



CHAMBER ACTION

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The Committee on Insurance 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. 20.055, 103.091, 110.1127, 112.215, 215.555, 215.559, 287.059, 288.901, 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, 624.316, 624.317, 624.404, 624.4072,



29 | 624.413, 624.424, 624.476, 624.477, 625.01115, 625.121,
30 | 625.151, 625.317, 625.325, and 626.015, F.S., to revise
31 | and conform; amending s. 20.121, F.S., to revise and
32 | conform; authorizing the Division of Consumer Services to
33 | request certain information; providing procedures and
34 | requirements for providing such information; authorizing
35 | the division to impose administrative penalties; requiring
36 | the division to report certain violations; authorizing the
37 | Department 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, 626.9545, 626.9551, 626.9561,
62 | 626.9571, 626.9581, 626.9591, 626.9601, 626.9611,
63 | 626.9621, 626.9631, 626.9641, 626.9651, 626.989, 626.9892,
64 | 626.99, 626.9911, 626.9912, 626.9913, 626.9914, 626.9915,
65 | 626.9916, 626.9919, 626.9921, 626.9922, 626.99235,
66 | 626.99245, 626.9925, 626.9926, 626.9927, 626.99272,
67 | 626.99285, 626.99295, 627.0628, 627.0629, 627.311,
68 | 627.3111, 627.351, 627.3511, 627.3513, 627.3515, 627.357,
69 | 627.4236, 627.6488, 627.6699, 627.7015, 628.4615, 628.917,
70 | 631.021, 631.025, 631.031, 631.051, 631.081, 631.152,
71 | 631.221, 631.231, 631.361, 631.371, 631.391, 631.392,
72 | 631.398, 631.54, 631.55, 631.56, 631.57, 631.59, 631.60,
73 | 631.62, 631.66, 631.714, 631.72, 631.722, 631.723,
74 | 631.727, 631.813, 631.814, 631.821, 631.823, 631.825,
75 | 631.904, 631.911, 631.912, 631. 917, 631.918, 631.931,
76 | 634.3284, 634.430, 634.433, 636.067, 641.183, 641.185,
77 | 641.19, 641.2017, 641.2018, 641.21, 641.215, 641.22,
78 | 641.225, 641.227, 641.228, 641.23, 641.234, 641.2342,
79 | 641.25, 641.255, 641.26, 641.27, 641.28, 641.281, 641.284,
80 | 641.285, 641.29, 641.3007, 641.305, 641.31, 641.3105,
81 | 641.31071, 641.31074, 641.315, 641.3154, 641.3155,
82 | 641.316, 641.35, 641.35, 641.36, 641.365, 641.385,
83 | 641.39001, 641.3903, 641.3905, 641.3907, 641.3909,
84 | 641.3911, 641.3913, 641.3917, 641.3922, 641.402, 641.403,



85 | 641.,405, 641.406, 641.4065, 641.407, 641.409, 641.41,
 86 | 641.412, 641.418, 641.42, 641.421, 641.424, 641.437,
 87 | 641.443, 641.444, 641.445, 641.446, 641.447, 641.448,
 88 | 641.45, 641.452, 641.453, 641.454, 641.455, 641.457,
 89 | 641.48, 641.49, 641.495, 641.511, 641.511, 641.512,
 90 | 641.52, 641.54, 641.55, 641.58, 642.0475, 651.119, 252.62,
 91 | 288.778, 288.99, 289.051, 289.081, 289.121, 420.101,
 92 | 494.00125, 494.00421 517.021, 517.03, 517.051, 517.061,
 93 | 517.07, 517.075, 517.081, 517.082, 517.101, 517.111,
 94 | 517.12, 517.1201, 517.1203, 517.1204, 517.121, 517.131,
 95 | 517.141, 517.151, 517.161, 517.181, 517.191, 517.201,
 96 | 517.2015, 517.221, 517.241, 517.301, 517.302 517.313,
 97 | 517.315, 517.32, 520.996, 520.9965, 537.008, 537.009,
 98 | 537.011, 537.013, 537.016, 537.017, 559.725, 560.128,
 99 | 560.129, 560.404, 609.05, and 655.012, F.S., to revise and
 100 | conform; protecting the validity of certain administrative
 101 | and judicial actions; providing for substitution of
 102 | parties; providing for continuation and effect of certain
 103 | certificates of authority, forms, licenses, rates,
 104 | filings, and actions; transferring and renumbering s.
 105 | 627.3111, F.S., as 624.23, F.S.; repealing s. 624.305,
 106 | F.S., relating to prohibited interests; providing for
 107 | controlling effect; providing an effective date.

108 |
 109 | Be It Enacted by the Legislature of the State of Florida:
 110 | Section 1. Subsection (1) of section 20.055, Florida
 111 | Statutes, is amended to read:
 112 | 20.055 Agency inspectors general.--



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113 (1) For the purposes of this section:

114 (a) "State agency" means each department created pursuant
115 to this chapter, and also includes the Executive Office of the
116 Governor, the Department of Military Affairs, the Board of
117 Regents, the Fish and Wildlife Conservation Commission, the
118 Public Service Commission, the Office of Insurance Regulation of
119 the Financial Services Commission, the Office of Financial
120 Institutions and Securities Regulation of the Financial Services
121 Commission, and the state courts system.

122 (b) "Agency head" means the Governor, a Cabinet officer, a
123 secretary as defined in s. 20.03(5), or an executive director as
124 defined in s. 20.03(6). It also includes the chair of the Public
125 Service Commission, the Director of the Office of Insurance
126 Regulation of the Financial Services Commission, the Director of
127 the Office of Financial Institutions and Securities Regulation
128 of the Financial Services Commission, and the Chief Justice of
129 the State Supreme Court.

130 Section 2. Section 20.121, Florida Statutes, is amended to
131 read:

132 20.121 Department of Financial Services.--There is created
133 a Department of Financial Services.

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

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

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

140 1. The Bureau of Unclaimed Property.



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

152 (b) The Division of State Fire Marshal.

153 (c) The Division of Risk Management.

154 (d) The Division of Treasury, which shall include a Bureau
155 of Deferred Compensation responsible for administering the
156 Government Employees Deferred Compensation Plan established
157 under s. 112.215 for state employees.

158 (e) The Division of Insurance Fraud.

159 (f) The Division of Rehabilitation and Liquidation.

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

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

163 1. The Division of Consumer Services shall perform the
164 following functions concerning products or services regulated by
165 the Department of Financial Services or by either office of the
166 Financial Services Commission:

167 a. Receive inquiries and complaints from consumers;



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- 168 b. Prepare and disseminate such information as the
169 department deems appropriate to inform or assist consumers;
- 170 c. Provide direct assistance and advocacy for consumers
171 who request such assistance or advocacy;
- 172 d. With respect to apparent or potential violations of law
173 or applicable rules by a person or entity licensed by the
174 department or by either office of the commission, report such
175 apparent or potential violation to the appropriate division of
176 the department or office of the commission, which may take such
177 further action as it deems appropriate.
- 178 2. Any person licensed or issued a certificate of
179 authority by the department or by the Office of Insurance
180 Regulation shall respond, in writing, to the Division of
181 Consumer Services within 20 days after receipt of a written
182 request for information from the division concerning a consumer
183 complaint. The response must address the issues and allegations
184 raised in the complaint. The division may, in its discretion,
185 impose an administrative penalty for failure to comply with this
186 subparagraph in an amount up to \$2,500 per violation upon any
187 entity licensed by the department or the Office of Insurance
188 Regulation and \$250 for the first violation, \$500 for the second
189 violation, and up \$1,000 per violation thereafter upon any
190 individual licensed by the department or the Office of Insurance
191 Regulation.
- 192 3. The department may adopt rules to implement the
193 provisions of this paragraph.
- 194 4. The powers, duties, and responsibilities expressed or
195 granted in this paragraph shall not limit the powers, duties,



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196 and responsibilities of the Department of Financial Services,
197 the Financial Services Commission, the Office of the Insurance
198 Regulation, or the Office of Financial Institutions and
199 Securities Regulation as provided by law.

200 (i) The Division of Workers' Compensation.

201 (j) The Division of Administration.

202 (k) The Division of Legal Services.

203 (l) The Division of Information Systems.

204 (m) The Office of Insurance Consumer Advocate.

205 (3) FINANCIAL SERVICES COMMISSION.--Effective January 7,

206 2003, there is created within the Department of Financial
207 Services the Financial Services Commission, composed of the
208 Governor, the Attorney General, the Chief Financial Officer, and
209 the Commissioner of Agriculture, which shall for purposes of
210 this section be referred to as the commission. Commission
211 members shall serve as agency head of the Financial Services
212 Commission. The commission shall be a separate budget entity
213 and shall be exempt from the provisions of s. 20.052. Commission
214 action shall be by majority vote consisting of at least three
215 affirmative votes. The commission shall not be subject to
216 control, supervision, or direction by the Department of
217 Financial Services in any manner, including purchasing,
218 transactions involving real or personal property, personnel, or
219 budgetary matters.

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



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223 1. The Office of Insurance Regulation, which shall be
224 responsible for all activities concerning insurers and other
225 risk bearing entities, including licensing, rates, policy forms,
226 market conduct, claims, adjusters, issuance of certificates of
227 authority, solvency, viatical settlements, premium financing,
228 and administrative supervision, as provided under the insurance
229 code or chapter 636. The head of the Office of Insurance
230 Regulation is the Director of the Office of Insurance
231 Regulation.

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



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251 (b) Organization.--The commission shall establish by rule
252 any additional organizational structure of the offices. It is
253 the intent of the Legislature to provide the commission with the
254 flexibility to organize the offices in any manner they determine
255 appropriate to promote both efficiency and accountability.

256 (c) Powers.--Commission members shall serve as the agency
257 head for purposes of rulemaking under ss. 120.536-120.565 by the
258 commission and all subunits of the commission. Each director is
259 agency head for purposes of final agency action under chapter
260 120 for all areas within the regulatory authority delegated to
261 the director's office.

262 (d) Appointment and qualifications of directors.--The
263 commission shall appoint or remove each director by a majority
264 vote consisting of at least three affirmative votes, with both
265 the Governor and the Chief Financial Officer on the prevailing
266 side. The minimum qualifications of the directors are as
267 follows:

268 1. Prior to appointment as director, the Director of the
269 Office of Insurance Regulation must have had, within the
270 previous 10 years, at least 5 years of responsible private
271 sector experience working full time in areas within the scope of
272 the subject matter jurisdiction of the Office of Insurance
273 Regulation or at least 5 years of experience as a senior
274 examiner or other senior employee of a state or federal agency
275 having regulatory responsibility over insurers or insurance
276 agencies.

277 2. Prior to appointment as director, the Director of the
278 Office of Financial Institutions and Securities Regulation must



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279 | have had, within the previous 10 years, at least 5 years of
280 | responsible private sector experience working full time in areas
281 | within the subject matter jurisdiction of the Office of
282 | Financial Institutions and Securities Regulation or at least 5
283 | years of experience as a senior examiner or other senior
284 | employee of a state or federal agency having regulatory
285 | responsibility over financial institutions, finance companies,
286 | or securities companies.

287 | (e) Administrative support.--The offices shall have a
288 | sufficient number of attorneys, examiners, investigators, other
289 | professional personnel to carry out their responsibilities and
290 | administrative personnel as determined annually in the
291 | appropriations process. The Department of Financial Services
292 | shall provide administrative and information systems support to
293 | the offices.

294 | (f) The commission and the offices may destroy general
295 | correspondence files and any other records which they deem no
296 | longer necessary to preserve in accordance with retention
297 | schedules and destruction notices established under rules of the
298 | Division of Library and Information Services, records and
299 | information management program, of the Department of State. Such
300 | schedules and notices relating to financial records of the
301 | commission and offices shall be subject to the approval of the
302 | Auditor General.

303 | (g) The commission and offices may photograph,
304 | microphotograph, or reproduce on film such documents and records
305 | as they may select, in such manner that each page will be
306 | exposed in exact conformity with the original. After



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307 | reproduction and filing, original documents and records may be
308 | destroyed in accordance with the provisions of paragraph (f).

309 | (h) The department, commission, and offices shall share
310 | such information as is necessary to the implementation of their
311 | respective powers, duties and functions prescribed by law. Any
312 | such information made confidential or exempt from disclosure
313 | pursuant to law shall not lose its confidential or exempt
314 | status.

315 | Section 3. Subsection (6) of section 103.091, Florida
316 | Statutes, is amended to read:

317 | 103.091 Political parties.--

318 | ~~(6)(a)1-~~ In addition to the members provided for in
319 | subsection (1), each county executive committee shall include
320 | all members of the Legislature who are residents of the county
321 | and members of their respective political party and who shall be
322 | known as at-large committeemen and committeewomen.

323 | ~~(b)2-~~ Each state executive committee shall include, as at-
324 | large committeemen and committeewomen, all members of the United
325 | States Congress representing the State of Florida who are
326 | members of the political party, all statewide elected officials
327 | who are members of the party, and the President of the Senate or
328 | the Minority Leader in the Senate, and the Speaker of the House
329 | of Representatives or the Minority Leader in the House of
330 | Representatives, whichever is a member of the political party,
331 | and 20 members of the Legislature who are members of the
332 | political party. Ten of the legislators shall be appointed with
333 | the concurrence of the state chair of the respective party, as
334 | follows: five to be appointed by the President of the Senate;



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335 five by the Minority Leader in the Senate; five by the Speaker
336 of the House of Representatives; and five by the Minority Leader
337 in the House.

338 ~~(c)3.~~ When a political party allows any member of the
339 state executive committee to have more than one vote per person,
340 other than by proxy, in a matter coming before the state
341 executive committee, the 20 members of the Legislature appointed
342 under subparagraph 2. shall not be appointed to the state
343 executive committee and the following elected officials who are
344 members of that political party shall be appointed and shall
345 have the following votes:

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

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

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

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

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

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

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



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363 6.h. Commissioner of Agriculture: a number equal to 5
364 percent of the votes cast by state executive committeemen and
365 committeewomen;

366 ~~i. Commissioner of Education: a number equal to 5 percent~~
367 ~~of the votes cast by state executive committeemen and~~
368 ~~committeewomen;~~

369 7.j. President of the Senate: a number equal to 10 percent
370 of the votes cast by state executive committeemen and
371 committeewomen;

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

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

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

381 11.n. Each member of the United States House of
382 Representatives representing the state: a number equal to 1
383 percent of the votes cast by state executive committeemen and
384 committeewomen.

385 (d)1.4.a. The governing body of each state executive
386 committee as defined by party rule shall include as at-large
387 committeemen and committeewomen all statewide elected officials
388 who are members of such political party; up to four members of
389 the United States Congress representing the state who are
390 members of such political party and who shall be appointed by



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391 the state chair on the basis of geographic representation; the
392 permanent presiding officer selected by the members of each
393 house of the Legislature who are members of such political
394 party; and the minority leader selected by the members of each
395 house of the Legislature who are members of such political
396 party.

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

399 Section 4. Paragraph (a) of subsection (2) of section
400 110.1127, Florida Statutes, is amended to read:

401 110.1127 Employee security checks.--

402 (2)(a) All positions within the Division of Treasury of
403 the Department of Financial Services Insurance ~~Insurance~~ are deemed to be
404 positions of special trust or responsibility, and a person may
405 be disqualified for employment in any such position by reason
406 of:

407 1. The conviction or prior conviction of a crime which is
408 reasonably related to the nature of the position sought or held
409 by the individual; or

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

414 Section 5. Subsection (4), paragraph (a) of subsection
415 (6), paragraphs (a), (d), (f), and(h) of subsection (8),
416 paragraph (b) of subsection (10), and subsections (11) and (12)
417 of section 112.215, Florida Statutes, are amended to read:



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418 112.215 Government employees; deferred compensation
419 program.--

420 (4)(a) The Chief Financial Officer ~~Treasurer~~, with the
421 approval of the State Board of Administration, shall establish
422 such plan or plans of deferred compensation for state employees,
423 including all such investment vehicles or products incident
424 thereto, as may be available through, or offered by, qualified
425 companies or persons, and may approve one or more such plans for
426 implementation by and on behalf of the state and its agencies
427 and employees.

428 (b) If the Chief Financial Officer ~~Treasurer~~ deems it
429 advisable, he or she shall have the power, with the approval of
430 the State Board of Administration, to create a trust or other
431 special funds for the segregation of funds or assets resulting
432 from compensation deferred at the request of employees of the
433 state or its agencies and for the administration of such
434 program.

435 (c) The Chief Financial Officer ~~Treasurer~~, with the
436 approval of the State Board of Administration, may delegate
437 responsibility for administration of the plan to a person the
438 Chief Financial Officer ~~Treasurer~~ determines to be qualified,
439 compensate such person, and, directly or through such person or
440 pursuant to a collective bargaining agreement, contract with a
441 private corporation or institution to provide such services as
442 may be part of any such plan or as may be deemed necessary or
443 proper by the Chief Financial Officer ~~Treasurer~~ or such person,
444 including, but not limited to, providing consolidated billing,
445 individual and collective recordkeeping and accountings, asset



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446 purchase, control, and safekeeping, and direct disbursement of
447 funds to employees or other beneficiaries. The Chief Financial
448 Officer ~~Treasurer~~ may authorize a person, private corporation,
449 or institution to make direct disbursement of funds under the
450 plan to an employee or other beneficiary ~~only upon the order of~~
451 ~~the Comptroller to the Treasurer.~~

452 (d) In accordance with such approved plan, and upon
453 contract or agreement with an eligible employee, deferrals of
454 compensation may be accomplished by payroll deductions made by
455 the appropriate officer or officers of the state, with such
456 funds being thereafter held and administered in accordance with
457 the plan.

458 (6)(a) No deferred compensation plan of the state shall
459 become effective until approved by the State Board of
460 Administration and the Chief Financial Officer ~~Treasurer~~ is
461 satisfied by opinion from such federal agency or agencies as may
462 be deemed necessary that the compensation deferred thereunder
463 and/or the investment products purchased pursuant to the plan
464 will not be included in the employee's taxable income under
465 federal or state law until it is actually received by such
466 employee under the terms of the plan, and that such compensation
467 will nonetheless be deemed compensation at the time of deferral
468 for the purposes of social security coverage, for the purposes
469 of the state retirement system, and for any other retirement,
470 pension, or benefit program established by law.

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



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473 1. One member shall be appointed by the Speaker of the
474 House of Representatives and the President of the Senate jointly
475 and shall be an employee of the legislative branch.

476 2. One member shall be appointed by the Chief Justice of
477 the Supreme Court and shall be an employee of the judicial
478 branch.

479 3. One member shall be appointed by the chair of the
480 Public Employees Relations Commission and shall be a nonexempt
481 public employee.

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

484 a. One member shall be appointed by the Chancellor of the
485 State University System and shall be an employee of the
486 university system.

487 b. One member shall be appointed by the Chief Financial
488 Officer ~~Treasurer~~ and shall be an employee of the Chief
489 Financial Officer ~~Treasurer~~.

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

492 d. One member shall be appointed by the Executive Director
493 of the State Board of Administration ~~Comptroller~~ and shall be an
494 employee of the Executive Director of the State Board of
495 Administration ~~Comptroller~~.

496 (d) The council shall meet at the call of its chair, at
497 the request of a majority of its membership, or at the request
498 of the Chief Financial Officer ~~Treasurer~~, but not less than
499 twice a year. The business of the council shall be presented to
500 the council in the form of an agenda. The agenda shall be set



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501 by the Chief Financial Officer ~~Treasurer~~ and shall include items
502 of business requested by the council members.

503 (f) The council shall make a report of each meeting to the
504 Chief Financial Officer ~~Treasurer~~, which shall show the names of
505 the members present and shall include a record of its
506 discussions, recommendations, and actions taken. The Chief
507 Financial Officer ~~Treasurer~~ shall keep the records of the
508 proceedings of each meeting on file and shall make the records
509 available to any interested person or group.

510 (h) The advisory council shall provide assistance and
511 recommendations to the Chief Financial Officer ~~Treasurer~~
512 relating to the provisions of the plan, the insurance or
513 investment options to be offered under the plan, and any other
514 contracts or appointments deemed necessary by the council and
515 the Chief Financial Officer ~~Treasurer~~ to carry out the
516 provisions of this act. The Chief Financial Officer ~~Treasurer~~
517 shall inform the council of the manner in which each council
518 recommendation is being addressed. The Chief Financial Officer
519 ~~Treasurer~~ shall provide the council, at least annually, a report
520 on the status of the deferred compensation program, including,
521 but not limited to, information on participant enrollment,
522 amount of compensation deferred, total plan assets, product
523 provider performance, and participant satisfaction with the
524 program.

525 (10)

526 (b)1. There is created in the State Treasury the Deferred
527 Compensation Trust Fund, through which the Chief Financial
528 Officer ~~Treasurer~~ as trustee shall hold moneys, pensions,



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529 annuities, or other benefits accrued or accruing under and
530 pursuant to 26 U.S.C. s. 457 and the deferred compensation plan
531 provided for therein and adopted by this state; and

532 a. All amounts of compensation deferred thereunder;

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

534 and

535 c. All income attributable to such amounts, property, or
536 rights.

