

15519
 15520
 15521 The office ~~department~~, upon determining that a health
 15522 maintenance organization's asset has not been evaluated
 15523 according to applicable law or that it does not qualify as an
 15524 asset, shall require the health maintenance organization to
 15525 properly reevaluate the asset or replace the asset with an asset
 15526 suitable to the office ~~department~~ within 30 days of receipt of
 15527 written notification by the office ~~department~~ of this
 15528 determination, if the removal of the asset from the
 15529 organization's assets would impair the organization's solvency.

15530 (2) ASSETS NOT ALLOWED.--In addition to assets impliedly
 15531 excluded by the provisions of subsection (1), the following
 15532 assets expressly shall not be allowed as assets in any
 15533 determination of the financial condition of a health maintenance
 15534 organization:

15535 (a) Subscriber lists, patents, trade names, agreements not
 15536 to compete, and other like intangible assets.

15537 (b) Any note or account receivable from or advances to
 15538 officers, directors, or controlling stockholders, whether
 15539 secured or not, and advances to employees, agents, or other
 15540 persons on personal security only, other than those transactions
 15541 authorized under paragraph (1)(g).



15542 (c) Stock of the health maintenance organization owned by
 15543 it directly or owned by it through any entity in which the
 15544 organization owns or controls, directly or indirectly, more than
 15545 25 percent of the ownership interest.

15546 (d) Leasehold improvements, nonmedical libraries,
 15547 stationery, literature, and nonmedical supply inventories,
 15548 except that leasehold improvements made prior to October 1,
 15549 1985, shall be allowed as an asset and shall be amortized over
 15550 the shortest of the following periods:

- 15551 1. The life of the lease.
- 15552 2. The useful life of the improvements.
- 15553 3. The 3-year period following October 1, 1985.

15554 (e) Furniture, fixtures, furnishings, vehicles, medical
 15555 libraries, and equipment.

15556 (f) Notes or other evidences of indebtedness which are
 15557 secured by mortgages or deeds of trust which are in default and
 15558 beyond the express period specified in the instrument for curing
 15559 the default.

15560 (g) Bonds in default for more than 60 days.

15561 (h) Prepaid and deferred expenses.

15562 (i) Any note, account receivable, advance, or other
 15563 evidence of indebtedness, or investment in:

- 15564 1. The parent of the health maintenance organization;
- 15565 2. Any entity directly or indirectly controlled by the
 15566 health maintenance organization parent; or
- 15567 3. An affiliate of the parent or the health maintenance
 15568 organization,

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except as allowed in subsections (1), (11), and (12). The office department may, however, allow all or a portion of such asset, at values to be determined by the office department, if deemed by the office department to be available for the payment of losses and claims.

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

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



15598 paragraph, the term "entity" does not include this state, the
 15599 United States, or an agency thereof or an insurer or health
 15600 maintenance organization authorized in this state.

15601 (b) The amount equal to the unearned portions of the gross
 15602 premiums charged on health maintenance contracts in force.

15603 (c) Taxes, expenses, and other obligations due or accrued
 15604 at the date of the statement.

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15607 The office ~~department~~, upon determining that a health
 15608 maintenance organization has failed to report liabilities that
 15609 should have been reported, shall require a corrected report
 15610 which reflects the proper liabilities to be submitted by the
 15611 organization to the office ~~department~~ within 10 working days of
 15612 receipt of written notification.

15613 (4) INVESTMENTS GENERALLY.--Health maintenance
 15614 organizations may invest their funds only in accordance with the
 15615 provisions of this part. Notwithstanding the provisions of this
 15616 part, however, the office ~~department~~ may, after notice and
 15617 hearing, order a health maintenance organization to limit or
 15618 withdraw from certain investments or to discontinue certain
 15619 investment practices, to the extent that the office ~~department~~
 15620 finds the investment practices hazardous to the financial
 15621 condition of the organization. At any such hearing, the office
 15622 ~~department~~ shall have the burden of presenting a prima facie
 15623 case that the investment or investment practices are hazardous
 15624 to the financial condition of the organization. If the office
 15625 ~~department~~ presents such a prima facie case, then it shall be



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15626 the organization's burden to demonstrate that the investment or
15627 investment practices are not hazardous to the financial
15628 condition of the organization.

15629 (6) GENERAL QUALIFICATIONS.--

15630 (b) No security or investment shall be eligible for
15631 purchase at a price above its market value unless it is approved
15632 by the office ~~department~~.

15633 (8) EXCESSIVE COMMISSIONS AND CERTAIN INTERESTS
15634 PROHIBITED.--

15635 (a) No health maintenance organization shall pay any
15636 commission or brokerage for the purchase or sale of property,
15637 whether real or personal, in excess of that usual and customary
15638 at the time and in the locality where the purchases or sales are
15639 made. Information regarding payments of commissions and
15640 brokerage shall be maintained from the date of the most recent
15641 examination by the office ~~department~~ pursuant to s. 641.27 until
15642 the date of completion of the following examination.

15643 (b) No health maintenance organization shall knowingly
15644 invest in or loan upon any property, directly or indirectly,
15645 whether real or personal, in which any officer or director of
15646 the organization has a financial interest, nor shall any
15647 organization make a loan of any kind to any officer or director
15648 of the organization, except that:

15649 1. This paragraph shall not apply to loans in
15650 circumstances in which the financial interest of the officer or
15651 director is only nominal, trifling, or so remote as not to give
15652 rise to a conflict of interest; and



15653 2. In any case, the office ~~department~~ may approve a
15654 transaction between an organization and its officers or
15655 directors under this paragraph if it is satisfied that:

15656 a. The transaction is entered into in good faith for the
15657 advantage and benefit of the organization,

15658 b. The amount of the proposed investment or loan does not
15659 violate any other provision of this part or exceed the
15660 reasonable, normal value of the property or the interest which
15661 the company proposed to acquire,

15662 c. The transaction is otherwise fair and reasonable, and

15663 d. The transaction will not adversely affect, to any
15664 substantial degree, the liquidity of the organization's
15665 investments or its ability thereafter to comply with
15666 requirements of this part or the payment of its claims and
15667 obligations.

15668 (10) PROPERTY USED IN THE HEALTH MAINTENANCE

15669 ORGANIZATION'S BUSINESS.--Real estate, including leasehold
15670 estates, for the convenient accommodation of the organization's
15671 business operations, including home office, branch
15672 administrative offices, hospitals, medical clinics, medical
15673 professional buildings, and any other facility to be used in the
15674 provision of health care services, or real estate for rental to
15675 any health care provider under contract with the organization to
15676 provide health care services which shall be used in the
15677 provision of health care services to members of the organization
15678 by that provider, is acceptable as an investment on the
15679 following conditions:



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15680 (c) The greater of the admitted value of the asset, as
15681 determined by statutory accounting principles, or, if approved
15682 by the office ~~department~~, the health maintenance organization's
15683 equity in the real estate plus all encumbrances on the real
15684 estate owned by the organization under this subsection, when
15685 added to the value of all personal and mixed property used in
15686 the organization's business, shall not exceed 75 percent of its
15687 admitted assets unless, with the permission of the office
15688 ~~department~~, it finds that the percentage of its admitted assets
15689 is insufficient to provide convenient accommodation for the
15690 organization's business and the operations of the organization
15691 would not otherwise be impaired.

15692 (11) INVESTMENTS IN ADMINISTRATIVE AND MANAGEMENT SERVICE
15693 ENTITIES AND OTHER HEALTH CARE PROVIDERS.--A health maintenance
15694 organization may invest directly or indirectly in real estate,
15695 common and preferred stocks, bonds or debentures, including
15696 convertible debentures, or other evidences of debts of or equity
15697 in an entity if the entity is owned by or, with the approval of
15698 the office ~~department~~, under contract to the organization to
15699 provide management services, administrative services, or health
15700 care services for the organization, on the following conditions:

15701 (a) Investments authorized under this subsection shall not
15702 exceed 50 percent of admitted assets, and these investments
15703 shall be included in the calculation of the overall limitation
15704 in paragraph (10)(c) relating to all real and personal property.

15705 (b) Investments may qualify under this section only
15706 insofar as a provider of management, administrative, or health
15707 care service relationship as defined herein exists. Upon



15708 cessation of such relationship, each investment shall be subject
 15709 to the rules applicable to an investment of that type and must
 15710 qualify under the appropriate limitation or, failing that,
 15711 become ineligible and subject to disposal under subsection (17).

15712 (12) EXCHANGES OF FACILITIES OR ASSETS.--Health care or
 15713 administrative service entities, if subsidiaries of or under
 15714 contract to the health maintenance organization to provide
 15715 administrative or health care services to the organization's
 15716 members, may exchange facilities or similar assets to be used in
 15717 the organization's business for stock of the organization.
 15718 However, any exchange involving an entity under contract with
 15719 the health maintenance organization must have the approval of
 15720 the office ~~department~~ prior to the exchange. These facilities
 15721 or assets shall be valued in accordance with statutory
 15722 accounting principles.

15723 (14) SPECIAL LIMITATION INVESTMENTS.--

15724 (a) After satisfying the requirements of this part, any
 15725 funds of the health maintenance organization may be invested in
 15726 the following investments, subject to a cost limitation of 10
 15727 percent of its admitted assets in each category of investment:

15728 1. Anticipation obligations of political subdivisions of a
 15729 state.--Anticipation obligations of any political subdivision of
 15730 any state of the United States, including, but not limited to,
 15731 bond anticipation notes, tax anticipation notes, preliminary
 15732 loan anticipation notes, revenue anticipation notes, and
 15733 construction anticipation notes, for the payment of money within
 15734 12 months from the issuance of the obligation, on the following
 15735 conditions:



15736 a. The anticipation notes are a direct obligation of the
15737 issuer under conditions set forth in subsection (9).

15738 b. The political subdivision is not in default in the
15739 payment of the principal or interest on any of its direct
15740 general obligations or any obligation guaranteed by such
15741 political subdivision.

15742 c. The anticipated funds are specifically pledged to
15743 secure the obligations.

15744 2. Revenue obligations of state or municipal public
15745 utilities.--Obligations of any state of the United States, a
15746 political subdivision thereof, or a public instrumentality of
15747 any one or more of the foregoing for the payment of money, on
15748 the following conditions:

15749 a. The obligations are payable from revenues or earnings
15750 of a public utility of such state, political subdivision, or
15751 public instrumentality which are specifically pledged therefor.

15752 b. The law under which the obligations are issued requires
15753 that such rates for service shall be charged and collected at
15754 all times so as to produce sufficient revenue or earning,
15755 together with any other revenues or moneys pledged, to pay all
15756 operating and maintenance charges of the public utility and all
15757 principal and interest on such charges.

15758 c. No prior or parity obligations payable from the
15759 revenues or earnings of that public utility are in default at
15760 the date of such investment.

15761 3. Other revenue obligations.--Obligations of any state of
15762 the United States, a political subdivision thereof, or a public



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15763 instrumentality of any of the foregoing for the payment of
15764 money, on the following conditions:

15765 a. The obligations are payable from revenues or earnings,
15766 excluding revenues or earnings from public utilities,
15767 specifically pledged therefor by such state, political
15768 subdivision, or public instrumentality.

15769 b. No prior or parity obligation of the same issuer
15770 payable from revenues or earnings from the same source has been
15771 in default as to principal or interest during the 5 years next
15772 preceding the date of the investment, but the issuer need not
15773 have been in existence for that period, and obligations acquired
15774 under this paragraph may be newly issued.

15775 4. Corporate stocks.--Stocks, common or preferred, of any
15776 corporation created or existing under the laws of the United
15777 States or any state thereof. The organization may invest in
15778 stocks, common or preferred, of any corporation created or
15779 existing under the laws of any foreign country if such stocks
15780 are listed and traded on a national securities exchange in the
15781 United States or, in the alternative, if such investment in
15782 stocks of any corporation created or existing under the laws of
15783 any foreign country are first approved by the office ~~department~~.
15784 Investment in common stock of any one corporation shall not
15785 exceed 3 percent of the health maintenance organization's
15786 admitted assets.

15787 (15) INVESTMENT OF EXCESS FUNDS.--

15788 (a) After satisfying the requirements of this part, any
15789 funds of a health maintenance organization in excess of its
15790 statutorily required reserves and surplus may be invested:



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15791 | 1. Without limitation in any investments otherwise
15792 | authorized by this part; or

15793 | 2. In such other investments not specifically authorized
15794 | by this part, provided such investments do not exceed the lesser
15795 | of 5 percent of the health maintenance organization's admitted
15796 | assets or 25 percent of the amount by which a health maintenance
15797 | organization's surplus exceeds its statutorily required minimum
15798 | surplus. A health maintenance organization may exceed the
15799 | limitations of this subparagraph only with the prior written
15800 | approval of the office ~~department~~.

15801 | (b) Nothing in this section authorizes a health
15802 | maintenance organization to:

15803 | 1. Invest any funds in excess of the amount by which its
15804 | actual surplus exceeds its statutorily required minimum surplus;
15805 | or

15806 | 2. Make any investment prohibited by this code.

15807 | (16) PROHIBITED INVESTMENTS AND INVESTMENT UNDERWRITING.--

15808 | (a) In addition to investments excluded pursuant to other
15809 | provisions of this act, a health maintenance organization shall
15810 | not directly or indirectly invest in or lend its funds upon the
15811 | security of:

15812 | 1. Issued shares of its own capital stock, except in
15813 | connection with a plan approved by the office ~~department~~ for
15814 | purchase of the shares by the organization's officers,
15815 | employees, or agents. However, no such stock shall constitute an
15816 | asset of the organization in any determination of its financial
15817 | condition.



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15818 2. Except with the consent of the office ~~department~~,
 15819 securities issued by any corporation or enterprise the
 15820 controlling interest of which is, or will after such acquisition
 15821 by the organization be, held directly or indirectly by the
 15822 organization or any combination of the organization and its
 15823 directors, officers, parent corporation, subsidiaries, or
 15824 controlling stockholders. Investments in health care providers
 15825 under subsections (11) and(12) shall not be subject to this
 15826 provision.

15827 3. Any note or other evidence of indebtedness of any
 15828 director, officer, or controlling stockholder of the health
 15829 maintenance organization.

15830 (b) No health maintenance organization shall underwrite or
 15831 participate in the underwriting of an offering of securities or
 15832 property by any other person.

15833 (17) TIME LIMIT FOR DISPOSAL OF INELIGIBLE PROPERTY AND
 15834 SECURITIES; EFFECT OF FAILURE TO DISPOSE.--

15835 (a) Any property or securities lawfully acquired by a
 15836 health maintenance organization which it could not otherwise
 15837 have invested in or loaned its funds upon at the time of such
 15838 acquisition shall be disposed of within 6 months from the date
 15839 of acquisition, unless within such period the security has
 15840 attained to the standard of eligibility; except that any
 15841 security or property acquired under any agreement of merger or
 15842 consolidation may be retained for a longer period if so provided
 15843 in the plan for such merger or consolidation, as approved by the
 15844 office ~~department~~. Upon application by the organization and
 15845 proof to the office ~~department~~ that forced sale of any such



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15846 property or security would materially injure the interests of
15847 the health maintenance organization, the office ~~department~~ shall
15848 extend the disposal period for an additional reasonable time.

15849 (b) Notwithstanding the provisions of paragraph (a), any
15850 ineligible property or securities shall not be allowed as an
15851 asset of the organization.

15852 Section 292. Section 641.36, Florida Statutes, is amended
15853 to read:

15854 641.36 Adoption of rules; penalty for violation.--The
15855 commission ~~department~~ shall adopt rules necessary to carry out
15856 the provisions of this part. The office ~~department~~ shall
15857 collect and make available all health maintenance organization
15858 rules adopted by the commission ~~department~~. Any violation of a
15859 rule adopted under this section shall subject the violating
15860 entity to the provisions of s. 641.23.

15861 Section 293. Subsections (1), (2), and (5) of section
15862 641.365, Florida Statutes, are amended to read:

15863 641.365 Dividends.--

15864 (1)(a) A health maintenance organization shall not pay any
15865 dividend or distribute cash or other property to stockholders
15866 except out of that part of its available and accumulated surplus
15867 funds which is derived from realized net operating profits on
15868 its business and net realized capital gains.

15869 (b) Unless prior written approval is obtained from the
15870 office ~~department~~, a health maintenance organization may not pay
15871 or declare any dividend or distribute cash or other property to
15872 or on behalf of any stockholder if, immediately before or after
15873 such distribution, the health maintenance organization's



15874 available and accumulated surplus funds, which are derived from
 15875 realized net operating profits on its business and net realized
 15876 gains, are or would be less than zero.

15877 (c) A health maintenance organization may make dividend
 15878 payments or distributions to stockholders without the prior
 15879 written approval of the office ~~department~~ when:

15880 1. The dividend is equal to or less than the greater of:

15881 a. Ten percent of the health maintenance organization's
 15882 accumulated surplus funds which are derived from realized net
 15883 operating profits on its business and net realized capital gains
 15884 as of the immediate preceding calendar year; or

15885 b. The health maintenance organization's entire net
 15886 operating profit and realized net capital gains derived during
 15887 the immediately preceding calendar year.

15888 2. The health maintenance organization will have surplus
 15889 equal to or exceeding 115 percent of the minimum required
 15890 statutory surplus after the dividend or distribution is made.

15891 3. The health maintenance organization has filed a notice
 15892 with the office ~~department~~ at least 30 days prior to the
 15893 dividend payment or distribution, or such shorter period of time
 15894 as approved by the office ~~department~~ on a case-by-case basis.

15895 4. The notice includes a certification by an officer of
 15896 the health maintenance organization attesting that after payment
 15897 of the dividend or distribution the health maintenance
 15898 organization will have at least 115 percent of required
 15899 statutory surplus.

15900 5. The health maintenance organization has negative
 15901 retained earnings, statutory surplus in excess of \$50 million,



15902 and statutory surplus greater than or equal to 150 percent of
 15903 its required statutory surplus before and after the dividend
 15904 distribution is made based upon the health maintenance
 15905 organization's most recently filed annual financial statement.

15906 (2) The office ~~department~~ shall not approve a dividend or
 15907 distribution in excess of the maximum amount allowed in
 15908 subsection(1) unless it determines that the distribution or
 15909 dividend would not jeopardize the financial condition of the
 15910 health maintenance organization, considering:

15911 (a) The liquidity, quality, and diversification of the
 15912 health maintenance organization's assets and the effect on its
 15913 ability to meet its obligations.

15914 (b) Any reduction of investment portfolio and investment
 15915 income.

15916 (c) History of capital contributions.

15917 (d) Prior dividend distributions of the health maintenance
 15918 organization.

15919 (e) Whether the dividend is only a pass-through dividend
 15920 from a subsidiary of the health maintenance organization.

15921 (5) The office ~~department~~ may revoke or suspend the
 15922 certificate of authority of a health maintenance organization
 15923 which has declared or paid such an illegal dividend.

15924 Section 294. Section 641.385, Florida Statutes, is amended
 15925 to read:

15926 641.385 Order to discontinue certain advertising.--If in
 15927 the opinion of the office ~~department~~ any advertisement by a
 15928 health maintenance organization violates any of the provisions
 15929 of this part, the department may enter an immediate order



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15930 requiring that the use of the advertisement be discontinued. If
 15931 requested by the health maintenance organization, the office
 15932 ~~department~~ shall conduct a hearing within 10 days of the entry
 15933 of such order. If, after the hearing or by agreement with the
 15934 health maintenance organization, a final determination is made
 15935 that the advertising was in fact violative of any provision of
 15936 this part, the office ~~department~~ may, in lieu of revocation of
 15937 the certificate of authority, require the publication of a
 15938 corrective advertisement; impose an administrative penalty of up
 15939 to \$10,000; and, in the case of an initial solicitation, require
 15940 that the health maintenance organization, prior to accepting any
 15941 application received in response to the advertisement, provide
 15942 an acceptable clarification of the advertisement to each
 15943 individual applicant.

15944 Section 295. Subsection (1) of section 641.39001, Florida
 15945 Statutes, is amended to read:

15946 641.39001 Soliciting or accepting new or renewal health
 15947 maintenance contracts by insolvent or impaired health
 15948 maintenance organization prohibited; penalty.--

15949 (1) Whether or not delinquency proceedings as to a health
 15950 maintenance organization have been or are to be initiated, a
 15951 director or officer of a health maintenance organization, except
 15952 with the written permission of the office ~~Department of~~
 15953 ~~Insurance~~, may not authorize or permit the health maintenance
 15954 organization to solicit or accept new or renewal health
 15955 maintenance contracts or provider contracts in this state after
 15956 the director or officer knew, or reasonably should have known,
 15957 that the health maintenance organization was insolvent or



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15958 | impaired. As used in this section, the term "impaired" means
15959 | that the health maintenance organization does not meet the
15960 | requirements of s. 641.225.

15961 | Section 296. Subsections (6) and (10) of section 641.3903,
15962 | Florida Statutes, are amended to read:

15963 | 641.3903 Unfair methods of competition and unfair or
15964 | deceptive acts or practices defined.--The following are defined
15965 | as unfair methods of competition and unfair or deceptive acts or
15966 | practices:

15967 | (6) FAILURE TO MAINTAIN COMPLAINT-HANDLING
15968 | PROCEDURES.--Failure of any person to maintain a complete record
15969 | of all the complaints received since the date of the most recent
15970 | examination of the health maintenance organization by the office
15971 | ~~department~~. For the purposes of this subsection, the term
15972 | "complaint" means any written communication primarily expressing
15973 | a grievance and requesting a remedy to the grievance.

15974 | (10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED
15975 | CHARGES FOR HEALTH MAINTENANCE COVERAGE.--

15976 | (a) Knowingly collecting any sum as a premium or charge
15977 | for health maintenance coverage which is not then provided or is
15978 | not in due course to be provided, subject to acceptance of the
15979 | risk by the health maintenance organization, by a health
15980 | maintenance contract issued by a health maintenance organization
15981 | as permitted by this part.

15982 | (b) Knowingly collecting as a premium or charge for health
15983 | maintenance coverage any sum in excess of or less than the
15984 | premium or charge applicable to health maintenance coverage, in
15985 | accordance with the applicable classifications and rates as



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15986 filed with the office ~~department~~, and as specified in the health
15987 maintenance contract.

15988 Section 297. Section 641.3905, Florida Statutes, is
15989 amended to read:

15990 641.3905 General powers and duties of the department and
15991 office.--In addition to the powers and duties set forth in s.
15992 624.307, the department and office shall each have the power
15993 within its respective regulatory jurisdiction to examine and
15994 investigate the affairs of every person, entity, or health
15995 maintenance organization in order to determine whether the
15996 person, entity, or health maintenance organization is operating
15997 in accordance with the provisions of this part or has been or is
15998 engaged in any unfair method of competition or in any unfair or
15999 deceptive act or practice prohibited by s. 641.3901, and each
16000 shall have the powers and duties specified in ss. 641.3907-
16001 641.3913 in connection therewith.

16002 Section 298. Section 641.3907, Florida Statutes, is
16003 amended to read:

16004 641.3907 Defined unfair practices; hearings, witnesses,
16005 appearances, production of books, and service of process.--

16006 (1) Whenever the department or office has reason to
16007 believe that any person, entity, or health maintenance
16008 organization has engaged, or is engaging, in this state in any
16009 unfair method of competition or any unfair or deceptive act or
16010 practice as defined in s. 641.3903 or is operating a health
16011 maintenance organization without a certificate of authority as
16012 required by this part and that a proceeding by it in respect
16013 thereto would be to the interest of the public, the department



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16014 | or office shall conduct or cause to have conducted a hearing in
16015 | accordance with chapter 120.

16016 | (2) The department or office, a duly empowered hearing
16017 | officer, or an administrative law judge shall, during the
16018 | conduct of such hearing, have those powers enumerated in s.
16019 | 120.569; however, the penalties for failure to comply with a
16020 | subpoena or with an order directing discovery shall be limited
16021 | to a fine not to exceed \$1,000 per violation.

16022 | (3) Statements of charges, notices, and orders under this
16023 | part may be served by anyone duly authorized by the department
16024 | or office, either in the manner provided by law for service of
16025 | process in civil actions or by certifying and mailing a copy
16026 | thereof to the person, entity, or health maintenance
16027 | organization affected by the statement, notice, order, or other
16028 | process at her or his or its residence or principal office or
16029 | place of business. The verified return by the person so serving
16030 | such statement, notice, order, or other process, setting forth
16031 | the manner of the service, shall be proof of the same, and the
16032 | return postcard receipt for such statement, notice, order, or
16033 | other process, certified and mailed as aforesaid, shall be proof
16034 | of service of the same.

16035 | Section 299. Section 641.3909, Florida Statutes, is
16036 | amended to read:

16037 | 641.3909 Cease and desist and penalty orders.--After the
16038 | hearing provided in s. 641.3907, the department or office shall
16039 | enter a final order in accordance with s. 120.569. If it is
16040 | determined that the person, entity, or health maintenance
16041 | organization charged has engaged in an unfair or deceptive act



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16042 or practice or the unlawful operation of a health maintenance
16043 organization without a subsisting certificate of authority, the
16044 department or office shall also issue an order requiring the
16045 violator to cease and desist from engaging in such method of
16046 competition, act, or practice or unlawful operation of a health
16047 maintenance organization. Further, if the act or practice
16048 constitutes a violation of s. 641.3155, s. 641.3901, or s.
16049 641.3903, the department or office may, at its discretion, order
16050 any one or more of the following:

16051 (1) Suspension or revocation of the health maintenance
16052 organization's certificate of authority if it knew, or
16053 reasonably should have known, it was in violation of this part.

16054 (2) If it is determined that the person or entity charged
16055 has engaged in the business of operating a health maintenance
16056 organization without a certificate of authority, an
16057 administrative penalty not to exceed \$1,000 for each health
16058 maintenance contract offered or effectuated.

16059 Section 300. Section 641.3911, Florida Statutes, is
16060 amended to read:

16061 641.3911 Appeals from the department or office.--Any
16062 person, entity, or health maintenance organization subject to an
16063 order of the department or office under s. 641.3909 or s.
16064 641.3913 may obtain a review of the order by filing an appeal
16065 therefrom in accordance with the provisions and procedures for
16066 appeal under s. 120.68.

16067 Section 301. Section 641.3913, Florida Statutes, is
16068 amended to read:



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16069 641.3913 Penalty for violation of cease and desist
16070 orders.--Any person, entity, or health maintenance organization
16071 which violates a cease and desist order of the department or
16072 office under s. 641.3909 while such order is in effect, after
16073 notice and hearing as provided in s. 641.3907, shall be subject,
16074 at the discretion of the department or office, to any one or
16075 more of the following:

16076 (1) A monetary penalty of not more than \$200,000 as to all
16077 matters determined in such hearing.

16078 (2) Suspension or revocation of the health maintenance
16079 organization's certificate of authority.

16080 Section 302. Section 641.3917, Florida Statutes, is
16081 amended to read:

16082 641.3917 Civil liability.--The provisions of this part are
16083 cumulative to rights under the general civil and common law, and
16084 no action of the department or office shall abrogate such rights
16085 to damage or other relief in any court.

16086 Section 303. Subsections (3), (10), and (14) of section
16087 641.3922, Florida Statutes, are amended to read:

16088 641.3922 Conversion contracts; conditions.--Issuance of a
16089 converted contract shall be subject to the following conditions:

16090 (3) CONVERSION PREMIUM.--The premium for the converted
16091 contract shall be determined in accordance with premium rates
16092 applicable to the age and class of risk of each person to be
16093 covered under the converted contract and to the type and amount
16094 of coverage provided. However, the premium for the converted
16095 contract may not exceed 200 percent of the standard risk rate,
16096 as established by the office ~~department~~ under s. 627.6675(3).



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16097 The mode of payment for the converted contract shall be
16098 quarterly or more frequently at the option of the organization,
16099 unless otherwise mutually agreed upon between the subscriber and
16100 the organization.

16101 (10) ALTERNATE PLANS.--The health maintenance organization
16102 shall offer a standard health benefit plan as established
16103 pursuant to s. 627.6699(12). The health maintenance organization
16104 may, at its option, also offer alternative plans for group
16105 health conversion in addition to those required by this section,
16106 provided any alternative plan is approved by the office
16107 ~~department~~ or is a converted policy, approved under s. 627.6675
16108 and issued by an insurance company authorized to transact
16109 insurance in this state. Approval by the office ~~department~~ of an
16110 alternative plan shall be based on compliance by the alternative
16111 plan with the provisions of this part and the rules promulgated
16112 thereunder, applicable provisions of the Florida Insurance Code
16113 and rules promulgated thereunder, and any other applicable law.

16114 (14) NOTIFICATION.--A notification of the conversion
16115 privilege shall be included in each health maintenance contract
16116 and in any certificate or member's handbook. The organization
16117 shall mail an election and premium notice form, including an
16118 outline of coverage, on a form approved by the office
16119 ~~department~~, within 14 days after any individual who is eligible
16120 for a converted health maintenance contract gives notice to the
16121 organization that the individual is considering applying for the
16122 converted contract or otherwise requests such information. The
16123 outline of coverage must contain a description of the principal
16124 benefits and coverage provided by the contract and its principal



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16125 exclusions and limitations, including, but not limited to,
16126 deductibles and coinsurance.

16127 Section 304. Section 641.402, Florida Statutes, is amended
16128 to read:

16129 641.402 Definitions.--As used in this part, the term:

16130 (1) "Basic services" includes any of the following:
16131 emergency care, physician care other than hospital inpatient
16132 physician services, ambulatory diagnostic treatment, and
16133 preventive health care services.

16134 ~~(2) "Department" means the Department of Insurance.~~

16135 (2)(3) "Guaranteeing organization" means an organization
16136 that ~~which~~ is domiciled in the United States; that ~~which~~ has
16137 authorized service of process against it; and that ~~which~~ has
16138 appointed the Chief Financial Officer ~~Insurance Commissioner and~~
16139 ~~Treasurer~~ as its agent for service of process in connection with
16140 any cause of action arising in this state, based upon any
16141 guarantee entered into under this part.

16142 (3)(4) "Insolvent" or "insolvency" means the inability of
16143 a prepaid health clinic to discharge its liabilities as they
16144 become due in the normal course of business.

16145 (4)(5) "Prepaid health clinic" means any organization
16146 authorized under this part which provides, either directly or
16147 through arrangements with other persons, basic services to
16148 persons enrolled with such organization, on a prepaid per capita
16149 or prepaid aggregate fixed-sum basis, including those basic
16150 services which subscribers might reasonably require to maintain
16151 good health. However, no clinic that ~~which~~ provides or contracts
16152 for, either directly or indirectly, inpatient hospital services,



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16153 hospital inpatient physician services, or indemnity against the
16154 cost of such services shall be a prepaid health clinic.

16155 (5)~~(6)~~ "Prepaid health clinic contract" means any contract
16156 entered into by a prepaid health clinic with a subscriber or
16157 group of subscribers to provide any of the basic services in
16158 exchange for a prepaid per capita or prepaid aggregate fixed
16159 sum.

16160 (6)~~(7)~~ "Provider" means any physician or person other than
16161 a hospital that furnishes health care services and is licensed
16162 or authorized to practice in this state.

16163 (7)~~(8)~~ "Reporting period" means the particular span of
16164 time by or for which accounts are redeemed on an annualized
16165 basis.

16166 (8)~~(9)~~ "Subscriber" means an individual who has
16167 contracted, or on whose behalf a contract has been entered into,
16168 with a prepaid health clinic for health care services.

16169 (9)~~(10)~~ "Surplus" means total unencumbered assets in
16170 excess of total liabilities. Surplus includes capital stock,
16171 capital in excess of par, and retained earnings and may include
16172 surplus notes.

16173 (10)~~(11)~~ "Surplus notes" means debt that ~~which~~ has been
16174 guaranteed by the United States Government or its agencies or
16175 debt that ~~which~~ has been subordinated to all claims of
16176 subscribers and general creditors of the prepaid health clinic.

16177 Section 305. Section 641.403, Florida Statutes, is amended
16178 to read:

16179 641.403 Rulemaking authority.--The commission may
16180 ~~Department of Insurance has authority to~~ adopt rules pursuant to



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16181 ss. 120.536(1) and 120.54 to implement the provisions of this
16182 part.

16183 Section 306. Section 641.405, Florida Statutes, is amended
16184 to read:

16185 641.405 Application for certificate of authority to
16186 operate prepaid health clinic.--

16187 (1) No person may operate a prepaid health clinic without
16188 first obtaining a certificate of authority from the office
16189 ~~department~~. The office ~~department~~ shall not issue a certificate
16190 of authority to any applicant which does not possess a valid
16191 Health Care Provider Certificate issued by the Agency for Health
16192 Care Administration.

16193 (2) Each application for a certificate of authority shall
16194 be on such form as the commission ~~department~~ prescribes, and
16195 such application shall be accompanied by:

16196 (a) A copy of the basic organizational document of the
16197 applicant, if any, such as the articles of incorporation,
16198 articles of association, partnership agreement, trust agreement,
16199 or other applicable document, and all amendments to such
16200 document.

16201 (b) A copy of the constitution, bylaws, rules and
16202 regulations, or similar form of document, if any, regulating the
16203 conduct of the affairs of the applicant.

16204 (c) A list of the names, addresses, and official
16205 capacities with the applicant of the persons who are to be
16206 responsible for the conduct of the affairs of the clinic,
16207 including all members of the governing body, the officers and
16208 directors in the case of a corporation, and the partners or



16209 associates in the case of a partnership or association. Such
 16210 persons shall fully disclose to the office ~~department~~ and the
 16211 governing body of the clinic the extent and nature of any
 16212 contracts or arrangements between them and the clinic, including
 16213 any possible conflicts of interest.

16214 (d) A statement generally describing the clinic and its
 16215 operations.

16216 (e) Each form of prepaid health clinic contract that the
 16217 applicant proposes to offer the subscribers, showing for each
 16218 form of contract the benefits to which the subscribers are
 16219 entitled, together with a table of the rates charged, or
 16220 proposed to be charged.

16221 (f) A copy of the applicant's Health Care Provider
 16222 Certificate from the Agency for Health Care Administration,
 16223 issued pursuant to part III of this chapter.

16224 (g) A financial statement prepared on the basis of
 16225 generally accepted accounting principles, except that surplus
 16226 notes acceptable to the office ~~department~~ may be included in the
 16227 calculation of surplus.