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

541 (11) With respect to any funds held pursuant to a deferred
542 compensation plan, any plan provider which is a bank or savings
543 association and which provides time deposit accounts and
544 certificates of deposit as an investment product to the plan
545 participants may, with the approval of the State Board of
546 Administration for providers in the state plan, or with the
547 approval of the appropriate official or body designated under
548 subsection (5) for a plan of a county, municipality, other
549 political subdivision, or constitutional county officer, be
550 exempt from the provisions of chapter 280 requiring it to be a
551 qualified public depository, provided:

552 (a) The bank or savings association shall, to the extent
553 that the time deposit accounts or certificates of deposit are
554 not insured by the Federal Deposit Insurance Corporation ~~or the~~
555 ~~Federal Savings and Loan Insurance Corporation~~, deposit or issue
556 pledge collateral with the Chief Financial Officer ~~Treasurer~~ for



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557 all state funds held by it under a deferred compensation plan,
558 or with such other appropriate official for all public funds
559 held by it under a deferred compensation plan of a county,
560 municipality, other political subdivision, or constitutional
561 county officer, in an amount which equals at least 150 percent
562 of all uninsured deferred compensation funds then held.

563 (b) Said collateral shall be of the kind permitted by s.
564 280.13 and shall be pledged in the manner provided for by the
565 applicable provisions of chapter 280.

566
567 The Chief Financial Officer ~~Treasurer~~ shall have all the
568 applicable powers provided in ss. 280.04, 280.05, and 280.08
569 relating to the sale or other disposition of the pledged
570 collateral.

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

574 Section 6. Paragraph (c) of subsection (2), paragraph (d)
575 of subsection (4), and paragraphs (a), (b), and (c) of
576 subsection (6) of section 215.555, Florida Statutes, are amended
577 to read:

578 215.555 Florida Hurricane Catastrophe Fund.--

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

580 (c) "Covered policy" means any insurance policy covering
581 residential property in this state, including, but not limited
582 to, any homeowner's, mobile home owner's, farm owner's,
583 condominium association, condominium unit owner's, tenant's, or
584 apartment building policy, or any other policy covering a



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585 residential structure or its contents issued by any authorized
586 insurer, including the Citizens Property Insurance Corporation
587 and any joint underwriting association or similar entity created
588 pursuant to law. The term "covered policy" includes any
589 collateral protection insurance policy covering personal
590 residences which protects both the borrower's and the lender's
591 financial interests, in an amount at least equal to the coverage
592 for the dwelling in place under the lapsed homeowner's policy,
593 if such policy can be accurately reported as required in
594 subsection(5). Additionally, covered policies include policies
595 covering the peril of wind removed from the Florida Residential
596 Property and Casualty Joint Underwriting Association or from the
597 Citizens Property Insurance Corporation, created pursuant to s.
598 627.351(6), or from the Florida Windstorm Underwriting
599 Association, created pursuant to s. 627.351(2), by an authorized
600 insurer under the terms and conditions of an executed assumption
601 agreement between the authorized insurer and ~~either~~ such
602 association. Each assumption agreement between the ~~either~~
603 association and such authorized insurer must be approved by the
604 Florida Department of Insurance or the Office of Insurance
605 Regulation prior to the effective date of the assumption, and
606 the Department of Insurance or the Office of Insurance
607 Regulation must provide written notification to the board within
608 15 working days after such approval. "Covered policy" does not
609 include any policy that excludes wind coverage or hurricane
610 coverage or any reinsurance agreement and does not include any
611 policy otherwise meeting this definition which is issued by a
612 surplus lines insurer or a reinsurer.



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613 (4) REIMBURSEMENT CONTRACTS.--

614 (d)1. For purposes of determining potential liability and
615 to aid in the sound administration of the fund, the contract
616 shall require each insurer to report such insurer's losses from
617 each covered event on an interim basis, as directed by the
618 board. The contract shall require the insurer to report to the
619 board no later than December 31 of each year, and quarterly
620 thereafter, its reimbursable losses from covered events for the
621 year. The contract shall require the board to determine and pay,
622 as soon as practicable after receiving these reports of
623 reimbursable losses, the initial amount of reimbursement due and
624 adjustments to this amount based on later loss information. The
625 adjustments to reimbursement amounts shall require the board to
626 pay, or the insurer to return, amounts reflecting the most
627 recent calculation of losses.

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

630 a. First reimburse insurers writing covered policies,
631 which insurers are in full compliance with this section and have
632 petitioned the Office of Insurance Regulation ~~Department of~~
633 ~~Insurance~~ and qualified as limited apportionment companies under
634 s. 627.351(2)(b)3. The amount of such reimbursement shall be
635 the lesser of \$10 million or an amount equal to 10 times the
636 insurer's reimbursement premium for the current year. The
637 amount of reimbursement paid under this sub-subparagraph may not
638 exceed the full amount of reimbursement promised in the
639 reimbursement contract. This sub-subparagraph does not apply
640 with respect to any contract year in which the year-end



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641 | projected cash balance of the fund, exclusive of any bonding
642 | capacity of the fund, exceeds \$2 billion. Only one member of any
643 | insurer group may receive reimbursement under this sub-
644 | subparagraph.

645 | b. Next pay to each insurer such insurer's projected
646 | payout, which is the amount of reimbursement it is owed, up to
647 | an amount equal to the insurer's share of the actual premium
648 | paid for that contract year, multiplied by the actual claims-
649 | paying capacity available for that contract year; provided,
650 | entities created pursuant to s. 627.351 shall be further
651 | reimbursed in accordance with sub-subparagraph c.

652 | c. Thereafter, establish, based on reimbursable losses,
653 | the prorated reimbursement level at the highest level for which
654 | any remaining fund balance or bond proceeds are sufficient to
655 | reimburse entities created pursuant to s. 627.351 for losses
656 | exceeding the amounts payable pursuant to sub-subparagraph b.
657 | for the current contract year.

658 | (6) REVENUE BONDS.--

659 | (a) General provisions.--

660 | 1. Upon the occurrence of a hurricane and a determination
661 | that the moneys in the fund are or will be insufficient to pay
662 | reimbursement at the levels promised in the reimbursement
663 | contracts, the board may take the necessary steps under
664 | paragraph (b) or paragraph (c) for the issuance of revenue bonds
665 | for the benefit of the fund. The proceeds of such revenue bonds
666 | may be used to make reimbursement payments under reimbursement
667 | contracts; to refinance or replace previously existing
668 | borrowings or financial arrangements; to pay interest on bonds;



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669 | to fund reserves for the bonds; to pay expenses incident to the
670 | issuance or sale of any bond issued under this section,
671 | including costs of validating, printing, and delivering the
672 | bonds, costs of printing the official statement, costs of
673 | publishing notices of sale of the bonds, and related
674 | administrative expenses; or for such other purposes related to
675 | the financial obligations of the fund as the board may
676 | determine. The term of the bonds may not exceed 30 years. The
677 | board may pledge or authorize the corporation to pledge all or a
678 | portion of all revenues under subsection (5) and under
679 | subparagraph 3. to secure such revenue bonds and the board may
680 | execute such agreements between the board and the issuer of any
681 | revenue bonds and providers of other financing arrangements
682 | under paragraph (7)(b) as the board deems necessary to evidence,
683 | secure, preserve, and protect such pledge. If reimbursement
684 | premiums received under subsection (5) or earnings on such
685 | premiums are used to pay debt service on revenue bonds, such
686 | premiums and earnings shall be used only after the use of the
687 | moneys derived from assessments under subparagraph 3. The
688 | funds, credit, property, or taxing power of the state or
689 | political subdivisions of the state shall not be pledged for the
690 | payment of such bonds. The board may also enter into agreements
691 | under paragraph (b) or paragraph (c) for the purpose of issuing
692 | revenue bonds in the absence of a hurricane upon a determination
693 | that such action would maximize the ability of the fund to meet
694 | future obligations.

695 | 2. The Legislature finds and declares that the issuance of
696 | bonds under this subsection is for the public purpose of paying



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697 the proceeds of the bonds to insurers, thereby enabling insurers
698 to pay the claims of policyholders to assure that policyholders
699 are able to pay the cost of construction, reconstruction,
700 repair, restoration, and other costs associated with damage to
701 property of policyholders of covered policies after the
702 occurrence of a hurricane. Revenue bonds may not be issued under
703 this subsection until validated under chapter 75. The validation
704 of at least the first obligations incurred pursuant to this
705 subsection shall be appealed to the Supreme Court, to be handled
706 on an expedited basis.

707 3. If the board determines that the amount of revenue
708 produced under subsection (5) is insufficient to fund the
709 obligations, costs, and expenses of the fund and the
710 corporation, including repayment of revenue bonds, the board
711 shall direct the Office of Insurance Regulation ~~Department of~~
712 ~~Insurance~~ to levy an emergency assessment on each insurer
713 writing property and casualty business in this state. Pursuant
714 to the emergency assessment, each such insurer shall pay to the
715 corporation by July 1 of each year an amount set by the board
716 not exceeding 2 percent of its gross direct written premium for
717 the prior year from all property and casualty business in this
718 state except for workers' compensation, except that, if the
719 Governor has declared a state of emergency under s. 252.36 due
720 to the occurrence of a covered event, the amount of the
721 assessment for the contract year may be increased to an amount
722 not exceeding 4 percent of such premium. Any assessment
723 authority not used for the contract year may be used for a
724 subsequent contract year. If, for a subsequent contract year,



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725 | the board determines that the amount of revenue produced under
726 | subsection (5) is insufficient to fund the obligations, costs,
727 | and expenses of the fund and the corporation, including
728 | repayment of revenue bonds for that contract year, the board
729 | shall direct the Office of Insurance Regulation ~~Department of~~
730 | ~~Insurance~~ to levy an emergency assessment up to an amount not
731 | exceeding the amount of unused assessment authority from a
732 | previous contract year or years, plus an additional 2 percent if
733 | the Governor has declared a state of emergency under s. 252.36
734 | due to the occurrence of a covered event. Any assessment
735 | authority not used for the contract year may be used for a
736 | subsequent contract year. As used in this subsection, the term
737 | "property and casualty business" includes all lines of business
738 | identified on Form 2, Exhibit of Premiums and Losses, in the
739 | annual statement required by s. 624.424 and any rules adopted
740 | under such section, except for those lines identified as
741 | accident and health insurance. The annual assessments under this
742 | subparagraph shall continue as long as the revenue bonds issued
743 | with respect to which the assessment was imposed are
744 | outstanding, unless adequate provision has been made for the
745 | payment of such bonds pursuant to the documents authorizing
746 | issuance of the bonds. An insurer shall not at any time be
747 | subject to aggregate annual assessments under this subparagraph
748 | of more than 2 percent of premium, except that in the case of a
749 | declared emergency, an insurer shall not at any time be subject
750 | to aggregate annual assessments under this subparagraph of more
751 | than 6 percent of premium; provided, no more than 4 percent may
752 | be assessed for any one contract year. Any rate filing or



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753 | portion of a rate filing reflecting a rate change attributable
754 | entirely to the assessment levied under this subparagraph shall
755 | be deemed approved when made, subject to the authority of the
756 | Office of Insurance Regulation ~~Department of Insurance~~ to
757 | require actuarial justification as to the adequacy of any rate
758 | at any time. If the rate filing reflects only a rate change
759 | attributable to the assessment under this paragraph, the filing
760 | may consist of a certification so stating. The assessments
761 | otherwise payable to the corporation pursuant to this
762 | subparagraph shall be paid instead to the fund unless and until
763 | the Office of Insurance Regulation ~~Department of Insurance~~ has
764 | received from the corporation and the fund a notice, which shall
765 | be conclusive and upon which the Office of Insurance Regulation
766 | ~~Department of Insurance~~ may rely without further inquiry, that
767 | the corporation has issued bonds and the fund has no agreements
768 | in effect with local governments pursuant to paragraph (b). On
769 | or after the date of such notice and until such date as the
770 | corporation has no bonds outstanding, the fund shall have no
771 | right, title, or interest in or to the assessments, except as
772 | provided in the fund's agreements with the corporation.

773 | (b) Revenue bond issuance through counties or
774 | municipalities.--

775 | 1. If the board elects to enter into agreements with local
776 | governments for the issuance of revenue bonds for the benefit of
777 | the fund, the board shall enter into such contracts with one or
778 | more local governments, including agreements providing for the
779 | pledge of revenues, as are necessary to effect such issuance.
780 | The governing body of a county or municipality is authorized to



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781 issue bonds as defined in s. 125.013 or s. 166.101 from time to
782 time to fund an assistance program, in conjunction with the
783 Florida Hurricane Catastrophe Fund, for the purposes set forth
784 in this section or for the purpose of paying the costs of
785 construction, reconstruction, repair, restoration, and other
786 costs associated with damage to properties of policyholders of
787 covered policies due to the occurrence of a hurricane by
788 assuring that policyholders located in this state are able to
789 recover claims under property insurance policies after a covered
790 event.

791 2. In order to avoid needless and indiscriminate
792 proliferation, duplication, and fragmentation of such assistance
793 programs, any local government may provide for the payment of
794 fund reimbursements, regardless of whether or not the losses for
795 which reimbursement is made occurred within or outside of the
796 territorial jurisdiction of the local government.

797 3. The state hereby covenants with holders of bonds issued
798 under this paragraph that the state will not repeal or abrogate
799 the power of the board to direct the Office of Insurance
800 Regulation ~~Department of Insurance~~ to levy the assessments and
801 to collect the proceeds of the revenues pledged to the payment
802 of such bonds as long as any such bonds remain outstanding
803 unless adequate provision has been made for the payment of such
804 bonds pursuant to the documents authorizing the issuance of such
805 bonds.

806 4. There shall be no liability on the part of, and no
807 cause of action shall arise against any members or employees of



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808 | the governing body of a local government for any actions taken
809 | by them in the performance of their duties under this paragraph.

810 | (c) Florida Hurricane Catastrophe Fund Finance
811 | Corporation.--

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

814 | a. The public benefits corporation created under this
815 | paragraph will provide a mechanism necessary for the cost-
816 | effective and efficient issuance of bonds. This mechanism will
817 | eliminate unnecessary costs in the bond issuance process,
818 | thereby increasing the amounts available to pay reimbursement
819 | for losses to property sustained as a result of hurricane
820 | damage.

821 | b. The purpose of such bonds is to fund reimbursements
822 | through the Florida Hurricane Catastrophe Fund to pay for the
823 | costs of construction, reconstruction, repair, restoration, and
824 | other costs associated with damage to properties of
825 | policyholders of covered policies due to the occurrence of a
826 | hurricane.

827 | c. The efficacy of the financing mechanism will be
828 | enhanced by the corporation's ownership of the assessments, by
829 | the insulation of the assessments from possible bankruptcy
830 | proceedings, and by covenants of the state with the
831 | corporation's bondholders.

832 | 2.a. There is created a public benefits corporation, which
833 | is an instrumentality of the state, to be known as the Florida
834 | Hurricane Catastrophe Fund Finance Corporation.



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835 | b. The corporation shall operate under a five-member board
836 | of directors consisting of the Governor or a designee, the Chief
837 | Financial Officer ~~Comptroller~~ or a designee, the Attorney
838 | General ~~Treasurer~~ or a designee, the director of the Division of
839 | Bond Finance of the State Board of Administration, and the
840 | senior employee of the State Board of Administration responsible
841 | for operations ~~chief operating officer~~ of the Florida Hurricane
842 | Catastrophe Fund.

843 | c. The corporation has all of the powers of corporations
844 | under chapter 607 and under chapter 617, subject only to the
845 | provisions of this subsection.

846 | d. The corporation may issue bonds and engage in such
847 | other financial transactions as are necessary to provide
848 | sufficient funds to achieve the purposes of this section.

849 | e. The corporation may invest in any of the investments
850 | authorized under s. 215.47.

851 | f. There shall be no liability on the part of, and no
852 | cause of action shall arise against, any board members or
853 | employees of the corporation for any actions taken by them in
854 | the performance of their duties under this paragraph.

855 | 3.a. In actions under chapter 75 to validate any bonds
856 | issued by the corporation, the notice required by s. 75.06 shall
857 | be published only in Leon County and in two newspapers of
858 | general circulation in the state, and the complaint and order of
859 | the court shall be served only on the State Attorney of the
860 | Second Judicial Circuit.

861 | b. The state hereby covenants with holders of bonds of the
862 | corporation that the state will not repeal or abrogate the power



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863 of the board to direct the Office of Insurance Regulation
864 ~~Department of Insurance~~ to levy the assessments and to collect
865 the proceeds of the revenues pledged to the payment of such
866 bonds as long as any such bonds remain outstanding unless
867 adequate provision has been made for the payment of such bonds
868 pursuant to the documents authorizing the issuance of such
869 bonds.

870 4. The bonds of the corporation are not a debt of the
871 state or of any political subdivision, and neither the state nor
872 any political subdivision is liable on such bonds. The
873 corporation does not have the power to pledge the credit, the
874 revenues, or the taxing power of the state or of any political
875 subdivision. The credit, revenues, or taxing power of the state
876 or of any political subdivision shall not be deemed to be
877 pledged to the payment of any bonds of the corporation.

878 5.a. The property, revenues, and other assets of the
879 corporation; the transactions and operations of the corporation
880 and the income from such transactions and operations; and all
881 bonds issued under this paragraph and interest on such bonds are
882 exempt from taxation by the state and any political subdivision,
883 including the intangibles tax under chapter 199 and the income
884 tax under chapter 220. This exemption does not apply to any tax
885 imposed by chapter 220 on interest, income, or profits on debt
886 obligations owned by corporations other than the Florida
887 Hurricane Catastrophe Fund Finance Corporation.

888 b. All bonds of the corporation shall be and constitute
889 legal investments without limitation for all public bodies of
890 this state; for all banks, trust companies, savings banks,



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891 savings associations, savings and loan associations, and
892 investment companies; for all administrators, executors,
893 trustees, and other fiduciaries; for all insurance companies and
894 associations and other persons carrying on an insurance
895 business; and for all other persons who are now or may hereafter
896 be authorized to invest in bonds or other obligations of the
897 state and shall be and constitute eligible securities to be
898 deposited as collateral for the security of any state, county,
899 municipal, or other public funds. This sub-subparagraph shall be
900 considered as additional and supplemental authority and shall
901 not be limited without specific reference to this sub-
902 subparagraph.

903 6. The corporation and its corporate existence shall
904 continue until terminated by law; however, no such law shall
905 take effect as long as the corporation has bonds outstanding
906 unless adequate provision has been made for the payment of such
907 bonds pursuant to the documents authorizing the issuance of such
908 bonds. Upon termination of the existence of the corporation, all
909 of its rights and properties in excess of its obligations shall
910 pass to and be vested in the state.

911 Section 7. Subsection (5) of section 215.559, Florida
912 Statutes, is amended to read:

913 215.559 Hurricane Loss Mitigation Program.--

914 (5) Except for the program set forth in subsection (3),
915 the Department of Community Affairs shall develop the programs
916 set forth in this section in consultation with an advisory
917 council consisting of a representative designated by the Chief
918 Financial Officer ~~Department of Insurance~~, a representative



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919 designated by the Florida Home Builders Association, a
920 representative designated by the Florida Insurance Council, a
921 representative designated by the Federation of Manufactured Home
922 Owners, a representative designated by the Florida Association
923 of Counties, and a representative designated by the Florida
924 Manufactured Housing Association.

925 Section 8. Paragraph (a) of subsection (2) of section
926 287.059, Florida Statutes, is amended to read:

927 287.059 Private attorney services.--

928 (2) No agency shall contract for private attorney services
929 without the prior written approval of the Attorney General,
930 except that such written approval is not required for private
931 attorney services:

932 (a) Procured by the Executive Office of the Governor,
933 offices under the jurisdiction of the Financial Services
934 Commission, or any department under the exclusive jurisdiction
935 of a single Cabinet officer.

936 Section 9. Paragraph (c) of subsection (3) of section
937 288.901, Florida Statutes, is amended to read:

938 288.901 Enterprise Florida, Inc.; creation; membership;
939 organization; meetings; disclosure.--

940 (3) Enterprise Florida, Inc., shall be governed by a board
941 of directors. The board of directors shall consist of the
942 following members:

943 (c) The Chief Financial Officer ~~Secretary of Labor and~~
944 ~~Employment Security~~ or the Chief Financial Officer's ~~secretary's~~
945 designee.



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946 Section 10. Subsection (2) of section 391.221, Florida
947 Statutes, is amended to read:

948 391.221 Statewide Children's Medical Services Network
949 Advisory Council.--

950 (2) The council shall be composed of 12 members
951 representing the private health care provider sector, families
952 with children who have special health care needs, the Agency for
953 Health Care Administration, the Department of Financial Services
954 ~~Insurance~~, the Florida Chapter of the American Academy of
955 Pediatrics, an academic health center pediatric program, and the
956 health insurance industry. Members shall be appointed for 4-
957 year, staggered terms. In no case shall an employee of the
958 Department of Health serve as a member or as an ex officio
959 member of the advisory council. A vacancy shall be filled for
960 the remainder of the unexpired term in the same manner as the
961 original appointment. A member may not be appointed to more
962 than two consecutive terms. However, a member may be
963 reappointed after being off the council for at least 2 years.

964 Section 11. Paragraph (b) of subsection (2) of section
965 401.245, Florida Statutes, is amended to read:

966 401.245 Emergency Medical Services Advisory Council.--

967 (2)

968 (b) Representation on the Emergency Medical Services
969 Advisory Council shall include: two licensed physicians who are
970 "medical directors" as defined in s. 401.23(15) or whose medical
971 practice is closely related to emergency medical services; two
972 emergency medical service administrators, one of whom is
973 employed by a fire service; two certified paramedics, one of



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974 | whom is employed by a fire service; two certified emergency
975 | medical technicians, one of whom is employed by a fire service;
976 | one emergency medical services educator; one emergency nurse;
977 | one hospital administrator; one representative of air ambulance
978 | services; one representative of a commercial ambulance operator;
979 | and two laypersons who are in no way connected with emergency
980 | medical services, one of whom is a representative of the
981 | elderly. Ex officio members of the advisory council from state
982 | agencies shall include, but shall not be limited to,
983 | representatives from the Department of Education, the Department
984 | of Management Services, the State Fire Marshal ~~Department of~~
985 | ~~Insurance~~, the Department of Highway Safety and Motor Vehicles,
986 | the Department of Transportation, and the Department of
987 | Community Affairs.

988 | Section 12. Paragraph (a) of subsection (8) of section
989 | 408.05, Florida Statutes, is amended to read:

990 | 408.05 State Center for Health Statistics.--

991 | (8) STATE COMPREHENSIVE HEALTH INFORMATION SYSTEM ADVISORY
992 | COUNCIL.--

993 | (a) There is established in the agency the State
994 | Comprehensive Health Information System Advisory Council to
995 | assist the center in reviewing the comprehensive health
996 | information system and to recommend improvements for such
997 | system. The council shall consist of the following members:

998 | 1. An employee of the Executive Office of the Governor, to
999 | be appointed by the Governor.



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1000 2. An employee of the Department of Financial Services
1001 ~~Department of Insurance~~, to be appointed by the Chief Financial
1002 Officer Insurance Commissioner.

1003 3. An employee of the Department of Education, to be
1004 appointed by the Commissioner of Education.

1005 4. Ten persons, to be appointed by the Secretary of Health
1006 Care Administration, representing other state and local
1007 agencies, state universities, the Florida Association of
1008 Business/Health Coalitions, local health councils, professional
1009 health-care-related associations, consumers, and purchasers.

1010 Section 13. Section 408.7056, Florida Statutes, is amended
1011 to read:

1012 408.7056 Statewide Provider and Subscriber Assistance
1013 Program.--

1014 (1) As used in this section, the term:

1015 (a) "Agency" means the Agency for Health Care
1016 Administration.

1017 (b) "Department" means the Department of Financial
1018 Services Insurance.

1019 (c) "Grievance procedure" means an established set of
1020 rules that specify a process for appeal of an organizational
1021 decision.

1022 (d) "Health care provider" or "provider" means a state-
1023 licensed or state-authorized facility, a facility principally
1024 supported by a local government or by funds from a charitable
1025 organization that holds a current exemption from federal income
1026 tax under s. 501(c)(3) of the Internal Revenue Code, a licensed
1027 practitioner, a county health department established under part



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1028 I of chapter 154, a prescribed pediatric extended care center
1029 defined in s. 400.902, a federally supported primary care
1030 program such as a migrant health center or a community health
1031 center authorized under s. 329 or s. 330 of the United States
1032 Public Health Services Act that delivers health care services to
1033 individuals, or a community facility that receives funds from
1034 the state under the Community Alcohol, Drug Abuse, and Mental
1035 Health Services Act and provides mental health services to
1036 individuals.

1037 (e) "Managed care entity" means a health maintenance
1038 organization or a prepaid health clinic certified under chapter
1039 641, a prepaid health plan authorized under s. 409.912, or an
1040 exclusive provider organization certified under s. 627.6472.

1041 (f) "Office" means the Office of Insurance Regulation of
1042 the Financial Services Commission.

1043 (g)~~(f)~~ "Panel" means a statewide provider and subscriber
1044 assistance panel selected as provided in subsection (11).

1045 (2) The agency shall adopt and implement a program to
1046 provide assistance to subscribers and providers, including those
1047 whose grievances are not resolved by the managed care entity to
1048 the satisfaction of the subscriber or provider. The program
1049 shall consist of one or more panels that meet as often as
1050 necessary to timely review, consider, and hear grievances and
1051 recommend to the agency or the office ~~department~~ any actions
1052 that should be taken concerning individual cases heard by the
1053 panel. The panel shall hear every grievance filed by subscribers
1054 and providers on behalf of subscribers, unless the grievance:



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1055 (a) Relates to a managed care entity's refusal to accept a
1056 provider into its network of providers;

1057 (b) Is part of an internal grievance in a Medicare managed
1058 care entity or a reconsideration appeal through the Medicare
1059 appeals process which does not involve a quality of care issue;

1060 (c) Is related to a health plan not regulated by the state
1061 such as an administrative services organization, third-party
1062 administrator, or federal employee health benefit program;

1063 (d) Is related to appeals by in-plan suppliers and
1064 providers, unless related to quality of care provided by the
1065 plan;

1066 (e) Is part of a Medicaid fair hearing pursued under 42
1067 C.F.R. ss. 431.220 et seq.;

1068 (f) Is the basis for an action pending in state or federal
1069 court;

1070 (g) Is related to an appeal by nonparticipating providers,
1071 unless related to the quality of care provided to a subscriber
1072 by the managed care entity and the provider is involved in the
1073 care provided to the subscriber;

1074 (h) Was filed before the subscriber or provider completed
1075 the entire internal grievance procedure of the managed care
1076 entity, the managed care entity has complied with its timeframes
1077 for completing the internal grievance procedure, and the
1078 circumstances described in subsection (6) do not apply;

1079 (i) Has been resolved to the satisfaction of the
1080 subscriber or provider who filed the grievance, unless the
1081 managed care entity's initial action is egregious or may be
1082 indicative of a pattern of inappropriate behavior;



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1083 (j) Is limited to seeking damages for pain and suffering,
1084 lost wages, or other incidental expenses, including accrued
1085 interest on unpaid balances, court costs, and transportation
1086 costs associated with a grievance procedure;

1087 (k) Is limited to issues involving conduct of a health
1088 care provider or facility, staff member, or employee of a
1089 managed care entity which constitute grounds for disciplinary
1090 action by the appropriate professional licensing board and is
1091 not indicative of a pattern of inappropriate behavior, and the
1092 agency or office ~~department~~ has reported these grievances to the
1093 appropriate professional licensing board or to the health
1094 facility regulation section of the agency for possible
1095 investigation; or

1096 (l) Is withdrawn by the subscriber or provider. Failure
1097 of the subscriber or the provider to attend the hearing shall be
1098 considered a withdrawal of the grievance.

1099 (3) The agency shall review all grievances within 60 days
1100 after receipt and make a determination whether the grievance
1101 shall be heard. Once the agency notifies the panel, the
1102 subscriber or provider, and the managed care entity that a
1103 grievance will be heard by the panel, the panel shall hear the
1104 grievance either in the network area or by teleconference no
1105 later than 120 days after the date the grievance was filed. The
1106 agency shall notify the parties, in writing, by facsimile
1107 transmission, or by phone, of the time and place of the hearing.
1108 The panel may take testimony under oath, request certified
1109 copies of documents, and take similar actions to collect
1110 information and documentation that will assist the panel in



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1111 making findings of fact and a recommendation. The panel shall
1112 issue a written recommendation, supported by findings of fact,
1113 to the provider or subscriber, to the managed care entity, and
1114 to the agency or the office ~~department~~ no later than 15 working
1115 days after hearing the grievance. If at the hearing the panel
1116 requests additional documentation or additional records, the
1117 time for issuing a recommendation is tolled until the
1118 information or documentation requested has been provided to the
1119 panel. The proceedings of the panel are not subject to chapter
1120 120.

1121 (4) If, upon receiving a proper patient authorization
1122 along with a properly filed grievance, the agency requests
1123 medical records from a health care provider or managed care
1124 entity, the health care provider or managed care entity that has
1125 custody of the records has 10 days to provide the records to the
1126 agency. Failure to provide requested medical records may result
1127 in the imposition of a fine of up to \$500. Each day that
1128 records are not produced is considered a separate violation.

1129 (5) Grievances that the agency determines pose an
1130 immediate and serious threat to a subscriber's health must be
1131 given priority over other grievances. The panel may meet at the
1132 call of the chair to hear the grievances as quickly as possible
1133 but no later than 45 days after the date the grievance is filed,
1134 unless the panel receives a waiver of the time requirement from
1135 the subscriber. The panel shall issue a written recommendation,
1136 supported by findings of fact, to the office ~~department~~ or the
1137 agency within 10 days after hearing the expedited grievance.



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1138 (6) When the agency determines that the life of a
1139 subscriber is in imminent and emergent jeopardy, the chair of
1140 the panel may convene an emergency hearing, within 24 hours
1141 after notification to the managed care entity and to the
1142 subscriber, to hear the grievance. The grievance must be heard
1143 notwithstanding that the subscriber has not completed the
1144 internal grievance procedure of the managed care entity. The
1145 panel shall, upon hearing the grievance, issue a written
1146 emergency recommendation, supported by findings of fact, to the
1147 managed care entity, to the subscriber, and to the agency or the
1148 office ~~department~~ for the purpose of deferring the imminent and
1149 emergent jeopardy to the subscriber's life. Within 24 hours
1150 after receipt of the panel's emergency recommendation, the
1151 agency or office ~~department~~ may issue an emergency order to the
1152 managed care entity. An emergency order remains in force until:

1153 (a) The grievance has been resolved by the managed care
1154 entity;

1155 (b) Medical intervention is no longer necessary; or

1156 (c) The panel has conducted a full hearing under
1157 subsection (3) and issued a recommendation to the agency or the
1158 office ~~department~~, and the agency or office ~~department~~ has
1159 issued a final order.

1160 (7) After hearing a grievance, the panel shall make a
1161 recommendation to the agency or the office ~~department~~ which may
1162 include specific actions the managed care entity must take to
1163 comply with state laws or rules regulating managed care
1164 entities.



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1165 (8) A managed care entity, subscriber, or provider that is
1166 affected by a panel recommendation may within 10 days after
1167 receipt of the panel's recommendation, or 72 hours after receipt
1168 of a recommendation in an expedited grievance, furnish to the
1169 agency or office ~~department~~ written evidence in opposition to
1170 the recommendation or findings of fact of the panel.

1171 (9) No later than 30 days after the issuance of the
1172 panel's recommendation and, for an expedited grievance, no later
1173 than 10 days after the issuance of the panel's recommendation,
1174 the agency or the office ~~department~~ may adopt the panel's
1175 recommendation or findings of fact in a proposed order or an
1176 emergency order, as provided in chapter 120, which it shall
1177 issue to the managed care entity. The agency or office
1178 ~~department~~ may issue a proposed order or an emergency order, as
1179 provided in chapter 120, imposing fines or sanctions, including
1180 those contained in ss. 641.25 and 641.52. The agency or the
1181 office ~~department~~ may reject all or part of the panel's
1182 recommendation. All fines collected under this subsection must
1183 be deposited into the Health Care Trust Fund.

1184 (10) In determining any fine or sanction to be imposed,
1185 the agency and the office ~~department~~ may consider the following
1186 factors:

1187 (a) The severity of the noncompliance, including the
1188 probability that death or serious harm to the health or safety
1189 of the subscriber will result or has resulted, the severity of
1190 the actual or potential harm, and the extent to which provisions
1191 of chapter 641 were violated.



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1192 (b) Actions taken by the managed care entity to resolve or
1193 remedy any quality-of-care grievance.

1194 (c) Any previous incidents of noncompliance by the managed
1195 care entity.

1196 (d) Any other relevant factors the agency or office
1197 ~~department~~ considers appropriate in a particular grievance.

1198 (11) The panel shall consist of the Insurance Consumer
1199 Advocate, established by s. 627.0613, or the Insurance Consumer
1200 Advocate's designee, two members employed by the agency, and two
1201 members employed by the department, chosen by their respective
1202 agencies; a consumer appointed by the Governor; a physician
1203 appointed by the Governor, as a standing member; and physicians
1204 who have expertise relevant to the case to be heard, on a
1205 rotating basis. The agency may contract with a medical director
1206 and a primary care physician who shall provide additional
1207 technical expertise to the panel. The medical director shall be
1208 selected from a health maintenance organization with a current
1209 certificate of authority to operate in Florida.

1210 (12) Every managed care entity shall submit a quarterly
1211 report to the agency and the office ~~department~~ listing the
1212 number and the nature of all subscribers' and providers'
1213 grievances which have not been resolved to the satisfaction of
1214 the subscriber or provider after the subscriber or provider
1215 follows the entire internal grievance procedure of the managed
1216 care entity. The agency shall notify all subscribers and
1217 providers included in the quarterly reports of their right to
1218 file an unresolved grievance with the panel.



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1219 (13) Any information which would identify a subscriber or
1220 the spouse, relative, or guardian of a subscriber and which is
1221 contained in a report obtained by the office ~~Department of~~
1222 ~~Insurance~~ pursuant to this section is confidential and exempt
1223 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
1224 State Constitution.

1225 (14) A proposed order issued by the agency or office
1226 ~~department~~ which only requires the managed care entity to take a
1227 specific action under subsection (7) is subject to a summary
1228 hearing in accordance with s. 120.574, unless all of the parties
1229 agree otherwise. If the managed care entity does not prevail at
1230 the hearing, the managed care entity must pay reasonable costs
1231 and attorney's fees of the agency or the office ~~department~~
1232 incurred in that proceeding.

1233 (15)(a) Any information which would identify a subscriber
1234 or the spouse, relative, or guardian of a subscriber which is
1235 contained in a document, report, or record prepared or reviewed
1236 by the panel or obtained by the agency pursuant to this section
1237 is confidential and exempt from the provisions of s. 119.07(1)
1238 and s. 24(a), Art. I of the State Constitution.

1239 (b) Meetings of the panel shall be open to the public
1240 unless the provider or subscriber whose grievance will be heard
1241 requests a closed meeting or the agency or the department ~~of~~
1242 ~~Insurance~~ determines that information of a sensitive personal
1243 nature which discloses the subscriber's medical treatment or
1244 history; or information which constitutes a trade secret as
1245 defined by s. 812.081; or information relating to internal risk
1246 management programs as defined in s. 641.55(5)(c), (6), and (8)



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1247 may be revealed at the panel meeting, in which case that portion
1248 of the meeting during which such sensitive personal information,
1249 trade secret information, or internal risk management program
1250 information is discussed shall be exempt from the provisions of
1251 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
1252 closed meetings shall be recorded by a certified court reporter.
1253

1254 This subsection is subject to the Open Government Sunset Review
1255 Act of 1995 in accordance with s. 119.15, and shall stand
1256 repealed on October 2, 2003, unless reviewed and saved from
1257 repeal through reenactment by the Legislature.

1258 Section 14. Subsections (11) and (12) of section 440.13,
1259 Florida Statutes, are amended to read:

1260 440.13 Medical services and supplies; penalty for
1261 violations; limitations.--

1262 (11) ~~AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND~~
1263 ~~THE DEPARTMENT OF INSURANCE; JURISDICTION.--~~

1264 (a) The Agency for Health Care Administration may
1265 investigate health care providers to determine whether providers
1266 are complying with this chapter and with rules adopted by the
1267 agency, whether the providers are engaging in overutilization,
1268 and whether providers are engaging in improper billing
1269 practices. If the agency finds that a health care provider has
1270 improperly billed, overutilized, or failed to comply with agency
1271 rules or the requirements of this chapter it must notify the
1272 provider of its findings and may determine that the health care
1273 provider may not receive payment from the carrier or may impose
1274 penalties as set forth in subsection (8) or other sections of



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1275 | this chapter. If the health care provider has received payment
1276 | from a carrier for services that were improperly billed or for
1277 | overutilization, it must return those payments to the carrier.
1278 | The agency may assess a penalty not to exceed \$500 for each
1279 | overpayment that is not refunded within 30 days after
1280 | notification of overpayment by the agency or carrier.

1281 | (b) The department shall monitor carriers as provided in
1282 | this chapter and the Office of Insurance Regulation shall ~~and~~
1283 | audit insurers and group self-insurance funds ~~carriers~~ as
1284 | provided in s. 624.3161, to determine if medical bills are paid
1285 | in accordance with this section and ~~department~~ rules of the
1286 | department and Financial Services Commission, respectively. Any
1287 | employer, if self-insured, or carrier found by the department or
1288 | Office of Insurance Regulation ~~division~~ not to be within 90
1289 | percent compliance as to the payment of medical bills after July
1290 | 1, 1994, must be assessed a fine not to exceed 1 percent of the
1291 | prior year's assessment levied against such entity under s.
1292 | 440.51 for every quarter in which the entity fails to attain 90-
1293 | percent compliance. The department shall fine or otherwise
1294 | discipline an employer or carrier, pursuant to this chapter, ~~the~~
1295 | ~~insurance code~~, or rules adopted by the department, and the
1296 | Office of Insurance Regulation shall fine or otherwise
1297 | discipline an insurer or group self-insurance fund pursuant to
1298 | the insurance code or rules adopted by the Financial Services
1299 | Commission, for each late payment of compensation that is below
1300 | the minimum 90-percent performance standard. Any carrier that is
1301 | found to be not in compliance in subsequent consecutive quarters
1302 | must implement a medical-bill review program approved by the



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1303 department or office ~~division~~, and an insurer or group self-
1304 insurance fund ~~the carrier~~ is subject to disciplinary action by
1305 the Office of Insurance Regulation ~~Department of Insurance~~.

1306 (c) The agency has exclusive jurisdiction to decide any
1307 matters concerning reimbursement, to resolve any overutilization
1308 dispute under subsection (7), and to decide any question
1309 concerning overutilization under subsection (8), which question
1310 or dispute arises after January 1, 1994.

1311 (d) The following agency actions do not constitute agency
1312 action subject to review under ss. 120.569 and 120.57 and do not
1313 constitute actions subject to s. 120.56: referral by the entity
1314 responsible for utilization review; a decision by the agency to
1315 refer a matter to a peer review committee; establishment by a
1316 health care provider or entity of procedures by which a peer
1317 review committee reviews the rendering of health care services;
1318 and the review proceedings, report, and recommendation of the
1319 peer review committee.

1320 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
1321 REIMBURSEMENT ALLOWANCES.--

1322 (a) A three-member panel is created, consisting of the
1323 Chief Financial Officer ~~Insurance Commissioner~~, or the Chief
1324 Financial Officer's ~~Insurance Commissioner's~~ designee, and two
1325 members to be appointed by the Governor, subject to confirmation
1326 by the Senate, one member who, on account of present or previous
1327 vocation, employment, or affiliation, shall be classified as a
1328 representative of employers, the other member who, on account of
1329 previous vocation, employment, or affiliation, shall be
1330 classified as a representative of employees. The panel shall



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1331 determine statewide schedules of maximum reimbursement
1332 allowances for medically necessary treatment, care, and
1333 attendance provided by physicians, hospitals, ambulatory
1334 surgical centers, work-hardening programs, pain programs, and
1335 durable medical equipment. The maximum reimbursement allowances
1336 for inpatient hospital care shall be based on a schedule of per
1337 diem rates, to be approved by the three-member panel no later
1338 than March 1, 1994, to be used in conjunction with a
1339 precertification manual as determined by the agency. All
1340 compensable charges for hospital outpatient care shall be
1341 reimbursed at 75 percent of usual and customary charges. Until
1342 the three-member panel approves a schedule of per diem rates for
1343 inpatient hospital care and it becomes effective, all
1344 compensable charges for hospital inpatient care must be
1345 reimbursed at 75 percent of their usual and customary charges.
1346 Annually, the three-member panel shall adopt schedules of
1347 maximum reimbursement allowances for physicians, hospital
1348 inpatient care, hospital outpatient care, ambulatory surgical
1349 centers, work-hardening programs, and pain programs. However,
1350 the maximum percentage of increase in the individual
1351 reimbursement allowance may not exceed the percentage of
1352 increase in the Consumer Price Index for the previous year. An
1353 individual physician, hospital, ambulatory surgical center, pain
1354 program, or work-hardening program shall be reimbursed either
1355 the usual and customary charge for treatment, care, and
1356 attendance, the agreed-upon contract price, or the maximum
1357 reimbursement allowance in the appropriate schedule, whichever
1358 is less.



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1359 (b) As to reimbursement for a prescription medication, the
1360 reimbursement amount for a prescription shall be the average
1361 wholesale price times 1.2 plus \$4.18 for the dispensing fee,
1362 except where the carrier has contracted for a lower amount. Fees
1363 for pharmaceuticals and pharmaceutical services shall be
1364 reimbursable at the applicable fee schedule amount. Where the
1365 employer or carrier has contracted for such services and the
1366 employee elects to obtain them through a provider not a party to
1367 the contract, the carrier shall reimburse at the schedule,
1368 negotiated, or contract price, whichever is lower.

1369 (c) Reimbursement for all fees and other charges for such
1370 treatment, care, and attendance, including treatment, care, and
1371 attendance provided by any hospital or other health care
1372 provider, ambulatory surgical center, work-hardening program, or
1373 pain program, must not exceed the amounts provided by the
1374 uniform schedule of maximum reimbursement allowances as
1375 determined by the panel or as otherwise provided in this
1376 section. This subsection also applies to independent medical
1377 examinations performed by health care providers under this
1378 chapter. Until the three-member panel approves a uniform
1379 schedule of maximum reimbursement allowances and it becomes
1380 effective, all compensable charges for treatment, care, and
1381 attendance provided by physicians, ambulatory surgical centers,
1382 work-hardening programs, or pain programs shall be reimbursed at
1383 the lowest maximum reimbursement allowance across all 1992
1384 schedules of maximum reimbursement allowances for the services
1385 provided regardless of the place of service. In determining the
1386 uniform schedule, the panel shall first approve the data which



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1387 it finds representative of prevailing charges in the state for
1388 similar treatment, care, and attendance of injured persons. Each
1389 health care provider, health care facility, ambulatory surgical
1390 center, work-hardening program, or pain program receiving
1391 workers' compensation payments shall maintain records verifying
1392 their usual charges. In establishing the uniform schedule of
1393 maximum reimbursement allowances, the panel must consider:

1394 1. The levels of reimbursement for similar treatment,
1395 care, and attendance made by other health care programs or
1396 third-party providers;

1397 2. The impact upon cost to employers for providing a level
1398 of reimbursement for treatment, care, and attendance which will
1399 ensure the availability of treatment, care, and attendance
1400 required by injured workers;

1401 3. The financial impact of the reimbursement allowances
1402 upon health care providers and health care facilities, including
1403 trauma centers as defined in s. 395.4001, and its effect upon
1404 their ability to make available to injured workers such
1405 medically necessary remedial treatment, care, and attendance.
1406 The uniform schedule of maximum reimbursement allowances must be
1407 reasonable, must promote health care cost containment and
1408 efficiency with respect to the workers' compensation health care
1409 delivery system, and must be sufficient to ensure availability
1410 of such medically necessary remedial treatment, care, and
1411 attendance to injured workers; and

1412 4. The most recent average maximum allowable rate of
1413 increase for hospitals determined by the Health Care Board under
1414 chapter 408.