16228 Section 307. Section 641.406, Florida Statutes, is amended
 16229 to read:

16230 641.406 Issuance of certificate of authority.--The office
 16231 ~~department~~ shall issue a certificate of authority for a prepaid
 16232 health clinic to any applicant filing a properly completed
 16233 application in conformity with s. 641.405, upon payment of the
 16234 prescribed fees and upon the office's ~~department's~~ being
 16235 satisfied that:



16236 (1) As a condition precedent to the issuance of any
 16237 certificate, the applicant has obtained a Health Care Provider
 16238 Certificate from the Agency for Health Care Administration
 16239 pursuant to part III of this chapter.

16240 (2) The proposed rates are actuarially sound for the
 16241 benefits provided, including administrative costs.

16242 (3) The applicant has met the minimum surplus requirements
 16243 of s. 641.407.

16244 (4) The procedures for offering basic services and
 16245 offering and terminating contracts to subscribers will not
 16246 unfairly discriminate on the basis of age, health, or economic
 16247 status. However, this subsection does not prohibit reasonable
 16248 underwriting classifications for the purposes of establishing
 16249 contract rates, nor does it prohibit experience rating.

16250 (5) The procedures for offering basic services and
 16251 offering and terminating contracts to subscribers will not
 16252 discriminate on the basis of sex, race, or national origin.

16253 (6) The applicant furnishes evidence of adequate insurance
 16254 coverage or an adequate plan for self-insurance to respond to
 16255 claims for injuries arising out of the furnishing of basic
 16256 services.

16257 (7) The ownership, control, or management of the applicant
 16258 is competent and trustworthy and possesses managerial experience
 16259 that would make the proposed clinic operation beneficial to the
 16260 subscribers. The office ~~department~~ shall not grant or continue
 16261 authority to transact the business of a prepaid health clinic in
 16262 this state at any time during which the office ~~department~~ has
 16263 good reason to believe that the ownership, control, or



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16264 management of the clinic is under the control of any person
 16265 whose business operations are or have been marked by business
 16266 practices or conduct that is to the detriment of the public,
 16267 stockholders, investors, or creditors; by the improper
 16268 manipulation of assets or of accounts; or by bad faith.

16269 (8) The application and the applicant are in conformity
 16270 with all requirements of this part.

16271 Section 308. Section 641.4065, Florida Statutes, is
 16272 amended to read:

16273 641.4065 Insurance business not authorized.--Nothing in
 16274 the Florida Insurance Code or this part shall be deemed to
 16275 authorize any prepaid health clinic to transact any insurance
 16276 business other than that issuing prepaid health clinic contracts
 16277 or otherwise to engage in any other type of insurance unless it
 16278 is authorized under a certificate of authority issued by the
 16279 office ~~department~~ under the provisions of the Florida Insurance
 16280 Code.

16281 Section 309. Subsection (2) of section 641.407, Florida
 16282 Statutes, is amended to read:

16283 641.407 Minimum surplus.--

16284 (2) In lieu of having any minimum surplus, the prepaid
 16285 health clinic may provide a written guaranty to assure payment
 16286 of covered subscriber claims if the guaranteeing organization
 16287 has been in operation for at least 3 years and has a surplus,
 16288 not including land, buildings, and equipment, equal to the
 16289 product of 2 times the amount of the required statutory surplus.
 16290 Such guaranteeing organization and such written guaranty must be
 16291 acceptable to, and approved by, the office ~~department~~. The



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16292 | office ~~department~~ shall consider the likelihood of the payment
16293 | of subscriber claims in granting or withholding such approval.

16294 | Section 310. Section 641.409, Florida Statutes, is amended
16295 | to read:

16296 | 641.409 Insolvency protection.--

16297 | (1) Every prepaid health clinic shall comply with one of
16298 | the following paragraphs:

16299 | (a) The prepaid health clinic shall secure insurance to
16300 | the satisfaction of the office ~~department~~ to protect subscribers
16301 | in the event the prepaid health clinic is unable to meet its
16302 | obligations to subscribers under the terms of any prepaid health
16303 | clinic contract issued to a subscriber.

16304 | (b) The prepaid health clinic shall file with the office
16305 | ~~department~~ a surety bond issued by an authorized surety insurer.
16306 | The bond shall be for the same purpose as the insurance in lieu
16307 | of which the bond is filed. The office ~~department~~ shall not
16308 | approve any bond under the terms of which the protection
16309 | afforded against insolvency is not equivalent to the protection
16310 | afforded by such insurance. The bond shall guarantee that the
16311 | prepaid health clinic will faithfully and truly perform all the
16312 | conditions of any prepaid health clinic contract. No such bond
16313 | shall be canceled or subject to cancellation unless at least 60
16314 | days' notice of the cancellation, in writing, is filed with the
16315 | office ~~department~~. In the event that the notice of termination
16316 | of the bond is filed with the office ~~department~~, the prepaid
16317 | health clinic insured under the bond shall, within 30 days of
16318 | the filing of the notice of termination, provide the office
16319 | ~~department~~ with a replacement bond meeting the requirements of



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16320 | this part or secure insurance as required by paragraph (a). The
 16321 | cancellation of a bond does not relieve the obligation of the
 16322 | issuer of the bond for claims arising out of contracts issued
 16323 | prior to the cancellation of the bond unless a replacement bond
 16324 | or insurance is secured. In no event shall the issuer's
 16325 | aggregate liability under the bond exceed the face amount of the
 16326 | bond. If, within 30 days of filing the notice of termination, a
 16327 | replacement bond or insurance has not been secured and filed
 16328 | with the office ~~department~~, the office ~~department~~ shall suspend
 16329 | the certificate of the prepaid health clinic until the deposit
 16330 | requirements are satisfied. Whenever the prepaid health clinic
 16331 | ceases to do business in this state and furnishes to the office
 16332 | ~~department~~ satisfactory proof that it has discharged or
 16333 | otherwise adequately provided for all of its obligations to its
 16334 | subscribers, the office ~~department~~ shall release any bond filed
 16335 | by the prepaid health clinic.

16336 | (2) In determining the sufficiency of the insurance
 16337 | required under paragraph (1)(a) or the surety bond required
 16338 | under paragraph (1)(b), the office ~~department~~ may consider the
 16339 | number of subscribers, the basic services included in subscriber
 16340 | contracts, and the cost of providing such basic services to
 16341 | subscribers in the geographic area served.

16342 | (3) Every prepaid health clinic shall deposit with the
 16343 | department a cash deposit in the amount of \$30,000 to guarantee
 16344 | that the obligations to the subscribers will be performed.

16345 | Section 311. Section 641.41, Florida Statutes, is amended
 16346 | to read:



16347 641.41 Annual report of prepaid health clinic;
16348 administrative penalty.--

16349 (1) Each prepaid health clinic shall file a report with
16350 the office ~~department~~, annually on or before March 1, or within
16351 3 months of the end of the reporting period of the clinic, or
16352 within such extension of time for the filing of the report as
16353 the office ~~department~~, for good cause, may grant. The report of
16354 the prepaid health clinic must be filed on forms prescribed by
16355 the commission ~~department~~ and must be verified under oath by two
16356 executive officers of the clinic or, if the clinic is not a
16357 corporation, verified under oath by two persons who are
16358 principal managing directors of the affairs of the clinic. The
16359 report of the clinic shall show the condition of the clinic on
16360 the last day of the immediately preceding reporting period.
16361 Such report shall include:

16362 (a) A financial statement of the clinic, including its
16363 balance sheet and a statement of operations for the preceding
16364 year;

16365 (b) A list of the name and residence address of every
16366 person responsible for the conduct of the affairs of the clinic,
16367 together with a disclosure of the extent and nature of any
16368 contract or arrangement between such person and the clinic,
16369 including any possible conflicts of interest;

16370 (c) The number of prepaid health clinic contracts issued
16371 and outstanding, and the number of prepaid health clinic
16372 contracts terminated and a compilation of the reasons for such
16373 terminations;



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16374 (d) Such statistical information as is requested by the
 16375 commission or office ~~department~~, which information shows the
 16376 rates of the clinic for all basic services provided under
 16377 prepaid health clinic contracts;

16378 (e) The number and amount of damage claims for medical
 16379 injury initiated against the clinic and any of the providers
 16380 engaged by it during the reporting year, broken down into claims
 16381 with and without formal legal process, and the disposition, if
 16382 any, of each such claim; and

16383 (f) Such other information relating to the performance of
 16384 the clinic as is required by the commission or office
 16385 ~~department~~.

16386 (2) Any clinic which neglects to file the annual report in
 16387 the form and within the time required by this section is subject
 16388 to an administrative penalty, not to exceed \$100 for each day
 16389 during which the neglect continues; and, upon notice by the
 16390 office ~~department~~ to that effect, the authority of the clinic to
 16391 do business in this state shall cease while such default
 16392 continues.

16393 Section 312. Section 641.412, Florida Statutes, is amended
 16394 to read:

16395 641.412 Fees.--

16396 (1) Every prepaid health clinic shall pay to the office
 16397 ~~department~~ the following fees:

16398 (a) For filing a copy of its application for a certificate
 16399 of authority or an amendment to such certificate, a
 16400 nonrefundable fee in the amount of \$150.



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16401 (b) For filing each annual report, a fee in the amount of
16402 \$150.

16403 (2) The fees charged under this section shall be
16404 distributed as follows:

16405 (a) One-third of the total amount of fees shall be
16406 distributed to the Agency for Health Care Administration; and

16407 (b) Two-thirds of the total amount of fees shall be
16408 distributed to the office ~~Department of Insurance~~.

16409 Section 313. Section 641.418, Florida Statutes, is amended
16410 to read:

16411 641.418 Examination of prepaid health clinic by the office
16412 ~~department~~.--The office ~~department~~ shall examine the affairs,
16413 transactions, accounts, business records, and assets of any
16414 prepaid health clinic as often as the office ~~department~~ deems it
16415 expedient for the protection of the people of this state. Every
16416 clinic shall submit its books and records and take other
16417 appropriate action as may be necessary to facilitate an
16418 examination. However, medical records of individuals and
16419 records of physicians providing services under contracts to the
16420 clinic are not subject to audit, although such records may be
16421 subject to subpoena by court order upon a showing of good cause.
16422 For the purpose of examinations, the office ~~department~~ may
16423 administer oaths to and examine the officers and agents of a
16424 clinic concerning its business and affairs. The expenses for
16425 the examination of each clinic by the office ~~department~~ are
16426 subject to the same terms and conditions that apply to insurers
16427 under part II of chapter 624. In no event shall the expenses of
16428 all examinations exceed the maximum amount of \$15,000 per year.



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16429 Section 314. Subsections (2), (3), (5), and (7) of section
16430 641.42, Florida Statutes, is amended to read:

16431 641.42 Prepaid health clinic contracts.--

16432 (2) The rates charged by any clinic to its subscribers
16433 shall not be excessive, inadequate, or unfairly discriminatory.
16434 The commission ~~department~~, in accordance with generally accepted
16435 actuarial practice, may define by rule what constitutes
16436 excessive, inadequate, or unfairly discriminatory rates and may
16437 require whatever information the commission ~~department~~ deems
16438 necessary to determine that a rate or proposed rate meets the
16439 requirements of this subsection.

16440 (3) No clinic shall issue or agree to issue any prepaid
16441 health clinic contract to a subscriber unless the contract has
16442 first been filed with, and approved by, the office ~~department~~.

16443 (5) Every subscriber shall receive a clear and
16444 understandable description of the method of the clinic for
16445 resolving subscriber grievances; such method shall be set forth
16446 in the contract and shall be approved by the office ~~department~~
16447 on the basis of its underlying fairness.

16448 (7)(a) If a clinic desires to amend any contract with any
16449 of its subscribers or desires to change any rate charged for the
16450 contract, the clinic may do so, upon filing with the office
16451 ~~department~~ the proposed amendment or change in rates.

16452 (b) No prepaid health clinic contract form or application
16453 form when written application is required and is to be made a
16454 part of the policy or contract, or no printed amendment,
16455 addendum, rider, or endorsement form or form of renewal
16456 certificate, shall be delivered or issued for delivery in this



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16457 | state, unless the form has been filed with the office ~~department~~
16458 | ~~at its offices in Tallahassee~~ by or in behalf of the clinic
16459 | which proposes to use such form and has been approved by the
16460 | office ~~department~~. Every such filing shall be made not less than
16461 | 30 days in advance of any such use or delivery. At the
16462 | expiration of such 30 days, the form so filed shall be deemed
16463 | approved unless prior to the end of the 30 days the form has
16464 | been affirmatively approved or disapproved by the office
16465 | ~~department~~. The approval of any such form by the office
16466 | ~~department~~ constitutes a waiver of any unexpired portion of such
16467 | waiting period. The office ~~department~~ may extend by not more
16468 | than an additional 15 days the period within which the office
16469 | ~~department~~ may so affirmatively approve or disapprove any such
16470 | form, by giving notice of such extension before the expiration
16471 | of the initial 30-day period. At the expiration of any such
16472 | period as so extended, and in the absence of such prior
16473 | affirmative approval or disapproval, such form shall be deemed
16474 | approved. The office ~~department~~ may, for cause, withdraw a
16475 | previous approval. No clinic shall issue or use any form which
16476 | has been disapproved by the office ~~department~~ or any form for
16477 | which the office ~~department~~ has withdrawn approval.

16478 | (c) The office ~~department~~ shall disapprove any form filed
16479 | under this subsection, or withdraw any previous approval of the
16480 | form, only if the form:

16481 | 1. Is in any respect in violation of, or does not comply
16482 | with, any provision of this part or rule adopted under this
16483 | part.



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16484 2. Contains or incorporates by reference, where such
16485 incorporation is otherwise permissible, any inconsistent,
16486 ambiguous, or misleading clauses, or exceptions and conditions
16487 which deceptively affect the risk purported to be assumed in the
16488 general coverage of the contract.

16489 3. Has a misleading title, misleading heading, or other
16490 indication of the provisions of the form which is misleading.

16491 4. Is printed or otherwise reproduced in such manner as to
16492 render any material provision of the form substantially
16493 illegible.

16494 5. Provides benefits which are unreasonable in relation to
16495 the rate charged or contains provisions which are unfair,
16496 inequitable, or contrary to the public policy of this state or
16497 encourage misrepresentation.

16498 (d) In determining whether the benefits are reasonable in
16499 relation to the rate charged, the office ~~department~~, in
16500 accordance with reasonable actuarial techniques, shall consider:

16501 1. Past loss experience and prospective loss experience.

16502 2. Allocation of expenses.

16503 3. Risk and contingency margins, along with justification
16504 of such margins.

16505 4. Acquisition costs.

16506 5. Other factors deemed appropriate by the office
16507 ~~department~~, based on sound actuarial techniques.

16508 Section 315. Section 641.421, Florida Statutes, is amended
16509 to read:

16510 641.421 Language used in contracts and advertisements;
16511 translations.--



16512 (1)(a) All prepaid health clinic contracts or forms shall
16513 be printed in English.

16514 (b) If the negotiations by a prepaid health clinic with a
16515 subscriber leading up to the effectuation of a prepaid health
16516 clinic contract are conducted in a language other than English,
16517 the prepaid health clinic shall supply to the subscriber a
16518 written translation of the contract, which translation
16519 accurately reflects the substance of the contract and is in the
16520 language used to negotiate the contract. Any such translation
16521 shall be furnished to the office ~~department~~ as part of the
16522 filing of the prepaid health clinic contract form and shall be
16523 approved by the office ~~department~~ prior to use. No translation
16524 of a prepaid health clinic contract form shall be approved by
16525 the office ~~department~~ unless the translation accurately reflects
16526 the substance of the prepaid health clinic contract form in
16527 translation. When a translation of a prepaid health clinic
16528 contract is used, the translation shall clearly and
16529 conspicuously state on its face and in the language of the
16530 translation:

16531 READ THIS FIRST

16532 This is a translation of the document that you are about
16533 to sign.

16534
16535 (2) All advertisements by a prepaid health clinic, if
16536 printed or broadcast in a language other than English, also
16537 shall be available in English and shall be furnished to the
16538 office ~~department~~ upon request. As used in this subsection, the
16539 term "advertisement" means any advertisement, circular,



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16540 pamphlet, brochure, or other printed material disclosing or
 16541 disseminating advertising material or information by a clinic to
 16542 prospective or existing subscribers and includes any radio or
 16543 television transmittal of an advertisement or information.

16544 Section 316. Subsection (2) of section 641.424, Florida
 16545 Statutes, is amended to read:

16546 641.424 Validity of noncomplying contracts.--

16547 (2) Any contract delivered or issued for delivery in this
 16548 state covering a subscriber resident, located, or to be
 16549 performed in this state, which subscriber, pursuant to the
 16550 provisions of this part, the clinic may not lawfully provide
 16551 under such a contract, is cancelable at any time by the clinic,
 16552 any provision of the contract to the contrary notwithstanding;
 16553 and the clinic shall promptly cancel the contract in accordance
 16554 with the request of the office ~~department~~ for such cancellation.
 16555 No such illegality or cancellation shall be deemed to relieve
 16556 the clinic of any liability incurred by the clinic under the
 16557 contract while the contract was in force or to prohibit the
 16558 clinic from retaining the pro rata earned premium on the
 16559 contract. This provision does not relieve the clinic from any
 16560 penalty otherwise incurred by the clinic under this part on
 16561 account of any such violation.

16562 Section 317. Section 641.437, Florida Statutes, is amended
 16563 to read:

16564 641.437 Investigatory power of office ~~department~~.--The
 16565 office ~~department~~ has the power to examine and investigate the
 16566 affairs of every person, entity, or prepaid health clinic in
 16567 order to determine whether the person, entity, or prepaid health



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16568 clinic is operating in accordance with the provisions of this
 16569 part or has been or is engaged in any unfair method of
 16570 competition or any unfair or deceptive act or practice
 16571 prohibited by s. 641.44.

16572 Section 318. Section 641.443, Florida Statutes, is amended
 16573 to read:

16574 641.443 Temporary restraining orders.--

16575 (1) The office ~~department~~ is vested with the power to seek
 16576 a temporary restraining order:

16577 (a) On behalf of the office ~~department~~ or on behalf of a
 16578 subscriber or subscribers of a prepaid health clinic that is
 16579 being operated by a person or entity without a subsisting
 16580 certificate of authority; or

16581 (b) On behalf of the office ~~department~~ or on behalf of a
 16582 subscriber or subscribers to whom a prepaid health clinic,
 16583 person, or entity is issuing, delivering, or renewing prepaid
 16584 health clinic contracts without an existing certificate of
 16585 authority.

16586 (2) The office ~~department~~ and the Agency for Health Care
 16587 Administration are each vested with the power to seek a
 16588 temporary restraining order on their behalf or on behalf of a
 16589 subscriber or subscribers of a prepaid health clinic that is
 16590 being operated in violation of any provision of this part or any
 16591 rule promulgated under this part, or any other applicable law or
 16592 rule.

16593 Section 319. Section 641.444, Florida Statutes, is amended
 16594 to read:



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16595 | 641.444 Injunction.--In addition to the penalties and
16596 | other enforcement provisions of this part, if a person, entity,
16597 | or prepaid health clinic has engaged in any activity prohibited
16598 | by this part or any rule adopted pursuant to this part, the
16599 | office ~~department~~ may resort to a proceeding for injunction in
16600 | the circuit court of the county where such person, entity, or
16601 | prepaid health clinic is located or has her or his or its
16602 | principal place of business; and the office ~~department~~ may apply
16603 | in such court for such temporary and permanent orders as the
16604 | office ~~department~~ may deem necessary to restrain the person,
16605 | entity, or prepaid health clinic from engaging in any such
16606 | activity, until the person, entity, or prepaid health clinic
16607 | complies with the provisions and rules.

16608 | Section 320. Section 641.445, Florida Statutes, is amended
16609 | to read:

16610 | 641.445 Defined practices; hearings, witnesses,
16611 | appearances, production of books, and service of process.--

16612 | (1) Whenever the office ~~department~~ has reason to believe
16613 | that a person, entity, or prepaid health clinic has engaged, or
16614 | is engaging, in this state in any unfair method of competition
16615 | or any unfair or deceptive act or practice as defined in s.
16616 | 641.441, or is operating a prepaid health clinic without a
16617 | certificate of authority as required by this part or otherwise
16618 | operating in violation of any provision of this part or rule
16619 | adopted pursuant to this part, and that a proceeding by the
16620 | office ~~department~~ in respect thereto would be in the interest of
16621 | the public, the office ~~department~~ shall conduct, or cause to
16622 | have conducted, a hearing in accordance with chapter 120.



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16623 (2) The office ~~department~~, a duly empowered hearing
 16624 officer, or an administrative law judge shall, during the
 16625 conduct of such hearing, have those powers enumerated in s.
 16626 120.569; however, the penalty for the failure to comply with a
 16627 subpoena or with an order directing discovery is limited to a
 16628 fine not to exceed \$1,000 per violation.

16629 (3) A statement of charges, notice, or order under this
 16630 part may be served by anyone duly authorized by the office
 16631 ~~department~~, either in the manner provided by law for service of
 16632 process in civil actions or by certifying and mailing a copy of
 16633 the statement of charges, notice, or order to the person,
 16634 entity, or prepaid health clinic affected by the statement,
 16635 notice, or order or other process at his or her or its residence
 16636 or principal office or place of business. The verified return
 16637 by the person so serving such statement, notice, or order or
 16638 other process, setting forth the manner of the service, is proof
 16639 of such service; and the return postcard receipt for such
 16640 statement, notice, or order or other process, certified and
 16641 mailed as provided in this subsection, is proof of the service
 16642 of the statement, notice, or order or other process.

16643 Section 321. Section 641.446, Florida Statutes, is amended
 16644 to read:

16645 641.446 Cease and desist and penalty orders.--After the
 16646 hearing provided in s. 641.445, the office ~~department~~ shall
 16647 enter a final order in accordance with s. 120.569. If it is
 16648 determined that the person, entity, or prepaid health clinic
 16649 charged has engaged in an unfair or deceptive act or practice or
 16650 the unlawful operation of a prepaid health clinic, the office



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16651 ~~department~~ also shall issue an order requiring the violator to
 16652 cease and desist from engaging in such method of competition,
 16653 act, or practice or unlawful operation of a prepaid health
 16654 clinic. Furthermore, the office ~~department~~ may, at its
 16655 discretion, order any one or more of the following:

16656 (1) The suspension or revocation of the certificate of
 16657 authority of the prepaid health clinic if it knew, or reasonably
 16658 should have known, that it was in violation of this part.

16659 (2) If it is determined that the person or entity charged
 16660 has engaged in the business of operating a prepaid health clinic
 16661 without a certificate of authority, an administrative penalty
 16662 not to exceed \$1,000 for each prepaid health clinic contract
 16663 offered or effectuated.

16664 Section 322. Section 641.447, Florida Statutes, is amended
 16665 to read:

16666 641.447 Appeal from ~~departmental~~ order.--Any person,
 16667 entity, or prepaid health clinic that is subject to an order of
 16668 the office ~~department~~ under s. 641.446 may obtain a review of
 16669 the order by filing an appeal from the order in accordance with
 16670 the provisions and procedures for appeal under s. 120.68.

16671 Section 323. Section 641.448, Florida Statutes, is amended
 16672 to read:

16673 641.448 Penalty for violation of cease and desist
 16674 order.--Any person, entity, or prepaid health clinic that
 16675 violates a cease and desist order of the office ~~department~~ under
 16676 s. 641.446 while such order is in effect, after notice and
 16677 hearing as provided in s. 641.445, is subject, at the discretion
 16678 of the office ~~department~~, to any one or more of the following:



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16679 (1) A monetary penalty of not more than \$50,000 as to all
16680 matters determined in such hearing.

16681 (2) The suspension or revocation of the certificate of
16682 authority of the prepaid health clinic.

16683 Section 324. Section 641.45, Florida Statutes, is amended
16684 to read:

16685 641.45 Revocation or cancellation of certificate of
16686 authority; suspension of authority to enroll new subscribers;
16687 terms of suspension.--

16688 (1) The maintenance of a valid and current Health Care
16689 Provider Certificate issued pursuant to part III of this chapter
16690 is a condition of the maintenance of a valid and current
16691 certificate of authority issued by the office ~~department~~ to
16692 operate a prepaid health clinic. Revocation or nonrenewal of a
16693 Health Care Provider Certificate shall be deemed to be an
16694 automatic and immediate cancellation of a prepaid health
16695 clinic's certificate of authority.

16696 (2) The office ~~department~~ may suspend the authority of a
16697 clinic to enroll new subscribers or revoke any certificate of
16698 authority issued to a prepaid health clinic, or order compliance
16699 within 60 days, if the office ~~department~~ finds that any of the
16700 following conditions exist:

16701 (a) The clinic is not operating in compliance with this
16702 part or any rule promulgated under this part.

16703 (b) The plan is no longer actuarially sound or the clinic
16704 does not have the minimum surplus as required by this part.

16705 (c) The existing contract rates are excessive, inadequate,
16706 or unfairly discriminatory.



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16707 (d) The clinic has advertised, merchandised, or attempted
 16708 to merchandise its services in such a manner as to misrepresent
 16709 its services or capacity for services or has engaged in
 16710 deceptive, misleading, or unfair practices with respect to
 16711 advertising or merchandising.

16712 (e) The organization is insolvent.

16713 (f) The clinic has not complied with the grievance
 16714 procedures for subscribers that are set forth in any prepaid
 16715 health clinic contract.

16716 (g) The clinic has not fully satisfied a judgment against
 16717 the clinic within 10 days of the entry of the judgment by any
 16718 court in the state or, in the case of an appeal from such
 16719 judgment, has not fully satisfied the judgment within 60 days
 16720 after affirmance of the judgment by the appellate court.

16721 (3) The office ~~department~~ shall, in its order suspending
 16722 the authority of a clinic to enroll new subscribers, specify the
 16723 period during which the suspension is to be in effect and the
 16724 conditions, if any, which must be met by the clinic prior to
 16725 reinstatement of its authority to enroll new subscribers. The
 16726 order of suspension is subject to rescission or modification by
 16727 further order of the office ~~department~~ prior to the expiration
 16728 of the suspension period. Reinstatement shall not be made unless
 16729 requested by the clinic; however, the office ~~department~~ shall
 16730 not grant reinstatement if it finds that the circumstances for
 16731 which the suspension occurred still exist or are likely to
 16732 recur.

16733 Section 325. Section 641.452, Florida Statutes, is amended
 16734 to read:



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16735 641.452 Administrative penalty in lieu of suspension or
16736 revocation of certificate of authority.--The office department
16737 may, in lieu of suspension or revocation of a certificate of
16738 authority, levy an administrative penalty in an amount not more
16739 than \$10,000 for each violation by a prepaid health clinic. In
16740 levying such fine, the office department shall consider the
16741 number of members and total revenues of the clinic and whether
16742 the violation was committed knowingly and willfully.

16743 Section 326. Section 641.453, Florida Statutes, is amended
16744 to read:

16745 641.453 Civil liability.--The provisions of this part are
16746 cumulative to the rights under the general civil law and common
16747 law, and no action of the office department shall abrogate such
16748 rights to damages or other relief in any court.

16749 Section 327. Section 641.454, Florida Statutes, is amended
16750 to read:

16751 641.454 Civil action to enforce prepaid health clinic
16752 contract; attorney's fees; court costs.--In any civil action
16753 brought to enforce the terms and conditions of a prepaid health
16754 clinic contract, the prevailing party is entitled to recover
16755 reasonable attorney's fees and court costs. This section shall
16756 not be construed to authorize a civil action against the
16757 commission or office department, or their its employees, ~~or the~~
16758 ~~Insurance Commissioner and Treasurer~~ or against the Agency for
16759 Health Care Administration, the employees of the Agency for
16760 Health Care Administration, or the Secretary of Health Care
16761 Administration.



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16762 Section 328. Section 641.455, Florida Statutes, is amended
16763 to read:

16764 641.455 Disposition of moneys collected under this
16765 part.--Fees, administrative penalties, examination expenses, and
16766 other sums collected by the office ~~department~~ under this part
16767 shall be deposited to the credit of the Insurance ~~Commissioner's~~
16768 Regulatory Trust Fund; however, fees, examination expenses, and
16769 other sums collected by, or allocated to, the Agency for Health
16770 Care Administration under this part shall be deposited to the
16771 credit of the General Revenue Fund.

16772 Section 329. Section 641.457, Florida Statutes, is amended
16773 to read:

16774 641.457 Exemption for certain operational prepaid health
16775 clinics.--The provisions of this part do not apply to those
16776 prepaid health clinics providing the services defined in ss.
16777 641.40 through 641.459, which clinics have been continuously
16778 engaged in providing such services since January 1, 1947,
16779 provided that any prepaid health clinic claiming an exemption
16780 under this section notified ~~notifies~~ the former Department of
16781 Insurance of its claim on or before January 1, 1985. This
16782 exemption will terminate upon a change in controlling ownership
16783 of the organization.

16784 Section 330. Section 641.48, Florida Statutes, is amended
16785 to read:

16786 641.48 Purpose and application of part.--The purpose of
16787 this part is to ensure that health maintenance organizations and
16788 prepaid health clinics deliver high-quality health care to their
16789 subscribers. To achieve this purpose, this part requires all



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16790 such organizations to obtain a health care provider certificate
16791 from the agency as a condition precedent to obtaining a
16792 certificate of authority to do business in Florida from the
16793 office ~~Department of Insurance~~, under part I or part II of this
16794 chapter.

16795 Section 331. Subsection (2) of section 641.49, Florida
16796 Statutes, is amended to read:

16797 641.49 Certification of health maintenance organization
16798 and prepaid health clinic as health care providers; application
16799 procedure.--

16800 (2) The office ~~Department of Insurance~~ shall not issue a
16801 certificate of authority under part I or part II of this chapter
16802 to any applicant which does not possess a valid health care
16803 provider certificate issued by the agency under this part.

16804 Section 332. Subsection (4) of section 641.495, Florida
16805 Statutes, is amended to read:

16806 641.495 Requirements for issuance and maintenance of
16807 certificate.--

16808 (4) The organization shall ensure that the health care
16809 services it provides to subscribers, including physician
16810 services as required by s. 641.19(12)(13)(d) and (e), are
16811 accessible to the subscribers, with reasonable promptness, with
16812 respect to geographic location, hours of operation, provision of
16813 after-hours service, and staffing patterns within generally
16814 accepted industry norms for meeting the projected subscriber
16815 needs. The health maintenance organization must provide
16816 treatment authorization 24 hours a day, 7 days a week. Requests
16817 for treatment authorization may not be held pending unless the



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16818 requesting provider contractually agrees to take a pending or
16819 tracking number.

16820 Section 333. Subsections (7), (8), and (11) of section
16821 641.511, Florida Statutes, are amended to read:

16822 641.511 Subscriber grievance reporting and resolution
16823 requirements.--

16824 (7) Each organization shall send to the agency a copy of
16825 its quarterly grievance reports submitted to the office
16826 ~~Department of Insurance~~ pursuant to s. 408.7056(12).

16827 (8) The agency shall investigate all reports of unresolved
16828 quality of care grievances received from:

16829 (a) Annual and quarterly grievance reports submitted by
16830 the organization to the office ~~Department of Insurance~~.

16831 (b) Review requests of subscribers whose grievances remain
16832 unresolved after the subscriber has followed the full grievance
16833 procedure of the organization.

16834 (11) Each organization, as part of its contract with any
16835 provider, must require the provider to post a consumer
16836 assistance notice prominently displayed in the reception area of
16837 the provider and clearly noticeable by all patients. The
16838 consumer assistance notice must state the addresses and toll-
16839 free telephone numbers of the Agency for Health Care
16840 Administration, the Statewide Provider and Subscriber Assistance
16841 Program, and the Department of Financial Services ~~Insurance~~. The
16842 consumer assistance notice must also clearly state that the
16843 address and toll-free telephone number of the organization's
16844 grievance department shall be provided upon request. The agency



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16845 | may adopt ~~is authorized to promulgate~~ rules to implement this
16846 | section.

16847 | Section 334. Subsections (1), (3), and (6) of section
16848 | 641.512, Florida Statutes, are amended to read:

16849 | 641.512 Accreditation and external quality assurance
16850 | assessment.--

16851 | (1)(a) To promote the quality of health care services
16852 | provided by health maintenance organizations and prepaid health
16853 | clinics in this state, the office ~~department~~ shall require each
16854 | health maintenance organization and prepaid health clinic to be
16855 | accredited within 1 year of the organization's receipt of its
16856 | certificate of authority and to maintain accreditation by an
16857 | accreditation organization approved by the office ~~department~~, as
16858 | a condition of doing business in the state.

16859 | (b) In the event that no accreditation organization can be
16860 | approved by the office ~~department~~, the office ~~department~~ shall
16861 | require each health maintenance organization and prepaid health
16862 | clinic to have an external quality assurance assessment
16863 | performed by a review organization approved by the office
16864 | ~~department~~, as a condition of doing business in the state. The
16865 | assessment shall be conducted within 1 year of the
16866 | organization's receipt of its certificate of authority and every
16867 | 2 years thereafter, or when the office ~~department~~ deems
16868 | additional assessments necessary.

16869 | (3) A representative of the office ~~department~~ shall
16870 | accompany the accreditation or review organization throughout
16871 | the accreditation or assessment process, but shall not
16872 | participate in the final accreditation or assessment



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16873 determination. The accreditation or review organization shall
 16874 monitor and evaluate the quality and appropriateness of patient
 16875 care, the organization's pursuance of opportunities to improve
 16876 patient care and resolve identified problems, and the
 16877 effectiveness of the internal quality assurance program required
 16878 for health maintenance organization and prepaid health clinic
 16879 certification pursuant to s. 641.49(3)(p).

16880 (6) The accreditation or review organization shall issue a
 16881 written report of its findings to the health maintenance
 16882 organization's or prepaid health clinic's board of directors. A
 16883 copy of the report shall be submitted to the office ~~department~~
 16884 by the organization within 30 business days of its receipt by
 16885 the health maintenance organization or prepaid health clinic.

16886 Section 335. Section 641.52, Florida Statutes, is amended
 16887 to read:

16888 641.52 Revocation of certificate; suspension of new
 16889 enrollment; suspension of the health care provider certificate;
 16890 administrative fine; notice of action to the office ~~Department~~
 16891 ~~of Insurance~~; penalty for use of unlicensed providers.--

16892 (1) The agency may suspend the authority of an
 16893 organization to enroll new subscribers or revoke the health care
 16894 provider certificate of any organization, or order compliance
 16895 within a time certain, if it finds that any of the following
 16896 conditions exist:

16897 (a) The organization is in substantial violation of its
 16898 contracts.