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1415 (d) In addition to establishing the uniform schedule of
1416 maximum reimbursement allowances, the panel shall:

1417 1. Take testimony, receive records, and collect data to
1418 evaluate the adequacy of the workers' compensation fee schedule,
1419 nationally recognized fee schedules and alternative methods of
1420 reimbursement to certified health care providers and health care
1421 facilities for inpatient and outpatient treatment and care.

1422 2. Survey certified health care providers and health care
1423 facilities to determine the availability and accessibility of
1424 workers' compensation health care delivery systems for injured
1425 workers.

1426 3. Survey carriers to determine the estimated impact on
1427 carrier costs and workers' compensation premium rates by
1428 implementing changes to the carrier reimbursement schedule or
1429 implementing alternative reimbursement methods.

1430 4. Submit recommendations on or before January 1, 2003,
1431 and biennially thereafter, to the President of the Senate and
1432 the Speaker of the House of Representatives on methods to
1433 improve the workers' compensation health care delivery system.

1434
1435 The agency and the department, as requested, ~~division~~ shall
1436 provide data to the panel, including but not limited to,
1437 utilization trends in the workers' compensation health care
1438 delivery system. The agency ~~division~~ shall provide the panel
1439 with an annual report regarding the resolution of medical
1440 reimbursement disputes and any actions pursuant to s. 440.13(8).
1441 The department ~~division~~ shall provide administrative support and
1442 service to the panel to the extent requested by the panel.



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1443 Section 15. Paragraph (c) of subsection (8) and
1444 subsections (10), (15), (16), and (17) of section 440.20,
1445 Florida Statutes, are amended to read:

1446 440.20 Time for payment of compensation; penalties for
1447 late payment.--

1448 (8) In addition to any other penalties provided by this
1449 chapter for late payment, if any installment of compensation is
1450 not paid when it becomes due, the employer, carrier, or
1451 servicing agent shall pay interest thereon at the rate of 12
1452 percent per year from the date the installment becomes due until
1453 it is paid, whether such installment is payable without an order
1454 or under the terms of an order. The interest payment shall be
1455 the greater of the amount of interest due or \$5.

1456 (c) In order to ensure carrier compliance under this
1457 chapter and provisions of the Florida Insurance Code, the office
1458 ~~department~~ shall monitor the performance of carriers by
1459 conducting market conduct examinations, as provided in s.
1460 624.3161, and conducting investigations, as provided in s.
1461 624.317. The department shall establish by rule minimum
1462 performance standards for carriers to ensure that a minimum of
1463 90 percent of all compensation benefits are timely paid. The
1464 department shall fine a carrier as provided in s. 440.13(11)(b)
1465 up to \$50 for each late payment of compensation that is below
1466 the minimum 90 percent performance standard. This paragraph does
1467 not affect the imposition of any penalties or interest due to
1468 the claimant. If a carrier contracts with a servicing agent to
1469 fulfill its administrative responsibilities under this chapter,
1470 the payment practices of the servicing agent are deemed the



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1471 payment practices of the carrier for the purpose of assessing
1472 penalties against the carrier.

1473 (10) Whenever the department deems it advisable, it may
1474 require any employer to make a deposit with the Chief Financial
1475 Officer ~~Treasurer~~ to secure the prompt and convenient payments
1476 of such compensation; and payments therefrom upon any awards
1477 shall be made upon order of the department or judge of
1478 compensation claims.

1479 (15)(a) The office ~~department~~ shall examine on an ongoing
1480 basis claims files in accordance with s. 624.3161 and may impose
1481 fines pursuant to s. 624.310(5) and this chapter in order to
1482 identify questionable claims-handling techniques, questionable
1483 patterns or practices of claims, or a pattern of repeated
1484 unreasonably controverted claims by carriers, as defined in s.
1485 440.02, providing services to employees pursuant to this
1486 chapter. If the office ~~department~~ finds such questionable
1487 techniques, patterns, or repeated unreasonably controverted
1488 claims as constitute a general business practice of a carrier,
1489 as defined in s. 440.02, the office ~~department~~ shall take
1490 appropriate action so as to bring such general business
1491 practices to a halt pursuant to s. 440.38(3) or may impose
1492 penalties pursuant to s. 624.4211. The department and office may
1493 initiate investigations of questionable techniques, patterns,
1494 practices, or repeated unreasonably controverted claims. The
1495 Financial Services Commission ~~department~~ may by rule establish
1496 forms and procedures for corrective action plans and for
1497 auditing carriers.



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1498 (b) As to any examination, investigation, or hearing being
1499 conducted under this chapter, the department and office
1500 ~~Insurance Commissioner or his or her designee~~:

1501 1. May administer oaths, examine and cross-examine
1502 witnesses, receive oral and documentary evidence; and

1503 2. Shall have the power to subpoena witnesses, compel
1504 their attendance and testimony, and require by subpoena the
1505 production of books, papers, records, files, correspondence,
1506 documents, or other evidence which is relevant to the inquiry.

1507 (c) If any person refuses to comply with any such subpoena
1508 or to testify as to any matter concerning which she or he may be
1509 lawfully interrogated, the Circuit Court of Leon County or of
1510 the county wherein such examination, investigation, or hearing
1511 is being conducted, or of the county wherein such person
1512 resides, may, on the application of the department or the
1513 office, issue an order requiring such person to comply with the
1514 subpoena and to testify.

1515 (d) Subpoenas shall be served, and proof of such service
1516 made, in the same manner as if issued by a circuit court.
1517 Witness fees, costs, and reasonable travel expenses, if claimed,
1518 shall be allowed the same as for testimony in a circuit court.

1519 (e) The department shall publish annually a report which
1520 indicates the promptness of first payment of compensation
1521 records of each carrier or self-insurer so as to focus attention
1522 on those carriers or self-insurers with poor payment records for
1523 the preceding year. The department and the office shall take
1524 appropriate steps so as to cause such poor carrier payment
1525 practices to halt pursuant to s. 440.38(3). In addition, the



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1526 department shall take appropriate action so as to halt such poor
1527 payment practices of self-insurers. "Poor payment practice"
1528 means a practice of late payment sufficient to constitute a
1529 general business practice.

1530 (f) The Financial Services Commission, in consultation
1531 with the department, shall adopt ~~promulgate~~ rules providing
1532 guidelines to carriers, as defined in s. 440.02, self-insurers,
1533 and employers to indicate behavior that may be construed as
1534 questionable claims-handling techniques, questionable patterns
1535 of claims, repeated unreasonably controverted claims, or poor
1536 payment practices.

1537 (16) No penalty assessed under this section may be
1538 recouped by any carrier or self-insurer in the rate base, the
1539 premium, or any rate filing. The office ~~Department of Insurance~~
1540 shall enforce this subsection.

1541 (17) The Financial Services Commission ~~department~~ may by
1542 rule establish audit procedures and set standards for the
1543 Automated Carrier Performance System.

1544 Section 16. Subsections (2) and (3) of section 440.24,
1545 Florida Statutes, is amended to read:

1546 440.24 Enforcement of compensation orders; penalties.--

1547 (2) In any case where the employer is insured and the
1548 carrier fails to comply with any compensation order of a judge
1549 of compensation claims or court within 10 days after such order
1550 becomes final, the department shall notify the office of such
1551 failure and the office shall thereupon suspend the license of
1552 such carrier to do an insurance business in this state, until
1553 such carrier has complied with such order.



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1554 (3) In any case where the employer is a self-insurer and
1555 fails to comply with any compensation order of a judge of
1556 compensation claims or court within 10 days after such order
1557 becomes final, the department ~~of Insurance~~ may suspend or revoke
1558 any authorization previously given to the employer to be a self-
1559 insurer, and the Florida Self-Insurers Guaranty Association,
1560 Incorporated, may call or sue upon the surety bond or exercise
1561 its rights under the letter of credit deposited by the self-
1562 insurer with the association as a qualifying security deposit as
1563 may be necessary to satisfy the order.

1564 Section 17. Subsections (1), (2), (3), and (4) of section
1565 440.38, Florida Statutes, are amended to read:

1566 440.38 Security for compensation; insurance carriers and
1567 self-insurers.--

1568 (1) Every employer shall secure the payment of
1569 compensation under this chapter:

1570 (a) By insuring and keeping insured the payment of such
1571 compensation with any stock company or mutual company or
1572 association or exchange, authorized to do business in the state;

1573 (b) By furnishing satisfactory proof to the Florida Self-
1574 Insurers Guaranty Association, Incorporated, created in s.
1575 440.385, that it has the financial strength necessary to ensure
1576 timely payment of all current and future claims individually and
1577 on behalf of its subsidiary and affiliated companies with
1578 employees in this state and receiving an authorization from the
1579 department ~~of Insurance~~ to pay such compensation directly. The
1580 association shall review the financial strength of applicants
1581 for membership, current members, and former members and make



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1582 recommendations to the department ~~of Insurance~~ regarding their
1583 qualifications to self-insure in accordance with this section
1584 and ss. 440.385 and 440.386. The department shall act in
1585 accordance with the recommendations unless it finds by clear and
1586 convincing evidence that the recommendations are erroneous.

1587 1. As a condition of authorization under paragraph (a),
1588 the association may recommend that the department ~~of Insurance~~
1589 require an employer to deposit with the association a qualifying
1590 security deposit. The association shall recommend the type and
1591 amount of the qualifying security deposit and shall prescribe
1592 conditions for the qualifying security deposit, which shall
1593 include authorization for the association to call the qualifying
1594 security deposit in the case of default to pay compensation
1595 awards and related expenses of the association. As a condition
1596 to authorization to self-insure, the employer shall provide
1597 proof that the employer has provided for competent personnel
1598 with whom to deliver benefits and to provide a safe working
1599 environment. The employer shall also provide evidence that it
1600 carries reinsurance at levels that will ensure the financial
1601 strength and actuarial soundness of such employer in accordance
1602 with rules adopted by the department ~~of Insurance~~. The
1603 department ~~of Insurance~~ may by rule require that, in the event
1604 of an individual self-insurer's insolvency, such qualifying
1605 security deposits and reinsurance policies are payable to the
1606 association. Any employer securing compensation in accordance
1607 with the provisions of this paragraph shall be known as a self-
1608 insurer and shall be classed as a carrier of her or his own
1609 insurance. The employer shall, if requested, provide the



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1610 association an actuarial report signed by a member of the
1611 American Academy of Actuaries providing an opinion of the
1612 appropriate present value of the reserves, using a 4-percent
1613 discount rate, for current and future compensation claims. If
1614 any member or former member of the association refuses to timely
1615 provide such a report, the association may obtain an order from
1616 a circuit court requiring the member to produce such a report
1617 and ordering any other relief that the court determines is
1618 appropriate. The association may recover all reasonable costs
1619 and attorney's fees in such proceedings.

1620 2. If the employer fails to maintain the foregoing
1621 requirements, the association shall recommend to the department
1622 ~~of Insurance~~ that the department revoke the employer's authority
1623 to self-insure, unless the employer provides to the association
1624 the certified opinion of an independent actuary who is a member
1625 of the American Academy of Actuaries as to the actuarial present
1626 value of the employer's determined and estimated future
1627 compensation payments based on cash reserves, using a 4-percent
1628 discount rate, and a qualifying security deposit equal to 1.5
1629 times the value so certified. The employer shall thereafter
1630 annually provide such a certified opinion until such time as the
1631 employer meets the requirements of subparagraph 1. The
1632 qualifying security deposit shall be adjusted at the time of
1633 each such annual report. Upon the failure of the employer to
1634 timely provide such opinion or to timely provide a security
1635 deposit in an amount equal to 1.5 times the value certified in
1636 the latest opinion, the association shall provide that
1637 information to the department ~~of Insurance~~ along with a



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1638 recommendation, and the department ~~of Insurance~~ shall then
1639 revoke such employer's authorization to self-insure. Failure to
1640 comply with this subparagraph constitutes an immediate serious
1641 danger to the public health, safety, or welfare sufficient to
1642 justify the summary suspension of the employer's authorization
1643 to self-insure pursuant to s. 120.68.

1644 3. Upon the suspension or revocation of the employer's
1645 authorization to self-insure, the employer shall provide to the
1646 association the certified opinion of an independent actuary who
1647 is a member of the American Academy of Actuaries of the
1648 actuarial present value of the determined and estimated future
1649 compensation payments of the employer for claims incurred while
1650 the member exercised the privilege of self-insurance, using a
1651 discount rate of 4 percent. The employer shall provide such an
1652 opinion at 6-month intervals thereafter until such time as the
1653 latest opinion shows no remaining value of claims. With each
1654 such opinion, the employer shall deposit with the association a
1655 qualifying security deposit in an amount equal to the value
1656 certified by the actuary. The association has a cause of action
1657 against an employer, and against any successor of the employer,
1658 who fails to timely provide such opinion or who fails to timely
1659 maintain the required security deposit with the association. The
1660 association shall recover a judgment in the amount of the
1661 actuarial present value of the determined and estimated future
1662 compensation payments of the employer for claims incurred while
1663 the employer exercised the privilege of self-insurance, together
1664 with attorney's fees. For purposes of this section, the
1665 successor of an employer means any person, business entity, or



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1666 group of persons or business entities, which holds or acquires
1667 legal or beneficial title to the majority of the assets or the
1668 majority of the shares of the employer.

1669 4. A qualifying security deposit shall consist, at the
1670 option of the employer, of:

1671 a. Surety bonds, in a form and containing such terms as
1672 prescribed by the association, issued by a corporation surety
1673 authorized to transact surety business by the office ~~Department~~
1674 ~~of Insurance~~, and whose policyholders' and financial ratings, as
1675 reported in A.M. Best's Insurance Reports, Property-Liability,
1676 are not less than "A" and "V", respectively.

1677 b. Irrevocable letters of credit in favor of the
1678 association issued by financial institutions located within this
1679 state, the deposits of which are insured through the Federal
1680 Deposit Insurance Corporation.

1681 5. The qualifying security deposit shall be held by the
1682 association exclusively for the benefit of workers' compensation
1683 claimants. The security shall not be subject to assignment,
1684 execution, attachment, or any legal process whatsoever, except
1685 as necessary to guarantee the payment of compensation under this
1686 chapter. No surety bond may be terminated, and no letter of
1687 credit may be allowed to expire, without 90 days' prior written
1688 notice to the association and deposit by the self-insuring
1689 employer of some other qualifying security deposit of equal
1690 value within 10 business days after such notice. Failure to
1691 provide such written notice or failure to timely provide
1692 qualifying replacement security after such notice shall
1693 constitute grounds for the association to call or sue upon the



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1694 surety bond or to exercise its rights under a letter of credit.
1695 Current self-insured employers must comply with this section on
1696 or before December 31, 2001, or upon the maturity of existing
1697 security deposits, whichever occurs later. The department of
1698 Insurance may specify by rule the amount of the qualifying
1699 security deposit required prior to authorizing an employer to
1700 self-insure and the amount of net worth required for an employer
1701 to qualify for authorization to self-insure;

1702 (c) By entering into a contract with a public utility
1703 under an approved utility-provided self-insurance program as set
1704 forth in s. 624.46225 in effect as of July 1, 1983. The
1705 department ~~division~~ shall adopt rules to implement this
1706 paragraph;

1707 (d) By entering into an interlocal agreement with other
1708 local governmental entities to create a local government pool
1709 pursuant to s. 624.4622;

1710 ~~(e) In accordance with s. 440.135, an employer, other than~~
1711 ~~a local government unit, may elect coverage under the Workers'~~
1712 ~~Compensation Law and retain the benefit of the exclusiveness of~~
1713 ~~liability provided in s. 440.11 by obtaining a 24-hour health~~
1714 ~~insurance policy from an authorized property and casualty~~
1715 ~~insurance carrier or an authorized life and health insurance~~
1716 ~~carrier, or by participating in a fully or partially self-~~
1717 ~~insured 24-hour health plan that is established or maintained by~~
1718 ~~or for two or more employers, so long as the law of this state~~
1719 ~~is not preempted by the Employee Retirement Income Security Act~~
1720 ~~of 1974, Pub. L. No. 93-406, or any amendment to that law, which~~
1721 ~~policy or plan must provide, for at least occupational injuries~~



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1722 ~~and illnesses, medical benefits that are comparable to those~~
1723 ~~required by this chapter. A local government unit, as a single~~
1724 ~~employer, in accordance with s. 440.135, may participate in the~~
1725 ~~24-hour health insurance coverage plan referenced in this~~
1726 ~~paragraph. Disputes and remedies arising under policies issued~~
1727 ~~under this section are governed by the terms and conditions of~~
1728 ~~the policies and under the applicable provisions of the Florida~~
1729 ~~Insurance Code and rules adopted under the insurance code and~~
1730 ~~other applicable laws of this state. The 24-hour health~~
1731 ~~insurance policy may provide for health care by a health~~
1732 ~~maintenance organization or a preferred provider organization.~~
1733 ~~The premium for such 24-hour health insurance policy shall be~~
1734 ~~paid entirely by the employer. The 24-hour health insurance~~
1735 ~~policy may use deductibles and coinsurance provisions that~~
1736 ~~require the employee to pay a portion of the actual medical care~~
1737 ~~received by the employee. If an employer obtains a 24-hour~~
1738 ~~health insurance policy or self-insured plan to secure payment~~
1739 ~~of compensation as to medical benefits, the employer must also~~
1740 ~~obtain an insurance policy or policies that provide indemnity~~
1741 ~~benefits as follows:~~

1742 ~~1. If indemnity benefits are provided only for~~
1743 ~~occupational-related disability, such benefits must be~~
1744 ~~comparable to those required by this chapter.~~

1745 ~~2. If indemnity benefits are provided for both~~
1746 ~~occupational-related and nonoccupational-related disability,~~
1747 ~~such benefits must be comparable to those required by this~~
1748 ~~chapter, except that they must be based on 60 percent of the~~
1749 ~~average weekly wages.~~



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1750 ~~3. The employer shall provide for each of its employees~~
1751 ~~life insurance with a death benefit of \$100,000.~~

1752 ~~4. Policies providing coverage under this subsection must~~
1753 ~~use prescribed and acceptable underwriting standards, forms, and~~
1754 ~~policies approved by the Department of Insurance. If any~~
1755 ~~insurance policy that provides coverage under this section is~~
1756 ~~canceled, terminated, or nonrenewed for any reason, the~~
1757 ~~cancellation, termination, or nonrenewal is ineffective until~~
1758 ~~the self-insured employer or insurance carrier or carriers~~
1759 ~~notify the division and the Department of Insurance of the~~
1760 ~~cancellation, termination, or nonrenewal, and until the division~~
1761 ~~has actually received the notification. The division must be~~
1762 ~~notified of replacement coverage under a workers' compensation~~
1763 ~~and employer's liability insurance policy or plan by the~~
1764 ~~employer prior to the effective date of the cancellation,~~
1765 ~~termination, or nonrenewal; or~~

1766 ~~(e)(f)~~ By entering into a contract with an individual
1767 self-insurer under an approved individual self-insurer-provided
1768 self-insurance program as set forth in s. 624.46225. The
1769 department ~~division~~ may adopt rules to administer this
1770 subsection.

1771 (2)(a) The department ~~of Insurance~~ shall adopt rules by
1772 which businesses may become qualified to provide underwriting
1773 claims-adjusting, loss control, and safety engineering services
1774 to self-insurers.

1775 (b) The department ~~of Insurance~~ shall adopt rules
1776 requiring self-insurers to file any reports necessary to fulfill
1777 the requirements of this chapter. Any self-insurer who fails to



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1778 file any report as prescribed by the rules adopted by the
1779 department ~~of Insurance~~ shall be subject to a civil penalty.

1780 (3)(a) The license of any stock company or mutual company
1781 or association or exchange authorized to do insurance business
1782 in the state shall for good cause, upon recommendation of the
1783 department division, be suspended or revoked by the office
1784 ~~Department of Insurance~~. No suspension or revocation shall
1785 affect the liability of any carrier already incurred.

1786 (b) The department ~~of Insurance~~ shall suspend or revoke
1787 any authorization to a self-insurer for failure to comply with
1788 this section or for good cause, as defined by rule of the
1789 department ~~of Insurance~~. No suspension or revocation shall
1790 affect the liability of any self-insurer already incurred.

1791 (c) Violation of s. 440.381 by a self-insurance fund shall
1792 result in the imposition of a fine not to exceed \$1,000 per
1793 audit if the self-insurance fund fails to act on said audits by
1794 correcting errors in employee classification or accepted
1795 applications for coverage where it knew employee classifications
1796 were incorrect. Such fines shall be levied by the department
1797 ~~division~~ and deposited into the Workers' Compensation
1798 Administration Trust Fund.

1799 (4)(a) A carrier of insurance, including the parties to
1800 any mutual, reciprocal, or other association, may not write any
1801 compensation insurance under this chapter without a certificate
1802 of authority permit from the office ~~Department of Insurance~~.
1803 Such certificate of authority permit shall be given, upon
1804 application therefor, to any insurance or mutual or reciprocal
1805 insurance association upon the office's ~~department's~~ being



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1806 satisfied of the solvency of such corporation or association and
 1807 its ability to perform all its undertakings. The office
 1808 ~~Department of Insurance~~ may revoke any certificate of authority
 1809 ~~permit~~ so issued for violation of any provision of this chapter.

1810 (b) A carrier of insurance, including the parties to any
 1811 mutual, reciprocal, or other association, may not write any
 1812 compensation insurance under this chapter unless such carrier
 1813 has a claims adjuster, either in-house or under contract,
 1814 situated within this state. Self-insurers whose compensation
 1815 payments are administered through a third party and carriers of
 1816 insurance shall maintain a claims adjuster within this state
 1817 during any period for which there are any open claims against
 1818 such self-insurer or carrier arising under the compensation
 1819 insurance written by the self-insurer or carrier. Individual
 1820 self-insurers whose compensation payments are administered by
 1821 employees of the self-insurer shall not be required to have
 1822 their claims adjuster situated within this state. Individual
 1823 self-insurers shall not be required to have their claims
 1824 adjusters situated within this state.

1825 Section 18. Subsections (1) and (3) of section 440.381,
 1826 Florida Statutes, are amended to read:

1827 440.381 Application for coverage; reporting payroll;
 1828 payroll audit procedures; penalties.--

1829 (1) Applications by an employer to a carrier for coverage
 1830 required by s. 440.38 must be made on a form prescribed by the
 1831 Financial Services Commission ~~Department of Insurance~~. The
 1832 Financial Services Commission ~~Department of Insurance~~ shall
 1833 adopt rules for applications for coverage required by s. 440.38.



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1834 The rules must provide that an application include information
1835 on the employer, the type of business, past and prospective
1836 payroll, estimated revenue, previous workers' compensation
1837 experience, employee classification, employee names, and any
1838 other information necessary to enable a carrier to accurately
1839 underwrite the applicant. The rules must include a provision
1840 that a carrier or self-insurance fund may require that an
1841 employer update an application monthly to reflect any change in
1842 the required application information.

1843 (3) The Financial Services Commission, in consultation
1844 with the department, shall establish by rule minimum
1845 requirements for audits of payroll and classifications in order
1846 to ensure that the appropriate premium is charged for workers'
1847 compensation coverage. The rules shall ensure that audits
1848 performed by both carriers and employers are adequate to provide
1849 that all sources of payments to employees, subcontractors, and
1850 independent contractors have been reviewed and that the accuracy
1851 of classification of employees has been verified. The rules
1852 shall provide that employers in all classes other than the
1853 construction class be audited not less frequently than
1854 biennially and may provide for more frequent audits of employers
1855 in specified classifications based on factors such as amount of
1856 premium, type of business, loss ratios, or other relevant
1857 factors. In no event shall employers in the construction class,
1858 generating more than the amount of premium required to be
1859 experience rated, be audited less than annually. The annual
1860 audits required for construction classes shall consist of
1861 physical onsite audits. Payroll verification audit rules must



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1862 include, but need not be limited to, the use of state and
1863 federal reports of employee income, payroll and other accounting
1864 records, certificates of insurance maintained by subcontractors,
1865 and duties of employees. At the completion of an audit, the
1866 employer or officer of the corporation and the auditor must
1867 print and sign their names on the audit document and attach
1868 proof of identification to the audit document.

1869 Section 19. Section 440.385, Florida Statutes, is amended
1870 to read:

1871 440.385 Florida Self-Insurers Guaranty Association,
1872 Incorporated.--

1873 (1) CREATION OF ASSOCIATION.--

1874 (a) There is created a nonprofit corporation to be known
1875 as the "Florida Self-Insurers Guaranty Association,
1876 Incorporated," hereinafter referred to as "the association."
1877 Upon incorporation of the association, all individual self-
1878 insurers as defined in ss. 440.02(23)(a) and 440.38(1)(b), other
1879 than individual self-insurers which are public utilities or
1880 governmental entities, shall be members of the association as a
1881 condition of their authority to individually self-insure in this
1882 state. The association shall perform its functions under a plan
1883 of operation as established and approved under subsection (5)
1884 and shall exercise its powers and duties through a board of
1885 directors as established under subsection (2). The association
1886 shall have those powers granted or permitted corporations not
1887 for profit, as provided in chapter 617. The activities of the
1888 association shall be subject to review by the department of
1889 ~~Insurance~~. The department of ~~Insurance~~ shall have oversight



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1890 responsibility as set forth in this section. The association is
1891 specifically authorized to enter into agreements with this state
1892 to perform specified services.

1893 (b) A member may voluntarily withdraw from the association
1894 when the member voluntarily terminates the self-insurance
1895 privilege and pays all assessments due to the date of such
1896 termination. However, the withdrawing member shall continue to
1897 be bound by the provisions of this section relating to the
1898 period of his or her membership and any claims charged pursuant
1899 thereto. The withdrawing member who is a member on or after
1900 January 1, 1991, shall also be required to provide to the
1901 association upon withdrawal, and at 12-month intervals
1902 thereafter, satisfactory proof, including, if requested by the
1903 association, a report of known and potential claims certified by
1904 a member of the American Academy of Actuaries, that it continues
1905 to meet the standards of s. 440.38(1)(b)1. in relation to claims
1906 incurred while the withdrawing member exercised the privilege of
1907 self-insurance. Such reporting shall continue until the
1908 withdrawing member demonstrates to the association that there is
1909 no remaining value to claims incurred while the withdrawing
1910 member was self-insured. If a withdrawing member fails or
1911 refuses to timely provide an actuarial report to the
1912 association, the association may obtain an order from a circuit
1913 court requiring the member to produce such a report and ordering
1914 any other relief that the court determines appropriate. The
1915 association is entitled to recover all reasonable costs and
1916 attorney's fees expended in such proceedings. If during this
1917 reporting period the withdrawing member fails to meet the



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1918 standards of s. 440.38(1)(b)1., the withdrawing member who is a
1919 member on or after January 1, 1991, shall thereupon, and at 6-
1920 month intervals thereafter, provide to the association the
1921 certified opinion of an independent actuary who is a member of
1922 the American Academy of Actuaries of the actuarial present value
1923 of the determined and estimated future compensation payments of
1924 the member for claims incurred while the member was a self-
1925 insurer, using a discount rate of 4 percent. With each such
1926 opinion, the withdrawing member shall deposit with the
1927 association security in an amount equal to the value certified
1928 by the actuary and of a type that is acceptable for qualifying
1929 security deposits under s. 440.38(1)(b). The withdrawing member
1930 shall continue to provide such opinions and to provide such
1931 security until such time as the latest opinion shows no
1932 remaining value of claims. The association has a cause of
1933 action against a withdrawing member, and against any successor
1934 of a withdrawing member, who fails to timely provide the
1935 required opinion or who fails to maintain the required deposit
1936 with the association. The association shall be entitled to
1937 recover a judgment in the amount of the actuarial present value
1938 of the determined and estimated future compensation payments of
1939 the withdrawing member for claims incurred during the time that
1940 the withdrawing member exercised the privilege of self-
1941 insurance, together with reasonable attorney's fees. The
1942 association is also entitled to recover reasonable attorney's
1943 fees in any action to compel production of any actuarial report
1944 required by this section. For purposes of this section, the
1945 successor of a withdrawing member means any person, business



1946 entity, or group of persons or business entities, which holds or
 1947 acquires legal or beneficial title to the majority of the assets
 1948 or the majority of the shares of the withdrawing member.

1949 (2) BOARD OF DIRECTORS.--The board of directors of the
 1950 association shall consist of nine persons and shall be organized
 1951 as established in the plan of operation. All board members shall
 1952 be experienced in self-insurance in this state. Each director
 1953 shall serve for a 4-year term and may be reappointed.

1954 Appointments after January 1, 2002, shall be made by the
 1955 department of ~~Insurance~~ upon recommendation of members of the
 1956 association. Any vacancy on the board shall be filled for the
 1957 remaining period of the term in the same manner as appointments
 1958 other than initial appointments are made. Each director shall be
 1959 reimbursed for expenses incurred in carrying out the duties of
 1960 the board on behalf of the association.

1961 (3) POWERS AND DUTIES.--

1962 (a) Upon creation of the Insolvency Fund pursuant to the
 1963 provisions of subsection (4), the association is obligated for
 1964 payment of compensation under this chapter to insolvent members'
 1965 employees resulting from incidents and injuries existing prior
 1966 to the member becoming an insolvent member and from incidents
 1967 and injuries occurring within 30 days after the member has
 1968 become an insolvent member, provided the incidents giving rise
 1969 to claims for compensation under this chapter occur during the
 1970 year in which such insolvent member is a member of the guaranty
 1971 fund and was assessable pursuant to the plan of operation, and
 1972 provided the employee makes timely claim for such payments
 1973 according to procedures set forth by a court of competent



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1974 jurisdiction over the delinquency or bankruptcy proceedings of
1975 the insolvent member. Such obligation includes only that amount
1976 due the injured worker or workers of the insolvent member under
1977 this chapter. In no event is the association obligated to a
1978 claimant in an amount in excess of the obligation of the
1979 insolvent member. The association shall be deemed the insolvent
1980 employer for purposes of this chapter to the extent of its
1981 obligation on the covered claims and, to such extent, shall have
1982 all rights, duties, and obligations of the insolvent employer as
1983 if the employer had not become insolvent. However, in no event
1984 shall the association be liable for any penalties or interest.

1985 (b) The association may:

1986 1. Employ or retain such persons as are necessary to
1987 handle claims and perform other duties of the association.

1988 2. Borrow funds necessary to effect the purposes of this
1989 section in accord with the plan of operation.

1990 3. Sue or be sued.

1991 4. Negotiate and become a party to such contracts as are
1992 necessary to carry out the purposes of this section.

1993 5. Purchase such reinsurance as is determined necessary
1994 pursuant to the plan of operation.

1995 6. Review all applicants for membership in the association
1996 to determine whether the applicant is qualified for membership
1997 under the law. The association shall recommend to the department
1998 ~~of Insurance~~ that the application be accepted or rejected based
1999 on the criteria set forth in s. 440.38(1)(b). The department ~~of~~
2000 ~~Insurance~~ shall approve or disapprove the application as
2001 provided in paragraph (6)(a).



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2002 7. Collect and review financial information from employers
2003 and make recommendations to the department ~~of Insurance~~
2004 regarding the appropriate security deposit and reinsurance
2005 amounts necessary for an employer to demonstrate that it has the
2006 financial strength necessary to ensure the timely payment of all
2007 current and future claims. The association may audit and examine
2008 an employer to verify the financial strength of its current and
2009 former members. If the association determines that a current or
2010 former self-insured employer does not have the financial
2011 strength necessary to ensure the timely payment of all current
2012 and estimated future claims, the association may recommend to
2013 the department ~~of Insurance~~ that the department:

2014 a. Revoke the employer's self-insurance privilege.

2015 b. Require the employer to provide a certified opinion of
2016 an independent actuary who is a member of the American Academy
2017 of Actuaries as to the actuarial present value of the employer's
2018 estimated current and future compensation payments, using a 4-
2019 percent discount rate.

2020 c. Require an increase in the employer's security deposit
2021 in an amount determined by the association to be necessary to
2022 ensure payment of compensation claims. The department ~~of~~
2023 ~~Insurance~~ shall act on such recommendations as provided in
2024 paragraph (6)(a). The association has a cause of action against
2025 an employer, and against any successor of an employer, who fails
2026 to provide an additional security deposit required by the
2027 department ~~of Insurance~~. The association shall file an action
2028 in circuit court to recover a judgment in the amount of the
2029 requested additional security deposit together with reasonable



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2030 attorney's fees. For the purposes of this section, the
2031 successor of an employer is any person, business entity, or
2032 group of persons or business entities which holds or acquires
2033 legal or beneficial title to the majority of the assets or the
2034 majority of the shares of the employer.

2035 8. Charge fees to any member of the association to cover
2036 the actual costs of examining the financial and safety
2037 conditions of that member.

2038 9. Charge an applicant for membership in the association a
2039 fee sufficient to cover the actual costs of examining the
2040 financial condition of the applicant.

2041 10. Implement any procedures necessary to ensure
2042 compliance with regulatory actions taken by the department ~~of~~
2043 ~~Insurance~~.

2044 (c)1. To the extent necessary to secure funds for the
2045 payment of covered claims and also to pay the reasonable costs
2046 to administer them, the association, subject to approval by the
2047 department ~~of Insurance~~, shall levy assessments based on the
2048 annual written premium each employer would have paid had the
2049 employer not been self-insured. Every assessment shall be made
2050 as a uniform percentage of the figure applicable to all
2051 individual self-insurers, provided that the assessment levied
2052 against any self-insurer in any one year shall not exceed 1
2053 percent of the annual written premium during the calendar year
2054 preceding the date of the assessment. Assessments shall be
2055 remitted to and administered by the board of directors in the
2056 manner specified by the approved plan. Each employer so
2057 assessed shall have at least 30 days' written notice as to the



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2058 | date the assessment is due and payable. The association shall
2059 | levy assessments against any newly admitted member of the
2060 | association so that the basis of contribution of any newly
2061 | admitted member is the same as previously admitted members,
2062 | provision for which shall be contained in the plan of operation.

2063 | 2. If, in any one year, funds available from such
2064 | assessments, together with funds previously raised, are not
2065 | sufficient to make all the payments or reimbursements then
2066 | owing, the funds available shall be prorated, and the unpaid
2067 | portion shall be paid as soon thereafter as sufficient
2068 | additional funds become available.

2069 | 3. Funds may be allocated or paid from the Workers'
2070 | Compensation Administration Trust Fund to contract with the
2071 | association to perform services required by law. However, no
2072 | state funds of any kind shall be allocated or paid to the
2073 | association or any of its accounts for payment of covered claims
2074 | or related expenses except those state funds accruing to the
2075 | association by and through the assignment of rights of an
2076 | insolvent employer. The department ~~of Insurance~~ may not levy any
2077 | assessment on the association.

2078 | (4) INSOLVENCY FUND.--Upon the adoption of a plan of
2079 | operation, there shall be created an Insolvency Fund to be
2080 | managed by the association.

2081 | (a) The Insolvency Fund is created for purposes of meeting
2082 | the obligations of insolvent members incurred while members of
2083 | the association and after the exhaustion of any security
2084 | deposit, as required under this chapter. However, if such
2085 | security deposit or reinsurance policy is payable to the



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2086 association, the association shall commence to provide benefits
2087 out of the Insolvency Fund and be reimbursed from the security
2088 deposit or reinsurance policy. The method of operation of the
2089 Insolvency Fund shall be defined in the plan of operation as
2090 provided in subsection (5).

2091 (b) The department ~~of Insurance~~ shall have the authority
2092 to audit the financial soundness of the Insolvency Fund
2093 annually.

2094 (c) The department ~~of Insurance~~ may offer certain
2095 amendments to the plan of operation to the board of directors of
2096 the association for purposes of assuring the ongoing financial
2097 soundness of the Insolvency Fund and its ability to meet the
2098 obligations of this section.

2099 (5) PLAN OF OPERATION.--The association shall operate
2100 pursuant to a plan of operation approved by the board of
2101 directors. The plan of operation in effect on January 1, 2002,
2102 and approved by the Department of Labor and Employment Security
2103 shall remain in effect. However, any amendments to the plan
2104 shall not become effective until approved by the Department of
2105 Financial Services Insurance.

2106 (a) The purpose of the plan of operation shall be to
2107 provide the association and the board of directors with the
2108 authority and responsibility to establish the necessary programs
2109 and to take the necessary actions to protect against the
2110 insolvency of a member of the association. In addition, the
2111 plan shall provide that the members of the association shall be
2112 responsible for maintaining an adequate Insolvency Fund to meet
2113 the obligations of insolvent members provided for under this act



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2114 and shall authorize the board of directors to contract and
2115 employ those persons with the necessary expertise to carry out
2116 this stated purpose. By January 1, 2003, the board of directors
2117 shall submit to the department ~~of Insurance~~ a proposed plan of
2118 operation for the administration of the association. The
2119 department ~~of Insurance~~ shall approve the plan by order,
2120 consistent with this section. The department ~~of Insurance~~ shall
2121 approve any amendments to the plan, consistent with this
2122 section, which are determined appropriate to carry out the
2123 duties and responsibilities of the association.

2124 (b) All member employers shall comply with the plan of
2125 operation.

2126 (c) The plan of operation shall:

2127 1. Establish the procedures whereby all the powers and
2128 duties of the association under subsection (3) will be
2129 performed.

2130 2. Establish procedures for handling assets of the
2131 association.

2132 3. Establish the amount and method of reimbursing members
2133 of the board of directors under subsection (2).

2134 4. Establish procedures by which claims may be filed with
2135 the association and establish acceptable forms of proof of
2136 covered claims. Notice of claims to the receiver or liquidator
2137 of the insolvent employer shall be deemed notice to the
2138 association or its agent, and a list of such claims shall be
2139 submitted periodically to the association or similar
2140 organization in another state by the receiver or liquidator.



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2141 5. Establish regular places and times for meetings of the
2142 board of directors.

2143 6. Establish procedures for records to be kept of all
2144 financial transactions of the association and its agents and the
2145 board of directors.

2146 7. Provide that any member employer aggrieved by any final
2147 action or decision of the association may appeal to the
2148 department of ~~Insurance~~ within 30 days after the action or
2149 decision.

2150 8. Establish the procedures whereby recommendations of
2151 candidates for the board of directors shall be submitted to the
2152 department of ~~Insurance~~.

2153 9. Contain additional provisions necessary or proper for
2154 the execution of the powers and duties of the association.

2155 (d) The plan of operation may provide that any or all of
2156 the powers and duties of the association, except those specified
2157 under subparagraphs (c)1. and 2., be delegated to a corporation,
2158 association, or other organization which performs or will
2159 perform functions similar to those of this association or its
2160 equivalent in two or more states. Such a corporation,
2161 association, or organization shall be reimbursed as a servicing
2162 facility would be reimbursed and shall be paid for its
2163 performance of any other functions of the association. A
2164 delegation of powers or duties under this subsection shall take
2165 effect only with the approval of both the board of directors and
2166 the department of ~~Insurance~~ and may be made only to a
2167 corporation, association, or organization which extends



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2168 protection which is not substantially less favorable and
2169 effective than the protection provided by this section.

2170 (6) POWERS AND DUTIES OF DEPARTMENT OF ~~INSURANCE~~.--The
2171 department ~~of Insurance~~ shall:

2172 (a) Review recommendations of the association concerning
2173 whether current or former self-insured employers or members of
2174 the association have the financial strength necessary to ensure
2175 the timely payment of all current and estimated future claims.
2176 If the association determines an employer does not have the
2177 financial strength necessary to ensure the timely payment of all
2178 current and future claims and recommends action pursuant to
2179 paragraph (3)(b), the department shall take such action as
2180 necessary to order the employer to comply with the
2181 recommendation, unless the department finds by clear and
2182 convincing evidence that the recommendation is erroneous.

2183 (b) Contract with the association for services, which may
2184 include, but are not limited to:

- 2185 1. Processing applications for self-insurance.
- 2186 2. Collecting and reviewing financial statements and loss
2187 reserve information from individual self-insurers.
- 2188 3. Collecting and maintaining files for original security
2189 deposit documents and reinsurance policies from individual self-
2190 insurers and, if necessary, perfecting security interests in
2191 security deposits.
- 2192 4. Processing compliance documentation for individual
2193 self-insurers and providing copies of such documentation to the
2194 department.



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2195 | 5. Collecting all data necessary to calculate annual
2196 | premium for all individual self-insurers, including individual
2197 | self-insurers that are public utilities or governmental
2198 | entities, and providing such calculated annual premium to the
2199 | department ~~division~~ for assessment purposes.

2200 | 6. Inspecting and auditing annually, if necessary, the
2201 | payroll and other records of each individual self-insurer,
2202 | including individual self-insurers that are public utilities or
2203 | governmental entities, in order to determine the wages paid by
2204 | each individual self-insurer, the premium such individual self-
2205 | insurer would have to pay if insured, and all payments of
2206 | compensation made by such individual self-insurer during each
2207 | prior period with the results of such audit provided to the
2208 | department ~~division~~. For purposes of this section, the payroll
2209 | records of each individual self-insurer shall be open to
2210 | inspection and audit by the association and the department, or
2211 | their authorized representatives, during regular business hours.

2212 | 7. Processing applications and making recommendations with
2213 | respect to the qualification of a business to be approved to
2214 | provide or continue to provide services to individual self-
2215 | insurers in the areas of underwriting, claims adjusting, loss
2216 | control, and safety engineering.

2217 | 8. Providing legal representation to implement the
2218 | administration and audit of individual self-insurers and making
2219 | recommendations regarding prosecution of any administrative or
2220 | legal proceedings necessitated by the regulation of the
2221 | individual self-insurers by the department.



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2222 (c) Contract with an attorney or attorneys recommended by
2223 the association for representation of the department in any
2224 administrative or legal proceedings necessitated by the
2225 recommended regulation of the individual self-insurers.