16899 (b) The organization is unable to fulfill its obligations
 16900 under outstanding contracts entered into with its subscribers.



16901 (c) The organization knowingly utilizes a provider who is
 16902 furnishing or has furnished health care services and who does
 16903 not have a subsisting license or other authority to practice or
 16904 furnish health care services in this state.

16905 (d) The organization no longer meets the requirements for
 16906 the certificate as originally issued.

16907 (e) The organization has violated any lawful rule or order
 16908 of the agency or any provision of this part.

16909 (f) The organization has refused to be examined or to
 16910 produce its accounts, records, and files for examination or to
 16911 perform any other legal obligation as to such examination, when
 16912 required by the agency.

16913 (g) The organization has not, after given reasonable
 16914 notice, maintained accreditation or received favorable external
 16915 quality assurance reviews under s. 641.512 or, following an
 16916 investigation under s. 641.515, has been determined to not
 16917 materially meet requirements under this part.

16918 (2) Revocation of an organization's certificate shall be
 16919 for a period of 2 years. After 2 years, the organization may
 16920 apply for a new certificate by compliance with all application
 16921 requirements applicable to first-time applicants.

16922 (3) Suspension of an organization's authority to enroll
 16923 new subscribers shall be for such period, not to exceed 1 year,
 16924 as is fixed by the agency. The agency shall, in its order
 16925 suspending the authority of an organization to enroll new
 16926 subscribers, specify the period during which the suspension is
 16927 to be in effect and the conditions, if any, which must be met by
 16928 the organization prior to reinstatement of its authority to



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16929 enroll new subscribers. The order of suspension is subject to
16930 rescission or modification by further order of the agency prior
16931 to the expiration of the suspension period. Authority to enroll
16932 new subscribers shall not be reinstated unless requested by the
16933 organization; however, the agency may not grant reinstatement if
16934 it finds that the circumstances for which the suspension of
16935 authority to enroll new subscribers occurred still exist or are
16936 likely to recur.

16937 (4) The agency may suspend the health care provider
16938 certificate issued to an organization. The agency shall, in its
16939 order suspending the health care provider certificate, specify
16940 the period during which the suspension is to be in effect and
16941 the conditions, if any, which must be met by the organization
16942 for reinstatement. Upon expiration of the suspension period, the
16943 organization's certificate automatically reinstates unless the
16944 agency finds that the causes of the suspension have not been
16945 removed or that the organization is otherwise not in compliance
16946 with this part. If the agency makes such a finding, the health
16947 care provider certificate shall not be reinstated and is
16948 considered to have expired as of the end of the suspension
16949 period.

16950 (5) If the agency finds that one or more grounds exist for
16951 the revocation or suspension of a certificate issued under this
16952 part, the agency may, in lieu of such revocation or suspension,
16953 impose a fine upon the organization. With respect to any
16954 nonwillful violation, the fine may not exceed \$2,500 per
16955 violation. Such fines may not exceed an aggregate amount of
16956 \$25,000 for all nonwillful violations arising out of the same



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16957 | action. With respect to any knowing and willful violation of a
 16958 | lawful order or rule of the agency or a provision of this part,
 16959 | the agency may impose a fine upon the organization in an amount
 16960 | not to exceed \$20,000 for each such violation. Such fines may
 16961 | not exceed an aggregate amount of \$250,000 for all knowing and
 16962 | willful violations arising out of the same action. The agency
 16963 | shall, by January 1, 1997, adopt by rule penalty categories that
 16964 | specify varying ranges of fines for willful violations and for
 16965 | nonwillful violations.

16966 | (6) The agency shall immediately notify the office
 16967 | ~~Department of Insurance~~ whenever it issues an administrative
 16968 | complaint or an order or otherwise initiates legal proceedings
 16969 | resulting in or which may result in suspension or revocation of
 16970 | an organization's health care provider certificate or suspension
 16971 | of new enrollment.

16972 | (7) Any organization that knowingly utilizes the services
 16973 | of a provider who is not licensed or otherwise authorized by law
 16974 | to provide such services is guilty of a felony of the third
 16975 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 16976 | 775.084.

16977 | Section 336. Subsection (2) of section 641.54, Florida
 16978 | Statutes, is amended to read:

16979 | 641.54 Information disclosure.--

16980 | (2) The list shall be made available, upon request, to the
 16981 | office ~~department~~. The list shall also be made available, upon
 16982 | request:

16983 | (a) With respect to negotiation, application, or
 16984 | effectuation of a group health maintenance contract, to the



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16985 employer or other person who will hold the contract on behalf of
 16986 the subscriber group. The list may be restricted to include
 16987 only physicians and hospitals in the group's geographic area.

16988 (b) With respect to an individual health maintenance
 16989 contract or any contract offered to a person who is entitled to
 16990 have payments for health care costs made under Medicare, to the
 16991 person considering or making application to, or under contract
 16992 with, the health maintenance organization. The list may be
 16993 restricted to include only physicians and hospitals in the
 16994 person's geographic area.

16995 Section 337. Subsection (4) of section 641.55, Florida
 16996 Statutes, is amended to read:

16997 641.55 Internal risk management program.--

16998 (4) The Agency for Health Care Administration shall adopt
 16999 rules necessary to carry out the provisions of this section,
 17000 including rules governing the establishment of required internal
 17001 risk management programs to meet the needs of individual
 17002 organizations and each specific organization type governed by
 17003 this part. The office ~~Department of Insurance~~ shall assist the
 17004 agency in preparing these rules. Each internal risk management
 17005 program shall include the use of incident reports to be filed
 17006 with the risk manager. The risk manager shall have free access
 17007 to all organization or provider medical records. The incident
 17008 reports shall be considered to be a part of the workpapers of
 17009 the attorney defending the organization in litigation relating
 17010 thereto and shall be subject to discovery, but not be admissible
 17011 as evidence in court, nor shall any person filing an incident
 17012 report be subject to civil suit by virtue of the incident report



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17013 and the matters it contains. As a part of each internal risk
17014 management program, the incident reports shall be utilized to
17015 develop categories of incidents which identify problem areas.
17016 Once identified, procedures must be adjusted to correct these
17017 problem areas.

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17020 The gross data compiled under this section or s. 395.0197 shall
17021 be furnished by the agency upon request to organizations to be
17022 utilized for risk management purposes. The agency shall adopt
17023 rules necessary to carry out the provisions of this section.

17024 Section 338. Subsection (2) of section 641.58, Florida
17025 Statutes, is amended to read:

17026 641.58 Regulatory assessment; levy and amount; use of
17027 funds; tax returns; penalty for failure to pay.--

17028 (2) The office ~~Department of Insurance~~ shall determine the
17029 amount of gross premiums for the purposes of the regulatory
17030 assessment, and then the agency shall determine on or before
17031 December 1 of each year the regulatory assessment percentage
17032 necessary to be imposed for that calendar year, payable on or
17033 before the following April 1, as herein prescribed, to provide
17034 the funds appropriated to the agency to carry out the provisions
17035 of subsection (4).

17036 Section 339. Subsections (3) and (4) of section 642.0475,
17037 Florida Statutes, are amended to read:

17038 642.0475 Civil remedy.--

17039 (3) As a condition precedent to bringing an action under
17040 this section, the office ~~department~~ and the person against whom



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17041 the action is to be brought shall be given notice of the
 17042 violation. The notice shall state with specificity the facts
 17043 which allegedly constitute the violation and the law which the
 17044 plaintiff is relying upon. No action shall lie if, within 30
 17045 days thereafter, the damages are paid or the circumstances
 17046 giving rise to the violation are corrected.

17047 (4) This section shall not be construed to authorize a
 17048 class action suit against a legal expense insurance corporation
 17049 or a civil action against the department, commission, or office
 17050 or their its employees, ~~or the Insurance Commissioner.~~

17051 Section 340. Section 651.119, Florida Statutes, is amended
 17052 to read:

17053 651.119 Assistance to persons affected by closure due to
 17054 liquidation or pending liquidation.--

17055 (1) If a facility closes and ceases to operate as a result
 17056 of liquidation or pending liquidation and residents are forced
 17057 to relocate, the department shall become a creditor of the
 17058 facility for the purpose of providing moving expenses for
 17059 displaced residents and such other care or services as is made
 17060 possible by the unencumbered assets of the facility. To the
 17061 extent that another provider provides, as approved by the office
 17062 ~~department~~, direct assistance to such residents, the cost of
 17063 such direct assistance shall be offset against reserves pursuant
 17064 to subsection (4). The department shall provide proportional
 17065 reimbursements of such costs to the respective providers from
 17066 such unencumbered assets.

17067 (2) If the moneys and direct assistance made available
 17068 under subsection(1) are not sufficient to cover moving costs,



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17069 | the office ~~department~~ may seek voluntary contributions from the
 17070 | reserves maintained by providers under s. 651.035 in amounts
 17071 | approved by the office ~~department~~ to provide for the moving
 17072 | expenses of the residents in moving to another residence within
 17073 | the state.

17074 | (3) If the moneys and direct assistance provided under
 17075 | subsections (1) and(2) are not sufficient to provide for the
 17076 | moving expenses of displaced residents in moving to other
 17077 | residences within the state, the office ~~department~~ may levy pro
 17078 | rata assessments on the reserves of providers maintained under
 17079 | s. 651.035 for such moving expenses of any displaced resident
 17080 | who lacks sufficient assets to pay for such moving expenses. The
 17081 | assessments for such moving expenses on any particular provider
 17082 | may not exceed for any 12-month period an aggregate of 1 percent
 17083 | of the unencumbered portion of the reserves maintained by the
 17084 | provider under s. 651.035. If the office ~~department~~ determines
 17085 | that payment of an assessment under this subsection would impair
 17086 | the financial standing of a facility or its residents, the
 17087 | office ~~department~~ may waive or temporarily defer all or part of
 17088 | the assessment with respect to that provider. The office
 17089 | ~~department~~ shall apply any moneys voluntarily paid by a provider
 17090 | under subsection (1) or subsection (2) to satisfaction of
 17091 | assessments under this subsection.

17092 | (4) The office ~~department~~ shall permanently reduce the
 17093 | reserves required of a provider under s. 651.035 to the extent
 17094 | of the provider's costs under subsection (1), voluntary
 17095 | contributions under subsection (2), and assessments under
 17096 | subsection (3). However, the office ~~department~~ shall thereafter



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17097 raise the reserve requirements of a provider to the extent of
 17098 reimbursements paid to the provider under subsection (1) unless
 17099 such increase would raise the reserve requirement above the
 17100 amount required under s. 651.035.

17101 (5) No payment, contribution, or assessment may be paid by
 17102 a provider under this section if the release of funds from the
 17103 reserves of the provider would violate a bond or lending
 17104 commitment or covenant.

17105 (6) Moneys received under this section for the support of
 17106 residents shall be kept in a separate fund maintained and
 17107 administered by the department. The Continuing Care Advisory
 17108 Council shall monitor the collection and use of such funds and
 17109 shall advise the office or department on plans for resident
 17110 relocation. The council shall seek the assistance of providers
 17111 licensed under this chapter and other service providers in
 17112 locating alternative housing and care arrangements.

17113 (7) For the purposes of this section, "moving expenses"
 17114 means transportation expenses and the cost of packing and
 17115 relocating personal belongings.

17116 Section 341. Section 252.62, Florida Statutes, is amended
 17117 to read:

17118 252.62 Director of Office of Financial Institutions and
 17119 Securities Regulation ~~Comptroller's~~ powers in a state of
 17120 emergency.--

17121 (1) It is the purpose and intent of this section to
 17122 provide the Director of the Office of Financial Institutions and
 17123 Securities Regulation of the Financial Services Commission
 17124 ~~Comptroller, as head of the Department of Banking and Finance,~~



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17125 the authority to make temporary modifications to or suspensions
 17126 of the financial institutions codes in order to expedite the
 17127 recovery of communities affected by a disaster or other
 17128 emergency and in order to encourage financial institutions to
 17129 meet the credit, deposit, and other financial needs of such
 17130 communities.

17131 (2)(a) When the Governor declares a state of emergency
 17132 pursuant to s. 252.36, the Director of the Office of Financial
 17133 Institutions and Securities Regulation ~~Comptroller~~ may issue:

17134 1. One or more general orders applicable to all financial
 17135 institutions that are subject to the financial institutions
 17136 codes and that serve any portion of the area of the state under
 17137 the state of emergency; or

17138 2. One or more specific orders to particular financial
 17139 institutions that are subject to the financial institution codes
 17140 and that normally derive more than 60 percent of their deposits
 17141 from persons in the area of the state under the state of
 17142 emergency,

17143
 17144 which orders may modify or suspend, as to those institutions,
 17145 all or any part of the financial institutions codes, as defined
 17146 in s. 655.005, or any applicable rule, consistent with the
 17147 stated purposes of the financial institutions codes and with
 17148 maintaining the safety and soundness of the financial
 17149 institutions system in this state.

17150 (b) An order issued by the director ~~Comptroller~~ under this
 17151 section becomes effective upon issuance and continues for 120
 17152 days unless it is terminated by the director ~~Comptroller~~. The



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17153 director ~~Comptroller~~ may extend an order for one additional
 17154 period of 120 days if he or she ~~the Comptroller~~ determines that
 17155 the emergency conditions that gave rise to the ~~Comptroller's~~
 17156 initial order still exist. The Legislature, by concurrent
 17157 resolution, may terminate any order issued under this section.

17158 (3) The director ~~Comptroller~~ shall publish, in the next
 17159 available publication of the Florida Administrative Weekly, a
 17160 copy of the text of any order issued under this section,
 17161 together with a statement describing the modification or
 17162 suspension and explaining how the modification or suspension
 17163 will facilitate recovery from the emergency and maintain the
 17164 safety and soundness of financial institutions in this state.

17165 Section 342. Section 288.778, Florida Statutes, is amended
 17166 to read:

17167 288.778 Office of Financial Institutions and Securities
 17168 Regulation ~~Department of Banking and Finance~~.--The Office of
 17169 Financial Institutions and Securities Regulation ~~Department of~~
 17170 ~~Banking and Finance~~ shall review the corporation's activities
 17171 once every 24 months to determine compliance with this part and
 17172 other related laws and rules and to evaluate the corporation's
 17173 operations. The office ~~department~~ shall prepare a report based
 17174 on its review and evaluation with recommendation for any
 17175 corrective action. The president shall submit to the office
 17176 ~~department~~ regular reports on the corporation's activities. The
 17177 content and frequency of such reports shall be determined by the
 17178 office ~~department~~. The office ~~department~~ shall charge a fee for
 17179 conducting the review and evaluation and preparing the related
 17180 report, which fee shall not be in excess of the examination fee



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17181 | paid by financial institutions chartered or licensed under the
17182 | financial institutions code of this state.

17183 | Section 343. Paragraphs (c) and (e) through (p) of
17184 | subsection (3), paragraphs (a), (b),(c), (d), (g), and (h) of
17185 | subsection (4), paragraph (b) of subsection (5), subsection (7),
17186 | paragraphs (a) and (c) of subsection (8), paragraph (b) of
17187 | subsection (9), paragraphs (a) through (e), (h), and (j) of
17188 | subsection (10), subsections (12), (13), and (14), paragraphs
17189 | (a), (c), (d), (e), and (g) of subsection (15), and subsection
17190 | (17) of section 288.99, Florida Statutes, are amended to read:

17191 | 288.99 Certified Capital Company Act.--

17192 | (3) DEFINITIONS.--As used in this section, the term:

17193 | (c) "Certified capital company" means a corporation,
17194 | partnership, or limited liability company which:

17195 | 1. Is certified by the office ~~department~~ in accordance
17196 | with this act.

17197 | 2. Receives investments of certified capital from two or
17198 | more unaffiliated certified investors.

17199 | 3. Makes qualified investments as its primary activity.

17200 | (e) "Commission" means the Financial Services Commission
17201 | ~~"Department" means the Department of Banking and Finance.~~

17202 | ~~(f) "Director" means the director of the Office of~~
17203 | ~~Tourism, Trade, and Economic Development.~~

17204 | (f)(g) "Early stage technology business" means a qualified
17205 | business that is:

17206 | 1. Involved, at the time of the certified capital
17207 | company's initial investment in such business, in activities
17208 | related to developing initial product or service offerings, such



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17209 as prototype development or the establishment of initial
 17210 production or service processes;

17211 2. Less than 2 years old and has, together with its
 17212 affiliates, less than \$3 million in annual revenues for the
 17213 fiscal year immediately preceding the initial investment by the
 17214 certified capital company on a consolidated basis, as determined
 17215 in accordance with generally accepted accounting principles;

17216 3. The Florida Black Business Investment Board;

17217 4. Any entity that is majority owned by the Florida Black
 17218 Business Investment Board; or

17219 5. Any entity in which the Florida Black Business
 17220 Investment Board holds a majority voting interest on the board
 17221 of directors.

17222 (g)~~(h)~~ "Office" means the Office of Financial Institutions
 17223 and Securities Regulation of the commission ~~Tourism, Trade, and~~
 17224 ~~Economic Development~~.

17225 (h)~~(i)~~ "Premium tax liability" means any liability
 17226 incurred by an insurance company under the provisions of ss.
 17227 624.509 and 624.5091.

17228 (i)~~(j)~~ "Principal" means an executive officer of a
 17229 corporation, partner of a partnership, manager of a limited
 17230 liability company, or any other person with equivalent executive
 17231 functions.

17232 (j)~~(k)~~ "Qualified business" means the Digital Divide Trust
 17233 Fund established under the State of Florida Technology Office or
 17234 a business that meets the following conditions as evidenced by
 17235 documentation required by commission ~~department~~ rule:



17236 1. The business is headquartered in this state and its
17237 principal business operations are located in this state or at
17238 least 75 percent of the employees are employed in the state.

17239 2. At the time a certified capital company makes an
17240 initial investment in a business, the business would qualify for
17241 investment under 13 C.F.R. s. 121.301(c), which is involved in
17242 manufacturing, processing or assembling products, conducting
17243 research and development, or providing services.

17244 3. At the time a certified capital company makes an
17245 initial investment in a business, the business certifies in an
17246 affidavit that:

17247 a. The business is unable to obtain conventional
17248 financing, which means that the business has failed in an
17249 attempt to obtain funding for a loan from a bank or other
17250 commercial lender or that the business cannot reasonably be
17251 expected to qualify for such financing under the standards of
17252 commercial lending;

17253 b. The business plan for the business projects that the
17254 business is reasonably expected to achieve in excess of \$25
17255 million in sales revenue within 5 years after the initial
17256 investment, or the business is located in a designated Front
17257 Porch community, enterprise zone, urban high crime area, rural
17258 job tax credit county, or nationally recognized historic
17259 district;

17260 c. The business will maintain its headquarters in this
17261 state for the next 10 years and any new manufacturing facility
17262 financed by a qualified investment will remain in this state for
17263 the next 10 years, or the business is located in a designated



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17264 Front Porch community, enterprise zone, urban high crime area,
17265 rural job tax credit county, or nationally recognized historic
17266 district; and

17267 d. The business has fewer than 200 employees and at least
17268 75 percent of the employees are employed in this state. For
17269 purposes of this subsection, the term also includes the Florida
17270 Black Business Investment Board, any entity majority owned by
17271 the Florida Black Business Investment Board, or any entity in
17272 which the Florida Black Business Investment Board holds a
17273 majority voting interest on the board of directors.

17274 4. The term does not include:

17275 a. Any business predominantly engaged in retail sales,
17276 real estate development, insurance, banking, lending, or oil and
17277 gas exploration.

17278 b. Any business predominantly engaged in professional
17279 services provided by accountants, lawyers, or physicians.

17280 c. Any company that has no historical revenues and either
17281 has no specific business plan or purpose or has indicated that
17282 its business plan is solely to engage in a merger or acquisition
17283 with any unidentified company or other entity.

17284 d. Any company that has a strategic plan to grow through
17285 the acquisition of firms with substantially similar business
17286 which would result in the planned net loss of Florida-based jobs
17287 over a 12-month period after the acquisition as determined by
17288 the office department.

17289 ~~(k)(1)~~ "Qualified debt instrument" means a debt
17290 instrument, or a hybrid of a debt instrument, issued by a
17291 certified capital company, at par value or a premium, with an



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17292 original maturity date of at least 5 years after the date of
 17293 issuance, a repayment schedule which is no faster than a level
 17294 principal amortization over a 5-year period, and interest,
 17295 distribution, or payment features which are not related to the
 17296 profitability of the certified capital company or the
 17297 performance of the certified capital company's investment
 17298 portfolio.

17299 (1)~~(m)~~ "Qualified distribution" means any distribution or
 17300 payment by a certified capital company for:

17301 1. Reasonable costs and expenses, including, but not
 17302 limited to, professional fees, of forming and syndicating the
 17303 certified capital company, if no such costs or expenses are paid
 17304 to a certified investor, except as provided in subparagraph
 17305 (4)(f)2., and the total cash, cash equivalents, and other
 17306 current assets permitted by sub-subparagraph (5)(b)3.g. that can
 17307 be converted into cash within 5 business days available to the
 17308 certified capital company at the time of receipt of certified
 17309 capital from certified investors, after deducting the costs and
 17310 expenses of forming and syndicating the certified capital
 17311 company, including any payments made over time for obligations
 17312 incurred at the time of receipt of certified capital but
 17313 excluding other future qualified distributions and payments made
 17314 under paragraph (9)(a), are an amount equal to or greater than
 17315 50 percent of the total certified capital allocated to the
 17316 certified capital pursuant to subsection (7);

17317 2. Reasonable costs of managing and operating the
 17318 certified capital company, not exceeding 5 percent of the
 17319 certified capital in any single year, including an annual



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17320 management fee in an amount that does not exceed 2.5 percent of
17321 the certified capital of the certified capital company;

17322 3. Reasonable and necessary fees in accordance with
17323 industry custom for professional services, including, but not
17324 limited to, legal and accounting services, related to the
17325 operation of the certified capital company; or

17326 4. Any projected increase in federal or state taxes,
17327 including penalties and interest related to state and federal
17328 income taxes, of the equity owners of a certified capital
17329 company resulting from the earnings or other tax liability of
17330 the certified capital company to the extent that the increase is
17331 related to the ownership, management, or operation of a
17332 certified capital company.

17333 (m)~~(n)~~1. "Qualified investment" means the investment of
17334 cash by a certified capital company in a qualified business for
17335 the purchase of any debt, equity, or hybrid security, including
17336 a debt instrument or security that has the characteristics of
17337 debt but which provides for conversion into equity or equity
17338 participation instruments such as options or warrants.

17339 2. The term does not include:

17340 a. Any investment made after the effective date of this
17341 act the contractual terms of which require the repayment of any
17342 portion of the principal in instances, other than default as
17343 determined by commission ~~department~~ rule, within 12 months
17344 following the initial investment by the certified capital
17345 company unless such investment has a repayment schedule no
17346 faster than a level principal amortization of at least 2 years;



17347 b. Any "follow-on" or "add-on" investment except for the
17348 amount by which the new investment is in addition to the amount
17349 of the certified capital company's initial investment returned
17350 to it other than in the form of interest, dividends, or other
17351 types of profit participation or distributions; or

17352 c. Any investment in a qualified business or affiliate of
17353 a qualified business that exceeds 15 percent of certified
17354 capital.

17355 ~~(n)~~~~(e)~~ "Program One" means the \$150 million in premium tax
17356 credits issued under this section in 1999, the allocation of
17357 such credits under this section, and the regulation of certified
17358 capital companies and investments made by them hereunder.

17359 ~~(o)~~~~(p)~~ "Program Two" means the \$150 million in premium tax
17360 credits to be issued under subsection (17), the allocation of
17361 such credits under this section, and the regulation of certified
17362 capital companies and investments made by them hereunder.

17363 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
17364 DECERTIFICATION.--

17365 (a) To operate as a certified capital company, a
17366 corporation, partnership, or limited liability company must be
17367 certified by the Department of Banking and Finance or the office
17368 pursuant to this act.

17369 (b) An applicant for certification as a certified capital
17370 company must file a verified application with the Department of
17371 Banking and Finance on or before December 1, 1998, a date
17372 determined in rules adopted pursuant to subsection (17) in the
17373 case of applicants for Program Two, in a form which the
17374 commission ~~department~~ may prescribe by rule. The applicant shall



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17375 submit a nonrefundable application fee of \$7,500 to the office
17376 ~~department~~. The applicant shall provide:

17377 1. The name of the applicant and the address of its
17378 principal office and each office in this state.

17379 2. The applicant's form and place of organization and the
17380 relevant organizational documents, bylaws, and amendments or
17381 restatements of such documents, bylaws, or amendments.

17382 3. Evidence from the Department of State that the
17383 applicant is registered with the Department of State as required
17384 by law, maintains an active status with the Department of State,
17385 and has not been dissolved or had its registration revoked,
17386 canceled, or withdrawn.

17387 4. The applicant's proposed method of doing business.

17388 5. The applicant's financial condition and history,
17389 including an audit report on the financial statements prepared
17390 in accordance with generally accepted accounting principles. The
17391 applicant must have, at the time of application for
17392 certification, an equity capitalization of at least \$500,000 in
17393 the form of cash or cash equivalents. The applicant must
17394 maintain this equity capitalization until the applicant receives
17395 an allocation of certified capital pursuant to this act. If the
17396 date of the application is more than 90 days after preparation
17397 of the applicant's fiscal year-end financial statements, the
17398 applicant may file financial statements reviewed by an
17399 independent certified public accountant for the period
17400 subsequent to the audit report, together with the audited
17401 financial statement for the most recent fiscal year. If the
17402 applicant has been in business less than 12 months, and has not



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17403 prepared an audited financial statement, the applicant may file
17404 a financial statement reviewed by an independent certified
17405 public accountant.

17406 6. Copies of any offering materials used or proposed to be
17407 used by the applicant in soliciting investments of certified
17408 capital from certified investors.

17409 (c) Within 60 days after receipt of a verified
17410 application, the office ~~department~~ shall grant or deny
17411 certification as a certified capital company. If the office
17412 ~~department~~ denies certification within the time period
17413 specified, the office ~~department~~ shall inform the applicant of
17414 the grounds for the denial. If the office ~~department~~ has not
17415 granted or denied certification within the time specified, the
17416 application shall be deemed approved. The office ~~department~~
17417 shall approve the application if the office ~~department~~ finds
17418 that:

17419 1. The applicant satisfies the requirements of paragraph
17420 (b).

17421 2. No evidence exists that the applicant has committed any
17422 act specified in paragraph (d).

17423 3. At least two of the principals have a minimum of 5
17424 years of experience making venture capital investments out of
17425 private equity funds, with not less than \$20 million being
17426 provided by third-party investors for investment in the early
17427 stage of operating businesses. At least one full-time manager or
17428 principal of the certified capital company who has such
17429 experience must be primarily located in an office of the
17430 certified capital company which is based in this state.



17431 4. The applicant's proposed method of doing business and
 17432 raising certified capital as described in its offering materials
 17433 and other materials submitted to the office ~~department~~ conforms
 17434 with the requirements of this section.

17435 (d) The office ~~department~~ may deny certification or
 17436 decertify a certified capital company if the grounds for
 17437 decertification are not removed or corrected within 90 days
 17438 after the notice of such grounds is received by the certified
 17439 capital company. The office ~~department~~ may deny certification or
 17440 decertify a certified capital company if the certified capital
 17441 company fails to maintain common stock or paid-in capital of at
 17442 least \$500,000, or if the office ~~department~~ determines that the
 17443 applicant, or any principal or director of the certified capital
 17444 company, has:

- 17445 1. Violated any provision of this section;
- 17446 2. Made a material misrepresentation or false statement or
 17447 concealed any essential or material fact from any person during
 17448 the application process or with respect to information and
 17449 reports required of certified capital companies under this
 17450 section;
- 17451 3. Been convicted of, or entered a plea of guilty or nolo
 17452 contendere to, a crime against the laws of this state or any
 17453 other state or of the United States or any other country or
 17454 government, including a fraudulent act in connection with the
 17455 operation of a certified capital company, or in connection with
 17456 the performance of fiduciary duties in another capacity;
- 17457 4. Been adjudicated liable in a civil action on grounds of
 17458 fraud, embezzlement, misrepresentation, or deceit; or



17459 5.a. Been the subject of any decision, finding,
17460 injunction, suspension, prohibition, revocation, denial,
17461 judgment, or administrative order by any court of competent
17462 jurisdiction, administrative law judge, or any state or federal
17463 agency, national securities, commodities, or option exchange, or
17464 national securities, commodities, or option association,
17465 involving a material violation of any federal or state
17466 securities or commodities law or any rule or regulation adopted
17467 under such law, or any rule or regulation of any national
17468 securities, commodities, or options exchange, or national
17469 securities, commodities, or options association; or

17470 b. Been the subject of any injunction or adverse
17471 administrative order by a state or federal agency regulating
17472 banking, insurance, finance or small loan companies, real
17473 estate, mortgage brokers, or other related or similar
17474 industries.

17475 (g) On or before December 31 of each year, each certified
17476 capital company shall pay to the office ~~department~~ an annual,
17477 nonrefundable renewal certification fee of \$5,000. If a
17478 certified capital company fails to pay its renewal fee by the
17479 specified deadline, the company must pay a late fee of \$5,000 in
17480 addition to the renewal fee on or by January 31 of each year in
17481 order to continue its certification in the program. On or before
17482 April 30 of each year, each certified capital company shall file
17483 audited financial statements with the office ~~department~~. No
17484 renewal fees shall be required within 6 months after the date of
17485 initial certification.



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17486 (h) The commission and office ~~department~~ shall administer
 17487 and provide for the enforcement of certification requirements
 17488 for certified capital companies as provided in this act. The
 17489 commission ~~department~~ may adopt any rules necessary to carry out
 17490 its duties, obligations, and powers related to certification,
 17491 renewal of certification, or decertification of certified
 17492 capital companies and the commission and office may perform any
 17493 other acts necessary for the proper administration and
 17494 enforcement of such duties, obligations, and powers.

17495 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--

17496 (b) All capital not invested in qualified investments by
 17497 the certified capital company:

17498 1. Must be held in a financial institution as defined by
 17499 s. 655.005(1)(h) or held by a broker-dealer registered under s.
 17500 517.12, except as set forth in sub-subparagraph 3.g.

17501 2. Must not be invested in a certified investor of the
 17502 certified capital company or any affiliate of the certified
 17503 investor of the certified capital company, except for an
 17504 investment permitted by sub-subparagraph 3.g., provided
 17505 repayment terms do not permit the obligor to directly or
 17506 indirectly manage or control the investment decisions of the
 17507 certified capital company.

17508 3. Must be invested only in:

17509 a. Any United States Treasury obligations;

17510 b. Certificates of deposit or other obligations, maturing
 17511 within 3 years after acquisition of such certificates or
 17512 obligations, issued by any financial institution or trust
 17513 company incorporated under the laws of the United States;



17514 c. Marketable obligations, maturing within 10 years or
17515 less after the acquisition of such obligations, which are rated
17516 "A" or better by any nationally recognized credit rating agency;

17517 d. Mortgage-backed securities, with an average life of 5
17518 years or less, after the acquisition of such securities, which
17519 are rated "A" or better by any nationally recognized credit
17520 rating agency;

17521 e. Collateralized mortgage obligations and real estate
17522 mortgage investment conduits that are direct obligations of an
17523 agency of the United States Government; are not private-label
17524 issues; are in book-entry form; and do not include the classes
17525 of interest only, principal only, residual, or zero;

17526 f. Interests in money market funds, the portfolio of which
17527 is limited to cash and obligations described in sub-
17528 subparagraphs a.-d.; or

17529 g. Obligations that are issued by an insurance company
17530 that is not a certified investor of the certified capital
17531 company making the investment, that has provided a guarantee
17532 indemnity bond, insurance policy, or other payment undertaking
17533 in favor of the certified capital company's certified investors
17534 as permitted by subparagraph (3)(1)~~(m)~~1. or an affiliate of such
17535 insurance company as defined by subparagraph (3)(a)3. that is
17536 not a certified investor of the certified capital company making
17537 the investment, provided that such obligations are:

17538 (I) Issued or guaranteed as to principal by an entity
17539 whose senior debt is rated "AA" or better by Standard & Poor's
17540 Ratings Group or such other nationally recognized credit rating
17541 agency as the commission ~~department~~ may by rule determine.



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17542 (II) Not subordinated to other unsecured indebtedness of
17543 the issuer or the guarantor.

17544 (III) Invested by such issuing entity in accordance with
17545 sub-subparagraphs 3.a.-f.

17546 (IV) Readily convertible into cash within 5 business days
17547 for the purpose of making a qualified investment unless such
17548 obligations are held to provide a guarantee, indemnity bond,
17549 insurance policy, or other payment undertaking in favor of the
17550 certified capital company's certified investors as permitted by
17551 subparagraph (3)(1)~~(m)~~1.

17552 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
17553 PROCESS.--

17554 (a) The total amount of tax credits which may be allocated
17555 by the Office of Tourism, Trade, and Economic Development shall
17556 not exceed \$150 million with respect to Program One and \$150
17557 million with respect to Program Two. The total amount of tax
17558 credits which may be used by certified investors under this act
17559 shall not exceed \$15 million annually with respect to credits
17560 earned under Program One and \$15 million annually with respect
17561 to credits earned under Program Two.

17562 (b) The Office of Tourism, Trade, and Economic Development
17563 shall be responsible for allocating premium tax credits as
17564 provided for in this act to certified capital companies.

17565 (c) Each certified capital company must apply to the
17566 Office of Tourism, Trade, and Economic Development for an
17567 allocation of premium tax credits for potential certified
17568 investors on a form developed by the Office of Tourism, Trade,
17569 and Economic Development with the cooperation of the Department



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17570 of Revenue. The form shall be accompanied by an affidavit from
17571 each potential certified investor confirming that the potential
17572 certified investor has agreed to make an investment of certified
17573 capital in a certified capital company up to a specified amount,
17574 subject only to the receipt of a premium tax credit allocation
17575 pursuant to this subsection. No certified capital company shall
17576 submit premium tax allocation claims on behalf of certified
17577 investors that in the aggregate would exceed the total dollar
17578 amount appropriated by the Legislature for the specific program.
17579 No allocation shall be made to the potential investors of a
17580 certified capital company under Program Two unless such
17581 certified capital company has filed premium tax allocation
17582 claims of not less than \$15 million in the aggregate.

17583 (d) The Office of Tourism, Trade, and Economic Development
17584 shall inform each certified capital company of its share of
17585 total premium tax credits available for allocation to each of
17586 its potential investors.

17587 (e) If a certified capital company does not receive
17588 certified capital equaling the amount of premium tax credits
17589 allocated to a potential certified investor for which the
17590 investor filed a premium tax allocation claim within 10 business
17591 days after the investor received a notice of allocation, the
17592 certified capital company shall notify the Office of Tourism,
17593 Trade, and Economic Development by overnight common carrier
17594 delivery service of the company's failure to receive the
17595 capital. That portion of the premium tax credits allocated to
17596 the certified capital company shall be forfeited. If the Office
17597 of Tourism, Trade, and Economic Development must make a pro rata



17598 allocation under paragraph (f), that ~~the~~ office shall reallocate
 17599 such available credits among the other certified capital
 17600 companies on the same pro rata basis as the initial allocation.

17601 (f) If the total amount of capital committed by all
 17602 certified investors to certified capital companies in premium
 17603 tax allocation claims under Program Two exceeds the aggregate
 17604 cap on the amount of credits that may be awarded under Program
 17605 Two, the premium tax credits that may be allowed to any one
 17606 certified investor under Program Two shall be allocated using
 17607 the following ratio:

17608
$$A/B = X / > \$150,000,000$$

17609
 17610
 17611 where the letter "A" represents the total amount of certified
 17612 capital certified investors have agreed to invest in any one
 17613 certified capital company under Program Two, the letter "B"
 17614 represents the aggregate amount of certified capital that all
 17615 certified investors have agreed to invest in all certified
 17616 capital companies under Program Two, the letter "X" is the
 17617 numerator and represents the total amount of premium tax credits
 17618 and certified capital that may be allocated to a certified
 17619 capital company on a date determined by rule adopted by the
 17620 commission ~~department~~ pursuant to subsection (17), and \$150
 17621 million is the denominator and represents the total amount of
 17622 premium tax credits and certified capital that may be allocated
 17623 to all certified investors under Program Two. Any such premium
 17624 tax credits are not first available for utilization until annual
 17625 filings are made in 2001 for calendar year 2000 in the case of



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17626 Program One, and the tax credits may be used at a rate not to
17627 exceed 10 percent annually per program.

17628 (g) The maximum amount of certified capital for which
17629 premium tax allocation claims may be filed on behalf of any
17630 certified investor and its affiliates by one or more certified
17631 capital companies may not exceed \$15 million for Program One and
17632 \$22.5 million for Program Two.

17633 (h) To the extent that less than \$150 million in certified
17634 capital is raised in connection with the procedure set forth in
17635 paragraphs (c)-(g), the commission ~~department~~ may adopt rules to
17636 allow a subsequent allocation of the remaining premium tax
17637 credits authorized under this section.

17638 (i) The Office of Tourism, Trade, and Economic Development
17639 shall issue a certification letter for each certified investor,
17640 showing the amount invested in the certified capital company
17641 under each program. The applicable certified capital company
17642 shall attest to the validity of the certification letter.

17643 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.--

17644 (a) On an annual basis, on or before January 31, each
17645 certified capital company shall file with the office ~~department~~
17646 and the Office of Tourism, Trade, and Economic Development, in
17647 consultation with the office ~~department~~, on a form prescribed by
17648 the Office of Tourism, Trade, and Economic Development, for each
17649 calendar year:

17650 1. The total dollar amount the certified capital company
17651 received from certified investors, the identity of the certified
17652 investors, and the amount received from each certified investor
17653 during the immediately preceding calendar year.



17654 2. The total dollar amount the certified capital company
17655 invested and the amount invested in qualified businesses,
17656 together with the identity and location of those businesses and
17657 the amount invested in each qualified business during the
17658 immediately preceding calendar year.

17659 3. For informational purposes only, the total number of
17660 permanent, full-time jobs either created or retained by the
17661 qualified business during the immediately preceding calendar
17662 year, the average wage of the jobs created or retained, the
17663 industry sectors in which the qualified businesses operate, and
17664 any additional capital invested in qualified businesses from
17665 sources other than certified capital companies.

17666 (c) The Office of Tourism, Trade, and Economic Development
17667 shall review the form, and any supplemental documentation,
17668 submitted by each certified capital company for the purpose of
17669 verifying:

17670 1. That the businesses in which certified capital has been
17671 invested by the certified capital company are in fact qualified
17672 businesses, and that the amount of certified capital invested by
17673 the certified capital company is as represented in the form.

17674 2. The amount of certified capital invested in the
17675 certified capital company by the certified investors.

17676 3. The amount of premium tax credit available to certified
17677 investors.

17678 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
17679 PARTICIPATION.--

17680 (b) Cumulative distributions from a certified capital
17681 company from funds related to a particular program to its



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17682 certified investors and equity holders under such program, other
 17683 than qualified distributions, in excess of the certified capital
 17684 company's original certified capital raised under such program
 17685 and any additional capital contributions to the certified
 17686 capital company with respect to such program may be audited by a
 17687 nationally recognized certified public accounting firm
 17688 acceptable to the office ~~department~~, at the expense of the
 17689 certified capital company, if the office ~~department~~ directs such
 17690 audit be conducted. The audit shall determine whether aggregate
 17691 cumulative distributions from the funds related to a particular
 17692 program made by the certified capital company to all certified
 17693 investors and equity holders under such program, other than
 17694 qualified distributions, have equaled the sum of the certified
 17695 capital company's original certified capital raised under such
 17696 program and any additional capital contributions to the
 17697 certified capital company with respect to such program. If at
 17698 the time of any such distribution made by the certified capital
 17699 company, such distribution taken together with all other such
 17700 distributions from the funds related to such program made by the
 17701 certified capital company, other than qualified distributions,
 17702 exceeds in the aggregate the sum of the certified capital
 17703 company's original certified capital raised under such program
 17704 and any additional capital contributions to the certified
 17705 capital company with respect to such program, as determined by
 17706 the audit, the certified capital company shall pay to the
 17707 Department of Revenue 10 percent of the portion of such
 17708 distribution in excess of such amount. Payments to the
 17709 Department of Revenue by a certified capital company pursuant to



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17710 | this paragraph shall not exceed the aggregate amount of tax
17711 | credits used by all certified investors in such certified
17712 | capital company for such program.

17713 | (10) DECERTIFICATION.--

17714 | (a) The office ~~department~~ shall conduct an annual review
17715 | of each certified capital company to determine if the certified
17716 | capital company is abiding by the requirements of certification,
17717 | to advise the certified capital company as to the eligibility
17718 | status of its qualified investments, and to ensure that no
17719 | investment has been made in violation of this act. The cost of
17720 | the annual review shall be paid by each certified capital
17721 | company.

17722 | (b) Nothing contained in this subsection shall be
17723 | construed to limit the Chief Financial Officer's or the office's
17724 | ~~Comptroller's~~ authority to conduct audits of certified capital
17725 | companies as deemed appropriate and necessary.

17726 | (c) Any material violation of this section, or a finding
17727 | that the certified capital company or any principal or director
17728 | thereof has committed any act specified in paragraph (4)(d),
17729 | shall be grounds for decertification of the certified capital
17730 | company. If the office ~~department~~ determines that a certified
17731 | capital company is no longer in compliance with the
17732 | certification requirements of this act, the office ~~department~~
17733 | shall, by written notice, inform the officers of such company
17734 | that the company may be subject to decertification 90 days after
17735 | the date of mailing of the notice, unless the deficiencies are
17736 | corrected and such company is again found to be in compliance
17737 | with all certification requirements.



17738 (d) At the end of the 90-day grace period, if the
 17739 certified capital company is still not in compliance with the
 17740 certification requirements, the office ~~department~~ may issue a
 17741 notice to revoke or suspend the certification or to impose an
 17742 administrative fine. The office ~~department~~ shall advise each
 17743 respondent of the right to an administrative hearing under
 17744 chapter 120 prior to final action by the office ~~department~~.

17745 (e) If the office ~~department~~ revokes a certification, such
 17746 revocation shall also deny, suspend, or revoke the
 17747 certifications of all affiliates of the certified capital
 17748 company.

17749 (h) The Office of Tourism, Trade, and Economic Development
 17750 shall send written notice to the address of each certified
 17751 investor whose premium tax credit has been subject to recapture
 17752 or forfeiture, using the address last shown on the last premium
 17753 tax filing.

17754 (j) The certified investor shall file with the Department
 17755 of Revenue an amended return or such other report as the
 17756 commission ~~department~~ may prescribe by rule ~~regulation~~ and pay
 17757 any required tax, not later than 60 days after such
 17758 decertification has been agreed to or finally determined,
 17759 whichever shall first occur.

17760 (12) REPORTING REQUIREMENTS.--The Office of Tourism,
 17761 Trade, and Economic Development shall report on an annual basis
 17762 to the Governor, the President of the Senate, and the Speaker of
 17763 the House of Representatives on or before April 1:

17764 (a) The total dollar amount each certified capital company
 17765 received from all certified investors and any other investor,



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17766 the identity of the certified investors, and the total amount of
17767 premium tax credit used by each certified investor for the
17768 previous calendar year.

17769 (b) The total dollar amount invested by each certified
17770 capital company and that portion invested in qualified
17771 businesses, the identity and location of those businesses, the
17772 amount invested in each qualified business, and the total number
17773 of permanent, full-time jobs created or retained by each
17774 qualified business.

17775 (c) The return for the state as a result of the certified
17776 capital company investments, including the extent to which:

17777 1. Certified capital company investments have contributed
17778 to employment growth.

17779 2. The wage level of businesses in which certified capital
17780 companies have invested exceed the average wage for the county
17781 in which the jobs are located.

17782 3. The investments of the certified capital companies in
17783 qualified businesses have contributed to expanding or
17784 diversifying the economic base of the state.

17785 (13) FEES.--All fees and charges of any nature collected
17786 by the office ~~department~~ pursuant to this act shall be paid into
17787 the State Treasury and credited to the General Revenue Fund.

17788 (14) RULEMAKING AUTHORITY.--

17789 (a) The Department of Revenue may by rule prescribe forms
17790 and procedures for the tax credit filings, audits, and
17791 forfeiture of premium tax credits described in this section, and
17792 for certified capital company payments under paragraph (9)(b).



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17793 (b) The commission and the Office of Tourism, Trade, and
17794 Economic Development may adopt any rules necessary to carry out
17795 their respective ~~its~~ duties, obligations, and powers related to
17796 the administration, review, and reporting provisions of this
17797 section and may perform any other acts necessary for the proper
17798 administration and enforcement of such duties, obligations, and
17799 powers.

17800 (15)(a) CONFIDENTIALITY OF INVESTIGATION AND REVIEW
17801 INFORMATION.--Except as otherwise provided by this section, any
17802 information relating to an investigation or office ~~department~~
17803 review of a certified capital company, including any consumer
17804 complaint, is confidential and exempt from the provisions of s.
17805 119.07(1) and s. 24(a), Art. I of the State Constitution until
17806 the investigation or review is complete or ceases to be active.
17807 Such information shall remain confidential and exempt from the
17808 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
17809 Constitution after the investigation or review is complete or
17810 ceases to be active if the information is submitted to any law
17811 enforcement or administrative agency for further investigation,
17812 and shall remain confidential and exempt from the provisions of
17813 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
17814 until that agency's investigation is complete or ceases to be
17815 active. For purposes of this subsection, an investigation or
17816 review shall be considered "active" so long as the office
17817 ~~department~~, a law enforcement agency, or an administrative
17818 agency is proceeding with reasonable dispatch and has a
17819 reasonable good faith belief that the investigation may lead to
17820 the filing of an administrative, civil, or criminal proceeding.



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17821 | This section shall not be construed to prohibit disclosure of
 17822 | information which is required by law to be filed with the office
 17823 | ~~department~~ and which, but for the investigation, would otherwise
 17824 | be subject to s. 119.07(1).

17825 | (c) Nothing in this section shall be construed to prohibit
 17826 | the office ~~department~~ from providing information to any law
 17827 | enforcement or administrative agency. Any law enforcement or
 17828 | administrative agency receiving confidential information in
 17829 | connection with its official duties shall maintain the
 17830 | confidentiality of the information so long as it would otherwise
 17831 | be confidential.

17832 | (d) In the event office ~~department~~ personnel are or have
 17833 | been involved in an investigation or review of such nature as to
 17834 | endanger their lives or physical safety or that of their
 17835 | families, the home addresses, telephone numbers, places of
 17836 | employment, and photographs of such personnel, together with the
 17837 | home addresses, telephone numbers, photographs, and places of
 17838 | employment of spouses and children of such personnel and the
 17839 | names and locations of schools and day care facilities attended
 17840 | by the children of such personnel are confidential and exempt
 17841 | from s. 119.07(1).

17842 | (e) All information obtained by the office ~~department~~ from
 17843 | any person which is only made available to the office ~~department~~
 17844 | on a confidential or similarly restricted basis shall be
 17845 | confidential and exempt from s. 119.07(1). This exemption shall
 17846 | not be construed to prohibit disclosure of information which is
 17847 | specifically required by law to be filed with the office
 17848 | ~~department~~ or which is otherwise subject to s. 119.07(1).



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17849 (g) A privilege against civil liability is granted to a
17850 person with regard to information or evidence furnished to the
17851 office ~~department~~, unless such person acts in bad faith or with
17852 malice in providing such information or evidence.

17853 (17) Notwithstanding the limitations set forth in
17854 paragraph (7)(a), in the first fiscal year in which the total
17855 insurance premium tax collections as determined by the Revenue
17856 Estimating Conference exceed collections for fiscal year 2000-
17857 2001 by more than the total amount of tax credits issued
17858 pursuant to this section which were used by certified investors
17859 in that year, the Office of Tourism, Trade, and Economic
17860 Development may allocate to certified investors in accordance
17861 with paragraph (7)(a) tax credits for Program Two. The
17862 commission ~~department~~ shall establish, by rule, a date and
17863 procedures by which certified capital companies must file
17864 applications for allocations of such additional premium tax
17865 credits, which date shall be no later than 180 days from the
17866 date of determination by the Revenue Estimating Conference. With
17867 respect to new certified capital invested and premium tax
17868 credits earned pursuant to this subsection, the schedule
17869 specified in subparagraphs (5)(a)1.-4. is satisfied by
17870 investments by December 31 of the 2nd, 3rd, 4th, and 5th
17871 calendar year, respectively, after the date established by the
17872 commission ~~department~~ for applications of additional premium tax
17873 credits. The commission ~~department~~ shall adopt rules by which an
17874 entity not already certified as a certified capital company may
17875 apply for certification as a certified capital company for
17876 participation in this additional allocation. The insurance



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17877 premium tax credit authorized by Program Two may not be used by
17878 certified investors until the annual return due March 1, 2004,
17879 and may be used on all subsequent returns and estimated
17880 payments; however, notwithstanding the provisions of s.
17881 624.5092(2)(b), the installments of taxes due and payable on
17882 April 15, 2004, and June 15, 2004, shall be based on the net tax
17883 due in 2003 not taking into account credits granted pursuant to
17884 this section for Program Two.

17885 Section 344. Paragraph (c) of subsection (1) of section
17886 289.051, Florida Statutes, is amended to read:

17887 289.051 Membership of financial institutions; loans to
17888 corporation, limitations.--

17889 (1) Any financial institution may request membership in
17890 the corporation by making application to the board of directors
17891 on such form and in such manner as said board of directors may
17892 require, and membership shall become effective upon acceptance
17893 of such application by said board. Each member of the
17894 corporation shall make loans to the corporation as and when
17895 called upon by it to do so, on such terms and other conditions
17896 as shall be approved from time to time by the board of
17897 directors, subject to the following conditions:

17898 (c) The total amount outstanding on loans to the
17899 corporation made by any member at any one time, when added to
17900 the amount of the investment in the capital stock of the
17901 corporation then held by such member, shall not exceed:

17902 1. Twenty percent of the total amount then outstanding on
17903 loans to the corporation by all members, including, in said



17904 total amount outstanding, amounts validly called for loan but
17905 not yet loaned.

17906 2. The following limit, to be determined as of the time
17907 such member becomes a member on the basis of the audited balance
17908 sheet of such member at the close of its fiscal year immediately
17909 preceding its application for membership, or, in the case of an
17910 insurance company, its last annual statement to the Office of
17911 Insurance Regulation of the Financial Services Commission
17912 ~~Department of Insurance~~: 2.5 percent of the capital and surplus
17913 of commercial banks and trust companies; 0.5 percent of the
17914 total outstanding loans made by savings and loan associations
17915 and building and loan associations; 2.5 percent of the capital
17916 and unassigned surplus of stock insurance companies, except fire
17917 insurance companies; 2.5 percent of the unassigned surplus of
17918 mutual insurance companies, except fire insurance companies; 0.1
17919 percent of the assets of fire insurance companies; and such
17920 limits as may be approved by the board of directors of the
17921 corporation for other financial institutions.

17922 Section 345. Subsection (1) of section 289.081, Florida
17923 Statutes, is amended to read:

17924 289.081 Amendments to articles of incorporation.--

17925 (1) The articles of incorporation may be amended by the
17926 votes of the stockholders and the members of the corporation,
17927 voting separately by classes, and such amendments shall require
17928 approval by the affirmative vote of two-thirds of the votes to
17929 which the stockholders shall be entitled and two-thirds of the
17930 votes to which the members shall be entitled. No amendment of
17931 the articles of incorporation which is inconsistent with the



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17932 general purposes expressed herein, or which authorizes any
 17933 additional class of capital stock to be issued, or which
 17934 eliminates or curtails the right of the Office of Financial
 17935 Institutions and Securities Regulation of the Financial Services
 17936 Commission ~~Department of Banking and Finance~~ to examine the
 17937 corporation or the obligation of the corporation to make reports
 17938 as provided in s. 289.121, shall be made. No amendment of the
 17939 articles of incorporation which increases the obligation of a
 17940 member to make loans to the corporation, or makes any change in
 17941 the principal amount, interest rate, maturity date, or in the
 17942 security or credit position of any outstanding loan of a member
 17943 to the corporation, or affects a member's right to withdraw from
 17944 membership as provided herein, or affects a member's voting
 17945 rights as provided herein, shall be made without the consent of
 17946 each member affected by such amendment.

17947 Section 346. Section 289.121, Florida Statutes, is amended
 17948 to read:

17949 289.121 Periodic examinations; reports.--The corporation
 17950 shall be examined at least once annually by the Office of
 17951 Financial Institutions and Securities Regulation of the
 17952 Financial Services Commission ~~Department of Banking and Finance~~
 17953 and shall make reports of its condition not less than annually
 17954 to that office ~~said department~~ and more frequently upon call of
 17955 the office ~~department~~, which in turn shall make copies of such
 17956 reports available to the Office of Insurance Regulation of the
 17957 Financial Services Commission ~~Department of Insurance~~ and the
 17958 Governor; and the corporation shall also furnish such other
 17959 information as may from time to time be required by the Office



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17960 | of Financial Institutions and Securities Regulation Department
 17961 | ~~of Banking and Finance~~ and Department of State. The corporation
 17962 | shall pay the actual cost of ~~said~~ examinations. The office
 17963 | ~~Department of Banking and Finance~~ shall exercise the same power
 17964 | and authority over corporations organized under this act as is
 17965 | exercised over financial institutions under the provisions of
 17966 | the financial institutions codes, when such codes are not in
 17967 | conflict with this act.

17968 | Section 347. Paragraph (d) of subsection (1) of section
 17969 | 420.101, Florida Statutes, is amended to read:

17970 | 420.101 Housing Development Corporation of Florida;
 17971 | creation, membership, and purposes.--

17972 | (1) Twenty-five or more persons, a majority of whom shall
 17973 | be residents of this state, who may desire to create a housing
 17974 | development corporation under the provisions of this part for
 17975 | the purpose of promoting and developing housing and advancing
 17976 | the prosperity and economic welfare of the state and, to that
 17977 | end, to exercise the powers and privileges hereinafter provided,
 17978 | may be incorporated by filing in the Department of State, as
 17979 | hereinafter provided, articles of incorporation. The articles
 17980 | of incorporation shall contain:

17981 | (d) The names and post office addresses of the members of
 17982 | the first board of directors. The first board of directors shall
 17983 | be elected by and from the stockholders of the corporation and
 17984 | shall consist of 21 members. However, five of such members
 17985 | shall consist of the following persons, who shall be nonvoting
 17986 | members: the secretary of the Department of Community Affairs or
 17987 | her or his designee; the head of the Department of Financial



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17988 Services Banking and Finance or her or his designee with
 17989 expertise in insurance matters; a designee of the head of the
 17990 Department of Financial Services with expertise in banking
 17991 matters ~~Insurance or her or his designee~~; one state senator
 17992 appointed by the President of the Senate; and one representative
 17993 appointed by the Speaker of the House of Representatives.

17994 Section 348. Section 494.00125, Florida Statutes, is
 17995 amended to read:

17996 494.00125 Confidentiality of information relating to
 17997 investigations and examinations.--

17998 (1)(a) Except as otherwise provided by this section,
 17999 information relative to an investigation or examination by the
 18000 office ~~department~~ pursuant to this chapter, including any
 18001 consumer complaint received by the office or the Department of
 18002 Financial Services, is confidential and exempt from s. 119.07(1)
 18003 until the investigation or examination is completed or ceases to
 18004 be active. The information compiled by the office ~~department~~ in
 18005 such an investigation or examination shall remain confidential
 18006 and exempt from s. 119.07(1) after the office's ~~department's~~
 18007 investigation or examination is completed or ceases to be active
 18008 if the office ~~department~~ submits the information to any law
 18009 enforcement or administrative agency for further investigation.
 18010 Such information shall remain confidential and exempt from s.
 18011 119.07(1) until that agency's investigation is completed or
 18012 ceases to be active. For purposes of this section, an
 18013 investigation or examination shall be considered "active" so
 18014 long as the office ~~department~~ or any law enforcement or
 18015 administrative agency is proceeding with reasonable dispatch and



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18016 has a reasonable good faith belief that the investigation or
 18017 examination may lead to the filing of an administrative, civil,
 18018 or criminal proceeding or to the denial or conditional grant of
 18019 a license. This section shall not be construed to prohibit
 18020 disclosure of information which is required by law to be filed
 18021 with the office ~~department~~ and which, but for the investigation
 18022 or examination, would be subject to s. 119.07(1).

18023 (b) Except as necessary for the office ~~department~~ to
 18024 enforce the provisions of this chapter, a consumer complaint and
 18025 other information relative to an investigation or examination
 18026 shall remain confidential and exempt from s. 119.07(1) after the
 18027 investigation or examination is completed or ceases to be active
 18028 to the extent disclosure would:

18029 1. Jeopardize the integrity of another active
 18030 investigation or examination.

18031 2. Reveal the name, address, telephone number, social
 18032 security number, or any other identifying number or information
 18033 of any complainant, customer, or account holder.

18034 3. Disclose the identity of a confidential source.

18035 4. Disclose investigative techniques or procedures.

18036 5. Reveal a trade secret as defined in s. 688.002.

18037 (c) In the event that office ~~department~~ personnel are or
 18038 have been involved in an investigation or examination of such
 18039 nature as to endanger their lives or physical safety or that of
 18040 their families, then the home addresses, telephone numbers,
 18041 places of employment, and photographs of such personnel,
 18042 together with the home addresses, telephone numbers,
 18043 photographs, and places of employment of spouses and children of



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18044 such personnel and the names and locations of schools and day
18045 care facilities attended by the children of such personnel are
18046 confidential and exempt from s. 119.07(1).

18047 (d) Nothing in this section shall be construed to prohibit
18048 the office ~~department~~ from providing information to any law
18049 enforcement or administrative agency. Any law enforcement or
18050 administrative agency receiving confidential information in
18051 connection with its official duties shall maintain the
18052 confidentiality of the information so long as it would otherwise
18053 be confidential.

18054 (e) All information obtained by the office ~~department~~ from
18055 any person which is only made available to the office ~~department~~
18056 on a confidential or similarly restricted basis shall be
18057 confidential and exempt from s. 119.07(1). This exemption shall
18058 not be construed to prohibit disclosure of information which is
18059 required by law to be filed with the office ~~department~~ or which
18060 is otherwise subject to s. 119.07(1).

18061 (2) If information subject to subsection (1) is offered in
18062 evidence in any administrative, civil, or criminal proceeding,
18063 the presiding officer may, in her or his discretion, prevent the
18064 disclosure of information which would be confidential pursuant
18065 to paragraph (1)(b).

18066 (3) A privilege against civil liability is granted to a
18067 person who furnishes information or evidence to the office
18068 ~~department~~, unless such person acts in bad faith or with malice
18069 in providing such information or evidence.

18070 Section 349. Subsection (7) of section 494.00421, Florida
18071 Statutes, is amended to read:



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18072 494.00421 Fees earned upon obtaining a bona fide
18073 commitment.--Notwithstanding the provisions of ss. 494.001-
18074 494.0077, any mortgage brokerage business which contracts to
18075 receive from a borrower a mortgage brokerage fee upon obtaining
18076 a bona fide commitment shall accurately disclose in the mortgage
18077 brokerage agreement:

18078 (7)(a) The following statement, in no less than 12-point
18079 boldface type immediately above the signature lines for the
18080 borrowers:

18081
18082
18083 "You are entering into a contract with a mortgage brokerage
18084 business to obtain a bona fide mortgage loan commitment under
18085 the same terms and conditions as stated hereinabove or in a
18086 separate executed good faith estimate form. If the mortgage
18087 brokerage business obtains a bona fide commitment under the same
18088 terms and conditions, you will be obligated to pay the mortgage
18089 brokerage business fees, including, but not limited to, a
18090 mortgage brokerage fee, even if you choose not to complete the
18091 loan transaction. If the provisions of s. 494.00421, Florida
18092 Statutes, are not met, the mortgage brokerage fee can only be
18093 earned upon the funding of the mortgage loan. The borrower may
18094 contact the Department of Financial Services ~~Banking and~~
18095 ~~Finance~~, Tallahassee, Florida, regarding any complaints that the
18096 borrower may have against the mortgage broker or the mortgage
18097 brokerage business. The telephone number of the department ~~as~~
18098 ~~set by rule of the department~~ is: . . . [insert telephone
18099 number]"



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18100 (b) Paragraph (a) does not apply to nonresidential
18101 mortgage loan commitments in excess of \$1 million.

18102 Section 350. Subsection (7) of section 517.021, Florida
18103 Statutes, is amended, present subsections (8)-(20) of said
18104 section are renumbered as subsections (9)-(21), respectively,
18105 and a new subsection (8) is added to that section to read:

18106 517.021 Definitions.--When used in this chapter, unless
18107 the context otherwise indicates, the following terms have the
18108 following respective meanings:

18109 (7) "Commission" means the Financial Services Commission
18110 ~~"Department" means the Department of Banking and Finance.~~

18111 (8) "Office" means the Office of Financial Institutions
18112 and Securities Regulation of the commission.

18113 Section 351. Section 517.03, Florida Statutes, is amended
18114 to read:

18115 517.03 Rulemaking; immunity for acts in conformity with
18116 rules.--

18117 (1) The office ~~Department of Banking and Finance~~ shall
18118 administer and provide for the enforcement of all the provisions
18119 of this chapter. The commission may ~~department has authority to~~
18120 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
18121 the provisions of this chapter conferring powers or duties upon
18122 the office ~~it~~, including, without limitation, adopting rules and
18123 forms governing reports. The commission ~~department~~ shall also
18124 have the nonexclusive power to define by rule any term, whether
18125 or not used in this chapter, insofar as the definition is not
18126 inconsistent with the provisions of this chapter.



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18127 (2) No provision of this chapter imposing liability shall
 18128 apply to an act done, or omitted to be done, in conformity with
 18129 a rule of the commission ~~department~~ in existence at the time of
 18130 the act or omission, even though such rule may thereafter be
 18131 amended or repealed or determined by judicial or other authority
 18132 to be invalid for any reason.

18133 Section 352. Section 517.051, Florida Statutes, is amended
 18134 to read:

18135 517.051 Exempt securities.--The exemptions provided herein
 18136 from the registration requirements of s. 517.07 are self-
 18137 executing and do not require any filing with the office
 18138 ~~department~~ prior to claiming such exemption. Any person who
 18139 claims entitlement to any of these exemptions bears the burden
 18140 of proving such entitlement in any proceeding brought under this
 18141 chapter. The registration provisions of s. 517.07 do not apply
 18142 to any of the following securities:

18143 (1) A security issued or guaranteed by the United States
 18144 or any territory or insular possession of the United States, by
 18145 the District of Columbia, or by any state of the United States
 18146 or by any political subdivision or agency or other
 18147 instrumentality thereof; provided that no person shall directly
 18148 or indirectly offer or sell securities, other than general
 18149 obligation bonds, under this subsection if the issuer or
 18150 guarantor is in default or has been in default any time after
 18151 December 31, 1975, as to principal or interest:

18152 (a) With respect to an obligation issued by the issuer or
 18153 successor of the issuer; or



18154 (b) With respect to an obligation guaranteed by the
 18155 guarantor or successor of the guarantor,
 18156
 18157 except by an offering circular containing a full and fair
 18158 disclosure as prescribed by rule of the commission ~~department~~.

18159 (2) A security issued or guaranteed by any foreign
 18160 government with which the United States is maintaining
 18161 diplomatic relations at the time of the sale or offer of sale of
 18162 the security, or by any state, province, or political
 18163 subdivision thereof having the power of taxation or assessment,
 18164 which security is recognized at the time it is offered for sale
 18165 in this state as a valid obligation by such foreign government
 18166 or by such state, province, or political subdivision thereof
 18167 issuing the security.

18168 (3) A security issued or guaranteed by:

18169 (a) A national bank, a federally chartered savings and
 18170 loan association, or a federally chartered savings bank, or the
 18171 initial subscription for equity securities in such national
 18172 bank, federally chartered savings and loan association, or
 18173 federally chartered savings bank;

18174 (b) Any federal land bank, joint-stock land bank, or
 18175 national farm loan association under the provisions of the
 18176 Federal Farm Loan Act of July 17, 1916;

18177 (c) An international bank of which the United States is a
 18178 member; or

18179 (d) A corporation created and acting as an instrumentality
 18180 of the government of the United States.



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18181 (4) A security issued or guaranteed, as to principal,
18182 interest, or dividend, by a corporation owning or operating a
18183 railroad or any other public service utility; provided that such
18184 corporation is subject to regulation or supervision whether as
18185 to its rates and charges or as to the issue of its own
18186 securities by a public commission, board, or officer of the
18187 government of the United States, of any state, territory, or
18188 insular possession of the United States, of any municipality
18189 located therein, of the District of Columbia, or of the Dominion
18190 of Canada or of any province thereof; also equipment securities
18191 based on chattel mortgages, leases, or agreements for
18192 conditional sale of cars, motive power, or other rolling stock
18193 mortgaged, leased, or sold to or furnished for the use of or
18194 upon such railroad or other public service utility corporation
18195 or where the ownership or title of such equipment is pledged or
18196 retained in accordance with the provisions of the laws of the
18197 United States or of any state or of the Dominion of Canada to
18198 secure the payment of such equipment securities; and also bonds,
18199 notes, or other evidences of indebtedness issued by a holding
18200 corporation and secured by collateral consisting of any
18201 securities hereinabove described; provided, further, that the
18202 collateral securities equal in fair value at least 125 percent
18203 of the par value of the bonds, notes, or other evidences of
18204 indebtedness so secured.

18205 (5) A security issued or guaranteed by any of the
18206 following which are subject to the examination, supervision, or
18207 control of this state or of the Federal Deposit Insurance
18208 Corporation or the National Credit Union Association:



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- 18209 (a) A bank,
- 18210 (b) A trust company,
- 18211 (c) A savings institution,
- 18212 (d) A building or savings and loan association,
- 18213 (e) An international development bank, or
- 18214 (f) A credit union;

18215
 18216 or the initial subscription for equity securities of any
 18217 institution listed in paragraphs (a)-(f), provided such
 18218 institution is subject to the examination, supervision, or
 18219 control of this state.

18220 (6) A security, other than common stock, providing for a
 18221 fixed return, which security has been outstanding in the hands
 18222 of the public for a period of not less than 5 years, and upon
 18223 which security no default in payment of principal or failure to
 18224 pay the fixed return has occurred for an immediately preceding
 18225 period of 5 years.

18226 (7) Securities of nonprofit agricultural cooperatives
 18227 organized under the laws of this state when the securities are
 18228 sold or offered for sale to persons principally engaged in
 18229 agricultural production or selling agricultural products.

18230 (8) A note, draft, bill of exchange, or banker's
 18231 acceptance having a unit amount of \$25,000 or more which arises
 18232 out of a current transaction, or the proceeds of which have been
 18233 or are to be used for current transactions, and which has a
 18234 maturity period at the time of issuance not exceeding 9 months
 18235 exclusive of days of grace, or any renewal thereof which has a
 18236 maturity period likewise limited. This subsection applies only



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18237 to prime quality negotiable commercial paper of a type not
18238 ordinarily purchased by the general public; that is, paper
18239 issued to facilitate well-recognized types of current
18240 operational business requirements and of a type eligible for
18241 discounting by Federal Reserve banks.

18242 (9) A security issued by a corporation organized and
18243 operated exclusively for religious, educational, benevolent,
18244 fraternal, charitable, or reformatory purposes and not for
18245 pecuniary profit, no part of the net earnings of which
18246 corporation inures to the benefit of any private stockholder or
18247 individual, or any security of a fund that is excluded from the
18248 definition of an investment company under s. 3(c)(10)(B) of the
18249 Investment Company Act of 1940; provided that no person shall
18250 directly or indirectly offer or sell securities under this
18251 subsection except by an offering circular containing full and
18252 fair disclosure, as prescribed by the rules of the commission
18253 ~~department~~, of all material information, including, but not
18254 limited to, a description of the securities offered and terms of
18255 the offering, a description of the nature of the issuer's
18256 business, a statement of the purpose of the offering and the
18257 intended application by the issuer of the proceeds thereof, and
18258 financial statements of the issuer prepared in conformance with
18259 generally accepted accounting principles. Section 6(c) of the
18260 Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall
18261 not preempt any provision of this chapter.