2226 (d) Direct the association to require from each individual
2227 self-insurer, at such time and in accordance with such
2228 regulations as the department prescribes, reports relating to
2229 wages paid, the amount of premiums such individual self-insurer
2230 would have to pay if insured, and all payments of compensation
2231 made by such individual self-insurer during each prior period
2232 and to determine the amounts paid by each individual self-
2233 insurer and the amounts paid by all individual self-insurers
2234 during such period. For purposes of this section, the payroll
2235 records of each individual self-insurer shall be open to annual
2236 inspection and audit by the association and the department, or
2237 their authorized representative, during regular business hours,
2238 and if any audit of such records of an individual self-insurer
2239 discloses a deficiency in the amount reported to the association
2240 or in the amounts paid to the department ~~division~~ by an
2241 individual self-insurer for its assessment for the Workers'
2242 Compensation Administration Trust Fund, the department or the
2243 association may assess the cost of such audit against the
2244 individual self-insurer.

2245 (e) Require that the association notify the member
2246 employers and any other interested parties of the determination
2247 of insolvency and of their rights under this section. Such
2248 notification shall be by mail at the last known address thereof
2249 when available; but, if sufficient information for notification



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2250 by mail is not available, notice by publication in a newspaper
2251 of general circulation shall be sufficient.

2252 (f) Suspend or revoke the authority of any member employer
2253 failing to pay an assessment when due or failing to comply with
2254 the plan of operation to self-insure in this state. As an
2255 alternative, the department may levy a fine on any member
2256 employer failing to pay an assessment when due. Such fine shall
2257 not exceed 5 percent of the unpaid assessment per month, except
2258 that no fine shall be less than \$100 per month.

2259 (g) Revoke the designation of any servicing facility if
2260 the department finds that claims are being handled
2261 unsatisfactorily.

2262 (7) EFFECT OF PAID CLAIMS.--

2263 (a) Any person who recovers from the association under
2264 this section shall be deemed to have assigned his or her rights
2265 to the association to the extent of such recovery. Every
2266 claimant seeking the protection of this section shall cooperate
2267 with the association to the same extent as such person would
2268 have been required to cooperate with the insolvent member. The
2269 association shall have no cause of action against the employee
2270 of the insolvent member for any sums the association has paid
2271 out, except such causes of action as the insolvent member would
2272 have had if such sums had been paid by the insolvent member. In
2273 the case of an insolvent member operating on a plan with
2274 assessment liability, payments of claims by the association
2275 shall not operate to reduce the liability of the insolvent
2276 member to the receiver, liquidator, or statutory successor for
2277 unpaid assessments.



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2278 (b) The receiver, liquidator, or statutory successor of an
2279 insolvent member shall be bound by settlements of covered claims
2280 by the association or a similar organization in another state.
2281 The court having jurisdiction shall grant such claims priority
2282 against the assets of the insolvent member equal to that to
2283 which the claimant would have been entitled in the absence of
2284 this section. The expense of the association or similar
2285 organization in handling claims shall be accorded the same
2286 priority as the expenses of the liquidator.

2287 (c) The association shall file periodically with the
2288 receiver or liquidator of the insolvent member statements of the
2289 covered claims paid by the association and estimates of
2290 anticipated claims on the association, which shall preserve the
2291 rights of the association against the assets of the insolvent
2292 member.

2293 (8) NOTIFICATION OF INSOLVENCIES.--To aid in the detection
2294 and prevention of employer insolvencies: Upon determination by
2295 majority vote that any member employer may be insolvent or in a
2296 financial condition hazardous to the employees thereof or to the
2297 public, it shall be the duty of the board of directors to notify
2298 the department of ~~Insurance~~ of any information indicating such
2299 condition.

2300 (9) EXAMINATION OF THE ASSOCIATION.--The association shall
2301 be subject to examination and regulation by the department of
2302 ~~Insurance~~. No later than March 30 of each year, the board of
2303 directors shall submit an audited financial statement for the
2304 preceding calendar year in a form approved by the department.



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2305 (10) IMMUNITY.--There shall be no liability on the part
2306 of, and no cause of action of any nature shall arise against,
2307 any member employer, the association or its agents or employees,
2308 the board of directors, or the department ~~of Insurance~~ or its
2309 representatives for any action taken by them in the performance
2310 of their powers and duties under this section.

2311 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
2312 JUDGMENTS.--All proceedings in which an insolvent employer is a
2313 party, or is obligated to defend a party, in any court or before
2314 any quasi-judicial body or administrative board in this state
2315 shall be stayed for up to 6 months, or for such additional
2316 period from the date the employer becomes an insolvent member,
2317 as is deemed necessary by a court of competent jurisdiction to
2318 permit proper defense by the association of all pending causes
2319 of action as to any covered claims arising from a judgment under
2320 any decision, verdict, or finding based on the default of the
2321 insolvent member. The association, either on its own behalf or
2322 on behalf of the insolvent member, may apply to have such
2323 judgment, order, decision, verdict, or finding set aside by the
2324 same court or administrator that made such judgment, order,
2325 decision, verdict, or finding and shall be permitted to defend
2326 against such claim on the merits. If requested by the
2327 association, the stay of proceedings may be shortened or waived.

2328 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding any
2329 other provision of this chapter, a covered claim, as defined
2330 herein, with respect to which settlement is not effected and
2331 pursuant to which suit is not instituted against the insured of
2332 an insolvent member or the association within 1 year after the



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2333 deadline for filing claims with the receiver of the insolvent
2334 member, or any extension of the deadline, shall thenceforth be
2335 barred as a claim against the association.

2336 (13) CORPORATE INCOME TAX CREDIT.--Any sums acquired by a
2337 member by refund, dividend, or otherwise from the association
2338 shall be payable within 30 days of receipt to the Department of
2339 Revenue for deposit with the Chief Financial Officer ~~Treasurer~~
2340 to the credit of the General Revenue Fund. All provisions of
2341 chapter 220 relating to penalties and interest on delinquent
2342 corporate income tax payments apply to payments due under this
2343 subsection.

2344 Section 20. Subsections (2), (3), and (4) of section
2345 440.386, Florida Statutes, are amended to read:

2346 440.386 Individual self-insurers' insolvency;
2347 conservation; liquidation.--

2348 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
2349 department ~~of Insurance~~ or the Florida Self-Insurers Guaranty
2350 Association, Incorporated, may commence a delinquency proceeding
2351 by application to the court for an order directing the
2352 individual self-insurer to show cause why the department or
2353 association should not have the relief sought. On the return of
2354 such order to show cause, and after a full hearing, the court
2355 shall either deny the application or grant the application,
2356 together with such other relief as the nature of the case and
2357 the interests of the claimants, creditors, stockholders,
2358 members, subscribers, or public may require. The department and
2359 the association shall give reasonable written notice to each



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2360 other of all hearings which pertain to an adjudication of
2361 insolvency of a member individual self-insurer.

2362 (3) GROUNDS FOR LIQUIDATION.--The department ~~of Insurance~~
2363 or the association may apply to the court for an order
2364 appointing a receiver and directing the receiver to liquidate
2365 the business of a domestic individual self-insurer if such
2366 individual self-insurer is insolvent.

2367 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL SELF-
2368 INSURERS.--

2369 (a) The department ~~of Insurance~~ or the association may
2370 apply to the court for an order appointing a receiver or
2371 ancillary receiver, and directing the receiver to conserve the
2372 assets within this state, of a foreign individual self-insurer
2373 if such individual self-insurer is insolvent.

2374 (b) An order to conserve the assets of an individual self-
2375 insurer shall require the receiver forthwith to take possession
2376 of the property of the receiver within the state and to conserve
2377 it, subject to the further direction of the court.

2378 Section 21. Subsections (3), (4), and (6) of section
2379 440.44, Florida Statutes, are amended to read:

2380 440.44 Workers' compensation; staff organization.--

2381 (3) EXPENDITURES.--The department, the agency, the office,
2382 the Department of Education, and the director of the Division of
2383 Administrative Hearings shall make such expenditures, including
2384 expenditures for personal services and rent at the seat of
2385 government and elsewhere, for law books; for telephone services
2386 and WATS lines; for books of reference, periodicals, equipment,
2387 and supplies; and for printing and binding as may be necessary



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2388 in the administration of this chapter. All expenditures in the
2389 administration of this chapter shall be allowed and paid as
2390 provided in s. 440.50 upon the presentation of itemized vouchers
2391 therefor approved by the department, the agency, the office, the
2392 Department of Education, or the director of the Division of
2393 Administrative Hearings.

2394 (4) PERSONNEL ADMINISTRATION.--Subject to the other
2395 provisions of this chapter, the department, the agency, the
2396 office, the Department of Education, and the Division of
2397 Administrative Hearings may appoint, and prescribe the duties
2398 and powers of, bureau chiefs, attorneys, accountants, medical
2399 advisers, technical assistants, inspectors, claims examiners,
2400 and such other employees as may be necessary in the performance
2401 of their duties under this chapter.

2402 (6) SEAL.--The department and the judges of compensation
2403 claims shall have a seal upon which shall be inscribed the words
2404 "State of Florida Department of Financial Services
2405 ~~Insurance~~--Seal" and "Division of Administrative
2406 Hearings--Seal," respectively.

2407 Section 22. Subsections (3) and (4) of section 440.52,
2408 Florida Statutes, are amended to read:

2409 440.52 Registration of insurance carriers; notice of
2410 cancellation or expiration of policy; suspension or revocation
2411 of authority.--

2412 (3) If the department finds, after due notice and a
2413 hearing at which the insurance carrier is entitled to be heard
2414 in person or by counsel and present evidence, that the insurance
2415 carrier has repeatedly failed to comply with its obligations



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2416 under this chapter, the department may request the office to
2417 suspend or revoke the authorization of such insurance carrier to
2418 write workers' compensation insurance under this chapter. Such
2419 suspension or revocation shall not affect the liability of any
2420 such insurance carrier under policies in force prior to the
2421 suspension or revocation.

2422 (4) In addition to the penalties prescribed in subsection
2423 (3), violation of s. 440.381 by an insurance carrier shall
2424 result in the imposition of a fine not to exceed \$1,000 per
2425 audit, if the insurance carrier fails to act on said audits by
2426 correcting errors in employee classification or accepted
2427 applications for coverage where it knew employee classifications
2428 were incorrect. Such fines shall be levied by the office
2429 ~~Department of Insurance~~ and deposited into the Insurance
2430 ~~Commissioner's~~ Regulatory Trust Fund.

2431 Section 23. Section 440.525, Florida Statutes, is amended
2432 to read:

2433 440.525 Examination of carriers.--The department and
2434 office may examine each carrier as often as is warranted to
2435 ensure that carriers are fulfilling their obligations under this
2436 chapter ~~the law~~. The examination may cover any period of the
2437 carrier's operations since the last previous examination.

2438 Section 24. Paragraph (k) of subsection (1) of section
2439 553.74, Florida Statutes, is amended to read:

2440 553.74 Florida Building Commission.--

2441 (1) The Florida Building Commission is created and shall
2442 be located within the Department of Community Affairs for
2443 administrative purposes. Members shall be appointed by the



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2444 Governor subject to confirmation by the Senate. The commission
2445 shall be composed of 23 members, consisting of the following:

2446 (k) One member who represents the Department of Financial
2447 Services Insurance.

2448 Section 25. Effective October 1, 2003, paragraph (k) of
2449 subsection (1) of section 553.74, Florida Statutes, as amended
2450 by chapter 2002-293, Laws of Florida, is amended to read:

2451 553.74 Florida Building Commission.--

2452 (1) The Florida Building Commission is created and shall
2453 be located within the Department of Community Affairs for
2454 administrative purposes. Members shall be appointed by the
2455 Governor subject to confirmation by the Senate. The commission
2456 shall be composed of 23 members, consisting of the following:

2457 (k) One member who represents the Department of Financial
2458 Services Insurance.

2459
2460 Any person serving on the commission under paragraph (c) or
2461 paragraph (h) on October 1, 2003, and who has served less than
2462 two full terms is eligible for reappointment to the commission
2463 regardless of whether he or she meets the new qualification.

2464 Section 26. Section 624.05, Florida Statutes, is amended
2465 to read:

2466 624.05 "Department," "commission," and "office"

2467 defined.--As used in the Insurance Code:

2468 (1) "Department" means the Department of Financial
2469 Services. The term does not mean the Financial Services
2470 Commission or any office of the Financial Services Commission
2471 ~~Insurance of this state, unless the context otherwise requires.~~



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2472 (2) "Commission" means the Financial Services Commission.

2473 (3) "Office" means the Office of Insurance Regulation of
2474 the Financial Services Commission.

2475 Section 27. Subsection (5) of section 624.155, Florida
2476 Statutes, is amended to read:

2477 624.155 Civil remedy.--

2478 (5) This section shall not be construed to authorize a
2479 class action suit against an insurer or a civil action against
2480 the commission, the office, or the department or any of their,
2481 ~~its employees, or the Insurance Commissioner,~~ or to create a
2482 cause of action when a health insurer refuses to pay a claim for
2483 reimbursement on the ground that the charge for a service was
2484 unreasonably high or that the service provided was not medically
2485 necessary.

2486 Section 28. Section 624.303, Florida Statutes, is amended
2487 to read:

2488 624.303 Seal; certified copies as evidence.--

2489 (1) The department, commission, and office shall each have
2490 an official seal by which its respective proceedings are
2491 authenticated.

2492 (2) All certificates executed by the department or office,
2493 other than licenses of agents, solicitors, or adjusters or
2494 similar licenses or permits, shall bear its respective seal.

2495 (3) Any written instrument purporting to be a copy of any
2496 action, proceeding, or finding of fact by the department,
2497 commission, or office or any record of the department,
2498 commission, or office or copy of any document on file in its
2499 office when authenticated under hand of the respective agency



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2500 head or his or her designee ~~commissioner~~ by the seal shall be
2501 accepted by all the courts of this state as prima facie evidence
2502 of its contents.

2503 Section 29. Section 624.316, Florida Statutes, is amended
2504 to read:

2505 624.316 Examination of insurers.--

2506 (1)(a) The office ~~department~~ shall examine the affairs,
2507 transactions, accounts, records, and assets of each authorized
2508 insurer and of the attorney in fact of a reciprocal insurer as
2509 to its transactions affecting the insurer as often as it deems
2510 advisable, except as provided in this section. The examination
2511 may include examination of the affairs, transactions, accounts,
2512 and records relating directly or indirectly to the insurer and
2513 of the assets of the insurer's managing general agents and
2514 controlling or controlled person, as defined in s. 625.012. The
2515 examination shall be pursuant to a written order of the office
2516 ~~department~~. Such order shall expire upon receipt by the office
2517 ~~department~~ of the written report of the examination.

2518 (b) As a part of its examination procedure, the office
2519 ~~department~~ shall examine each insurer regarding all of the
2520 information required by s. 627.915.

2521 (c) The office ~~department~~ shall examine each insurer
2522 according to accounting procedures designed to fulfill the
2523 requirements of generally accepted insurance accounting
2524 principles and practices and good internal control and in
2525 keeping with generally accepted accounting forms, accounts,
2526 records, methods, and practices relating to insurers. To
2527 facilitate uniformity in examinations, the commission ~~department~~



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2528 may adopt, by rule, the Market ~~and Financial~~ Conduct Examiners
2529 ~~Examination~~ Handbook and the Financial Condition Examiners
2530 Handbook of the National Association of Insurance Commissioners,
2531 2002 ~~1990~~, and may adopt subsequent amendments thereto, if the
2532 examination methodology remains substantially consistent.

2533 (2)(a) Except as provided in paragraph (f), the office
2534 ~~department~~ may examine each insurer as often as may be warranted
2535 for the protection of the policyholders and in the public
2536 interest, and shall examine each domestic insurer not less
2537 frequently than once every 3 years. The examination shall cover
2538 the preceding 3 fiscal years of the insurer and shall be
2539 commenced within 12 months after the end of the most recent
2540 fiscal year being covered by the examination. The examination
2541 may cover any period of the insurer's operations since the last
2542 previous examination. The examination may include examination of
2543 events subsequent to the end of the most recent fiscal year and
2544 the events of any prior period that affect the present financial
2545 condition of the insurer. In lieu of making its own examination,
2546 the office ~~department~~ may accept an independent certified public
2547 accountant's audit report prepared on a statutory basis
2548 consistent with the Florida Insurance Code on that specific
2549 company. The office ~~department~~ may not accept the report in lieu
2550 of the requirement imposed by paragraph (1)(b). When an
2551 examination is conducted by the office ~~department~~ for the sole
2552 purpose of examining the 3 preceding fiscal years of the insurer
2553 within 12 months after the opinion date of an independent
2554 certified public accountant's audit report prepared on a
2555 statutory basis on that specific company consistent with the



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2556 Florida Insurance Code, the cost of the examination as charged
2557 to the insurer pursuant to s. 624.320 shall be reduced by the
2558 cost to the insurer of the independent certified public
2559 accountant's audit reports. Requests for the reduction in cost
2560 of examination must be submitted to the office ~~department~~ in
2561 writing no later than 90 days after the conclusion of the
2562 examination and shall include sufficient documentation to
2563 support the charges incurred for the statutory audit performed
2564 by the independent certified public accountant.

2565 (b) The office ~~department~~ shall examine each insurer
2566 applying for an initial certificate of authority to transact
2567 insurance in this state before granting the initial certificate.

2568 (c) In lieu of making its own examination, the office
2569 ~~department~~ may accept a full report of the last recent
2570 examination of a foreign insurer, certified to by the insurance
2571 supervisory official of another state.

2572 (d) The examination by the office ~~department~~ of an alien
2573 insurer shall be limited to the alien insurer's insurance
2574 transactions and affairs in the United States, except as
2575 otherwise required by the office ~~department~~.

2576 (e) The commission ~~department~~ shall adopt rules providing
2577 that, upon agreement between the office ~~department~~ and the
2578 insurer, an examination under this section may be conducted by
2579 independent certified public accountants, actuaries meeting
2580 criteria specified by rule, and reinsurance specialists meeting
2581 criteria specified by rule. The rules shall provide:



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2582 1. That the agreement of the insurer is not required if
2583 the office ~~department~~ reasonably suspects criminal misconduct on
2584 the part of the insurer.

2585 2. That the office ~~department~~ shall provide the insurer
2586 with a list of three firms acceptable to the office ~~department~~,
2587 and that the insurer shall select the firm to conduct the
2588 examination from the list provided by the office ~~department~~.

2589 3. That the insurer being examined must make payment for
2590 the examination directly to the firm performing the examination
2591 in accordance with the rates and terms agreed to by the office
2592 ~~department~~, the insurer, and the firm performing the
2593 examination.

2594 4. That if the examination is conducted without the
2595 consent of the insurer, the insurer must pay all reasonable
2596 charges of the examining firm if the examination finds
2597 impairment, insolvency, or criminal misconduct on the part of
2598 the insurer.

2599 (f)1.

2600 a. An examination under this section must be conducted at
2601 least once every year with respect to a domestic insurer that
2602 has continuously held a certificate of authority for less than 3
2603 years. The examination must cover the preceding fiscal year or
2604 the period since the last examination of the insurer. The office
2605 ~~department~~ may limit the scope of the examination.

2606 b. The office ~~department~~ may not accept an independent
2607 certified public accountant's audit report in lieu of an
2608 examination required by this subparagraph.



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2609 c. An insurer may not be required to pay more than \$25,000
2610 to cover the costs of any one examination under this
2611 subparagraph.

2612 2. An examination under this section must be conducted not
2613 less frequently than once every 5 years with respect to an
2614 insurer that has continuously held a certificate of authority,
2615 without a change in ownership subject to s. 624.4245 or s.
2616 628.461, for more than 15 years. The examination must cover the
2617 preceding 5 fiscal years of the insurer or the period since the
2618 last examination of the insurer. This subparagraph does not
2619 limit the ability of the office ~~department~~ to conduct more
2620 frequent examinations.

2621 Section 30. Section 624.317, Florida Statutes, is amended
2622 to read:

2623 624.317 Investigation of agents, adjusters,
2624 administrators, service companies, and others.--If it has reason
2625 to believe that any person has violated or is violating any
2626 provision of this code, or upon the written complaint signed by
2627 any interested person indicating that any such violation may
2628 exist:7

2629 (1) The department shall conduct such investigation as it
2630 deems necessary of the accounts, records, documents, and
2631 transactions pertaining to or affecting the insurance affairs of
2632 any~~+~~

2633 ~~(1)~~ general agent, surplus line agent, managing general
2634 agent, ~~adjuster, administrator, service company, or other~~
2635 ~~person.~~



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2636 ~~(2)~~ insurance agent, customer representative, service
 2637 representative, or other person subject to its jurisdiction ~~or~~
 2638 ~~solicitor~~, subject to the requirements of s. 626.601.

2639 (2) The office shall conduct such investigation as it
 2640 deems necessary of the accounts, records, documents, and
 2641 transactions pertaining to or affecting the insurance affairs of
 2642 any:

2643 (a) Adjuster, administrator, service company, or other
 2644 person subject to its jurisdiction.

2645 (b)~~(3)~~ Person having a contract or power of attorney under
 2646 which she or he enjoys in fact the exclusive or dominant right
 2647 to manage or control an insurer.

2648 (c)~~(4)~~ Person engaged in or proposing to be engaged in the
 2649 promotion or formation of:

2650 1.(a) A domestic insurer;

2651 2.(b) An insurance holding corporation; or

2652 3.(e) A corporation to finance a domestic insurer or in
 2653 the production of the domestic insurer's business.