18262 (10) Any insurance or endowment policy or annuity contract
18263 or optional annuity contract or self-insurance agreement issued
18264 by a corporation, insurance company, reciprocal insurer, or risk



18265 retention group subject to the supervision of the insurance
 18266 regulator ~~commissioner~~ or bank regulator ~~commissioner~~, or any
 18267 agency or officer performing like functions, of any state or
 18268 territory of the United States or the District of Columbia.

18269 Section 353. Section 517.061, Florida Statutes, is amended
 18270 to read:

18271 517.061 Exempt transactions.--The exemption for each
 18272 transaction listed below is self-executing and does not require
 18273 any filing with the office ~~department~~ prior to claiming such
 18274 exemption. Any person who claims entitlement to any of the
 18275 exemptions bears the burden of proving such entitlement in any
 18276 proceeding brought under this chapter. The registration
 18277 provisions of s. 517.07 do not apply to any of the following
 18278 transactions; however, such transactions are subject to the
 18279 provisions of ss. 517.301, 517.311, and 517.312:

18280 (1) At any judicial, executor's, administrator's,
 18281 guardian's, or conservator's sale, or at any sale by a receiver
 18282 or trustee in insolvency or bankruptcy, or any transaction
 18283 incident to a judicially approved reorganization in which a
 18284 security is issued in exchange for one or more outstanding
 18285 securities, claims, or property interests.

18286 (2) By or for the account of a pledgeholder or mortgagee
 18287 selling or offering for sale or delivery in the ordinary course
 18288 of business and not for the purposes of avoiding the provisions
 18289 of this chapter, to liquidate a bona fide debt, a security
 18290 pledged in good faith as security for such debt.

18291 (3) The isolated sale or offer for sale of securities when
 18292 made by or on behalf of a vendor not the issuer or underwriter



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18293 of the securities, who, being the bona fide owner of such
 18294 securities, disposes of her or his own property for her or his
 18295 own account, and such sale is not made directly or indirectly
 18296 for the benefit of the issuer or an underwriter of such
 18297 securities or for the direct or indirect promotion of any scheme
 18298 or enterprise with the intent of violating or evading any
 18299 provision of this chapter. For purposes of this subsection,
 18300 isolated offers or sales include, but are not limited to, an
 18301 isolated offer or sale made by or on behalf of a vendor of
 18302 securities not the issuer or underwriter of the securities if:

18303 (a) The offer or sale of securities is in a transaction
 18304 satisfying all of the requirements of subparagraphs (11)(a)1.,
 18305 2., 3., and 4. and paragraph(11)(b); or

18306 (b) The offer or sale of securities is in a transaction
 18307 exempt under s. 4(1) of the Securities Act of 1933, as amended.
 18308

18309 For purposes of this subsection, any person, including, without
 18310 limitation, a promoter or affiliate of an issuer, shall not be
 18311 deemed an underwriter, an issuer, or a person acting for the
 18312 direct or indirect benefit of the issuer or an underwriter with
 18313 respect to any securities of the issuer which she or he has
 18314 owned beneficially for at least 1 year.

18315 (4) The distribution by a corporation, trust, or
 18316 partnership, actively engaged in the business authorized by its
 18317 charter or other organizational articles or agreement, of
 18318 securities to its stockholders or other equity security holders,
 18319 partners, or beneficiaries as a stock dividend or other
 18320 distribution out of earnings or surplus.



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18321 (5) The issuance of securities to such equity security
18322 holders or other creditors of a corporation, trust, or
18323 partnership in the process of a reorganization of such
18324 corporation or entity, made in good faith and not for the
18325 purpose of avoiding the provisions of this chapter, either in
18326 exchange for the securities of such equity security holders or
18327 claims of such creditors or partly for cash and partly in
18328 exchange for the securities or claims of such equity security
18329 holders or creditors.

18330 (6) Any transaction involving the distribution of the
18331 securities of an issuer exclusively among its own security
18332 holders, including any person who at the time of the transaction
18333 is a holder of any convertible security, any nontransferable
18334 warrant, or any transferable warrant which is exercisable within
18335 not more than 90 days of issuance, when no commission or other
18336 remuneration is paid or given directly or indirectly in
18337 connection with the sale or distribution of such additional
18338 securities.

18339 (7) The offer or sale of securities to a bank, trust
18340 company, savings institution, insurance company, dealer,
18341 investment company as defined by the Investment Company Act of
18342 1940, pension or profit-sharing trust, or qualified
18343 institutional buyer as defined by rule of the commission
18344 ~~department~~ in accordance with Securities and Exchange Commission
18345 Rule 144A (17 C.F.R. 230.144(A)(a)), whether any of such
18346 entities is acting in its individual or fiduciary capacity;
18347 provided that such offer or sale of securities is not for the
18348 direct or indirect promotion of any scheme or enterprise with



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18349 | the intent of violating or evading any provision of this
18350 | chapter.

18351 | (8) The sale of securities from one corporation to another
18352 | corporation provided that:

18353 | (a) The sale price of the securities is \$50,000 or more;
18354 | and

18355 | (b) The buyer and seller corporations each have assets of
18356 | \$500,000 or more.

18357 | (9) The offer or sale of securities from one corporation
18358 | to another corporation, or to security holders thereof, pursuant
18359 | to a vote or consent of such security holders as may be provided
18360 | by the articles of incorporation and the applicable corporate
18361 | statutes in connection with mergers, share exchanges,
18362 | consolidations, or sale of corporate assets.

18363 | (10) The issuance of notes or bonds in connection with the
18364 | acquisition of real property or renewals thereof, if such notes
18365 | or bonds are issued to the sellers of, and are secured by all or
18366 | part of, the real property so acquired.

18367 | (11)(a) The offer or sale, by or on behalf of an issuer,
18368 | of its own securities, which offer or sale is part of an
18369 | offering made in accordance with all of the following
18370 | conditions:

18371 | 1. There are no more than 35 purchasers, or the issuer
18372 | reasonably believes that there are no more than 35 purchasers,
18373 | of the securities of the issuer in this state during an offering
18374 | made in reliance upon this subsection or, if such offering
18375 | continues for a period in excess of 12 months, in any
18376 | consecutive 12-month period.



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18377 2. Neither the issuer nor any person acting on behalf of
18378 the issuer offers or sells securities pursuant to this
18379 subsection by means of any form of general solicitation or
18380 general advertising in this state.

18381 3. Prior to the sale, each purchaser or the purchaser's
18382 representative, if any, is provided with, or given reasonable
18383 access to, full and fair disclosure of all material information.

18384 4. No person defined as a "dealer" in this chapter is paid
18385 a commission or compensation for the sale of the issuer's
18386 securities unless such person is registered as a dealer under
18387 this chapter.

18388 5. When sales are made to five or more persons in this
18389 state, any sale in this state made pursuant to this subsection
18390 is voidable by the purchaser in such sale either within 3 days
18391 after the first tender of consideration is made by such
18392 purchaser to the issuer, an agent of the issuer, or an escrow
18393 agent or within 3 days after the availability of that privilege
18394 is communicated to such purchaser, whichever occurs later.

18395 (b) The following purchasers are excluded from the
18396 calculation of the number of purchasers under subparagraph
18397 (a)1.:

18398 1. Any relative or spouse, or relative of such spouse, of
18399 a purchaser who has the same principal residence as such
18400 purchaser.

18401 2. Any trust or estate in which a purchaser, any of the
18402 persons related to such purchaser specified in subparagraph 1.,
18403 and any corporation specified in subparagraph 3. collectively



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18404 have more than 50 percent of the beneficial interest (excluding
18405 contingent interest).

18406 3. Any corporation or other organization of which a
18407 purchaser, any of the persons related to such purchaser
18408 specified in subparagraph 1., and any trust or estate specified
18409 in subparagraph 2. collectively are beneficial owners of more
18410 than 50 percent of the equity securities or equity interest.

18411 4. Any purchaser who makes a bona fide investment of
18412 \$100,000 or more, provided such purchaser or the purchaser's
18413 representative receives, or has access to, the information
18414 required to be disclosed by subparagraph (a)3.

18415 5. Any accredited investor, as defined by rule of the
18416 commission ~~department~~ in accordance with Securities and Exchange
18417 Commission Regulation 230.501 (17 C.F.R. 230.501).

18418 (c)1. For purposes of determining which offers and sales
18419 of securities constitute part of the same offering under this
18420 subsection and are therefore deemed to be integrated with one
18421 another:

18422 a. Offers or sales of securities occurring more than 6
18423 months prior to an offer or sale of securities made pursuant to
18424 this subsection shall not be considered part of the same
18425 offering, provided there are no offers or sales by or for the
18426 issuer of the same or a similar class of securities during such
18427 6-month period.

18428 b. Offers or sales of securities occurring at any time
18429 after 6 months from an offer or sale made pursuant to this
18430 subsection shall not be considered part of the same offering,
18431 provided there are no offers or sales by or for the issuer of



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18432 the same or a similar class of securities during such 6-month
18433 period.

18434 2. Offers or sales which do not satisfy the conditions of
18435 any of the provisions of subparagraph 1. may or may not be part
18436 of the same offering, depending on the particular facts and
18437 circumstances in each case. The commission ~~department~~ may, ~~but~~
18438 ~~is not required to~~, adopt a rule or rules indicating what
18439 factors should be considered in determining whether offers and
18440 sales not qualifying for the provisions of subparagraph 1. are
18441 part of the same offering for purposes of this subsection.

18442 (d) Offers or sales of securities made pursuant to, and in
18443 compliance with, any other subsection of this section or any
18444 subsection of s. 517.051 shall not be considered part of an
18445 offering pursuant to this subsection, regardless of when such
18446 offers and sales are made.

18447 (12) The sale of securities by a bank or trust company
18448 organized or incorporated under the laws of the United States or
18449 this state at a profit to such bank or trust company of not more
18450 than 2 percent of the total sale price of such securities;
18451 provided that there is no solicitation of this business by such
18452 bank or trust company where such bank or trust company acts as
18453 agent in the purchase or sale of such securities.

18454 (13) An unsolicited purchase or sale of securities on
18455 order of, and as the agent for, another by a dealer registered
18456 ~~with the Department of Banking and Finance~~ pursuant to the
18457 provisions of s. 517.12; provided that this exemption applies
18458 solely and exclusively to such registered dealers and does not
18459 authorize or permit the purchase or sale of securities on order



18460 of, and as agent for, another by any person other than a dealer
 18461 so registered; and provided, further, that such purchase or sale
 18462 is not directly or indirectly for the benefit of the issuer or
 18463 an underwriter of such securities or for the direct or indirect
 18464 promotion of any scheme or enterprise with the intent of
 18465 violation or evading any provision of this chapter.

18466 (14) The offer or sale of shares of a corporation which
 18467 represent ownership, or entitle the holders of the shares to
 18468 possession and occupancy, of specific apartment units in
 18469 property owned by such corporation and organized and operated on
 18470 a cooperative basis, solely for residential purposes.

18471 (15) The offer or sale of securities under a bona fide
 18472 employer-sponsored stock option, stock purchase, pension,
 18473 profit-sharing, savings, or other benefit plan when offered only
 18474 to employees of the sponsoring organization or to employees of
 18475 its controlled subsidiaries.

18476 (16) The sale by or through a registered dealer of any
 18477 securities option if at the time of the sale of the option:

18478 (a) The performance of the terms of the option is
 18479 guaranteed by any dealer registered under the federal Securities
 18480 Exchange Act of 1934, as amended, which guaranty and dealer are
 18481 in compliance with such requirements or rules as may be approved
 18482 or adopted by the commission ~~department~~; or

18483 (b) Such options transactions are cleared by the Options
 18484 Clearing Corporation or any other clearinghouse recognized by
 18485 the office ~~department~~; and

18486 (c) The option is not sold by or for the benefit of the
 18487 issuer of the underlying security; and



18488 (d) The underlying security may be purchased or sold on a
 18489 recognized securities exchange or is quoted on the National
 18490 Association of Securities Dealers Automated Quotation System;
 18491 and

18492 (e) Such sale is not directly or indirectly for the
 18493 purpose of providing or furthering any scheme to violate or
 18494 evade any provisions of this chapter.

18495 (17)(a) The offer or sale of securities, as agent or
 18496 principal, by a dealer registered pursuant to s. 517.12, when
 18497 such securities are offered or sold at a price reasonably
 18498 related to the current market price of such securities, provided
 18499 such securities are:

18500 1. Securities of an issuer for which reports are required
 18501 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act
 18502 of 1934, as amended;

18503 2. Securities of a company registered under the Investment
 18504 Company Act of 1940, as amended;

18505 3. Securities of an insurance company, as that term is
 18506 defined in s. 2(a)(17) of the Investment Company Act of 1940, as
 18507 amended;

18508 4. Securities, other than any security that is a federal
 18509 covered security pursuant to s. 18(b)(1) of the Securities Act
 18510 of 1933 and is not subject to any registration or filing
 18511 requirements under this act, which appear in any list of
 18512 securities dealt in on any stock exchange registered pursuant to
 18513 the Securities Exchange Act of 1934, as amended, and which
 18514 securities have been listed or approved for listing upon notice
 18515 of issuance by such exchange, and also all securities senior to



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18516 any securities so listed or approved for listing upon notice of
 18517 issuance, or represented by subscription rights which have been
 18518 so listed or approved for listing upon notice of issuance, or
 18519 evidences of indebtedness guaranteed by companies any stock of
 18520 which is so listed or approved for listing upon notice of
 18521 issuance, such securities to be exempt only so long as such
 18522 listings or approvals remain in effect. The exemption provided
 18523 for herein does not apply when the securities are suspended from
 18524 listing approval for listing or trading.

18525 (b) The exemption provided in this subsection does not
 18526 apply if the sale is made for the direct or indirect benefit of
 18527 an issuer or controlling persons of such issuer or if such
 18528 securities constitute the whole or part of an unsold allotment
 18529 to, or subscription or participation by, a dealer as an
 18530 underwriter of such securities.

18531 (c) This exemption shall not be available for any
 18532 securities which have been denied registration ~~by the department~~
 18533 pursuant to s. 517.111. Additionally, the office ~~department~~ may
 18534 deny this exemption with reference to any particular security,
 18535 other than a federal covered security, by order published in
 18536 such manner as the office ~~department~~ finds proper.

18537 (18) The offer or sale of any security effected by or
 18538 through a person registered pursuant to s. 517.12(17).

18539 (19) Other transactions defined by rules as transactions
 18540 exempted from the registration provisions of s. 517.07, which
 18541 rules the commission ~~department~~ may, ~~but is not required to,~~
 18542 adopt from time to time, but only after a finding by the office
 18543 ~~department~~ that the application of the provisions of s. 517.07



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18544 to a particular transaction is not necessary in the public
 18545 interest and for the protection of investors because of the
 18546 small dollar amount of securities involved or the limited
 18547 character of the offering. In conjunction with its adoption of
 18548 such rules, the commission ~~department~~ may also provide in such
 18549 rules that persons selling or offering for sale the exempted
 18550 securities are exempt from the registration requirements of s.
 18551 517.12. No rule so adopted may have the effect of narrowing or
 18552 limiting any exemption provided for by statute in the other
 18553 subsections of this section.

18554 (20) Any nonissuer transaction by a registered associated
 18555 person of a registered dealer, and any resale transaction by a
 18556 sponsor of a unit investment trust registered under the
 18557 Investment Company Act of 1940, in a security of a class that
 18558 has been outstanding in the hands of the public for at least 90
 18559 days; provided, at the time of the transaction:

18560 (a) The issuer of the security is actually engaged in
 18561 business and is not in the organization stage or in bankruptcy
 18562 or receivership and is not a blank check, blind pool, or shell
 18563 company whose primary plan of business is to engage in a merger
 18564 or combination of the business with, or an acquisition of, any
 18565 unidentified person;

18566 (b) The security is sold at a price reasonably related to
 18567 the current market price of the security;

18568 (c) The security does not constitute the whole or part of
 18569 an unsold allotment to, or a subscription or participation by,
 18570 the broker-dealer as an underwriter of the security;



18571 (d) A nationally recognized securities manual designated
 18572 by rule of the commission or order of the office ~~department~~ or a
 18573 document filed with the Securities and Exchange Commission that
 18574 is publicly available through the commission's electronic data
 18575 gathering and retrieval system contains:

18576 1. A description of the business and operations of the
 18577 issuer;

18578 2. The names of the issuer's officers and directors, if
 18579 any, or, in the case of an issuer not domiciled in the United
 18580 States, the corporate equivalents of such persons in the
 18581 issuer's country of domicile;

18582 3. An audited balance sheet of the issuer as of a date
 18583 within 18 months before such transaction or, in the case of a
 18584 reorganization or merger in which parties to the reorganization
 18585 or merger had such audited balance sheet, a pro forma balance
 18586 sheet; and

18587 4. An audited income statement for each of the issuer's
 18588 immediately preceding 2 fiscal years, or for the period of
 18589 existence of the issuer, if in existence for less than 2 years
 18590 or, in the case of a reorganization or merger in which the
 18591 parties to the reorganization or merger had such audited income
 18592 statement, a pro forma income statement; and

18593 (e) The issuer of the security has a class of equity
 18594 securities listed on a national securities exchange registered
 18595 under the Securities Exchange Act of 1934 or designated for
 18596 trading on the National Association of Securities Dealers
 18597 Automated Quotation System, unless:



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18598 | 1. The issuer of the security is a unit investment trust
18599 | registered under the Investment Company Act of 1940;

18600 | 2. The issuer of the security has been engaged in
18601 | continuous business, including predecessors, for at least 3
18602 | years; or

18603 | 3. The issuer of the security has total assets of at least
18604 | \$2 million based on an audited balance sheet as of a date within
18605 | 18 months before such transaction or, in the case of a
18606 | reorganization or merger in which parties to the reorganization
18607 | or merger had such audited balance sheet, a pro forma balance
18608 | sheet.

18609 | Section 354. Section 517.07, Florida Statutes, is amended
18610 | to read:

18611 | 517.07 Registration of securities.--

18612 | (1) It is unlawful and a violation of this chapter for any
18613 | person to sell or offer to sell a security within this state
18614 | unless the security is exempt under s. 517.051, is sold in a
18615 | transaction exempt under s. 517.061, is a federal covered
18616 | security, or is registered pursuant to this chapter.

18617 | (2) No securities that are required to be registered under
18618 | this chapter shall be sold or offered for sale within this state
18619 | unless such securities have been registered pursuant to this
18620 | chapter and unless prior to each sale the purchaser is furnished
18621 | with a prospectus meeting the requirements of rules adopted by
18622 | the commission ~~department~~.

18623 | (3) The office ~~department~~ shall issue a permit when
18624 | registration has been granted by the office ~~department~~. A
18625 | permit to sell securities is effective for 1 year from the date



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18626 it was granted. Registration of securities shall be deemed to
 18627 include the registration of rights to subscribe to such
 18628 securities if the application under s. 517.081 or s. 517.082 for
 18629 registration of such securities includes a statement that such
 18630 rights are to be issued.

18631 (4) A record of the registration of securities shall be
 18632 kept by ~~in~~ the office ~~of the department~~, in which register of
 18633 securities shall also be recorded any orders entered by the
 18634 office ~~department~~ with respect to such securities. Such
 18635 register, and all information with respect to the securities
 18636 registered therein, shall be open to public inspection.

18637 (5) Notwithstanding any other provision of this section,
 18638 offers of securities required to be registered by this section
 18639 may be made in this state before the registration of such
 18640 securities if the offers are made in conformity with rules
 18641 adopted by the commission ~~department~~.

18642 Section 355. Subsections (2), (3), (4), and (5) of section
 18643 517.075, Florida Statutes, are amended to read:

18644 517.075 Cuba, prospectus disclosure of doing business
 18645 with, required.--

18646 (2) Any disclosure required by subsection (1) must
 18647 include:

18648 (a) The name of such person, affiliate, or government with
 18649 which the issuer does business and the nature of that business;

18650 (b) A statement that the information is accurate as of the
 18651 date the securities were effective with the United States
 18652 Securities and Exchange Commission or with the office
 18653 ~~department~~, whichever date is later; and



18654 (c) A statement that current information concerning the
 18655 issuer's business dealings with the government of Cuba or with
 18656 any person or affiliate located in Cuba may be obtained from the
 18657 office ~~Department of Banking and Finance~~, which statement must
 18658 include the address and phone number of the office ~~department~~.

18659 (3) If an issuer commences engaging in business with the
 18660 government of Cuba or with any person or affiliate located in
 18661 Cuba, after the date issuer's securities become effective with
 18662 the Securities and Exchange Commission or with the office
 18663 ~~department~~, whichever date is later, or if the information
 18664 reported in the prospectus concerning that business changes in
 18665 any material way, the issuer must provide the office ~~department~~
 18666 notice of that business or change, as appropriate, in a manner
 18667 ~~form~~ acceptable to the office ~~department~~. The commission
 18668 ~~department~~ shall prescribe by rule a form for persons to use to
 18669 report the commencement of such business or any change in such
 18670 business which occurs after the effective registration of such
 18671 securities. This form must include, at a minimum, the
 18672 information required by subsection (2). The information reported
 18673 on the form must be kept current. Information is current if
 18674 reported to the office ~~department~~ within 90 days after the
 18675 commencement of business or within 90 days after the change
 18676 occurs with respect to previously reported information.

18677 (4) The office ~~department~~ shall provide, upon request, a
 18678 copy of any form filed with the office ~~department~~ under
 18679 subsection (3) to any person requesting the form.

18680 (5) Each securities offering sold in violation of this
 18681 section, and each failure of an issuer to timely file the form



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18682 required by subsection (3), subjects the issuer to a fine of up
 18683 to \$5,000. Any fine collected under this section shall be
 18684 deposited into the Anti-Fraud Trust Fund of the office
 18685 ~~Department of Banking and Finance~~.

18686 Section 356. Section 517.081, Florida Statutes, is amended
 18687 to read:

18688 517.081 Registration procedure.--

18689 (1) All securities required by this chapter to be
 18690 registered before being sold in this state and not entitled to
 18691 registration by notification shall be registered in the manner
 18692 provided by this section.

18693 (2) The office ~~department~~ shall receive and act upon
 18694 applications to have securities registered and the commission
 18695 may prescribe forms on which it may require such applications to
 18696 be submitted. Applications shall be duly signed by the
 18697 applicant, sworn to by any person having knowledge of the facts,
 18698 and filed with the office ~~department~~. The commission ~~department~~
 18699 may establish, by rule, procedures for depositing fees and
 18700 filing documents by electronic means provided such procedures
 18701 provide the office ~~department~~ with the information and data
 18702 required by this section. An application may be made either by
 18703 the issuer of the securities for which registration is applied
 18704 or by any registered dealer desiring to sell the same within the
 18705 state.

18706 (3) The office ~~department~~ may require the applicant to
 18707 submit to the office ~~department~~ the following information
 18708 concerning the issuer and such other relevant information as the
 18709 office ~~department~~ may in its judgment deem necessary to enable



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18710 it to ascertain whether such securities shall be registered
18711 pursuant to the provisions of this section:

18712 (a) The names and addresses of the directors, trustees,
18713 and officers, if the issuer be a corporation, association, or
18714 trust; of all the partners, if the issuer be a partnership; or
18715 of the issuer, if the issuer be an individual.

18716 (b) The location of the issuer's principal business office
18717 and of its principal office in this state, if any.

18718 (c) The general character of the business actually to be
18719 transacted by the issuer and the purposes of the proposed issue.

18720 (d) A statement of the capitalization of the issuer.

18721 (e) A balance sheet showing the amount and general
18722 character of its assets and liabilities on a day not more than
18723 90 days prior to the date of filing such balance sheet or such
18724 longer period of time, not exceeding 6 months, as the office
18725 ~~department~~ may permit at the written request of the issuer on a
18726 showing of good cause therefor.

18727 (f) A detailed statement of the plan upon which the issuer
18728 proposes to transact business.

18729 (g)1. A specimen copy of the security and a copy of any
18730 circular, prospectus, advertisement, or other description of
18731 such securities.

18732 2. The commission ~~department~~ shall adopt a form for a
18733 simplified offering circular to be used solely by corporations
18734 to register, under this section, securities of the corporation
18735 that are sold in offerings in which the aggregate offering price
18736 in any consecutive 12-month period does not exceed the amount
18737 provided in s. 3(b) of the Securities Act of 1933. The



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18738 following issuers shall not be eligible to submit a simplified
18739 offering circular adopted pursuant to this subparagraph:

18740 a. An issuer seeking to register securities for resale by
18741 persons other than the issuer.

18742 b. An issuer who is subject to any of the
18743 disqualifications described in 17 C.F.R. s. 230.262, adopted
18744 pursuant to the Securities Act of 1933, or who has been or is
18745 engaged or is about to engage in an activity that would be
18746 grounds for denial, revocation, or suspension under s. 517.111.
18747 For purposes of this subparagraph, an issuer includes an
18748 issuer's director, officer, shareholder who owns at least 10
18749 percent of the shares of the issuer, promoter, or selling agent
18750 of the securities to be offered or any officer, director, or
18751 partner of such selling agent.

18752 c. An issuer who is a development-stage company that
18753 either has no specific business plan or purpose or has indicated
18754 that its business plan is to merge with an unidentified company
18755 or companies.

18756 d. An issuer of offerings in which the specific business
18757 or properties cannot be described.

18758 e. Any issuer the office ~~department~~ determines is
18759 ineligible if the form would not provide full and fair
18760 disclosure of material information for the type of offering to
18761 be registered by the issuer.

18762 f. Any corporation which has failed to provide the office
18763 ~~department~~ the reports required for a previous offering
18764 registered pursuant to this subparagraph.

18765



18766

18767 As a condition precedent to qualifying for use of the
18768 simplified offering circular, a corporation shall agree to
18769 provide the office department with an annual financial report
18770 containing a balance sheet as of the end of the issuer's fiscal
18771 year and a statement of income for such year, prepared in
18772 accordance with generally accepted accounting principles and
18773 accompanied by an independent accountant's report. If the
18774 issuer has more than 100 security holders at the end of a fiscal
18775 year, the financial statements must be audited. Annual financial
18776 reports must be filed with the office department within 90 days
18777 after the close of the issuer's fiscal year for each of the
18778 first 5 years following the effective date of the registration.

18779 (h) A statement of the amount of the issuer's income,
18780 expenses, and fixed charges during the last fiscal year or, if
18781 in actual business less than 1 year, then for such time as the
18782 issuer has been in actual business.

18783 (i) A statement of the issuer's cash sources and
18784 application during the last fiscal year or, if in actual
18785 business less than 1 year, then for such time as the issuer has
18786 been in actual business.

18787 (j) A statement showing the maximum price at which such
18788 security is proposed to be sold, together with the maximum
18789 amount of commission, including expenses, or other form of
18790 remuneration to be paid in cash or otherwise, directly or
18791 indirectly, for or in connection with the sale or offering for
18792 sale of such securities.



18793 (k) A copy of the opinion or opinions of counsel
 18794 concerning the legality of the issue or other matters which the
 18795 office ~~department~~ may determine to be relevant to the issue.

18796 (l) A detailed statement showing the items of cash,
 18797 property, services, patents, good will, and any other
 18798 consideration in payment for which such securities have been or
 18799 are to be issued.

18800 (m) The amount of securities to be set aside and disposed
 18801 of and a statement of all securities issued from time to time
 18802 for promotional purposes.

18803 (n) If the issuer is a corporation, there shall be filed
 18804 with the application a copy of its articles of incorporation
 18805 with all amendments and of its existing bylaws, if not already
 18806 on file in the office ~~department~~. If the issuer is a trustee,
 18807 there shall be filed with the application a copy of all
 18808 instruments by which the trust is created or declared and in
 18809 which it is accepted and acknowledged. If the issuer is a
 18810 partnership, unincorporated association, joint-stock company, or
 18811 any other form of organization whatsoever, there shall be filed
 18812 with the application a copy of its articles of partnership or
 18813 association and all other papers pertaining to its organization,
 18814 if not already on file in the office ~~department~~.

18815 (4) All of the statements, exhibits, and documents of
 18816 every kind required ~~by the department~~ under this section, except
 18817 properly certified public documents, shall be verified by the
 18818 oath of the applicant or of the issuer in such manner and form
 18819 as may be required by the commission ~~department~~.



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18820 (5) The commission ~~department~~ may by rule fix the maximum
18821 discounts, commissions, expenses, remuneration, and other
18822 compensation to be paid in cash or otherwise, not to exceed 20
18823 percent, directly or indirectly, for or in connection with the
18824 sale or offering for sale of such securities in this state.

18825 (6) An issuer filing an application under this section
18826 shall, at the time of filing, pay the office ~~department~~ a
18827 nonreturnable fee of \$1,000 per application.

18828 (7) If upon examination of any application the office
18829 ~~department~~ shall find that the sale of the security referred to
18830 therein would not be fraudulent and would not work or tend to
18831 work a fraud upon the purchaser, that the terms of the sale of
18832 such securities would be fair, just, and equitable, and that the
18833 enterprise or business of the issuer is not based upon unsound
18834 business principles, it shall record the registration of such
18835 security in the register of securities; and thereupon such
18836 security so registered may be sold by any registered dealer,
18837 subject, however, to the further order of the office ~~department~~.

18838 Section 357. Section 517.082, Florida Statutes, is amended
18839 to read:

18840 517.082 Notification registration.--

18841 (1) Except as provided in subsection (3), securities
18842 offered or sold pursuant to a registration statement filed under
18843 the Securities Act of 1933 shall be entitled to registration by
18844 notification in the manner provided in subsection (2), provided
18845 that prior to the offer or sale the registration statement has
18846 become effective.



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18847 (2) An application for registration by notification shall
18848 be filed with the office ~~department~~, shall contain the following
18849 information, and shall be accompanied by the following:

18850 (a) An application to sell executed by the issuer, any
18851 person on whose behalf the offering is made, a dealer registered
18852 under this chapter, or any duly authorized agent of any such
18853 person, setting forth the name and address of the applicant, the
18854 name and address of the issuer, and the title of the securities
18855 to be offered and sold;

18856 (b) Copies of such documents filed with the Securities and
18857 Exchange Commission as the Financial Services Commission
18858 ~~department~~ may by rule require;

18859 (c) An irrevocable written consent to service as required
18860 by s. 517.101; and

18861 (d) A nonreturnable fee of \$1,000 per application.

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18864 A registration under this section becomes effective when the
18865 federal registration statement becomes effective or as of the
18866 date the application is filed with the office ~~department~~,
18867 whichever is later, provided that, in addition to the items
18868 listed in paragraphs (a)-(d), the office ~~department~~ has received
18869 written notification of effective registration under the
18870 Securities Act of 1933 or the Investment Company Act of 1940
18871 within 10 business days from the date federal registration is
18872 granted. Failure to provide all the information required by
18873 this subsection to the office ~~department~~ within 60 days of the
18874 date the registration statement becomes effective with the



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18875 Securities and Exchange Commission shall be a violation of this
18876 chapter.

18877 (3) Except for units of limited partnership interests or
18878 such other securities as the commission ~~department~~ describes by
18879 rule as exempt from this subsection due to high investment
18880 quality, the provisions of this section may not be used to
18881 register securities if the offering price at the time of
18882 effectiveness with the Securities and Exchange Commission is \$5
18883 or less per share, unless such securities are listed or
18884 designated, or approved for listing or designation upon notice
18885 of issuance, on a stock exchange registered pursuant to the
18886 Securities Exchange Act of 1934 or on the National Association
18887 of Securities Dealers Automated Quotation (NASDAQ) System, or
18888 unless such securities are of the same issuer and of senior or
18889 substantially equal rank to securities so listed or designated.

18890 (4) In lieu of filing with the office ~~department~~ the
18891 application, fees, and documents for registration required by
18892 subsection (2), the commission ~~department~~ may establish, by
18893 rule, procedures for depositing fees and filing documents by
18894 electronic means, provided such procedures provide the office
18895 ~~department~~ with the information and data required by this
18896 section.

18897 Section 358. Section 517.101, Florida Statutes, is amended
18898 to read:

18899 517.101 Consent to service.--

18900 (1) Upon any initial application for registration under s.
18901 517.081 or s. 517.082 or upon request of the office ~~department~~,
18902 the issuer shall file with such application the irrevocable



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18903 written consent of the issuer that in suits, proceedings, and
18904 actions growing out of the violation of any provision of this
18905 chapter, the service on the office ~~department~~ of a notice,
18906 process, or pleading therein, authorized by the laws of this
18907 state, shall be as valid and binding as if due service had been
18908 made on the issuer.

18909 (2) Any such action shall be brought either in the county
18910 of the plaintiff's residence or in the county in which the
18911 office ~~department~~ has its official headquarters. The written
18912 consent shall be authenticated by the seal of said issuer, if it
18913 has a seal, and by the acknowledged signature of a member of the
18914 copartnership or company, or by the acknowledged signature of
18915 any officer of the incorporated or unincorporated association,
18916 if it be an incorporated or unincorporated association, duly
18917 authorized by resolution of the board of directors, trustees, or
18918 managers of the corporation or association, and shall in such
18919 case be accompanied by a duly certified copy of the resolution
18920 of the board of directors, trustees, or managers of the
18921 corporation or association, authorizing the officers to execute
18922 the same. In case any process or pleadings mentioned in this
18923 chapter are served upon the office ~~department~~, it shall be by
18924 duplicate copies, one of which shall be filed in the office
18925 ~~department~~ and another immediately forwarded by the office
18926 ~~department~~ by registered mail to the principal office of the
18927 issuer against which said process or pleadings are directed.

18928 Section 359. Section 517.111, Florida Statutes, is amended
18929 to read:



18930 517.111 Revocation or denial of registration of
 18931 securities.--
 18932 (1) The office ~~department~~ may revoke or suspend the
 18933 registration of any security, or may deny any application to
 18934 register securities, if upon examination into the affairs of the
 18935 issuer of such security it shall appear that:
 18936 (a) The issuer is insolvent;
 18937 (b) The issuer or any officer, director, or control person
 18938 of the issuer has violated any provision of this chapter or any
 18939 rule made hereunder or any order of the office ~~department~~ of
 18940 which such issuer has notice;
 18941 (c) The issuer or any officer, director, or control person
 18942 of the issuer has been or is engaged or is about to engage in
 18943 fraudulent transactions;
 18944 (d) The issuer or any officer, director, or control person
 18945 of the issuer has been found guilty of a fraudulent act in
 18946 connection with any sale of securities, has engaged, is engaged,
 18947 or is about to engage, in making a fictitious sale or purchase
 18948 of any security, or in any practice or sale of any security
 18949 which is fraudulent or a violation of any law;
 18950 (e) The issuer or any officer, director, or control person
 18951 of the issuer has had a final judgment entered against such
 18952 issuer or person in a civil action on the grounds of fraud,
 18953 embezzlement, misrepresentation, or deceit;
 18954 (f) The issuer or any officer, director, or control person
 18955 of the issuer has demonstrated any evidence of unworthiness;
 18956 (g) The issuer or any officer, director, or control person
 18957 of the issuer is in any other way dishonest or has made any



18958 fraudulent representations or failed to disclose any material
 18959 information in any prospectus or in any circular or other
 18960 literature that has been distributed concerning the issuer or
 18961 its securities;

18962 (h) The security registered or sought to be registered is
 18963 the subject of an injunction entered by a court of competent
 18964 jurisdiction or is the subject of an administrative stop-order
 18965 or similar order prohibiting the offer or sale of the security;

18966 (i) For any security for which registration has been
 18967 applied pursuant to s. 517.081, the terms of the offer or sale
 18968 of such securities would not be fair, just, or equitable; or

18969 (j) The issuer or any person acting on behalf of the
 18970 issuer has failed to timely complete any application for
 18971 registration filed with the office ~~department~~ pursuant to the
 18972 provisions of s. 517.081 or s. 517.082 or any rule adopted under
 18973 such sections.

18974
 18975 In making such examination, the office ~~department~~ shall have
 18976 access to and may compel the production of all the books and
 18977 papers of such issuer and may administer oaths to and examine
 18978 the officers of such issuer or any other person connected
 18979 therewith as to its business and affairs and may also require a
 18980 balance sheet exhibiting the assets and liabilities of any such
 18981 issuer or its income statement, or both, to be certified to by a
 18982 public accountant either of this state or of any other state
 18983 where the issuer's business is located. Whenever the office
 18984 deems ~~department may deem~~ it necessary, it may also require such
 18985 balance sheet or income statement, or both, to be made more



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18986 | specific in such particulars as the office ~~department~~ may
18987 | require.

18988 | (2) If any issuer shall refuse to permit an examination to
18989 | be made by the office ~~department~~, it shall be proper ground for
18990 | revocation of registration.

18991 | (3) If the office deems ~~department shall deem~~ it
18992 | necessary, it may enter an order suspending the right to sell
18993 | securities pending any investigation, provided that the order
18994 | shall state the office's ~~department's~~ grounds for taking such
18995 | action.

18996 | (4) Notice of the entry of such order shall be given by
18997 | mail, personally, by telephone confirmed in writing, or by
18998 | telegraph to the issuer. Before such order is made final, the
18999 | issuer applying for registration shall, on application, be
19000 | entitled to a hearing.

19001 | (5) The office ~~department~~ may deny any request to
19002 | terminate any registration or to withdraw any application for
19003 | registration if the office ~~department~~ believes that an act which
19004 | would be grounds for denial, suspension, or revocation under
19005 | this chapter has been committed.

19006 | Section 360. Section 517.12, Florida Statutes, is amended
19007 | to read:

19008 | 517.12 Registration of dealers, associated persons,
19009 | investment advisers, and branch offices.--

19010 | (1) No dealer, associated person, or issuer of securities
19011 | shall sell or offer for sale any securities in or from offices
19012 | in this state, or sell securities to persons in this state from
19013 | offices outside this state, by mail or otherwise, unless the



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19014 person has been registered with the office ~~department~~ pursuant
 19015 to the provisions of this section. The office ~~department~~ shall
 19016 not register any person as an associated person of a dealer
 19017 unless the dealer with which the applicant seeks registration is
 19018 lawfully registered with the office ~~department~~ pursuant to this
 19019 chapter.

19020 (2) The registration requirements of this section do not
 19021 apply to the issuers of securities exempted by s. 517.051(1)-(8)
 19022 and (10).

19023 (3) Except as otherwise provided in s. 517.061(11)(a)4.,
 19024 (13), (16), (17), or (19), the registration requirements of this
 19025 section do not apply in a transaction exempted by s. 517.061(1)-
 19026 (12), (14), and (15).

19027 (4) No investment adviser or associated person of an
 19028 investment adviser or federal covered adviser shall engage in
 19029 business from offices in this state, or render investment advice
 19030 to persons of this state, by mail or otherwise, unless the
 19031 federal covered adviser has made a notice filing with the office
 19032 ~~department~~ pursuant to s. 517.1201 or the investment adviser is
 19033 registered pursuant to the provisions of this chapter and
 19034 associated persons of the federal covered adviser or investment
 19035 adviser have been registered with the office ~~department~~ pursuant
 19036 to this section. The office ~~department~~ shall not register any
 19037 person or an associated person of a federal covered adviser or
 19038 an investment adviser unless the federal covered adviser or
 19039 investment adviser with which the applicant seeks registration
 19040 is in compliance with the notice filing requirements of s.
 19041 517.1201 or is lawfully registered with the office ~~department~~



19042 | pursuant to this chapter. A dealer or associated person who is
 19043 | registered pursuant to this section may render investment advice
 19044 | upon notification to and approval from the office ~~department~~.

19045 | (5) No dealer or investment adviser shall conduct business
 19046 | from a branch office within this state unless the branch office
 19047 | is registered with the office ~~department~~ pursuant to the
 19048 | provisions of this section.

19049 | (6) A dealer, associated person, investment adviser, or
 19050 | branch office, in order to obtain registration, must file with
 19051 | the office ~~department~~ a written application, on a form which the
 19052 | commission ~~department~~ may by rule prescribe, verified under
 19053 | oath. The commission ~~department~~ may establish, by rule,
 19054 | procedures for depositing fees and filing documents by
 19055 | electronic means provided such procedures provide the office
 19056 | ~~department~~ with the information and data required by this
 19057 | section. Each dealer or investment adviser must also file an
 19058 | irrevocable written consent to service of civil process similar
 19059 | to that provided for in s. 517.101. The application shall
 19060 | contain such information as the commission or office ~~department~~
 19061 | may require concerning such matters as:

19062 | (a) The name of the applicant and the address of its
 19063 | principal office and each office in this state.

19064 | (b) The applicant's form and place of organization; and,
 19065 | if the applicant is a corporation, a copy of its articles of
 19066 | incorporation and amendments to the articles of incorporation
 19067 | or, if a partnership, a copy of the partnership agreement.

19068 | (c) The applicant's proposed method of doing business and
 19069 | financial condition and history, including a certified financial



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19070 statement showing all assets and all liabilities, including
19071 contingent liabilities of the applicant as of a date not more
19072 than 90 days prior to the filing of the application.

19073 (d) The names and addresses of all associated persons of
19074 the applicant to be employed in this state and the offices to
19075 which they will be assigned.

19076 (7) The application shall also contain such information as
19077 the commission or office ~~department~~ may require about the
19078 applicant; any partner, officer, or director of the applicant or
19079 any person having a similar status or performing similar
19080 functions; any person directly or indirectly controlling the
19081 applicant; or any employee of a dealer or of an investment
19082 adviser rendering investment advisory services. Each applicant
19083 shall file a complete set of fingerprints taken by an authorized
19084 law enforcement officer. Such fingerprints shall be submitted
19085 to the Department of Law Enforcement or the Federal Bureau of
19086 Investigation for state and federal processing. The commission
19087 ~~department~~ may waive, by rule, the requirement that applicants
19088 must file a set of fingerprints or the requirement that such
19089 fingerprints must be processed by the Department of Law
19090 Enforcement or the Federal Bureau of Investigation. The
19091 commission or office ~~department~~ may require information about
19092 any such applicant or person concerning such matters as:

19093 (a) His or her full name, and any other names by which he
19094 or she may have been known, and his or her age, photograph,
19095 qualifications, and educational and business history.

19096 (b) Any injunction or administrative order by a state or
19097 federal agency, national securities exchange, or national



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19098 securities association involving a security or any aspect of the
19099 securities business and any injunction or administrative order
19100 by a state or federal agency regulating banking, insurance,
19101 finance, or small loan companies, real estate, mortgage brokers,
19102 or other related or similar industries, which injunctions or
19103 administrative orders relate to such person.

19104 (c) His or her conviction of, or plea of nolo contendere
19105 to, a criminal offense or his or her commission of any acts
19106 which would be grounds for refusal of an application under s.
19107 517.161.

19108 (d) The names and addresses of other persons of whom the
19109 office ~~department~~ may inquire as to his or her character,
19110 reputation, and financial responsibility.

19111 (8) The commission or office ~~department~~ may require the
19112 applicant or one or more principals or general partners, or
19113 natural persons exercising similar functions, or any associated
19114 person applicant to successfully pass oral or written
19115 examinations. Because any principal, manager, supervisor, or
19116 person exercising similar functions shall be responsible for the
19117 acts of the associated persons affiliated with a dealer or
19118 investment adviser, the examination standards may be higher for
19119 a dealer, office manager, principal, or person exercising
19120 similar functions than for a nonsupervisory associated person.
19121 The commission ~~department~~ may waive the examination process when
19122 it determines that such examinations are not in the public
19123 interest. The office ~~department~~ shall waive the examination
19124 requirements for any person who has passed any tests as



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19125 prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934
19126 that relates to the position to be filled by the applicant.

19127 (9)(a) All dealers, except securities dealers who are
19128 designated by the Federal Reserve Bank of New York as primary
19129 government securities dealers or securities dealers registered
19130 as issuers of securities, shall comply with the net capital and
19131 ratio requirements imposed pursuant to the Securities Exchange
19132 Act of 1934. The commission ~~department~~ may by rule require a
19133 dealer to file with the office ~~department~~ any financial or
19134 operational information that is required to be filed by the
19135 Securities Exchange Act of 1934 or any rules adopted under such
19136 act.

19137 (b) The commission ~~department~~ may by rule require the
19138 maintenance of a minimum net capital for securities dealers who
19139 are designated by the Federal Reserve Bank of New York as
19140 primary government securities dealers and securities dealers
19141 registered as issuers of securities and investment advisers, or
19142 prescribe a ratio between net capital and aggregate
19143 indebtedness, to assure adequate protection for the investing
19144 public. The provisions of this section shall not apply to any
19145 investment adviser that maintains its principal place of
19146 business in a state other than this state, provided such
19147 investment adviser is registered in the state where it maintains
19148 its principal place of business and is in compliance with such
19149 state's net capital requirements.

19150 (10) An applicant for registration shall pay an assessment
19151 fee of \$200, in the case of a dealer or investment adviser, or
19152 \$40, in the case of an associated person. The assessment fee of



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19153 an associated person shall be reduced to \$30, but only after the
19154 office ~~department~~ determines, by final order, that sufficient
19155 funds have been allocated to the Securities Guaranty Fund
19156 pursuant to s. 517.1203 to satisfy all valid claims filed in
19157 accordance with s. 517.1203(2) and after all amounts payable
19158 under any service contract entered into by the office ~~department~~
19159 pursuant to s. 517.1204, and all notes, bonds, certificates of
19160 indebtedness, other obligations, or evidences of indebtedness
19161 secured by such notes, bonds, certificates of indebtedness, or
19162 other obligations, have been paid or provision has been made for
19163 the payment of such amounts, notes, bonds, certificates of
19164 indebtedness, other obligations, or evidences of indebtedness.
19165 An associated person not having current fingerprint cards filed
19166 with the National Association of Securities Dealers or a
19167 national securities exchange registered with the Securities and
19168 Exchange Commission shall be assessed an additional fee to cover
19169 the cost for said fingerprint cards to be processed by the
19170 office ~~department~~. Such fee shall be determined by rule of the
19171 commission ~~department~~. Each dealer and each investment adviser
19172 shall pay an assessment fee of \$100 for each office in this
19173 state, except its designated principal office. Such fees become
19174 the revenue of the state, except for those assessments provided
19175 for under s. 517.131(1) until such time as the Securities
19176 Guaranty Fund satisfies the statutory limits, and are not
19177 returnable in the event that registration is withdrawn or not
19178 granted.

19179 (11) If the office ~~department~~ finds that the applicant is
19180 of good repute and character and has complied with the



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19181 provisions of this chapter and the rules made pursuant hereto,
 19182 it shall register the applicant. The registration of each
 19183 dealer, investment adviser, and associated person will expire on
 19184 December 31, and the registration of each branch office will
 19185 expire on March 31, of the year in which it became effective
 19186 unless the registrant has renewed its registration on or before
 19187 that date. Registration may be renewed by furnishing such
 19188 information as the commission ~~department~~ may require, together
 19189 with payment of the fee required in subsection (10) for dealers,
 19190 investment advisers, associated persons, or branch offices and
 19191 the payment of any amount lawfully due and owing to the office
 19192 ~~department~~ pursuant to any order of the office ~~department~~ or
 19193 pursuant to any agreement with the office ~~department~~. Any
 19194 dealer, investment adviser, or associated person registrant who
 19195 has not renewed a registration by the time the current
 19196 registration expires may request reinstatement of such
 19197 registration by filing with the office ~~department~~, on or before
 19198 January 31 of the year following the year of expiration, such
 19199 information as may be required by the commission ~~department~~,
 19200 together with payment of the fee required in subsection (10) for
 19201 dealers, investment advisers, or associated persons and a late
 19202 fee equal to the amount of such fee. Any reinstatement of
 19203 registration granted by the office ~~department~~ during the month
 19204 of January shall be deemed effective retroactive to January 1 of
 19205 that year.

19206 (12)(a) The office ~~department~~ may issue a license to a
 19207 dealer, investment adviser, associated person, or branch office
 19208 to evidence registration under this chapter. The office



19209 ~~department~~ may require the return to the office ~~department~~ of
 19210 any license it may issue prior to issuing a new license.

19211 (b) Every dealer, investment adviser, or federal covered
 19212 adviser shall promptly file with the office ~~department~~, as
 19213 prescribed by rules adopted by the commission ~~department~~, notice
 19214 as to the termination of employment of any associated person
 19215 registered for such dealer or investment adviser in this state
 19216 and shall also furnish the reason or reasons for such
 19217 termination.

19218 (c) Each dealer or investment adviser shall designate in
 19219 writing to, and register with, the office ~~department~~ a manager
 19220 for each office the dealer or investment adviser has in this
 19221 state.

19222 (13) Changes in registration occasioned by changes in
 19223 personnel of a partnership or in the principals, copartners,
 19224 officers, or directors of any dealer or investment adviser or by
 19225 changes of any material fact or method of doing business shall
 19226 be reported by written amendment in such form and at such time
 19227 as the commission ~~department~~ may specify. In any case in which
 19228 a person or a group of persons, directly or indirectly or acting
 19229 by or through one or more persons, proposes to purchase or
 19230 acquire a controlling interest in a registered dealer or
 19231 investment adviser, such person or group shall submit an initial
 19232 application for registration as a dealer or investment adviser
 19233 prior to such purchase or acquisition. The commission ~~department~~
 19234 shall adopt rules providing for waiver of the application
 19235 required by this subsection where control of a registered dealer
 19236 or investment adviser is to be acquired by another dealer or



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19237 investment adviser registered under this chapter or where the
19238 application is otherwise unnecessary in the public interest.

19239 (14) Every dealer, investment adviser, or branch office
19240 registered or required to be registered with the office
19241 ~~department~~ shall keep records of all currency transactions in
19242 excess of \$10,000 and shall file reports, as prescribed under
19243 the financial recordkeeping regulations in 31 C.F.R. part 103,
19244 with the office ~~department~~ when transactions occur in or from
19245 this state. All reports required by this subsection to be filed
19246 with the office ~~department~~ shall be confidential and exempt from
19247 s. 119.07(1) except that any law enforcement agency or the
19248 Department of Revenue shall have access to, and shall be
19249 authorized to inspect and copy, such reports.

19250 (15) In lieu of filing with the office ~~department~~ the
19251 applications specified in subsection (6), the fees required by
19252 subsection(10), and the termination notices required by
19253 subsection (12), the commission ~~department~~ may by rule establish
19254 procedures for the deposit of such fees and documents with the
19255 Central Registration Depository of the National Association of
19256 Securities Dealers, Inc., as developed under contract with the
19257 North American Securities Administrators Association, Inc. ;
19258 provided, however, that such procedures shall provide the office
19259 ~~department~~ with the information and data as required by this
19260 section.

19261 (16) Except for securities dealers who are designated by
19262 the Federal Reserve Bank of New York as primary government
19263 securities dealers or securities dealers registered as issuers
19264 of securities, every applicant for initial or renewal



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19265 registration as a securities dealer and every person registered
19266 as a securities dealer shall be registered as a broker or dealer
19267 with the Securities and Exchange Commission and shall be subject
19268 to insurance coverage by the Securities Investor Protection
19269 Corporation.

19270 (17)(a) A dealer that is located in Canada and has no
19271 office or other physical presence in this state may, provided
19272 the dealer is registered in accordance with this section, effect
19273 transactions in securities with or for, or induce or attempt to
19274 induce the purchase or sale of any security by:

19275 1. A person from Canada who temporarily resides in this
19276 state and with whom the Canadian dealer had a bona fide dealer-
19277 client relationship before the person entered the United States;
19278 or

19279 2. A person from Canada who is a resident of this state,
19280 and whose transactions are in a self-directed tax advantage
19281 retirement plan in Canada of which the person is the holder or
19282 contributor.

19283 (b) An associated person who represents a Canadian dealer
19284 registered under this section may, provided the agent is
19285 registered in accordance with this section, effect transactions
19286 in securities in this state as permitted for a dealer, under
19287 subsection (a).

19288 (c) A Canadian dealer may register under this section
19289 provided that such dealer:

19290 1. Files an application in the form required by the
19291 jurisdiction in which the dealer has a head office.

19292 2. Files a consent to service of process.



19293 3. Is registered as a dealer in good standing in the
19294 jurisdiction from which it is effecting transactions into this
19295 state and files evidence of such registration with the office
19296 ~~department~~.

19297 4. Is a member of a self-regulatory organization or stock
19298 exchange in Canada.

19299 (d) An associated person who represents a Canadian dealer
19300 registered under this section in effecting transactions in
19301 securities in this state may register under this section
19302 provided that such person:

19303 1. Files an application in the form required by the
19304 jurisdiction in which the dealer has its head office.

19305 2. Is registered in good standing in the jurisdiction from
19306 which he or she is effecting transactions into this state and
19307 files evidence of such registration with the office ~~department~~.

19308 (e) If the office ~~department~~ finds that the applicant is
19309 of good repute and character and has complied with the
19310 provisions of this chapter, the office ~~department~~ shall register
19311 the applicant.

19312 (f) A Canadian dealer registered under this section shall:

19313 1. Maintain its provincial or territorial registration and
19314 its membership in a self-regulatory organization or stock
19315 exchange in good standing.

19316 2. Provide the office ~~department~~ upon request with its
19317 books and records relating to its business in this state as a
19318 dealer.

19319 3. Provide the office ~~department~~ notice of each civil,
19320 criminal, or administrative action initiated against the dealer.



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19321 4. Disclose to its clients in this state that the dealer
19322 and its agents are not subject to the full regulatory
19323 requirements under this chapter.

19324 5. Correct any inaccurate information within 30 days, if
19325 the information contained in the application form becomes
19326 inaccurate for any reason before or after the dealer becomes
19327 registered.

19328 (g) An associated person of a Canadian dealer registered
19329 under this section shall:

19330 1. Maintain provincial or territorial registration in good
19331 standing.

19332 2. Provide the office ~~department~~ with notice of each
19333 civil, criminal, or administrative action initiated against such
19334 person.

19335 3. Through the dealer, correct any inaccurate information
19336 within 30 days, if the information contained in the application
19337 form becomes inaccurate for any reason before or after the
19338 associated person becomes registered.

19339 (h) Renewal applications for Canadian dealers and
19340 associated persons under this section must be filed before
19341 December 31 each year. Every applicant for registration or
19342 renewal registration under this section shall pay the fee for
19343 dealers and associated persons under this chapter.

19344 (18) Every dealer or associated person registered or
19345 required to be registered with the office ~~department~~ shall
19346 satisfy any continuing education requirements established by
19347 rule pursuant to law.



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19348 (19) The registration requirements of this section which
 19349 apply to investment advisers and associated persons do not apply
 19350 to a commodity trading adviser who:

19351 (a) Is registered as such with the Commodity Futures
 19352 Trading Commission pursuant to the Commodity Exchange Act.

19353 (b) Advises or exercises trading discretion, with respect
 19354 to foreign currency options listed and traded exclusively on the
 19355 Philadelphia Stock Exchange, on behalf of an "appropriate
 19356 person" as defined by the Commodity Exchange Act.

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19359 The exemption provided in this subsection does not apply to a
 19360 commodity trading adviser who engages in other activities that
 19361 require registration under this chapter.

19362 (20) The registration requirements of this section do not
 19363 apply to any general lines insurance agent or life insurance
 19364 agent licensed under chapter 626 ~~individuals licensed under s.~~
 19365 ~~626.041 or its successor statute, or s. 626.051 or its successor~~
 19366 ~~statute~~, for the sale of a security as defined in s.
 19367 517.021 (20) ~~(19)~~(g), if the individual is directly authorized by
 19368 the issuer to offer or sell the security on behalf of the issuer
 19369 and the issuer is a federally chartered savings bank subject to
 19370 regulation by the Federal Deposit Insurance Corporation. Actions
 19371 under this subsection shall constitute activity under the
 19372 insurance agent's license for purposes of ss. 626.611 and
 19373 626.621.

19374 Section 361. Section 517.1201, Florida Statutes, is
 19375 amended to read:



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19376 517.1201 Notice filing requirements for federal covered
19377 advisers.--

19378 (1) It is unlawful for a person to transact business in
19379 this state as a federal covered adviser unless such person has
19380 made a notice filing with the office ~~department~~. A notice
19381 filing under this section shall consist of a copy of those
19382 documents that have been filed or are required to be filed by
19383 the federal covered adviser with the Securities and Exchange
19384 Commission that the Financial Services Commission ~~department~~ by
19385 rule requires to be filed, together with a consent to service of
19386 process and a filing fee of \$200. The commission ~~department~~ may
19387 establish by rule procedures for the deposit of fees and the
19388 filing of documents to be made through electronic means, if the
19389 procedures provide to the office ~~department~~ the information and
19390 data required by this section.

19391 (2) A notice filing shall be effective upon receipt. A
19392 notice filing shall expire on December 31 of the year in which
19393 the filing became effective unless the federal covered adviser
19394 has renewed the filing on or before that date. A federal covered
19395 adviser may renew a notice filing by furnishing to the office
19396 ~~department~~ such information that has been filed or is required
19397 to be filed with the Securities and Exchange Commission, as the
19398 Financial Services Commission or office ~~department~~ may require,
19399 together with a renewal fee of \$200 and the payment of any
19400 amount due and owing the office ~~department~~ pursuant to any
19401 agreement with the office ~~department~~. Any federal covered
19402 adviser who has not renewed a notice filing by the time a
19403 current notice filing expires may request reinstatement of such



19404 notice filing by filing with the office ~~department~~, on or before
 19405 January 31 of the year following the year the notice filing
 19406 expires, such information that has been filed or is required to
 19407 be filed with the Securities and Exchange Commission as may be
 19408 required by the Financial Services Commission or office
 19409 ~~department~~, together with the payment of \$200 and a late fee
 19410 equal to \$200. Any reinstatement of a notice filing granted by
 19411 the office ~~department~~ during the month of January shall be
 19412 deemed effective retroactive to January 1 of that year.

19413 (3) The commission ~~department~~ may require, by rule, a
 19414 federal covered adviser who has made a notice filing pursuant to
 19415 this section to file with the office ~~department~~ copies of any
 19416 amendments filed or required to be filed with the Securities and
 19417 Exchange Commission.

19418 (4) The office ~~department~~ may issue a permit to evidence
 19419 the effectiveness of a notice filing for a federal covered
 19420 adviser.

19421 (5) A notice filing may be terminated by filing notice of
 19422 such termination with the office ~~department~~. Unless another
 19423 date is specified by the federal covered adviser, such notice
 19424 shall be effective upon its receipt by the office ~~department~~.

19425 (6) All fees collected under this section become the
 19426 revenue of the state, except for those assessments provided for
 19427 under s. 517.131(1) until such time as the Securities Guaranty
 19428 Fund satisfies the statutory limits, and are not returnable in
 19429 the event that a notice filing is withdrawn.

19430 Section 362. Section 517.1203, Florida Statutes, is
 19431 amended to read:



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19432 517.1203 Allocation and disbursement of assessment fees.--
 19433 (1) Notwithstanding s. 517.131(1), an additional amount
 19434 equal to 25 percent of all revenues received as assessment fees
 19435 pursuant to s. 517.12(10) and (11) from persons applying for or
 19436 renewing registrations as associated persons shall be allocated
 19437 to the Securities Guaranty Fund and disbursed as provided in
 19438 this section. This allocation shall continue until the office
 19439 ~~department~~ determines, by final order, that sufficient funds
 19440 have been allocated to the Securities Guaranty Fund pursuant to
 19441 this section to satisfy all valid claims filed in accordance
 19442 with subsection (2) and until all amounts payable under any
 19443 service contract entered into by the office ~~department~~ pursuant
 19444 to s. 517.1204, and all notes, bonds, certificates of
 19445 indebtedness, other obligations, or evidences of indebtedness
 19446 secured by such notes, bonds, certificates of indebtedness, or
 19447 other obligations, have been paid or provision has been made for
 19448 the payment of such amounts, notes, bonds, certificates of
 19449 indebtedness, other obligations, or evidences of indebtedness.
 19450 This assessment fee shall be part of the regular license fee and
 19451 shall be transferred to or deposited into the Securities
 19452 Guaranty Fund. The moneys allocated to the Securities Guaranty
 19453 Fund under this section shall not be included in the calculation
 19454 of the allocation of the assessment fees referred to in s.
 19455 517.131(1)(b). Moneys allocated under this section in excess of
 19456 the valid claims filed pursuant to subsection (2) shall be
 19457 allocated to the Anti-Fraud Trust Fund.
 19458 (2)(a) Notwithstanding the provisions of ss. 517.131 and
 19459 517.141, moneys allocated to the Securities Guaranty Fund under



19460 | this section shall be used to pay amounts payable under any
 19461 | service contract entered into by the office ~~department~~ pursuant
 19462 | to s. 517.1204, subject to annual appropriation by the
 19463 | Legislature, and to pay investors who have filed claims with the
 19464 | Department of Banking and Finance after October 1, 1996, and on
 19465 | or before December 31, 1998, who have:

19466 | 1. Received a final judgment against an associated person
 19467 | of GIC Government Securities, Inc., based upon allegations which
 19468 | would amount to a violation of s. 517.07 or s. 517.301; or

19469 | 2. Demonstrated to the former Department of Banking and
 19470 | Finance or office that the claimant has suffered monetary
 19471 | damages as a result of the acts or actions of GIC Government
 19472 | Securities, Inc., or any associated person thereof, based upon
 19473 | allegations which would amount to a violation of s. 517.07 or s.
 19474 | 517.301.

19475 | (b)1. Claims shall be paid in the order that they were
 19476 | ~~have been~~ filed with the former Department of Banking and
 19477 | Finance, unless the department ~~has~~ noticed its intent to deny
 19478 | the claim in whole or in part. If a notice of intent to deny a
 19479 | claim in whole or in part was ~~is~~ issued, the claim shall not be
 19480 | paid until a final order has been entered which is not subject
 19481 | to an order staying its effect.

19482 | 2. If at any time the money in the Securities Guaranty
 19483 | Fund allocated under this section is insufficient to satisfy any
 19484 | valid claim or portion of a valid claim approved by the
 19485 | department or office under this section, the office ~~department~~
 19486 | shall prorate the payment based upon the ratio that the person's
 19487 | claim bears to the total approved claims filed on the same day.



19488 | The office department shall satisfy the unpaid claims as soon as
 19489 | a sufficient amount of money has been deposited in or
 19490 | transferred to the fund as provided in this section.

19491 | 3. A claimant shall not be substantially affected by the
 19492 | payment of another person's claim.

19493 | (c) Claims shall be limited to the amount of the
 19494 | investment, reduced by any amounts received from a bankruptcy
 19495 | proceeding or from any other source. If an investor is deceased,
 19496 | the award shall be made to the surviving spouse. If the investor
 19497 | and surviving spouse are both deceased, the award shall be made
 19498 | pursuant to the laws of descent and distribution. Neither the
 19499 | office department nor the Investment Fraud Restoration Financing
 19500 | Corporation shall make payment to assignees, secured parties,
 19501 | lien creditors, or other such entities.

19502 | (3) In rendering a determination, the office department
 19503 | may rely on records from the bankruptcy proceeding regarding GIC
 19504 | Government Securities, Inc., unless there is good cause to
 19505 | believe that the record is not genuine.

19506 | (4) Amounts deposited into the Securities Guaranty Fund
 19507 | pursuant to this section shall be applied to or allocated for
 19508 | payment of amounts payable by the office department pursuant to
 19509 | paragraph (2)(a), under a service contract entered into by the
 19510 | office department pursuant to s. 517.1204, subject to annual
 19511 | appropriation by the Legislature, before making or providing for
 19512 | any other disbursements from the fund.

19513 | Section 363. Subsection (2), paragraph (e) of subsection
 19514 | (3), and subsections (4), (5), and(6) of section 517.1204,
 19515 | Florida Statutes, are amended to read:



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19516 517.1204 Investment Fraud Restoration Financing
 19517 Corporation.--
 19518 (2) The corporation shall be governed by a board of
 19519 directors consisting of the director of the office or his or her
 19520 designee ~~assistant comptroller~~, the Secretary of Elderly Affairs
 19521 or the secretary's designee, and the executive director of the
 19522 Department of Veterans' Affairs or the executive director's
 19523 designee. The executive director of the State Board of
 19524 Administration shall be the chief executive officer of the
 19525 corporation and shall direct and supervise the administrative
 19526 affairs of the corporation and shall control, direct, and
 19527 supervise the operation of the corporation. The corporation
 19528 shall also have such other officers as may be determined by the
 19529 board of directors.
 19530 (3) The corporation shall have all the powers of a
 19531 corporate body under the laws of this state to the extent not
 19532 inconsistent with or restricted by the provisions of this
 19533 section, including, but not limited to, the power to:
 19534 (e) Elect or appoint and employ such officers, agents, and
 19535 employees as the corporation deems advisable to operate and
 19536 manage the affairs of the corporation, which officers, agents,
 19537 and employees may be officers or employees of the office
 19538 ~~department~~ and the state agencies represented on the board of
 19539 directors of the corporation.
 19540 (4) The corporation is authorized to enter into one or
 19541 more service contracts with the office ~~department~~ pursuant to
 19542 which the corporation shall provide services to the office
 19543 ~~department~~ in connection with financing the functions and



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19544 activities provided for in s. 517.1203. The office department
 19545 may enter into one or more such service contracts with the
 19546 corporation and provide for payments under such contracts
 19547 pursuant to s. 517.1203(2)(a), subject to annual appropriation
 19548 by the Legislature. The proceeds from such service contracts
 19549 may be used for the costs and expenses of administration of the
 19550 corporation after payments as set forth in subsection(5). Each
 19551 service contract shall have a term not to exceed 15 years and
 19552 shall terminate no later than July 1, 2021. The aggregate
 19553 amount payable from the Securities Guaranty Fund under all such
 19554 service contracts shall not exceed the amount provided by s.
 19555 517.1203(1). In compliance with provisions of s. 287.0641 and
 19556 other applicable provisions of law, the obligations of the
 19557 office department under such service contracts shall not
 19558 constitute a general obligation of the state or a pledge of the
 19559 faith and credit or taxing power of the state nor shall such
 19560 obligations be construed in any manner as an obligation of the
 19561 State Board of Administration or entities for which it invests
 19562 funds, other than the office department as provided in this
 19563 section, but shall be payable solely from amounts available in
 19564 the Securities Guaranty Fund, subject to annual appropriation.
 19565 In compliance with this subsection and s. 287.0582, such service
 19566 contracts shall expressly include the following statement: "The
 19567 State of Florida's performance and obligation to pay under this
 19568 contract is contingent upon an annual appropriation by the
 19569 Legislature."

19570 (5) The corporation may issue and incur notes, bonds,
 19571 certificates of indebtedness, or other obligations or evidences



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19572 of indebtedness payable from and secured by amounts payable to
 19573 the corporation by the office ~~department~~ under a service
 19574 contract entered into pursuant to subsection (4) for the purpose
 19575 of the simultaneous payment of all claims approved pursuant to
 19576 s. 517.1203. The term of any such note, bond, certificate of
 19577 indebtedness, or other obligation or evidence of indebtedness
 19578 shall not exceed 15 years. The corporation may select a
 19579 financing team and issue obligations through competitive bidding
 19580 or negotiated contracts, whichever is most cost-effective. Any
 19581 such indebtedness of the corporation shall not constitute a debt
 19582 or obligation of the state or a pledge of the faith and credit
 19583 or taxing power of the state, but shall be payable from and
 19584 secured by payments made by the office ~~department~~ under the
 19585 service contract pursuant to subsection (4).

19586 (6) The corporation shall pay all claims approved pursuant
 19587 to s. 517.1203 as determined by and at the direction of the
 19588 office ~~department~~.

19589 Section 364. Section 517.121, Florida Statutes, is amended
 19590 to read:

19591 517.121 Books and records requirements; examinations.--

19592 (1) A dealer, investment adviser, branch office, or
 19593 associated person shall maintain such books and records as the
 19594 commission ~~department~~ may prescribe by rule.

19595 (2) The office ~~department~~ shall, at intermittent periods,
 19596 examine the affairs and books and records of each registered
 19597 dealer, investment adviser, branch office, or associated person,
 19598 or require such records and reports to be submitted to it as



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19599 | required ~~it may require~~ by rule of the commission, to determine
19600 | compliance with this act.