2654 Section 31. Subsections (2), (3), (4), (5), and (7) of
 2655 section 624.404, Florida Statutes, are amended to read:

2656 624.404 General eligibility of insurers for certificate of
 2657 authority.--To qualify for and hold authority to transact
 2658 insurance in this state, an insurer must be otherwise in
 2659 compliance with this code and with its charter powers and must
 2660 be an incorporated stock insurer, an incorporated mutual
 2661 insurer, or a reciprocal insurer, of the same general type as
 2662 may be formed as a domestic insurer under this code; except
 2663 that:



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2664 (2) No foreign or alien insurer or exchange shall be
2665 authorized to transact insurance in this state unless it is
2666 otherwise qualified therefor under this code and has operated
2667 satisfactorily for at least 3 years in its state or country of
2668 domicile; however, the office ~~department~~ may waive the 3-year
2669 requirement if the foreign or alien insurer or exchange:

2670 (a) Has operated successfully and has capital and surplus
2671 of \$5 million;

2672 (b) Is the wholly owned subsidiary of an insurer which is
2673 an authorized insurer in this state;

2674 (c) Is the successor in interest through merger or
2675 consolidation of an authorized insurer; or

2676 (d) Provides a product or service not readily available to
2677 the consumers of this state.

2678 (3)(a) The office ~~department~~ shall not grant or continue
2679 authority to transact insurance in this state as to any insurer
2680 the management, officers, or directors of which are found by it
2681 to be incompetent or untrustworthy; or so lacking in insurance
2682 company managerial experience as to make the proposed operation
2683 hazardous to the insurance-buying public; or so lacking in
2684 insurance experience, ability, and standing as to jeopardize the
2685 reasonable promise of successful operation; or which it has good
2686 reason to believe are affiliated directly or indirectly through
2687 ownership, control, reinsurance transactions, or other insurance
2688 or business relations, with any person or persons whose business
2689 operations are or have been marked, to the detriment of
2690 policyholders or stockholders or investors or creditors or of



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2691 | the public, by manipulation of assets, accounts, or reinsurance
2692 | or by bad faith.

2693 | (b) The office ~~department~~ shall not grant or continue
2694 | authority to transact insurance in this state as to any insurer
2695 | if any person, including any subscriber, stockholder, or
2696 | incorporator, who exercises or has the ability to exercise
2697 | effective control of the insurer, or who influences or has the
2698 | ability to influence the transaction of the business of the
2699 | insurer, does not possess the financial standing and business
2700 | experience for the successful operation of the insurer.

2701 | (c) The office ~~department~~ may deny, suspend, or revoke the
2702 | authority to transact insurance in this state of any insurer if
2703 | any person, including any subscriber, stockholder, or
2704 | incorporator, who exercises or has the ability to exercise
2705 | effective control of the insurer, or who influences or has the
2706 | ability to influence the transaction of the business of the
2707 | insurer, has been found guilty of, or has pleaded guilty or nolo
2708 | contendere to, any felony or crime punishable by imprisonment of
2709 | 1 year or more under the law of the United States or any state
2710 | thereof or under the law of any other country which involves
2711 | moral turpitude, without regard to whether a judgment of
2712 | conviction has been entered by the court having jurisdiction in
2713 | such case. However, in the case of an insurer operating under a
2714 | subsisting certificate of authority, the insurer shall remove
2715 | any such person immediately upon discovery of the conditions set
2716 | forth in this paragraph when applicable to such person or upon
2717 | the order of the office ~~department~~, and the failure to so act by



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2718 | said insurer shall be grounds for revocation or suspension of
2719 | the insurer's certificate of authority.

2720 | (d) The office ~~department~~ may deny, suspend, or revoke the
2721 | authority of an insurer to transact insurance in this state if
2722 | any person, including any subscriber, stockholder, or
2723 | incorporator, who exercises or has the ability to exercise
2724 | effective control of the insurer, or who influences or has the
2725 | ability to influence the transaction of the business of the
2726 | insurer, which person the office ~~department~~ has good reason to
2727 | believe is now or was in the past affiliated directly or
2728 | indirectly, through ownership interest of 10 percent or more,
2729 | control, or reinsurance transactions, with any business,
2730 | corporation, or other entity that has been found guilty of or
2731 | has pleaded guilty or nolo contendere to any felony or crime
2732 | punishable by imprisonment for 1 year or more under the laws of
2733 | the United States, any state, or any other country, regardless
2734 | of adjudication. However, in the case of an insurer operating
2735 | under a subsisting certificate of authority, the insurer shall
2736 | immediately remove such person or immediately notify the office
2737 | ~~department~~ of such person upon discovery of the conditions set
2738 | forth in this paragraph, either when applicable to such person
2739 | or upon order of the office ~~department~~; the failure to remove
2740 | such person, provide such notice, or comply with such order
2741 | constitutes grounds for suspension or revocation of the
2742 | insurer's certificate of authority.

2743 | (4)(a) No authorized insurer shall act as a fronting
2744 | company for any unauthorized insurer which is not an approved
2745 | reinsurer.



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2746 (b) A "fronting company" is an authorized insurer which by
2747 reinsurance or otherwise generally transfers more than 50
2748 percent to one unauthorized insurer which does not meet the
2749 requirements of s. 624.610(3)(a), (b), or (c), or more than 75
2750 percent to two or more unauthorized insurers which do not meet
2751 the requirements of s. 624.610(3)(a), (b), or (c), of the entire
2752 risk of loss on all of the insurance written by it in this
2753 state, or on one or more lines of insurance, on all of the
2754 business produced through one or more agents or agencies, or on
2755 all of the business from a designated geographical territory,
2756 without obtaining the prior approval of the office department.

2757 (c) The office department may, in its discretion, approve
2758 a transfer of risk in excess of the limits in paragraph (b) upon
2759 presentation of evidence, satisfactory to the office department,
2760 that the transfer would be in the best interests of the
2761 financial condition of the insurer and in the best interests of
2762 the policyholders.

2763 (5) No insurer shall be authorized to transact insurance
2764 in this state which, during the 3 years immediately preceding
2765 its application for a certificate of authority, has violated any
2766 of the insurance laws of this state and after being informed of
2767 such violation has failed to correct the same; except that, if
2768 all other requirements are met, the office department may
2769 nevertheless issue a certificate of authority to such an insurer
2770 upon the filing by the insurer of a sworn statement of all such
2771 insurance so written in violation of law, and upon payment to
2772 the office department of a sum of money as additional filing fee
2773 equivalent to all premium taxes and other state taxes and fees



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2774 as would have been payable by the insurer if such insurance had
2775 been lawfully written by an authorized insurer under the laws of
2776 this state. This fee, when collected, shall be deposited to the
2777 credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

2778 (7) For the purpose of satisfying the requirements of ss.
2779 624.407 and 624.408, the investment portfolio of an insurer
2780 applying for an initial certificate of authority to do business
2781 in this state shall value its bonds and stocks in accordance
2782 with the provisions of the latest edition of the publication
2783 "Purposes and Procedures Manual of the NAIC Securities Valuation
2784 Office" ~~"Valuations of Securities"~~ by the National Association
2785 of Insurance Commissioners, July 1, 2002 ~~1990~~, and subsequent
2786 amendments thereto, if the valuation methodology remains
2787 substantially unchanged.

2788 Section 32. Subsection (1) of section 624.4072, Florida
2789 Statutes, is amended to read:

2790 624.4072 Minority-owned property and casualty insurers;
2791 limited exemption for taxation and assessments.--

2792 (1) A minority business that is at least 51 percent owned
2793 by minority persons, as defined in s. 288.703(3), initially
2794 issued a certificate of authority in this state as an authorized
2795 insurer after May 1, 1998, and before January 1, 2002, to write
2796 property and casualty insurance shall be exempt, for a period
2797 not to exceed 10 years from the date of receiving its
2798 certificate of authority, from the following taxes and
2799 assessments:

2800 (a) Taxes imposed under ss. 175.101, 185.08, and 624.509;



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2801 (b) Assessments by the Citizens Property Insurance
2802 Corporation ~~Florida Residential Property and Casualty Joint~~
2803 ~~Underwriting Association or by the Florida Windstorm~~
2804 ~~Underwriting Association, as provided under s. 627.351, except~~
2805 for emergency assessments collected from policyholders pursuant
2806 to s. 627.351(6)(b)3.d. ~~s. 627.351(2)(b)2.d.(III) and(6)(b)3.d.~~
2807 Any such insurer shall be a member insurer of the Citizens
2808 Property Insurance Corporation ~~Florida Windstorm Underwriting~~
2809 ~~Association and the Florida Residential Property and Casualty~~
2810 ~~Joint Underwriting Association.~~ The premiums of such insurer
2811 shall be included in determining, for the Citizens Property
2812 Insurance Corporation ~~Florida Windstorm Underwriting~~
2813 ~~Association, the aggregate statewide direct written premium for~~
2814 ~~property insurance and in determining, for the Florida~~
2815 ~~Residential Property and Casualty Joint Underwriting~~
2816 ~~Association, the aggregate statewide direct written premium for~~
2817 the subject lines of business for all member insurers.

2818 Section 33. Subsection (1) of section 624.413, Florida
2819 Statutes, is amended to read:

2820 624.413 Application for certificate of authority.--

2821 (1) To apply for a certificate of authority, an insurer
2822 shall file its application therefor with the office ~~department,~~
2823 upon a form adopted by the commission and furnished by the
2824 office ~~it,~~ showing its name; location of its home office and, if
2825 an alien insurer, its principal office in the United States;
2826 kinds of insurance to be transacted; state or country of
2827 domicile; and such additional information as the commission



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2828 ~~department may~~ reasonably requires ~~require~~, together with the
2829 following documents:

2830 (a) One copy of its corporate charter, articles of
2831 incorporation, existing and proposed nonfacultative reinsurance
2832 contracts, declaration of trust, or other charter documents,
2833 with all amendments thereto, certified by the public official
2834 with whom the originals are on file in the state or country of
2835 domicile.

2836 (b) If a mutual insurer, a copy of its bylaws, as amended,
2837 certified by its secretary or other officer having custody
2838 thereof.

2839 (c) If a foreign or alien reciprocal insurer, a copy of
2840 the power of attorney of its attorney in fact and of its
2841 subscribers' agreement, if any, certified by the attorney in
2842 fact; and, if a domestic reciprocal insurer, the declaration
2843 provided for in s. 629.081.

2844 (d) A copy of its financial statement as of December 31
2845 next preceding, containing information generally included in
2846 insurer financial statements prepared in accordance with
2847 generally accepted insurance accounting principles and practices
2848 and in a form generally utilized by insurers for financial
2849 statements, sworn to by at least two executive officers of the
2850 insurer, or certified by the public official having supervision
2851 of insurance in the insurer's state of domicile or of entry into
2852 the United States. To facilitate uniformity in financial
2853 statements, the commission ~~department~~ may by rule adopt the form
2854 for financial statements approved by the National Association of



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2855 Insurance Commissioners in 2002 ~~1990~~, and may adopt subsequent
2856 amendments thereto if the form remains substantially consistent.

2857 (e) Supplemental quarterly financial statements for each
2858 calendar quarter since the beginning of the year of its
2859 application for the certificate of authority, sworn to by at
2860 least two of its executive officers. To facilitate uniformity in
2861 financial statements, the commission ~~department~~ may by rule
2862 adopt the form for quarterly financial statements approved by
2863 the National Association of Insurance Commissioners in 2002
2864 ~~1990~~, and may adopt subsequent amendments thereto if the form
2865 remains substantially consistent.

2866 (f) If a foreign or alien insurer, a copy of the report of
2867 the most recent examination of the insurer certified by the
2868 public official having supervision of insurance in its state of
2869 domicile or of entry into the United States. The end of the
2870 most recent year covered by the examination must be within the
2871 3-year period preceding the date of application. In lieu of the
2872 certified examination report, the office ~~department~~ may accept
2873 an audited certified public accountant's report prepared on a
2874 basis consistent with the insurance laws of the insurer's state
2875 of domicile, certified by the public official having supervision
2876 of insurance in its state of domicile or of entry into the
2877 United States.

2878 (g) If a foreign or alien insurer, a certificate of
2879 compliance from the public official having supervision of
2880 insurance in its state or country of domicile showing that it is
2881 duly organized and authorized to transact insurance therein and
2882 the kinds of insurance it is so authorized to transact.



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2883 (h) If a foreign or alien insurer, a certificate of the
2884 public official having custody of any deposit maintained by the
2885 insurer in another state in lieu of a deposit or part thereof
2886 required in this state under s. 624.411 or s. 624.412, showing
2887 the amount of such deposit and the assets or securities of which
2888 comprised.

2889 (i) If a life insurer, a certificate of valuation.

2890 (j) If an alien insurer, a copy of the appointment and
2891 authority of its United States manager, certified by its officer
2892 having custody of its records.

2893 Section 34. Section 624.424, Florida Statutes, is amended
2894 to read:

2895 624.424 Annual statement and other information.--

2896 (1)(a) Each authorized insurer shall file with the office
2897 ~~department~~ full and true statements of its financial condition,
2898 transactions, and affairs. An annual statement covering the
2899 preceding calendar year shall be filed on or before March 1, and
2900 quarterly statements covering the periods ending on March 31,
2901 June 30, and September 30 shall be filed within 45 days after
2902 each such date. The office ~~department~~ may, for good cause, grant
2903 an extension of time for filing of an annual or quarterly
2904 statement. The statements shall contain information generally
2905 included in insurers' financial statements prepared in
2906 accordance with generally accepted insurance accounting
2907 principles and practices and in a form generally utilized by
2908 insurers for financial statements, sworn to by at least two
2909 executive officers of the insurer or, if a reciprocal insurer,
2910 by the oath of the attorney in fact or its like officer if a



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2911 corporation. To facilitate uniformity in financial statements
2912 and to facilitate office ~~department~~ analysis, the commission
2913 ~~department~~ may by rule adopt the form for financial statements
2914 approved by the National Association of Insurance Commissioners
2915 in 2002 ~~1990~~, and may adopt subsequent amendments thereto if the
2916 methodology remains substantially consistent, and may by rule
2917 require each insurer to submit to the office ~~department~~ or such
2918 organization as the office ~~department~~ may designate all or part
2919 of the information contained in the financial statement in a
2920 computer-readable form compatible with the electronic data
2921 processing system specified by the office ~~department~~.

2922 (b) Each insurer's annual statement must contain a
2923 statement of opinion on loss and loss adjustment expense
2924 reserves made by a member of the American Academy of Actuaries
2925 or by a qualified loss reserve specialist, under criteria
2926 established by rule of the commission ~~department~~. In adopting
2927 the rule, the commission ~~department~~ must consider any criteria
2928 established by the National Association of Insurance
2929 Commissioners. The office ~~department~~ may require semiannual
2930 updates of the annual statement of opinion as to a particular
2931 insurer if the office ~~department~~ has reasonable cause to believe
2932 that such reserves are understated to the extent of materially
2933 misstating the financial position of the insurer. Workpapers in
2934 support of the statement of opinion must be provided to the
2935 office ~~department~~ upon request. This paragraph does not apply to
2936 life insurance or title insurance.

2937 (c) The commission ~~department~~ may by rule require reports
2938 or filings required under the insurance code to be submitted by



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2939 electronic means in a computer-readable form ~~on a computer-~~
2940 ~~diskette~~ compatible with the electronic data processing
2941 equipment specified by the commission ~~department~~.

2942 (2) The statement of an alien insurer shall be verified by
2943 the insurer's United States manager or other officer duly
2944 authorized. It shall be a separate statement, to be known as
2945 its general statement, of its transactions, assets, and affairs
2946 within the United States unless the office ~~department~~ requires
2947 otherwise. If the office ~~department~~ requires a statement as to
2948 the insurer's affairs elsewhere, the insurer shall file such
2949 statement with the office ~~department~~ as soon as reasonably
2950 possible.

2951 (3) Each insurer having a deposit as required under s.
2952 624.411 shall file with the office ~~department~~ annually with its
2953 annual statement a certificate to the effect that the assets so
2954 deposited have a market value equal to or in excess of the
2955 amount of deposit so required.

2956 (4) At the time of filing, the insurer shall pay the fee
2957 for filing its annual statement in the amount specified in s.
2958 624.501.

2959 (5) The office ~~department~~ may refuse to continue, or may
2960 suspend or revoke, the certificate of authority of an insurer
2961 failing to file its annual or quarterly statements and
2962 accompanying certificates when due.

2963 (6) In addition to information called for and furnished in
2964 connection with its annual or quarterly statements, an insurer
2965 shall furnish to the office ~~department~~ as soon as reasonably
2966 possible such information as to its transactions or affairs as



2967 | the office ~~department~~ may from time to time request in writing.
 2968 | All such information furnished pursuant to the office's
 2969 | ~~department's~~ request shall be verified by the oath of two
 2970 | executive officers of the insurer or, if a reciprocal insurer,
 2971 | by the oath of the attorney in fact or its like officers if a
 2972 | corporation.

2973 | (7) The signatures of all such persons when written on
 2974 | annual or quarterly statements or other reports required by this
 2975 | section shall be presumed to have been so written by authority
 2976 | of the person whose signature is affixed thereon. The affixing
 2977 | of any signature by anyone other than the purported signer
 2978 | constitutes a felony of the second degree, punishable as
 2979 | provided in s. 775.082, s. 775.083, or s. 775.084.

2980 | (8)(a) All authorized insurers must have conducted an
 2981 | annual audit by an independent certified public accountant and
 2982 | must file an audited financial report with the office ~~department~~
 2983 | on or before June 1 for the preceding year ending December 31.
 2984 | The office ~~department~~ may require an insurer to file an audited
 2985 | financial report earlier than June 1 upon 90 days' advance
 2986 | notice to the insurer. The office ~~department~~ may immediately
 2987 | suspend an insurer's certificate of authority by order if an
 2988 | insurer's failure to file required reports, financial
 2989 | statements, or information required by this subsection or rule
 2990 | adopted pursuant thereto creates a significant uncertainty as to
 2991 | the insurer's continuing eligibility for a certificate of
 2992 | authority.

2993 | (b) Any authorized insurer otherwise subject to this
 2994 | section having direct premiums written in this state of less



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2995 | than \$1 million in any calendar year and fewer ~~less~~ than 1,000
2996 | policyholders or certificateholders of directly written policies
2997 | nationwide at the end of such calendar year is exempt from this
2998 | section for such year unless the office ~~department~~ makes a
2999 | specific finding that compliance is necessary in order for the
3000 | office ~~department~~ to carry out its statutory responsibilities.
3001 | However, any insurer having assumed premiums pursuant to
3002 | contracts or treaties or reinsurance of \$1 million or more is
3003 | not exempt. Any insurer subject to an exemption must submit by
3004 | March 1 following the year to which the exemption applies an
3005 | affidavit sworn to by a responsible officer of the insurer
3006 | specifying the amount of direct premiums written in this state
3007 | and number of policyholders or certificateholders.

3008 | (c) The board of directors of an insurer shall hire the
3009 | certified public accountant that prepares the audit required by
3010 | this subsection and the board shall establish an audit committee
3011 | of three or more directors of the insurer or an affiliated
3012 | company. The audit committee shall be responsible for discussing
3013 | audit findings and interacting with the certified public
3014 | accountant with regard to her or his findings. The audit
3015 | committee shall be comprised solely of members who are free from
3016 | any relationship that, in the opinion of its board of directors,
3017 | would interfere with the exercise of independent judgment as a
3018 | committee member. The audit committee shall report to the board
3019 | any findings of adverse financial conditions or significant
3020 | deficiencies in internal controls that have been noted by the
3021 | accountant. The insurer may request the office ~~department~~ to



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3022 waive this requirement of the audit committee membership based
3023 upon unusual hardship to the insurer.

3024 (d) An insurer may not use the same accountant or partner
3025 of an accounting firm responsible for preparing the report
3026 required by this subsection for more than 7 consecutive years.
3027 Following this period, the insurer may not use such accountant
3028 or partner for a period of 2 years, but may use another
3029 accountant or partner of the same firm. An insurer may request
3030 the office ~~department~~ to waive this prohibition based upon an
3031 unusual hardship to the insurer and a determination that the
3032 accountant is exercising independent judgment that is not unduly
3033 influenced by the insurer considering such factors as the number
3034 of partners, expertise of the partners or the number of
3035 insurance clients of the accounting firm; the premium volume of
3036 the insurer; and the number of jurisdictions in which the
3037 insurer transacts business.

3038 (e) The commission ~~department~~ shall adopt rules to
3039 implement this subsection, which rules must be in substantial
3040 conformity with the 1998 ~~1990~~ Model Rule Requiring Annual
3041 Audited Financial Reports adopted by the National Association of
3042 Insurance Commissioners, except where inconsistent with the
3043 requirements of this subsection. Any exception to, waiver of, or
3044 interpretation of accounting requirements of the commission
3045 ~~department~~ must be in writing and signed by an authorized
3046 representative of the office ~~department~~. No insurer may raise as
3047 a defense in any action, any exception to, waiver of, or
3048 interpretation of accounting requirements, unless previously



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3049 issued in writing by an authorized representative of the office
3050 ~~department~~.

3051 (9)(a) Each authorized insurer shall, pursuant to s.
3052 409.910(20), provide records and information to the Agency for
3053 Health Care Administration to identify potential insurance
3054 coverage for claims filed with that agency and its fiscal agents
3055 for payment of medical services under the Medicaid program.

3056 (b) Each authorized insurer shall, pursuant to s.
3057 409.2561(5)(c), notify the Medicaid agency of a cancellation or
3058 discontinuance of a policy within 30 days if the insurer
3059 received notification from the Medicaid agency to do so.