19601 | Section 365. Paragraph (a) of subsection (1), paragraphs
19602 | (b) and (e) of subsection (3), and subsection (4) of section
19603 | 517.131, Florida Statutes, are amended to read:

19604 | 517.131 Securities Guaranty Fund.--

19605 | (1)(a) The Chief Financial Officer ~~Treasurer~~ shall
19606 | establish a Securities Guaranty Fund. An amount not exceeding
19607 | 20 percent of all revenues received as assessment fees pursuant
19608 | to s. 517.12(10) and (11) for dealers and investment advisers or
19609 | s. 517.1201 for federal covered advisers and an amount not
19610 | exceeding 10 percent of all revenues received as assessment fees
19611 | pursuant to s. 517.12(10) and (11) for associated persons shall
19612 | be allocated to the fund. An additional amount not exceeding
19613 | 3.5 percent of all revenues received as assessment fees for
19614 | associated persons pursuant to s. 517.12(10) and (11) shall be
19615 | allocated to the Securities Guaranty Fund but only after the
19616 | office ~~department~~ determines, by final order, that sufficient
19617 | funds have been allocated to the fund pursuant to s. 517.1203 to
19618 | satisfy all valid claims filed in accordance with s. 517.1203(2)
19619 | and after all amounts payable under any service contract entered
19620 | into by the office ~~department~~ pursuant to s. 517.1204, and all
19621 | notes, bonds, certificates of indebtedness, other obligations,
19622 | or evidences of indebtedness secured by such notes, bonds,
19623 | certificates of indebtedness, or other obligations, have been
19624 | paid or provision has been made for the payment of such amounts,
19625 | notes, bonds, certificates of indebtedness, other obligations,
19626 | or evidences of indebtedness. This assessment fee shall be part



19627 | of the regular license fee and shall be transferred to or
 19628 | deposited in the Securities Guaranty Fund.

19629 | (3) Any person is eligible to seek recovery from the
 19630 | Securities Guaranty Fund if:

19631 | (b) Such person has made all reasonable searches and
 19632 | inquiries to ascertain whether the judgment debtor possesses
 19633 | real or personal property or other assets subject to being sold
 19634 | or applied in satisfaction of the judgment, and by her or his
 19635 | search the person has discovered no property or assets; or she
 19636 | or he has discovered property and assets and has taken all
 19637 | necessary action and proceedings for the application thereof to
 19638 | the judgment, but the amount thereby realized was insufficient
 19639 | to satisfy the judgment. To verify compliance with such
 19640 | condition, the office ~~department~~ may require such person to have
 19641 | a writ of execution be issued upon such judgment and may further
 19642 | require a showing that no personal or real property of the
 19643 | judgment debtor liable to be levied upon in complete
 19644 | satisfaction of the judgment can be found.

19645 | (e) The office ~~department~~ waives compliance with the
 19646 | requirements of paragraph (a) or paragraph (b). The office
 19647 | ~~department~~ may waive such compliance if the dealer, investment
 19648 | adviser, or associated person which is the subject of the claim
 19649 | filed with the office ~~department~~ is the subject of any
 19650 | proceeding in which a receiver has been appointed by a court of
 19651 | competent jurisdiction. If the office ~~department~~ waives such
 19652 | compliance, the office ~~department~~ may, upon petition by the
 19653 | debtor or the court-appointed trustee, examiner, or receiver,
 19654 | distribute funds from the Securities Guaranty Fund up to the



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19655 amount allowed under s. 517.141. Any waiver granted pursuant to
 19656 this section shall be considered a judgment for purposes of
 19657 complying with the requirements of this section and of s.
 19658 517.141.

19659 (4) Any person who files an action that may result in the
 19660 disbursement of funds from the Securities Guaranty Fund pursuant
 19661 to the provisions of s. 517.141 shall give written notice by
 19662 certified mail to the office ~~department~~ as soon as practicable
 19663 after such action has been filed. The failure to give such
 19664 notice shall not bar a payment from the Securities Guaranty Fund
 19665 if all of the conditions specified in subsection (3) are
 19666 satisfied.

19667 Section 366. Section 517.141, Florida Statutes, is amended
 19668 to read:

19669 517.141 Payment from the fund.--

19670 (1) Any person who meets all of the conditions prescribed
 19671 in s. 517.131 may apply to the office ~~department~~ for payment to
 19672 be made to such person from the Securities Guaranty Fund in the
 19673 amount equal to the unsatisfied portion of such person's
 19674 judgment or \$10,000, whichever is less, but only to the extent
 19675 and amount reflected in the judgment as being actual or
 19676 compensatory damages, excluding costs and attorney's fees.

19677 (2) Regardless of the number of claimants involved,
 19678 payments for claims shall be limited in the aggregate to
 19679 \$100,000 against any one dealer, investment adviser, or
 19680 associated person. If the total claims exceed the aggregate
 19681 limit of \$100,000, the office ~~department~~ shall prorate the



19682 payment based upon the ratio that the person's claim bears to
19683 the total claims filed.

19684 (3) No payment shall be made on any claim against any one
19685 dealer, investment adviser, or associated person before the
19686 expiration of 2 years from the date any claimant is found by the
19687 office ~~department~~ to be eligible for recovery pursuant to this
19688 section. If during this 2-year period more than one claim is
19689 filed against the same dealer, investment adviser, or associated
19690 person, or if the office ~~department~~ receives notice pursuant to
19691 s. 517.131(4) that an action against the same dealer, investment
19692 adviser, or associated person is pending, all such claims and
19693 notices of pending claims received during this period against
19694 the same dealer, investment adviser, or associated person may be
19695 handled by the office ~~department~~ as provided in this section.
19696 Two years after the first claimant against that same dealer,
19697 investment adviser, or associated person applies for payment
19698 pursuant to this section:

19699 (a) The office ~~department~~ shall determine those persons
19700 eligible for payment or for potential payment in the event of a
19701 pending action. All such persons may be entitled to receive
19702 their pro rata shares of the fund as provided in this section.

19703 (b) Those persons who meet all the conditions prescribed
19704 in s. 517.131 and who have applied for payment pursuant to this
19705 section will be entitled to receive their pro rata shares of the
19706 total disbursement.

19707 (c) Those persons who have filed notice with the office
19708 ~~department~~ of a pending claim pursuant to s. 517.131(4) but who
19709 are not yet eligible for payment from the fund will be entitled



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19710 to receive their pro rata shares of the total disbursement once
19711 they have complied with subsection (1). However, in the event
19712 that the amounts they are eligible to receive pursuant to
19713 subsection (1) are less than their pro rata shares as determined
19714 under this section, any excess shall be distributed pro rata to
19715 those persons entitled to disbursement under this subsection
19716 whose pro rata shares of the total disbursement were less than
19717 the amounts of their claims.

19718 (4) Individual claims filed by persons owning the same
19719 joint account, or claims stemming from any other type of account
19720 maintained by a particular licensee on which more than one name
19721 appears, shall be treated as the claims of one eligible claimant
19722 with respect to payment from the fund. If a claimant who has
19723 obtained a judgment which qualifies for disbursement under s.
19724 517.131 has maintained more than one account with the dealer,
19725 investment adviser, or associated person who is the subject of
19726 the claims, for purposes of disbursement of the fund, all such
19727 accounts, whether joint or individual, shall be considered as
19728 one account and shall entitle such claimant to only one
19729 distribution from the fund not to exceed the lesser of \$10,000
19730 or the unsatisfied portion of such claimant's judgment as
19731 provided in subsection (1). To the extent that a claimant
19732 obtains more than one judgment against a dealer, investment
19733 adviser, or one or more associated persons arising out of the
19734 same transactions, occurrences, or conduct or out of the
19735 dealer's, investment adviser's, or associated person's handling
19736 of the claimant's account, such judgments shall be consolidated
19737 for purposes of this section and shall entitle the claimant to



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19738 | only one disbursement from the fund not to exceed the lesser of
 19739 | \$10,000 or the unsatisfied portion of such claimant's judgment
 19740 | as provided in subsection (1).

19741 | (5) If the final judgment which gave rise to the claim is
 19742 | overturned in any appeal or in any collateral proceeding, the
 19743 | claimant shall reimburse the fund all amounts paid to the
 19744 | claimant on the claim. Such reimbursement shall be paid to the
 19745 | office department within 60 days after the final resolution of
 19746 | the appellate or collateral proceedings, with the 60-day period
 19747 | commencing on the date the final order or decision is entered in
 19748 | such proceedings.

19749 | (6) If a claimant receives payments in excess of that
 19750 | which is permitted under this chapter, the claimant shall
 19751 | reimburse the fund such excess within 60 days after the claimant
 19752 | receives such excess payment or after the payment is determined
 19753 | to be in excess of that permitted by law, whichever is later.

19754 | (7) The office department may institute legal proceedings
 19755 | to enforce compliance with this section and with s. 517.131 to
 19756 | recover moneys owed to the fund, and shall be entitled to
 19757 | recover interest, costs, and attorney's fees in any action
 19758 | brought pursuant to this section in which the office department
 19759 | prevails.

19760 | (8) If at any time the money in the Securities Guaranty
 19761 | Fund is insufficient to satisfy any valid claim or portion of a
 19762 | valid claim approved by the office department, the office
 19763 | ~~department~~ shall satisfy such unpaid claim or portion of such
 19764 | valid claim as soon as a sufficient amount of money has been
 19765 | deposited in or transferred to the fund. When there is more



19766 than one unsatisfied claim outstanding, such claims shall be
 19767 paid in the order in which the claims were approved by final
 19768 order of the office ~~department~~, which order is not subject to an
 19769 appeal or other pending proceeding.

19770 (9) Upon receipt by the claimant of the payment from the
 19771 Securities Guaranty Fund, the claimant shall assign any
 19772 additional right, title, and interest in the judgment, to the
 19773 extent of such payment, to the office ~~department~~. If the
 19774 provisions of s. 517.131(3)(e) apply, the claimant must assign
 19775 to the office ~~department~~ any right, title, and interest in the
 19776 debt to the extent of any payment by the office ~~department~~ from
 19777 the Securities Guaranty Fund.

19778 (10) All payments and disbursements made from the
 19779 Securities Guaranty Fund shall be made by the Chief Financial
 19780 Officer ~~Treasurer~~ upon authorization ~~a voucher~~ signed by the
 19781 director of the office ~~Comptroller, as head of the department~~,
 19782 or such agent as she or he may designate.

19783 Section 367. Section 517.151, Florida Statutes, is amended
 19784 to read:

19785 517.151 Investments of the fund.--The funds of the
 19786 Securities Guaranty Fund shall be invested by the Chief
 19787 Financial Officer ~~Treasurer~~ under the same limitations as other
 19788 state funds, and the interest earned thereon shall be deposited
 19789 to the credit of the fund and available for the same purpose as
 19790 other moneys deposited in the Securities Guaranty Fund.

19791 Section 368. Subsection (1), (3), and (5), and paragraph
 19792 (b) of subsection (6) of section 517.161, Florida Statutes, are
 19793 amended to read:



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19794 517.161 Revocation, denial, or suspension of registration
 19795 of dealer, investment adviser, associated person, or branch
 19796 office.--
 19797 (1) Registration under s. 517.12 may be denied or any
 19798 registration granted may be revoked, restricted, or suspended by
 19799 the office ~~department~~ if the office ~~department~~ determines that
 19800 such applicant or registrant:
 19801 (a) Has violated any provision of this chapter or any rule
 19802 or order made under this chapter;
 19803 (b) Has made a material false statement in the application
 19804 for registration;
 19805 (c) Has been guilty of a fraudulent act in connection with
 19806 rendering investment advice or in connection with any sale of
 19807 securities, has been or is engaged or is about to engage in
 19808 making fictitious or pretended sales or purchases of any such
 19809 securities or in any practice involving the rendering of
 19810 investment advice or the sale of securities which is fraudulent
 19811 or in violation of the law;
 19812 (d) Has made a misrepresentation or false statement to, or
 19813 concealed any essential or material fact from, any person in the
 19814 rendering of investment advice or the sale of a security to such
 19815 person;
 19816 (e) Has failed to account to persons interested for all
 19817 money and property received;
 19818 (f) Has not delivered, after a reasonable time, to persons
 19819 entitled thereto securities held or agreed to be delivered by
 19820 the dealer, broker, or investment adviser, as and when paid for,
 19821 and due to be delivered;



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19822 (g) Is rendering investment advice or selling or offering
 19823 for sale securities through any associated person not registered
 19824 in compliance with the provisions of this chapter;

19825 (h) Has demonstrated unworthiness to transact the business
 19826 of dealer, investment adviser, or associated person;

19827 (i) Has exercised management or policy control over or
 19828 owned 10 percent or more of the securities of any dealer or
 19829 investment adviser that has been declared bankrupt, or had a
 19830 trustee appointed under the Securities Investor Protection Act;
 19831 or is, in the case of a dealer or investment adviser, insolvent;

19832 (j) Has been convicted of, or has entered a plea of guilty
 19833 or nolo contendere to, a crime against the laws of this state or
 19834 any other state or of the United States or of any other country
 19835 or government which relates to registration as a dealer,
 19836 investment adviser, issuer of securities, associated person, or
 19837 branch office; which relates to the application for such
 19838 registration; or which involves moral turpitude or fraudulent or
 19839 dishonest dealing;

19840 (k) Has had a final judgment entered against her or him in
 19841 a civil action upon grounds of fraud, embezzlement,
 19842 misrepresentation, or deceit;

19843 (l) Is of bad business repute; or

19844 (m) Has been the subject of any decision, finding,
 19845 injunction, suspension, prohibition, revocation, denial,
 19846 judgment, or administrative order by any court of competent
 19847 jurisdiction, administrative law judge, or by any state or
 19848 federal agency, national securities, commodities, or option
 19849 exchange, or national securities, commodities, or option



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19850 association, involving a violation of any federal or state
19851 securities or commodities law or any rule or regulation
19852 promulgated thereunder, or any rule or regulation of any
19853 national securities, commodities, or options exchange or
19854 national securities, commodities, or options association, or has
19855 been the subject of any injunction or adverse administrative
19856 order by a state or federal agency regulating banking,
19857 insurance, finance or small loan companies, real estate,
19858 mortgage brokers, or other related or similar industries. For
19859 purposes of this subsection, the office ~~department~~ may not deny
19860 registration to any applicant who has been continuously
19861 registered with the office ~~department~~ for 5 years from the entry
19862 of such decision, finding, injunction, suspension, prohibition,
19863 revocation, denial, judgment, or administrative order provided
19864 such decision, finding, injunction, suspension, prohibition,
19865 revocation, denial, judgment, or administrative order has been
19866 timely reported to the office ~~department~~ pursuant to the
19867 commission's ~~department's~~ rules and regulations.

19868 (3) In the event the office ~~department~~ determines to deny
19869 an application or revoke a registration, it shall enter a final
19870 order with its findings on the register of dealers and
19871 associated persons; and denial, suspension, or revocation of the
19872 registration of a dealer or investment adviser shall also deny,
19873 suspend, or revoke the registration of all her or his associated
19874 persons.

19875 (5) The office ~~department~~ may deny any request to
19876 terminate or withdraw any application or registration if the
19877 office ~~department~~ believes that an act which would be a ground



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19878 | for denial, suspension, restriction, or revocation under this
19879 | chapter has been committed.

19880 | (6) Registration under s. 517.12 may be denied or any
19881 | registration granted may be suspended or restricted if an
19882 | applicant or registrant is charged, in a pending enforcement
19883 | action or pending criminal prosecution, with any conduct that
19884 | would authorize denial or revocation under subsection (1).

19885 | (b) Any order of suspension or restriction under this
19886 | subsection shall:

19887 | 1. Take effect only after a hearing, unless no hearing is
19888 | requested by the registrant or unless the suspension or
19889 | restriction is made in accordance with s. 120.60(6).

19890 | 2. Contain a finding that evidence of a prima facie case
19891 | supports the charge made in the enforcement action or criminal
19892 | prosecution.

19893 | 3. Operate for no longer than 10 days beyond receipt of
19894 | notice by the office ~~department~~ of termination with respect to
19895 | the registrant of the enforcement action or criminal
19896 | prosecution.

19897 | Section 369. Section 517.181, Florida Statutes, is amended
19898 | to read:

19899 | 517.181 Escrow agreement.--

19900 | (1) If the statement containing information as to
19901 | securities to be registered, as provided for in s. 517.081,
19902 | shall disclose that any such securities or any securities senior
19903 | thereto shall have been or shall be intended to be issued for
19904 | any patent right, copyright, trademark, process, formula, or
19905 | goodwill; for organization or promotion fees or expenses; or for



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19906 goodwill or going-concern value or other intangible assets, then
 19907 the amount and nature thereof shall be fully set forth, and the
 19908 office department ~~department~~ may require that such securities so issued in
 19909 payment of such patent right, copyright, trademark, process,
 19910 formula, or goodwill; for organization or promotion fees or
 19911 expenses; or for other intangible assets shall be delivered in
 19912 escrow to the office department or other depository satisfactory
 19913 to the office department under an escrow agreement. The escrow
 19914 agreement shall be in a form suitable to the office department
 19915 and shall provide for the escrow or impoundment of such
 19916 securities for a reasonable length of time determined by the
 19917 office department to be in the best interest of other
 19918 shareholders. The securities subject to escrow shall also
 19919 include any dividend, cash, or stock that may be paid during the
 19920 life of the escrow and any stock issued through, or by reason
 19921 of, any stock split, exchange of shares, recapitalization,
 19922 merger, consolidation, reorganization, or similar combination or
 19923 subdivision in substitution for or in lieu of any stock subject
 19924 to this provision; and in case of dissolution or insolvency
 19925 during the time such securities are held in escrow, the owners
 19926 of such securities shall not participate in the assets until
 19927 after the owners of all other securities shall have been paid in
 19928 full.

19929 (2) Any securities held in escrow under this section on
 19930 November 1, 1978, may be released to the owners thereof upon
 19931 request, if satisfactory financial data is submitted to the
 19932 office department showing that the issuer is currently operating
 19933 on sound business principles and has net income in accordance



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19934 with criteria-implementing rules of the commission ~~department~~
 19935 relating to escrow of securities. At any time, the office
 19936 ~~department~~ may review any existing escrow agreement made under
 19937 this section and determine that the same may be amended in order
 19938 to permit a subsequent release of the securities upon terms and
 19939 conditions which are just and equitable as defined by said
 19940 rules.

19941 (3) When it shall appear from information available to the
 19942 office ~~department~~ that the issuer of securities held in escrow
 19943 has been dissolved or disbanded or is defunct or no longer
 19944 actively engaged in business and such securities are of no
 19945 value, the office ~~department~~, after giving at least 60 days'
 19946 notice in at least one newspaper of general circulation and
 19947 after giving interested parties opportunity for hearing, may
 19948 enter its order authorizing the destruction of said securities.
 19949 Any affected escrow agent may rely on such order and shall not
 19950 be required to determine the validity or sufficiency thereof.

19951 Section 370. Section 517.191, Florida Statutes, is amended
 19952 to read:

19953 517.191 Injunction to restrain violations.--

19954 (1) When it appears ~~shall appear~~ to the office ~~department~~,
 19955 either upon complaint or otherwise, that a person has engaged or
 19956 is about to engage in any act or practice constituting a
 19957 violation of this chapter or a rule or order hereunder, the
 19958 office ~~department~~ may investigate; and whenever it shall believe
 19959 from evidence satisfactory to it that any such person has
 19960 engaged, is engaged, or is about to engage in any act or
 19961 practice constituting a violation of this chapter or a rule or



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19962 | order hereunder, the office ~~department~~ may, in addition to any
 19963 | other remedies, bring action in the name and on behalf of the
 19964 | state against such person and any other person concerned in or
 19965 | in any way participating in or about to participate in such
 19966 | practices or engaging therein or doing any act or acts in
 19967 | furtherance thereof or in violation of this chapter to enjoin
 19968 | such person or persons from continuing such fraudulent practices
 19969 | or engaging therein or doing any act or acts in furtherance
 19970 | thereof or in violation of this chapter. In any such court
 19971 | proceedings, the office ~~department~~ may apply for, and on due
 19972 | showing be entitled to have issued, the court's subpoena
 19973 | requiring forthwith the appearance of any defendant and her or
 19974 | his employees, associated persons, or agents and the production
 19975 | of documents, books, and records that may appear necessary for
 19976 | the hearing of such petition, to testify or give evidence
 19977 | concerning the acts or conduct or things complained of in such
 19978 | application for injunction. In such action, the equity courts
 19979 | shall have jurisdiction of the subject matter, and a judgment
 19980 | may be entered awarding such injunction as may be proper.

19981 | (2) In addition to all other means provided by law for the
 19982 | enforcement of any temporary restraining order, temporary
 19983 | injunction, or permanent injunction issued in any such court
 19984 | proceedings, the court shall have the power and jurisdiction,
 19985 | upon application of the office ~~department~~, to impound and to
 19986 | appoint a receiver or administrator for the property, assets,
 19987 | and business of the defendant, including, but not limited to,
 19988 | the books, records, documents, and papers appertaining thereto.
 19989 | Such receiver or administrator, when appointed and qualified,



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19990 shall have all powers and duties as to custody, collection,
 19991 administration, winding up, and liquidation of said property and
 19992 business as shall from time to time be conferred upon her or him
 19993 by the court. In any such action, the court may issue orders
 19994 and decrees staying all pending suits and enjoining any further
 19995 suits affecting the receiver's or administrator's custody or
 19996 possession of the said property, assets, and business or, in its
 19997 discretion, may with the consent of the presiding judge of the
 19998 circuit require that all such suits be assigned to the circuit
 19999 court judge appointing the said receiver or administrator.

20000 (3) In addition to any other remedies provided by this
 20001 chapter, the office ~~department~~ may apply to the court hearing
 20002 this matter for an order of restitution whereby the defendants
 20003 in such action shall be ordered to make restitution of those
 20004 sums shown by the office ~~department~~ to have been obtained by
 20005 them in violation of any of the provisions of this chapter.
 20006 Such restitution shall, at the option of the court, be payable
 20007 to the administrator or receiver appointed pursuant to this
 20008 section or directly to the persons whose assets were obtained in
 20009 violation of this chapter.

20010 Section 371. Section 517.201, Florida Statutes, is amended
 20011 to read:

20012 517.201 Investigations; examinations; subpoenas; hearings;
 20013 witnesses.--

20014 (1) The office ~~department~~:

20015 (a) May make investigations and examinations within or
 20016 outside of this state as it deems necessary:



20017 | 1. To determine whether a person has violated or is about
 20018 | to violate any provision of this chapter or a rule or order
 20019 | hereunder; or

20020 | 2. To aid in the enforcement of this chapter.

20021 | (b) May require or permit a person to file a statement in
 20022 | writing, under oath or otherwise as the office ~~department~~
 20023 | determines, as to all the facts and circumstances concerning the
 20024 | matter to be investigated.

20025 | (2) When it is proposed to conduct an investigation or
 20026 | examination, the office ~~department~~ may gather evidence in the
 20027 | matter. The office ~~department~~ may administer oaths, examine
 20028 | witnesses, and issue subpoenas.

20029 | (3) Subpoenas for witnesses whose evidence is deemed
 20030 | material to any investigation or examination may be issued by
 20031 | the office ~~department~~ under the seal of the office ~~department~~,
 20032 | or by any county court judge or clerk of the circuit court or
 20033 | county court, commanding such witnesses to be or appear before
 20034 | the office ~~department~~ at a time and place to be therein named
 20035 | and to bring such books, records, and documents as may be
 20036 | specified or to submit such books, records, and documents to
 20037 | inspection; and such subpoenas may be served by an authorized
 20038 | representative of the office ~~department~~.

20039 | (4)(a) In the event of substantial noncompliance with a
 20040 | subpoena or subpoena duces tecum issued or caused to be issued
 20041 | by the office ~~department~~ pursuant to this section, the office
 20042 | ~~department~~ may petition the circuit court of the county in which
 20043 | the person subpoenaed resides or has its principal place of
 20044 | business for an order requiring the subpoenaed person to appear



20045 | and testify and to produce such books, records, and documents as
 20046 | are specified in such subpoena duces tecum. The court may grant
 20047 | injunctive relief restraining the issuance, sale or offer for
 20048 | sale, purchase or offer to purchase, promotion, negotiation,
 20049 | advertisement, or distribution in or from offices in this state
 20050 | of securities or investments by a person or agent, employee,
 20051 | broker, partner, officer, director, or stockholder thereof, and
 20052 | may grant such other relief, including, but not limited to, the
 20053 | restraint, by injunction or appointment of a receiver, of any
 20054 | transfer, pledge, assignment, or other disposition of such
 20055 | person's assets or any concealment, alteration, destruction, or
 20056 | other disposition of subpoenaed books, records, or documents, as
 20057 | the court deems appropriate, until such person has fully
 20058 | complied with such subpoena or subpoena duces tecum and the
 20059 | office ~~department~~ has completed its investigation or
 20060 | examination. The office ~~department~~ is entitled to the summary
 20061 | procedure provided in s. 51.011, and the court shall advance the
 20062 | cause on its calendar. Costs incurred by the office ~~department~~
 20063 | to obtain an order granting, in whole or in part, such petition
 20064 | for enforcement of a subpoena or subpoena duces tecum shall be
 20065 | taxed against the subpoenaed person, and failure to comply with
 20066 | such order shall be a contempt of court.

20067 | (b) When it shall appear to the office ~~department~~ that the
 20068 | compliance with a subpoena or subpoena duces tecum issued or
 20069 | caused to be issued by the office ~~department~~ pursuant to this
 20070 | section is essential and otherwise unavailable to an
 20071 | investigation or examination, the office ~~department~~, in addition
 20072 | to the other remedies provided for herein, may, by verified



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20073 petition setting forth the facts, apply to the circuit court of
 20074 the county in which the subpoenaed person resides or has its
 20075 principal place of business for a writ of ne exeat. The court
 20076 shall thereupon direct the issuance of the writ against the
 20077 subpoenaed person requiring sufficient bond conditioned on
 20078 compliance with the subpoena or subpoena duces tecum. The court
 20079 shall cause to be endorsed on the writ a suitable amount of bond
 20080 on payment of which the person named in the writ shall be freed,
 20081 having a due regard to the nature of the case.

20082 (5) Witnesses shall be entitled to the same fees and
 20083 mileage as they may be entitled by law for attending as
 20084 witnesses in the circuit court, except where such examination or
 20085 investigation is held at the place of business or residence of
 20086 the witness.

20087 Section 372. Subsections (1) and (3) of section 517.2015,
 20088 Florida Statutes, are amended to read:

20089 517.2015 Confidentiality of information relating to
 20090 investigations and examinations.--

20091 (1)(a) Except as otherwise provided by this section,
 20092 information relative to an investigation or examination by the
 20093 office department pursuant to this chapter, including any
 20094 consumer complaint, is confidential and exempt from s. 119.07(1)
 20095 until the investigation or examination is completed or ceases to
 20096 be active. The information compiled by the office department in
 20097 such an investigation or examination shall remain confidential
 20098 and exempt from s. 119.07(1) after the office's department's
 20099 investigation or examination is completed or ceases to be active
 20100 if the office department submits the information to any law



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20101 enforcement or administrative agency or regulatory organization
 20102 for further investigation. Such information shall remain
 20103 confidential and exempt from s. 119.07(1) until that agency's or
 20104 organization's investigation is completed or ceases to be
 20105 active. For purposes of this section, an investigation or
 20106 examination shall be considered "active" so long as the office
 20107 ~~department~~ or any law enforcement or administrative agency or
 20108 regulatory organization is proceeding with reasonable dispatch
 20109 and has a reasonable good faith belief that the investigation or
 20110 examination may lead to the filing of an administrative, civil,
 20111 or criminal proceeding or to the denial or conditional grant of
 20112 a license, registration, or permit. This section shall not be
 20113 construed to prohibit disclosure of information which is
 20114 required by law to be filed with the office ~~department~~ and
 20115 which, but for the investigation or examination, would be
 20116 subject to s. 119.07(1).

20117 (b) Except as necessary for the office ~~department~~ to
 20118 enforce the provisions of this chapter, a consumer complaint and
 20119 other information relative to an investigation or examination
 20120 shall remain confidential and exempt from s. 119.07(1) after the
 20121 investigation or examination is completed or ceases to be active
 20122 to the extent disclosure would:

20123 1. Jeopardize the integrity of another active
 20124 investigation or examination.

20125 2. Reveal the name, address, telephone number, social
 20126 security number, or any other identifying number or information
 20127 of any complainant, customer, or account holder.

20128 3. Disclose the identity of a confidential source.



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20129 | 4. Disclose investigative techniques or procedures.
 20130 | 5. Reveal a trade secret as defined in s. 688.002.
 20131 | (c) In the event that office ~~department~~ personnel are or
 20132 | have been involved in an investigation or examination of such
 20133 | nature as to endanger their lives or physical safety or that of
 20134 | their families, then the home addresses, telephone numbers,
 20135 | places of employment, and photographs of such personnel,
 20136 | together with the home addresses, telephone numbers,
 20137 | photographs, and places of employment of spouses and children of
 20138 | such personnel and the names and locations of schools and day
 20139 | care facilities attended by the children of such personnel are
 20140 | confidential and exempt from s. 119.07(1).
 20141 | (d) Nothing in this section shall be construed to prohibit
 20142 | the office ~~department~~ from providing information to any law
 20143 | enforcement or administrative agency or regulatory organization.
 20144 | Any law enforcement or administrative agency or regulatory
 20145 | organization receiving confidential information in connection
 20146 | with its official duties shall maintain the confidentiality of
 20147 | the information so long as it would otherwise be confidential.
 20148 | (e) All information obtained by the office ~~department~~ from
 20149 | any person which is only made available to the office ~~department~~
 20150 | on a confidential or similarly restricted basis shall be
 20151 | confidential and exempt from s. 119.07(1). This exemption shall
 20152 | not be construed to prohibit disclosure of information which is
 20153 | required by law to be filed with the office ~~department~~ or which
 20154 | is otherwise subject to s. 119.07(1).
 20155 | (3) A privilege against civil liability is granted to a
 20156 | person who furnishes information or evidence to the office



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20157 ~~department~~, unless such person acts in bad faith or with malice
20158 in providing such information or evidence.

20159 Section 373. Section 517.221, Florida Statutes, is amended
20160 to read:

20161 517.221 Cease and desist orders.--

20162 (1) The office ~~department~~ may issue and serve upon a
20163 person a cease and desist order whenever the office ~~department~~
20164 has reason to believe that such person is violating, has
20165 violated, or is about to violate any provision of this chapter,
20166 any rule or order promulgated by the commission or office
20167 ~~department~~, or any written agreement entered into with the
20168 office ~~department~~.

20169 (2) Whenever the office ~~department~~ finds that conduct
20170 described in subsection (1) presents an immediate danger to the
20171 public requiring an immediate final order, it may issue an
20172 emergency cease and desist order reciting with particularity the
20173 facts underlying such findings. The emergency cease and desist
20174 order is effective immediately upon service of a copy of the
20175 order on the respondent named therein and remains effective for
20176 90 days. If the office ~~department~~ begins nonemergency cease and
20177 desist proceedings under subsection (1), the emergency cease and
20178 desist order remains effective until conclusion of the
20179 proceedings under ss. 120.569 and 120.57.

20180 (3) The office ~~department~~ may impose and collect an
20181 administrative fine against any person found to have violated
20182 any provision of this chapter, any rule or order promulgated by
20183 the commission or office ~~department~~, or any written agreement
20184 entered into with the office ~~department~~ in an amount not to



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20185 exceed \$5,000 for each such violation. All fines collected
20186 hereunder shall be deposited as received in the Anti-Fraud Trust
20187 Fund.

20188 Section 374. Subsection (1) of section 517.241, Florida
20189 Statutes, is amended to read:

20190 517.241 Remedies.--

20191 (1) Any person aggrieved by a final order of the office
20192 ~~department~~ may have the order reviewed as provided by chapter
20193 120, the Administrative Procedure Act.

20194 Section 375. Paragraph (c) of subsection (1) and paragraph
20195 (b) of subsection (2) of section 517.301, Florida Statutes, are
20196 amended to read:

20197 517.301 Fraudulent transactions; falsification or
20198 concealment of facts.--

20199 (1) It is unlawful and a violation of the provisions of
20200 this chapter for a person:

20201 (c) In any matter within the jurisdiction of the office
20202 ~~department~~, to knowingly and willfully falsify, conceal, or
20203 cover up, by any trick, scheme, or device, a material fact, make
20204 any false, fictitious, or fraudulent statement or
20205 representation, or make or use any false writing or document,
20206 knowing the same to contain any false, fictitious, or fraudulent
20207 statement or entry.

20208 (2) For purposes of ss. 517.311 and 517.312 and this
20209 section, the term "investment" means any commitment of money or
20210 property principally induced by a representation that an
20211 economic benefit may be derived from such commitment, except



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20212 | that the term "investment" does not include a commitment of
20213 | money or property for:

20214 | (b) The purchase of tangible personal property through a
20215 | person not engaged in telephone solicitation, where said
20216 | property is offered and sold in accordance with the following
20217 | conditions:

20218 | 1. There are no specific representations or guarantees
20219 | made by the offeror or seller as to the economic benefit to be
20220 | derived from the purchase;

20221 | 2. The tangible property is delivered to the purchaser
20222 | within 30 days after sale, except that such 30-day period may be
20223 | extended by the office ~~department~~ if market conditions so
20224 | warrant; and

20225 | 3. The seller has offered the purchaser a full refund
20226 | policy in writing, exercisable by the purchaser within 10 days
20227 | of the date of delivery of such tangible personal property,
20228 | except that the amount of such refund in no event shall exceed
20229 | the bid price in effect at the time the property is returned to
20230 | the seller. If the applicable sellers' market is closed at the
20231 | time the property is returned to the seller for a refund, the
20232 | amount of such refund shall be based on the bid price for such
20233 | property at the next opening of such market.

20234 | Section 376. Subsection (3) of section 517.302, Florida
20235 | Statutes, is amended to read:

20236 | 517.302 Criminal penalties; alternative fine; Anti-Fraud
20237 | Trust Fund; time limitation for criminal prosecution.--

20238 | (3) In lieu of a fine otherwise authorized by law, a
20239 | person who has been convicted of or who has pleaded guilty or no



20240 | contest to having engaged in conduct in violation of the
 20241 | provisions of this chapter may be sentenced to pay a fine that
 20242 | does not exceed the greater of three times the gross value
 20243 | gained or three times the gross loss caused by such conduct,
 20244 | plus court costs and the costs of investigation and prosecution
 20245 | reasonably incurred.

20246 | (a) There is created within the office ~~department~~ a trust
 20247 | fund to be known as the Anti-Fraud Trust Fund. Any amounts
 20248 | assessed as costs of investigation and prosecution under this
 20249 | subsection shall be deposited in the trust fund. Funds deposited
 20250 | in such trust fund shall be used, when authorized by
 20251 | appropriation, for investigation and prosecution of
 20252 | administrative, civil, and criminal actions arising under the
 20253 | provisions of this chapter. Funds may also be used to improve
 20254 | the public's awareness and understanding of prudent investing.

20255 | (b) The office ~~department~~ shall report to the Executive
 20256 | Office of the Governor annually by November 15, the amounts
 20257 | deposited into the Anti-Fraud Trust Fund during the previous
 20258 | fiscal year. The Executive Office of the Governor shall
 20259 | distribute these reports to the President of the Senate and the
 20260 | Speaker of the House of Representatives.

20261 | Section 377. Subsections (1) and (2) of section 517.313,
 20262 | Florida Statutes, are amended to read:

20263 | 517.313 Destroying certain records; reproduction.--

20264 | (1) The commission and office may ~~department is authorized~~
 20265 | ~~to~~ photograph, microphotograph, or reproduce on film or prints
 20266 | documents, records, data, and information of a permanent
 20267 | character.



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20268 (2) The commission and office may ~~department is authorized~~
 20269 ~~to~~ destroy any of said documents after audit ~~of the office~~ has
 20270 been completed for the period embracing the dates of said
 20271 instruments, after complying with the provisions of chapter 119.

20272 Section 378. Section 517.315, Florida Statutes, is amended
 20273 to read:

20274 517.315 Fees.--All fees and charges of any nature
 20275 collected by the office ~~department~~ pursuant to this chapter,
 20276 except the fees and charges collected pursuant to s. 517.131,
 20277 shall be paid into the State Treasury and credited to the
 20278 General Revenue Fund; and an appropriation shall be made
 20279 annually of necessary funds for the administration of the
 20280 provisions of this chapter.

20281 Section 379. Section 517.32, Florida Statutes, is amended
 20282 to read:

20283 517.32 Exemption from excise tax, certain obligations to
 20284 pay.--There shall be exempt from all excise taxes imposed by
 20285 chapter 201 all promissory notes, nonnegotiable notes, and other
 20286 written obligations to pay money bearing dates subsequent to
 20287 July 1, 1957, when the maker thereof is a security dealer
 20288 registered by the office ~~department~~ under this chapter and when
 20289 such promissory note, nonnegotiable note or notes, or other
 20290 written obligation to pay money shall be for the duration of 30
 20291 days or less and secured by pledge or deposit, as collateral
 20292 security for the payment thereof, security or securities as
 20293 defined in s. 517.021, provided all excise taxes imposed by
 20294 chapter 201 shall have been paid upon such collateral security.



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20295 Section 380. Section 520.996, Florida Statutes, is amended
20296 to read:

20297 520.996 Investigations and complaints.--

20298 (1)(a) The office ~~department~~ or its agent may, at
20299 intermittent periods, make such investigations and examinations
20300 of any licensee or other person as it deems necessary to
20301 determine compliance with this chapter. For such purposes, it
20302 may examine the books, accounts, records, and other documents or
20303 matters of any licensee or other person. It shall have the power
20304 to compel the production of all relevant books, records, and
20305 other documents and materials relative to an examination or
20306 investigation. Such investigations and examinations shall not
20307 be made more often than once during any 12-month period unless
20308 the office ~~department~~ has good and sufficient reason to believe
20309 the licensee is not complying with the provisions of this
20310 chapter. Such examination fee shall be calculated on an hourly
20311 basis and shall be rounded to the nearest hour.

20312 (b) The office ~~department~~ shall conduct all examinations
20313 at a convenient location in this state unless the office
20314 ~~department~~ determines that it is more effective or cost-
20315 efficient to perform an examination at the licensee's out-of-
20316 state location. For an examination performed at the licensee's
20317 out-of-state location, the licensee shall pay the travel expense
20318 and per diem subsistence at the rate provided by law for up to
20319 thirty 8-hour days per year for each examiner who participates
20320 in such an examination. However, if the examination involves or
20321 reveals possible fraudulent conduct of the licensee, the
20322 licensee shall pay the travel expenses and per diem subsistence



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20323 provided by law, without limitation, for each participating
20324 examiner.

20325 (2) The examination expenses incurred by the office
20326 ~~department~~ in each examination shall be paid by the licensee
20327 examined. The expenses of the office ~~department~~ incurred in
20328 each examination of a home improvement finance seller or of an
20329 employee representing such home improvement finance seller shall
20330 be paid by the home improvement finance seller. Expenses
20331 incurred for each examination of a sales finance company shall
20332 be paid by it. The examination expenses shall be paid by such
20333 licensee examined or such other person obligated to pay such
20334 examination expenses within 30 days after demand therefor by the
20335 office ~~department~~.

20336 (3) Any retail buyer or owner having reason to believe
20337 that the provisions of this chapter have been violated may file
20338 with the office or the Department of Financial Services a
20339 written complaint setting forth the details of such alleged
20340 violations and the office ~~department~~ upon receipt of such
20341 complaint, may inspect the pertinent books, records, letters,
20342 and contracts of the licensee and of the seller involved,
20343 relating to such specific written complaint.

20344 Section 381. Section 520.9965, Florida Statutes, is
20345 amended to read:

20346 520.9965 Confidentiality of information relating to
20347 investigations and examinations.--

20348 (1)(a) Except as otherwise provided by this section,
20349 information relative to an investigation or examination by the
20350 office ~~department~~ pursuant to this chapter, including any



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20351 | consumer complaint received by the office or the Department of
20352 | Financial Services, is confidential and exempt from s. 119.07(1)
20353 | until the investigation or examination is completed or ceases to
20354 | be active. The information compiled by the office ~~department~~ in
20355 | such an investigation or examination shall remain confidential
20356 | and exempt from s. 119.07(1) after the office's ~~department's~~
20357 | investigation or examination is completed or ceases to be active
20358 | if the office ~~department~~ submits the information to any law
20359 | enforcement or administrative agency for further investigation.
20360 | Such information shall remain confidential and exempt from s.
20361 | 119.07(1) until that agency's investigation is completed or
20362 | ceases to be active. For purposes of this section, an
20363 | investigation or examination shall be considered "active" so
20364 | long as the office ~~department~~ or any law enforcement or
20365 | administrative agency is proceeding with reasonable dispatch and
20366 | has a reasonable good faith belief that the investigation or
20367 | examination may lead to the filing of an administrative, civil,
20368 | or criminal proceeding or to the denial or conditional grant of
20369 | a license, registration, or permit. This section shall not be
20370 | construed to prohibit disclosure of information which is
20371 | required by law to be filed with the office ~~department~~ and
20372 | which, but for the investigation or examination, would be
20373 | subject to s. 119.07(1).

20374 | (b) Except as necessary for the office ~~department~~ to
20375 | enforce the provisions of this chapter, a consumer complaint and
20376 | other information relative to an investigation or examination
20377 | shall remain confidential and exempt from s. 119.07(1) after the



20378 investigation or examination is completed or ceases to be active
20379 to the extent disclosure would:

20380 1. Jeopardize the integrity of another active
20381 investigation or examination.

20382 2. Reveal the name, address, telephone number, social
20383 security number, or any other identifying number or information
20384 of any complainant, customer, or account holder.

20385 3. Disclose the identity of a confidential source.

20386 4. Disclose investigative techniques or procedures.

20387 5. Reveal a trade secret as defined in s. 688.002.

20388 (c) In the event that office ~~department~~ personnel or
20389 personnel of the former Department of Banking and Finance are or
20390 have been involved in an investigation or examination of such
20391 nature as to endanger their lives or physical safety or that of
20392 their families, then the home addresses, telephone numbers,
20393 places of employment, and photographs of such personnel,
20394 together with the home addresses, telephone numbers,
20395 photographs, and places of employment of spouses and children of
20396 such personnel and the names and locations of schools and day
20397 care facilities attended by the children of such personnel are
20398 confidential and exempt from s. 119.07(1).

20399 (d) Nothing in this section shall be construed to prohibit
20400 the office ~~department~~ from providing information to any law
20401 enforcement or administrative agency. Any law enforcement or
20402 administrative agency receiving confidential information in
20403 connection with its official duties shall maintain the
20404 confidentiality of the information so long as it would otherwise
20405 be confidential.



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20406 (e) All information obtained by the office ~~department~~ from
 20407 any person which is only made available to the office ~~department~~
 20408 on a confidential or similarly restricted basis shall be
 20409 confidential and exempt from s. 119.07(1). This exemption shall
 20410 not be construed to prohibit disclosure of information which is
 20411 required by law to be filed with the office ~~department~~ or which
 20412 is otherwise subject to s. 119.07(1).

20413 (2) If information subject to subsection (1) is offered in
 20414 evidence in any administrative, civil, or criminal proceeding,
 20415 the presiding officer may, in his or her discretion, prevent the
 20416 disclosure of information which would be confidential pursuant
 20417 to paragraph (1)(b).

20418 (3) A privilege against civil liability is granted to a
 20419 person who furnishes information or evidence to the office
 20420 ~~department~~, unless such person acts in bad faith or with malice
 20421 in providing such information or evidence.

20422 Section 382. Paragraph (b) of subsection (2) of section
 20423 537.008, Florida Statutes, is amended to read:

20424 537.008 Title loan agreement.--

20425 (2) The following information shall also be printed on all
 20426 title loan agreements:

20427 (b) The name and address of the Department of Financial
 20428 Services as well as a telephone number to which consumers may
 20429 address complaints.

20430 Section 383. Section 537.009, Florida Statutes, is amended
 20431 to read:

20432 537.009 Recordkeeping; reporting; safekeeping of
 20433 property.--



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20434 (1) Every title loan lender shall maintain, at the
 20435 lender's title loan office, such books, accounts, and records of
 20436 the business conducted under the license issued for such place
 20437 of business as will enable the office ~~department~~ to determine
 20438 the licensee's compliance with this act.

20439 (2) The office ~~department~~ may authorize the maintenance of
 20440 books, accounts, and records at a location other than the
 20441 lender's title loan office. The office ~~department~~ may require
 20442 books, accounts, and records to be produced and available at a
 20443 reasonable and convenient location in this state within a
 20444 reasonable period of time after such a request.

20445 (3) The title loan lender shall maintain the original copy
 20446 of each completed title loan agreement on the title loan office
 20447 premises, and shall not obliterate, discard, or destroy any such
 20448 original copy, for a period of at least 2 years after making the
 20449 final entry on any loan recorded in such office or after an a
 20450 ~~department~~ examination by the Office of Financial Institutions
 20451 and Securities Regulation, whichever is later.

20452 (4) Loan property which is delivered to a title loan
 20453 lender shall be securely stored and maintained at the title loan
 20454 office unless the loan property has been forwarded to the
 20455 appropriate state agency for the purpose of having a lien
 20456 recorded or deleted.

20457 (5) The commission ~~department~~ may prescribe by rule the
 20458 books, accounts, and records, and the minimum information to be
 20459 shown in the books, accounts, and records, of licensees so that
 20460 such records will enable the office ~~department~~ to determine
 20461 compliance with the provisions of this act.



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20462 Section 384. Subsection (2) and paragraph (c) of
20463 subsection (4) of section 537.011, Florida Statutes, are amended
20464 to read:

20465 537.011 Title loan charges.--

20466 (2) The annual percentage rate that may be charged for a
20467 title loan may equal, but not exceed, the annual percentage rate
20468 that must be computed and disclosed as required by the federal
20469 Truth in Lending Act and Regulation Z of the Board of Governors
20470 of the Federal Reserve System. The maximum annual percentage
20471 rate of interest that may be charged is 12 times the maximum
20472 monthly rate, and the maximum monthly rate must be computed on
20473 the basis of one-twelfth of the annual rate for each full month.
20474 The commission ~~Department of Banking and Finance~~ shall establish
20475 by rule the rate for each day in a fraction of a month when the
20476 period for which the charge is computed is more or less than 1
20477 month.

20478 (4) Any interest contracted for or received, directly or
20479 indirectly, by a title loan lender, or an agent of the title
20480 loan lender, in excess of the amounts authorized under this
20481 chapter is prohibited and may not be collected by the title loan
20482 lender or an agent of the title loan lender.

20483 (c) The office ~~department~~ may order a title loan lender,
20484 or an agent of the title loan lender, to comply with the
20485 provisions of paragraphs (a) and (b).

20486 Section 385. Paragraphs (b), (f), and (n) of subsection
20487 (1) of section 537.013, Florida Statutes, are amended to read:

20488 537.013 Prohibited acts.--



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20489 (1) A title loan lender, or any agent or employee of a
20490 title loan lender, shall not:

20491 (b) Refuse to allow the office ~~department~~ to inspect
20492 completed title loan agreements, extensions of such agreements,
20493 or loan property during the ordinary operating hours of the
20494 title loan lender's business or other times acceptable to both
20495 parties.

20496 (f) Fail to exercise reasonable care, as defined by
20497 commission ~~department~~ rule, in the safekeeping of loan property
20498 or of titled personal property repossessed pursuant to this act.

20499 (n) Act as a title loan lender under this act within a
20500 place of business in which the licensee solicits or engages in
20501 business outside the scope of this act if the office ~~department~~
20502 determines that the licensee's operation of and conduct
20503 pertaining to such other business results in an evasion of this
20504 act. Upon making such a determination, the office ~~department~~
20505 shall order the licensee to cease and desist from such evasion;
20506 provided, no licensee shall engage in the pawnbroker business.

20507 Section 386. Section 537.016, Florida Statutes, is amended
20508 to read:

20509 537.016 Subpoenas; enforcement actions; rules.--

20510 (1) The office ~~department~~ may issue and serve subpoenas to
20511 compel the attendance of witnesses and the production of
20512 documents, papers, books, records, and other evidence before the
20513 office ~~department~~ in any matter pertaining to this act. The
20514 office ~~department~~ may administer oaths and affirmations to any
20515 person whose testimony is required. If any person refuses to
20516 testify; produce books, records, and documents; or otherwise



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20517 | refuses to obey a subpoena issued under this section, the office
20518 | ~~department~~ may enforce the subpoena in the same manner as
20519 | subpoenas issued under the Administrative Procedure Act are
20520 | enforced. Witnesses are entitled to the same fees and mileage as
20521 | they are entitled to by law for attending as witnesses in the
20522 | circuit court, unless such examination or investigation is held
20523 | at the place of business or residence of the witness.

20524 | (2) In addition to any other powers conferred upon the
20525 | office ~~department~~ to enforce or administer this act, the office
20526 | ~~department~~ may:

20527 | (a) Bring an action in any court of competent jurisdiction
20528 | to enforce or administer this act, any rule or order adopted
20529 | under this act, or any written agreement entered into with the
20530 | office ~~department~~. In such action, the office ~~department~~ may
20531 | seek any relief at law or equity, including a temporary or
20532 | permanent injunction, appointment of a receiver or
20533 | administrator, or an order of restitution.

20534 | (b) Issue and serve upon a person an order requiring such
20535 | person to cease and desist and take corrective action whenever
20536 | the office ~~department~~ finds that such person is violating, has
20537 | violated, or is about to violate any provision of this act, any
20538 | rule or order adopted under this act, or any written agreement
20539 | entered into with the office ~~department~~.

20540 | (c) Whenever the office ~~department~~ finds that conduct
20541 | described in paragraph (b) presents an immediate danger to the
20542 | public health, safety, or welfare requiring an immediate final
20543 | order, the office ~~department~~ may issue an emergency cease and
20544 | desist order reciting with particularity the facts underlying



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20545 such findings. The emergency cease and desist order is effective
 20546 immediately upon service of a copy of the order on the
 20547 respondent named in the order and shall remain effective for 90
 20548 days. If the office ~~department~~ begins nonemergency proceedings
 20549 under paragraph (b), the emergency cease and desist order
 20550 remains effective until the conclusion of the proceedings under
 20551 ss. 120.569 and 120.57.

20552 (3) The commission ~~department~~ may adopt rules to
 20553 administer this act.

20554 Section 387. Section 537.017, Florida Statutes, is amended
 20555 to read:

20556 537.017 Investigations and complaints.--

20557 (1) The office ~~department~~ may make any investigation and
 20558 examination of any licensee or other person the office
 20559 ~~department~~ deems necessary to determine compliance with this
 20560 act. For such purposes, the office ~~department~~ may examine the
 20561 books, accounts, records, and other documents or matters of any
 20562 licensee or other person. The office ~~department~~ may compel the
 20563 production of all relevant books, records, and other documents
 20564 and materials relative to an examination or investigation.
 20565 Examinations shall not be made more often than once during any
 20566 12-month period unless the office ~~department~~ has reason to
 20567 believe the licensee is not complying with the provisions of
 20568 this act.

20569 (2) The office ~~department~~ shall conduct all examinations
 20570 at a convenient location in this state unless the office
 20571 ~~department~~ determines that it is more effective or cost-
 20572 efficient to perform an examination at the licensee's out-of-



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20573 state location. For an examination performed at the licensee's
 20574 out-of-state location, the licensee shall pay the travel expense
 20575 and per diem subsistence at the rate provided by law for up to
 20576 thirty 8-hour days per year for each office ~~department~~ examiner
 20577 who participates in such an examination. However, if the
 20578 examination involves or reveals possible fraudulent conduct by
 20579 the licensee, the licensee shall pay the travel expenses and per
 20580 diem subsistence provided by law, without limitation, for each
 20581 participating examiner.

20582 (3) Any person having reason to believe that any provision
 20583 of this act has been violated may file with the Department of
 20584 Financial Services or the office a written complaint setting
 20585 forth the details of such alleged violation, and the office
 20586 ~~department~~ may investigate such complaint.

20587 Section 388. Section 559.725, Florida Statutes, is amended
 20588 to read:

20589 559.725 Consumer complaints; administrative duties.--

20590 (1) The Division of Consumer Services of the Department of
 20591 Agriculture and Consumer Services shall serve as the registry
 20592 for receiving and maintaining records of inquiries,
 20593 correspondence, and complaints from consumers concerning any and
 20594 all persons who collect debts, including consumer collection
 20595 agencies.

20596 (2) The division shall classify complaints by type and
 20597 identify the number of written complaints against persons
 20598 collecting or attempting to collect debts in this state,
 20599 including credit grantors collecting their own debts, debt
 20600 collectors generally, and, specifically, consumer collection



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20601 agencies as distinguished from other persons who collect debts
20602 such as commercial debt collection agencies regulated under part
20603 V of this chapter. The division shall identify the nature and
20604 number of various kinds of written complaints, including
20605 specifically those alleging violations of s. 559.72.

20606 (3) The division shall inform and furnish relevant
20607 information to the appropriate regulatory body of the state, or
20608 The Florida Bar in the case of attorneys, when any consumer debt
20609 collector exempt from registration under this part has been
20610 named in five or more written consumer complaints alleging
20611 violations of s. 559.72 within a 12-month period.

20612 (4) The division shall furnish a form to each complainant
20613 whose complaint concerns an alleged violation of s. 559.72 by a
20614 consumer collection agency. Such form may be filed with the
20615 office ~~Department of Banking and Finance~~. The form shall
20616 identify the accused consumer collection agency and provide for
20617 the complainant's summary of the nature of the alleged violation
20618 and facts which allegedly support the complaint. The form shall
20619 include a provision for the complainant to state under oath
20620 before a notary public that the allegations therein made are
20621 true.

20622 (5) Upon receipt of such sworn complaint, the office
20623 ~~department~~ shall promptly furnish a copy of the sworn complaint
20624 to the accused consumer collection agency.

20625 (6) The office ~~department~~ shall investigate sworn
20626 complaints by direct written communication with the complainant
20627 and the affected consumer collection agency. In addition, the



20628 | office ~~department~~ shall attempt to resolve each sworn complaint
20629 | and shall record the resolution of such complaints.

20630 | (7) Periodically, the office ~~department~~ shall identify
20631 | consumer collection agencies that have unresolved sworn consumer
20632 | complaints from five or more different consumers within a 12-
20633 | month period under the provisions of this part.

20634 | (8) The office ~~department~~ shall issue a written warning
20635 | notice to the accused consumer collection agency if the office
20636 | ~~department~~ is unable to resolve all such sworn complaints and
20637 | fewer than five unresolved complaints remain. Such notice shall
20638 | include a statement that the warning may constitute evidence in
20639 | any future investigation of similar complaints against that
20640 | agency and in any future administrative determination of the
20641 | imposition of other administrative remedies available to the
20642 | office ~~department~~ under this part.

20643 | (9) The office ~~department~~ may issue a written reprimand
20644 | when five or more such unresolved sworn complaints against a
20645 | consumer collection agency collectively fall short of
20646 | constituting apparent repeated violations that warrant more
20647 | serious administrative sanctions. Such reprimand shall include a
20648 | statement that the reprimand may constitute evidence in any
20649 | future investigation of similar complaints against that agency
20650 | and in any future administrative determination of the imposition
20651 | of other administrative remedies available to the office
20652 | ~~department~~.

20653 | (10) The office ~~department~~ shall issue a notice of intent
20654 | either to revoke or suspend the registration or to impose an
20655 | administrative fine when the office ~~department~~ preliminarily



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20656 determines that repeated violations of s. 559.72 by an accused
20657 registrant have occurred which would warrant more serious
20658 administrative sanctions being imposed under this part. The
20659 office department shall advise each registrant of the right to
20660 require an administrative hearing under chapter 120, prior to
20661 the agency's final action on the matter as authorized by s.
20662 559.730.

20663 (11) The office department shall advise the appropriate
20664 state attorney, or the Attorney General in the case of an out-
20665 of-state consumer debt collector, of any determination by the
20666 office department of a violation of the requirements of this
20667 part by any consumer collection agency which is not registered
20668 as required by this part. The office department shall furnish
20669 the state attorney or Attorney General with the office's
20670 ~~department's~~ information concerning the alleged violations of
20671 such requirements.

20672 Section 389. Section 560.128, Florida Statutes, is amended
20673 to read:

20674 560.128 Consumer disclosure.--

20675 (1) Every money transmitter and authorized vendor shall
20676 provide each consumer of a money transmitter transaction a toll-
20677 free telephone number for the purpose of consumer contacts;
20678 however, in lieu of such toll-free telephone number, the money
20679 transmitter or authorized vendor may provide the address and
20680 telephone number of the office and the Division of Consumer
20681 Services of the Department of Financial Services department.

20682 (2) The commission department may by rule require every
20683 money transmitter to display its registration at each location,



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20684 including the location of each person designated by the
20685 registrant as an authorized vendor, where the money transmitter
20686 engages in the activities authorized by the registration.

20687 Section 390. Section 560.129, Florida Statutes, is amended
20688 to read:

20689 560.129 Confidentiality.--

20690 ~~(1) For purposes of this section, the definitions~~
20691 ~~contained in s. 560.103, as created by chapter 94-238, Laws of~~
20692 ~~Florida, and chapter 94-354, Laws of Florida, apply.~~

20693 (1)(2)(a) Except as otherwise provided in this section,
20694 all information concerning an investigation or examination by
20695 the office department pursuant to this chapter, including any
20696 consumer complaint received by the office or the Department of
20697 Financial Services, is confidential and exempt from s. 119.07(1)
20698 and s. 24(a), Art. I of the State Constitution until the
20699 investigation or examination ceases to be active. For purposes
20700 of this section, an investigation or examination is considered
20701 "active" so long as the office department or any other
20702 administrative, regulatory, or law enforcement agency of any
20703 jurisdiction is proceeding with reasonable dispatch and has a
20704 reasonable good faith belief that action may be initiated by the
20705 office department or other administrative, regulatory, or law
20706 enforcement agency.

20707 (b) Notwithstanding paragraph (a), all information
20708 obtained by the office department in the course of its
20709 investigation or examination which is a trade secret, as defined
20710 in s. 688.002, or which is personal financial information shall
20711 remain confidential. If any administrative, civil, or criminal



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20712 proceeding against the money transmitter or a money transmitter-
 20713 affiliated party is initiated and the office ~~department~~ seeks to
 20714 use matter that a registrant believes to be a trade secret or
 20715 personal financial information, such records shall be subject to
 20716 an in camera review by the administrative law judge, if the
 20717 matter is before the Division of Administrative Hearings, or a
 20718 judge of any court of this state, any other state, or the United
 20719 States, as appropriate, for the purpose of determining if the
 20720 matter is a trade secret or is personal financial information.
 20721 If it is determined that the matter is a trade secret, the
 20722 matter shall remain confidential. If it is determined that the
 20723 matter is personal financial information, the matter shall
 20724 remain confidential unless the administrative law judge or judge
 20725 determines that, in the interests of justice, the matter should
 20726 become public.

20727 (c) If any administrative, civil, or criminal proceeding
 20728 against the money transmitter or a money transmitter-affiliated
 20729 party results in an acquittal or the dismissal of all of the
 20730 allegations against the money transmitter or a money
 20731 transmitter-affiliated party, upon the request of any party, the
 20732 administrative law judge or the judge may order all or a portion
 20733 of the record of the proceeding to be sealed, and it shall
 20734 thereafter be confidential and exempt from s. 119.07(1) and s.
 20735 24(a), Art. I of the State Constitution.

20736 (d) Except as necessary for the office ~~department~~ or any
 20737 other administrative, regulatory, or law enforcement agency of
 20738 any jurisdiction to enforce the provisions of this chapter or
 20739 the law of any other state or the United States, a consumer



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20740 complaint and other information concerning an investigation or
 20741 examination shall remain confidential and exempt from s.
 20742 119.07(1) and s. 24(a), Art. I of the State Constitution after
 20743 the investigation or examination ceases to be active to the
 20744 extent that disclosure would:

20745 1. Jeopardize the integrity of another active
 20746 investigation;

20747 2. Reveal personal financial information;

20748 3. Reveal the identity of a confidential source; or

20749 4. Reveal investigative techniques or procedures.

20750 (2)~~(3)~~ This section does not prevent or restrict:

20751 (a) Furnishing records or information to any appropriate
 20752 regulatory agency if such agency adheres to the confidentiality
 20753 provisions of the code;

20754 (b) Furnishing records or information to an independent
 20755 third party or a certified public accountant who has been
 20756 approved by the office ~~department~~ to conduct an examination
 20757 under s. 560.118(1)(b), if the independent third party or
 20758 certified public accountant adheres to the confidentiality
 20759 provisions of the code; or

20760 (c) Reporting any suspected criminal activity, with
 20761 supporting documents and information, to appropriate law
 20762 enforcement or prosecutorial agencies.

20763 (3)~~(4)~~ All quarterly reports submitted by a money
 20764 transmitter to the office ~~department~~ under s. 560.118(2)(b) are
 20765 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 20766 of the State Constitution.



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20767 ~~(4)~~(5) Examination reports, investigatory records,
20768 applications, and related information compiled by the office
20769 ~~department~~, or photographic copies thereof, shall be retained by
20770 the office ~~department~~ for a period of at least 10 years.

20771 ~~(5)~~(6) Any person who willfully discloses information made
20772 confidential by this section commits a felony of the third
20773 degree, punishable as provided in s. 775.082 or s. 775.083.

20774 Section 391. Subsection (3), paragraph (b) of subsection
20775 (19), paragraph (b) of subsection(22), and subsection (23) of
20776 section 560.404, Florida Statutes, are amended to read:

20777 560.404 Requirements for deferred presentment
20778 transactions.--

20779 (3) Each written agreement shall contain the following
20780 information, in addition to any information the commission
20781 ~~department~~ requires by rule:

20782 (a) The name or trade name, address, and telephone number
20783 of the deferred presentment provider and the name and title of
20784 the person who signs the agreement on behalf of the deferred
20785 presentment provider.

20786 (b) The date the deferred presentment transaction was
20787 made.

20788 (c) The amount of the drawer's check.

20789 (d) The length of deferral period.

20790 (e) The last day of the deferment period.

20791 (f) The address and telephone number of the office and the
20792 Division of Consumer Services of the Department of Financial
20793 Services ~~department~~.



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20794 (g) A clear description of the drawer's payment
20795 obligations under the deferred presentment transaction.

20796 (h) The transaction number assigned by the office's
20797 ~~department's~~ database.

20798 (19) A deferred presentment provider may not enter into a
20799 deferred presentment transaction with a person who has an
20800 outstanding deferred presentment transaction with that provider
20801 or with any other deferred presentment provider, or with a
20802 person whose previous deferred presentment transaction with that
20803 provider or with any other provider has been terminated for less
20804 than 24 hours. The deferred presentment provider must verify
20805 such information as follows:

20806 (b) The deferred presentment provider shall access the
20807 office's ~~department's~~ database established pursuant to
20808 subsection (23) and shall verify whether any other deferred
20809 presentment provider has an outstanding deferred presentment
20810 transaction with a particular person or has terminated a
20811 transaction with that person within the previous 24 hours. Prior
20812 to the time that the office ~~department~~ has implemented such a
20813 database, the deferred presentment provider may rely upon the
20814 written verification of the drawer as provided in subsection
20815 (20).

20816 (22)

20817 (b) At the commencement of the grace period, the deferred
20818 presentment provider shall provide the drawer:

20819 1. Verbal notice of the availability of the grace period
20820 consistent with the written notice in subsection (20).



20821 2. A list of approved consumer credit counseling agencies
 20822 prepared by the office ~~department~~. ~~The department shall prepare~~
 20823 ~~the list by October 1, 2001~~. The office ~~department~~ list shall
 20824 include nonprofit consumer credit counseling agencies affiliated
 20825 with the National Foundation for Credit Counseling which provide
 20826 credit counseling services to Florida residents in person, by
 20827 telephone, or through the Internet. The office ~~department~~ list
 20828 must include phone numbers for the agencies, the counties served
 20829 by the agencies, and indicate the agencies that provide
 20830 telephone counseling and those that provide Internet counseling.
 20831 The office ~~department~~ shall update the list at least once each
 20832 year.

20833 3. The following notice in at least 14-point type in
 20834 substantially the following form:

20835
 20836 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM OF
 20837 YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL 60 DAYS,
 20838 UNTIL [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST COMPLETE
 20839 CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE
 20840 LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO
 20841 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY
 20842 THE AGENCY. THE COUNSELING MAY BE IN PERSON, BY TELEPHONE, OR
 20843 THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN SEVEN (7) DAYS,
 20844 BY [DATE], THAT YOU HAVE MADE AN APPOINTMENT WITH SUCH A
 20845 CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US
 20846 WITHIN SIXTY (60) DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE
 20847 CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH
 20848 THE AGENCY. IF YOU FAIL TO PROVIDE EITHER THE 7-DAY OR 60-DAY



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20849 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE
 20850 COUNSELING WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT
 20851 YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL
 20852 MEANS TO ENFORCE THE DEBT.

20853 (23) On or before March 1, 2002, the office ~~department~~
 20854 shall implement a common database with real-time access through
 20855 an Internet connection for deferred presentment providers, as
 20856 provided in this subsection. The database must be accessible to
 20857 the office ~~department~~ and the deferred presentment providers to
 20858 verify whether any deferred presentment transactions are
 20859 outstanding for a particular person. Deferred presentment
 20860 providers shall submit such data before entering into each
 20861 deferred presentment transaction in such format as the
 20862 commission ~~department~~ shall require by rule, including the
 20863 drawer's name, social security number or employment
 20864 authorization alien number, address, driver's license number,
 20865 amount of the transaction, date of transaction, the date that
 20866 the transaction is closed, and such additional information as is
 20867 required by the commission ~~department~~. The commission ~~department~~
 20868 may impose a fee not to exceed \$1 per transaction for data
 20869 required to be submitted by a deferred presentment provider. A
 20870 deferred presentment provider may rely on the information
 20871 contained in the database as accurate and is not subject to any
 20872 administrative penalty or civil liability as a result of relying
 20873 on inaccurate information contained in the database. The
 20874 commission ~~department~~ may adopt rules to administer and enforce
 20875 the provisions of this section and to assure that the database



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20876 is used by deferred presentment providers in accordance with
20877 this section.

20878 Section 392. Section 609.05, Florida Statutes, is amended
20879 to read:

20880 609.05 Qualification with Office of Financial Institutions
20881 and Securities Regulation ~~Department of Banking and~~
20882 ~~Finance~~.--Before any person may offer for sale, barter or sell
20883 any unit, share, contract, note, bond, mortgage, oil or mineral
20884 lease or other security of an association doing business under
20885 what is known as a "declaration of trust" in this state, such
20886 person shall procure from the Office of Financial Institutions
20887 and Securities Regulation of the Financial Services Commission
20888 ~~Department of Banking and Finance~~ a permit to offer for sale and
20889 sell such securities, which permit shall be applied for and
20890 granted under the same conditions as like permits are applied
20891 for and granted to corporations.

20892 Section 393. Section 655.012, Florida Statutes, is amended
20893 to read:

20894 655.012 General supervisory powers ~~of the department;~~
20895 rulemaking; seal.--

20896 (1) In addition to other powers conferred by the financial
20897 institutions codes, the office ~~department~~ shall have:

20898
20899 (a)~~(1)~~ General supervision over all state financial
20900 institutions, their subsidiaries, and service corporations.

20901 (b)~~(2)~~ Access to all books and records of all persons over
20902 whom the office ~~department~~ exercises general supervision as is
20903 necessary for the performance of the duties and functions of the



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20904 | office department prescribed by the financial institutions
20905 | codes.

20906 | ~~(c)(3)~~ Power to issue orders and declaratory statements,
20907 | disseminate information, and otherwise exercise its discretion
20908 | to effectuate the purposes, policies, and provisions of the
20909 | financial institutions codes.

20910 | (2) In addition to other powers conferred by the financial
20911 | institutions codes, the commission shall have the power and to
20912 | adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
20913 | the provisions of such codes.

20914 | (3) The office shall have an official seal by which its
20915 | proceedings are authenticated.

20916 | Section 394. This act shall not affect the validity of any
20917 | administrative or judicial action involving the Department of
20918 | Banking and Finance or the Department of Insurance occurring
20919 | prior to, or pending on, January 7, 2003, and the Department of
20920 | Financial Services or the Financial Services Commission, or the
20921 | respective office, shall be substituted as a party in interest
20922 | on any such pending action.

20923 | Section 395. Any certificate of authority, license, form,
20924 | rate, or other filing or action that was approved or authorized
20925 | by the Department of Insurance or the Department of Banking and
20926 | Finance, or that was otherwise lawfully in use prior to January
20927 | 7, 2003, may continue to be used or be effective as originally
20928 | authorized or permitted, until the Chief Financial Officer, the
20929 | Department of Financial Services, the Financial Services
20930 | Commission, or either of the respective offices, otherwise
20931 | prescribes.



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20932 Section 396. In the event of any conflict between any
 20933 provision of this act and any provision of other legislation
 20934 enacted during the 2003 Regular Session, the provisions of this
 20935 act shall control.

20936 Section 397. This act shall take effect upon becoming a
 20937 law.

20938