3060 (c) Any information provided by an insurer under this
3061 subsection does not violate any right of confidentiality or
3062 contract that the insurer may have with covered persons. The
3063 insurer is immune from any liability that it may otherwise incur
3064 through its release of such information to the Agency for Health
3065 Care Administration.

3066 (10) Each insurer or insurer group doing business in this
3067 state shall file on a quarterly basis in conjunction with
3068 financial reports required by paragraph (1)(a) a supplemental
3069 report on an individual and group basis on a form prescribed by
3070 the commission ~~department~~ with information on personal lines and
3071 commercial lines residential property insurance policies in this
3072 state. The supplemental report shall include separate
3073 information for personal lines property policies and for
3074 commercial lines property policies and totals for each item
3075 specified, including premiums written for each of the property
3076 lines of business as described in ss. 215.555(2)(c) and



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- 3077 627.351(6)(a). The report shall include the following
 3078 information for each county on a monthly basis:
- 3079 (a) Total number of policies in force at the end of each
 3080 month.
 - 3081 (b) Total number of policies canceled.
 - 3082 (c) Total number of policies nonrenewed.
 - 3083 (d) Number of policies canceled due to hurricane risk.
 - 3084 (e) Number of policies nonrenewed due to hurricane risk.
 - 3085 (f) Number of new policies written.
 - 3086 (g) Total dollar value of structure exposure under
 3087 policies that include wind coverage.
 - 3088 (h) Number of policies that exclude wind coverage.

3089 Section 35. Subsections (2), (3), and (4) of section
 3090 624.476, Florida Statutes, are amended to read:

3091 624.476 Impaired self-insurance funds.--

3092 (2) If any fund levies an assessment pursuant to
 3093 subsection (1), the office ~~department~~ shall require the fund to
 3094 consent to administrative supervision under part VI of this
 3095 chapter. The office ~~department~~ may waive the requirement to
 3096 consent to administrative supervision for good cause.

3097 (3) If the trustees fail to make an assessment as required
 3098 by subsection(1), the office ~~department~~ shall order the trustees
 3099 to do so. If the deficiency is not sufficiently made up within
 3100 60 days after the date of the order, the fund shall be deemed
 3101 insolvent and grounds shall exist to proceed against the fund as
 3102 provided for in part I of chapter 631.

3103 (4) Notwithstanding the requirement of the fund to make an
 3104 assessment pursuant to subsection (1) or subsection (3), the



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3105 | office department may at any time request that the department ~~to~~
3106 | be appointed receiver for purposes of rehabilitation or
3107 | liquidation if it is able to demonstrate that any grounds for
3108 | rehabilitation or liquidation exist pursuant to s. 631.051 or s.
3109 | 631.061.

3110 | Section 36. Section 624.477, Florida Statutes, is amended
3111 | to read:

3112 | 624.477 Liquidation, rehabilitation, reorganization, and
3113 | conservation.--Any rehabilitation, liquidation, conservation, or
3114 | dissolution of a self-insurance fund shall be conducted under
3115 | the supervision of the office and department, which shall each
3116 | have all power with respect thereto granted to the fund under
3117 | part I of chapter 631 governing the rehabilitation, liquidation,
3118 | conservation, or dissolution of insurers and including all
3119 | grounds for the appointment of a receiver contained in ss.
3120 | 631.051 and 631.061.

3121 | Section 37. Section 625.01115, Florida Statutes, is
3122 | amended to read:

3123 | 625.01115 Definitions.--As used in this chapter, the term
3124 | "statutory accounting principles" means accounting principles as
3125 | defined in the National Association of Insurance Commissioners
3126 | Accounting Practices and Procedures Manual as of March 2002 and
3127 | subsequent amendments thereto if the methodology remains
3128 | substantially consistent ~~effective January 1, 2001.~~

3129 | Section 38. Subsections (2), (3), and (4), paragraphs (c),
3130 | (d), (g), (h), (i), and (j) of subsection (5), paragraph (e) of
3131 | subsection (6), subsection (10), paragraph(b) of subsection



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3132 (12), and subsection (14) of section 625.121, Florida Statutes,
3133 are amended to read:

3134 625.121 Standard Valuation Law; life insurance.--

3135 (2) ANNUAL VALUATION.--The office ~~department~~ shall
3136 annually value, or cause to be valued, the reserve liabilities,
3137 hereinafter called "reserves," for all outstanding life
3138 insurance policies and annuity and pure endowment contracts of
3139 every life insurer doing business in this state, and may certify
3140 the amount of any such reserves, specifying the mortality table
3141 or tables, rate or rates of interest, and methods, net-level
3142 premium method or others, used in the calculation of such
3143 reserves. In the case of an alien insurer, such valuation shall
3144 be limited to its insurance transactions in the United States.
3145 In calculating such reserves, the office ~~department~~ may use
3146 group methods and approximate averages for fractions of a year
3147 or otherwise. It may accept in its discretion the insurer's
3148 calculation of such reserves. In lieu of the valuation of the
3149 reserves herein required of any foreign or alien insurer, it may
3150 accept any valuation made or caused to be made by the insurance
3151 supervisory official of any state or other jurisdiction when
3152 such valuation complies with the minimum standard herein
3153 provided and if the official of such state or jurisdiction
3154 accepts as sufficient and valid for all legal purposes the
3155 certificate of valuation of the office ~~department~~ when such
3156 certificate states the valuation to have been made in a
3157 specified manner according to which the aggregate reserves would
3158 be at least as large as if they had been computed in the manner
3159 prescribed by the law of that state or jurisdiction. When any



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3160 such valuation is made by the office ~~department~~, it may use the
3161 actuary of the office ~~department~~ or employ an actuary for the
3162 purpose; and the reasonable compensation of the actuary, at a
3163 rate approved by the office ~~department~~, and reimbursement of
3164 travel expenses pursuant to s. 624.320 upon demand by the office
3165 ~~department~~, supported by an itemized statement of such
3166 compensation and expenses, shall be paid by the insurer. When a
3167 domestic insurer furnishes the office ~~department~~ with a
3168 valuation of its outstanding policies as computed by its own
3169 actuary or by an actuary deemed satisfactory for the purpose by
3170 the office ~~department~~, the valuation shall be verified by the
3171 actuary of the office ~~department~~ without cost to the insurer.

3172 (3) ACTUARIAL OPINION OF RESERVES.--

3173 (a)1. Each life insurance company doing business in this
3174 state shall annually submit the opinion of a qualified actuary
3175 as to whether the reserves and related actuarial items held in
3176 support of the policies and contracts specified by the
3177 commission ~~department~~ by rule are computed appropriately, are
3178 based on assumptions which satisfy contractual provisions, are
3179 consistent with prior reported amounts, and comply with
3180 applicable laws of this state. The commission ~~department~~ by rule
3181 shall define the specifics of this opinion and add any other
3182 items determined to be necessary to its scope.

3183 2. The opinion shall be submitted with the annual
3184 statement reflecting the valuation of such reserve liabilities
3185 for each year ending on or after December 31, 1992.

3186 3. The opinion shall apply to all business in force,
3187 including individual and group health insurance plans, in the



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3188 form and substance acceptable to the office ~~department~~ as
3189 specified by rule of the commission.

3190 4. The commission ~~department~~ may adopt rules providing the
3191 standards of the actuarial opinion consistent with standards
3192 adopted by the Actuarial Standards Board on December 31, 2002
3193 ~~October 1, 1991~~, and subsequent revisions thereto, provided that
3194 the standards remain substantially consistent.

3195 5. In the case of an opinion required to be submitted by a
3196 foreign or alien company, the office ~~department~~ may accept the
3197 opinion filed by that company with the insurance supervisory
3198 official of another state if the office ~~department~~ determines
3199 that the opinion reasonably meets the requirements applicable to
3200 a company domiciled in this state.

3201 6. For the purposes of this subsection, "qualified
3202 actuary" means a member in good standing of the American Academy
3203 of Actuaries who also meets the requirements specified by rule
3204 of the commission ~~department~~.

3205 7. Disciplinary action by the office ~~department~~ against
3206 the company or the qualified actuary shall be in accordance with
3207 the insurance code and related rules adopted by the commission
3208 ~~department~~.

3209 8. A memorandum in the form and substance specified by
3210 rule shall be prepared to support each actuarial opinion.

3211 9. If the insurance company fails to provide a supporting
3212 memorandum at the request of the office ~~department~~ within a
3213 period specified by rule of the commission, or if the office
3214 ~~department~~ determines that the supporting memorandum provided by
3215 the insurance company fails to meet the standards prescribed by



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3216 | rule of the commission, the office ~~department~~ may engage a
3217 | qualified actuary at the expense of the company to review the
3218 | opinion and the basis for the opinion and prepare such
3219 | supporting memorandum as is required by the office ~~department~~.

3220 | 10. Except as otherwise provided in this paragraph, any
3221 | memorandum or other material in support of the opinion is
3222 | confidential and exempt from the provisions of s. 119.07(1);
3223 | however, the memorandum or other material may be released by the
3224 | office ~~department~~ with the written consent of the company, or to
3225 | the American Academy of Actuaries upon request stating that the
3226 | memorandum or other material is required for the purpose of
3227 | professional disciplinary proceedings and setting forth
3228 | procedures satisfactory to the office ~~department~~ for preserving
3229 | the confidentiality of the memorandum or other material. If any
3230 | portion of the confidential memorandum is cited by the company
3231 | in its marketing or is cited before any governmental agency
3232 | other than a state insurance department or is released by the
3233 | company to the news media, no portion of the memorandum is
3234 | confidential.

3235 | (b) In addition to the opinion required by subparagraph
3236 | (a)1., the office ~~department~~ may, pursuant to commission ~~by~~
3237 | rule, require an opinion of the same qualified actuary as to
3238 | whether the reserves and related actuarial items held in support
3239 | of the policies and contracts specified by the commission
3240 | ~~department~~ by rule, when considered in light of the assets held
3241 | by the company with respect to the reserves and related
3242 | actuarial items, including but not limited to the investment
3243 | earnings on the assets and considerations anticipated to be



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3244 received and retained under the policies and contracts, make
3245 adequate provision for the company's obligations under the
3246 policies and contracts, including, but not limited to, the
3247 benefits under, and expenses associated with, the policies and
3248 contracts.

3249 (c) The commission ~~department~~ may provide by rule for a
3250 transition period for establishing any higher reserves which the
3251 qualified actuary may deem necessary in order to render the
3252 opinion required by this subsection.

3253 (4) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
3254 CONTRACTS ISSUED BEFORE OPERATIVE DATE OF STANDARD NONFORFEITURE
3255 LAW.--The minimum standard for the valuation of all such
3256 policies and contracts issued prior to the operative date of s.
3257 627.476 (Standard Nonforfeiture Law) shall be any basis
3258 satisfactory to the office ~~department~~. Any basis satisfactory to
3259 the former Department of Insurance on the effective date of this
3260 code shall be deemed to meet such minimum standards.

3261 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
3262 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD
3263 NONFORFEITURE LAW.--Except as otherwise provided in paragraph
3264 (h) and subsections (6), (11), and (14), the minimum standard
3265 for the valuation of all such policies and contracts issued on
3266 or after the operative date of s. 627.476 (Standard
3267 Nonforfeiture Law for Life Insurance) shall be the
3268 commissioners' reserve valuation method defined in subsections
3269 (7), (11), and (14); 5 percent interest for group annuity and
3270 pure endowment contracts and 3.5 percent interest for all other
3271 such policies and contracts, or in the case of life insurance



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3272 policies and contracts, other than annuity and pure endowment
3273 contracts, issued on or after July 1, 1973, 4 percent interest
3274 for such policies issued prior to October 1, 1979, and 4.5
3275 percent interest for such policies issued on or after October 1,
3276 1979; and the following tables:

3277 (c) For individual annuity and pure endowment contracts,
3278 excluding any disability and accidental death benefits in such
3279 policies, the 1937 Standard Annuity Mortality Table or, at the
3280 option of the insurer, the Annuity Mortality Table for 1949,
3281 Ultimate, or any modification of either of these tables approved
3282 by the office ~~department~~.

3283 (d) For group annuity and pure endowment contracts,
3284 excluding any disability and accidental death benefits in such
3285 policies, the Group Annuity Mortality Table for 1951; any
3286 modification of such table approved by the office ~~department~~;
3287 or, at the option of the insurer, any of the tables or
3288 modifications of tables specified for individual annuity and
3289 pure endowment contracts.

3290 (g) For group life insurance, life insurance issued on the
3291 substandard basis, and other special benefits, such tables as
3292 may be approved by the office ~~department~~ as being sufficient
3293 with relation to the benefits provided by such policies.

3294 (h) Except as provided in subsection (6), the minimum
3295 standard for the valuation of all individual annuity and pure
3296 endowment contracts issued on or after the operative date of
3297 this paragraph and for all annuities and pure endowments
3298 purchased on or after such operative date under group annuity
3299 and pure endowment contracts shall be the commissioners' reserve



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3300 valuation method defined in subsection (7) and the following
3301 tables and interest rates:

3302 1. For individual annuity and pure endowment contracts
3303 issued prior to October 1, 1979, excluding any disability and
3304 accidental death benefits in such contracts, the 1971 Individual
3305 Annuity Mortality Table, or any modification of this table
3306 approved by the office ~~department~~, and 6 percent interest for
3307 single-premium immediate annuity contracts and 4 percent
3308 interest for all other individual annuity and pure endowment
3309 contracts.

3310 2. For individual single-premium immediate annuity
3311 contracts issued on or after October 1, 1979, and prior to
3312 October 1, 1986, excluding any disability and accidental death
3313 benefits in such contracts, the 1971 Individual Annuity
3314 Mortality Table, or any modification of this table approved by
3315 the office ~~department~~, and 7.5 percent interest. For such
3316 contracts issued on or after October 1, 1986, the 1983
3317 Individual Annual Mortality Table, or any modification of such
3318 table approved by the office ~~department~~, and the applicable
3319 calendar year statutory valuation interest rate as described in
3320 subsection (6).

3321 3. For individual annuity and pure endowment contracts
3322 issued on or after October 1, 1979, and prior to October 1,
3323 1986, other than single-premium immediate annuity contracts,
3324 excluding any disability and accidental death benefits in such
3325 contracts, the 1971 Individual Annuity Mortality Table, or any
3326 modification of this table approved by the office ~~department~~,
3327 and 5.5 percent interest for single-premium deferred annuity and



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3328 pure endowment contracts and 4.5 percent interest for all other
3329 such individual annuity and pure endowment contracts. For such
3330 contracts issued on or after October 1, 1986, the 1983
3331 Individual Annual Mortality Table, or any modification of such
3332 table approved by the office department, and the applicable
3333 calendar year statutory valuation interest rate as described in
3334 subsection (6).

3335 4. For all annuities and pure endowments purchased prior
3336 to October 1, 1979, under group annuity and pure endowment
3337 contracts, excluding any disability and accidental death
3338 benefits purchased under such contracts, the 1971 Group Annuity
3339 Mortality Table, or any modification of this table approved by
3340 the office department, and 6 percent interest.

3341 5. For all annuities and pure endowments purchased on or
3342 after October 1, 1979, and prior to October 1, 1986, under group
3343 annuity and pure endowment contracts, excluding any disability
3344 and accidental death benefits purchased under such contracts,
3345 the 1971 Group Annuity Mortality Table, or any modification of
3346 this table approved by the office department, and 7.5 percent
3347 interest. For such contracts purchased on or after October 1,
3348 1986, the 1983 Group Annuity Mortality Table, or any
3349 modification of such table approved by the office department,
3350 and the applicable calendar year statutory valuation interest
3351 rate as described in subsection (6).

3352
3353 After July 1, 1973, any insurer may have filed ~~file~~ with the
3354 former Department of Insurance a written notice of its election
3355 to comply with the provisions of this paragraph after a



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3356 specified date before January 1, 1979, which shall be the
3357 operative date of this paragraph for such insurer. However, an
3358 insurer may elect a different operative date for individual
3359 annuity and pure endowment contracts from that elected for group
3360 annuity and pure endowment contracts. If an insurer makes no
3361 such election, the operative date of this paragraph for such
3362 insurer shall be January 1, 1979.

3363 (i) In lieu of the mortality tables specified in this
3364 subsection, and subject to rules previously adopted by the
3365 former Department of Insurance, the insurance company may, at
3366 its option:

3367 1. Substitute the applicable 1958 CSO or CET Smoker and
3368 Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET
3369 mortality table standard, for policies issued on or after the
3370 operative date of s. 627.476(9) and before January 1, 1989.

3371 2. Substitute the applicable 1980 CSO or CET Smoker and
3372 Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET
3373 mortality table standard;

3374 3. Use the Annuity 2000 Mortality Table for determining
3375 the minimum standard of valuation for individual annuity and
3376 pure endowment contracts issued on or after January 1, 1998, and
3377 before July 1, 1998 ~~the operative date of this section until the~~
3378 ~~department, on a date certain that is on or after January 1,~~
3379 ~~1998, adopts by rule that table for determining the minimum~~
3380 ~~standard for valuation purposes.~~

3381 4. Use the 1994 GAR Table for determining the minimum
3382 standard of valuation for annuities and pure endowments
3383 purchased on or after January 1, 1998, and before July 1, 1998,



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3384 ~~the operative date of this section~~ under group annuity and pure
3385 endowment contracts ~~until the department, on a date certain that~~
3386 ~~is on or after January 1, 1998, adopts by rule that table for~~
3387 ~~determining the minimum standard for valuation purposes.~~

3388 (j) The commission ~~department~~ may adopt by rule the model
3389 regulation for valuation of life insurance policies as approved
3390 by the National Association of Insurance Commissioners in March
3391 1999, including tables of select mortality factors, and may make
3392 the regulation effective for policies issued on or after January
3393 1, 2000.

3394 (6) MINIMUM STANDARD OF VALUATION.--

3395 (e) The interest rate index shall be the Moody's Corporate
3396 Bond Yield Average-Monthly Average Corporates as published by
3397 Moody's Investors Service, Inc., as long as this index is
3398 calculated by using substantially the same methodology as used
3399 by it on January 1, 1981. If Moody's corporate bond yield
3400 average ceases to be calculated in this manner, the interest
3401 rate index shall be the index approved by rule promulgated by
3402 the commission ~~department~~. The methodology used in determining
3403 the index approved by rule shall be substantially the same as
3404 the methodology employed on January 1, 1981, for determining
3405 Moody's Corporate Bond Yield Average-Monthly Average Corporates
3406 as published by Moody's Investors Services, Inc.

3407 (10) LOWER VALUATIONS.--An insurer which at any time had
3408 adopted any standard of valuation producing greater aggregate
3409 reserves than those calculated according to the minimum standard
3410 herein provided may, with the approval of the office ~~department~~,
3411 adopt any lower standard of valuation, but not lower than the



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3412 minimum herein provided; however, for the purposes of this
3413 subsection, the holding of additional reserves previously
3414 determined by a qualified actuary to be necessary to render the
3415 opinion required by subsection (3) shall not be deemed to be the
3416 adoption of a higher standard of valuation.

3417 (12) ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN
3418 CASES.--In the case of any plan of life insurance which provides
3419 for future premium determination, the amounts of which are to be
3420 determined by the insurer based on then estimates of future
3421 experience, or in the case of any plan of life insurance or
3422 annuity which is of such a nature that the minimum reserves
3423 cannot be determined by the methods described in subsection (7),
3424 the reserves which are held under any such plan shall:

3425 (b) Be computed by a method which is consistent with the
3426 principles of this section, as determined by rules promulgated
3427 by the commission ~~department~~.

3428 (14) MINIMUM STANDARDS FOR HEALTH PLANS.--The commission
3429 ~~department~~ shall adopt a rule containing the minimum standards
3430 applicable to the valuation of health plans in accordance with
3431 sound actuarial principles.

3432 Section 39. Subsections (1), (2), and (4) of section
3433 625.151, Florida Statutes, are amended to read:

3434 625.151 Valuation of other securities.--

3435 (1) Securities, other than those referred to in s.
3436 625.141, held by an insurer shall be valued, in the discretion
3437 of the office ~~department~~, at their market value, or at their
3438 appraised value, or at prices determined by it as representing
3439 their fair market value.



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3440 (2) Preferred or guaranteed stocks or shares while paying
3441 full dividends may be carried at a fixed value in lieu of market
3442 value, at the discretion of the office ~~department~~ and in
3443 accordance with such method of valuation as it may approve.

3444 (4) No valuations under this section shall be inconsistent
3445 with any applicable valuation or method contained in the latest
3446 edition of the publication "Valuation of Securities" published
3447 by the National Association of Insurance Commissioners or its
3448 successor organization; provided that such valuation methodology
3449 is substantially similar to the methodology used by the National
3450 Association of Insurance Commissioners in its July 1, 2002, 1988
3451 edition of such publication.

3452 Section 40. Section 625.317, Florida Statutes, is amended
3453 to read:

3454 625.317 Corporate bonds and debentures.--An insurer may
3455 invest in bonds, notes, or other interest-bearing or interest-
3456 accruing obligations of any solvent corporation organized under
3457 the laws of the United States or Canada or under the laws of any
3458 state, the District of Columbia, any territory or possession of
3459 the United States, or any Province of Canada or in bonds or
3460 notes issued by the Citizens Property Insurance Corporation as
3461 authorized by s. 627.351(6) Florida Windstorm Underwriting
3462 ~~Association or a private nonprofit corporation, a private~~
3463 ~~nonprofit unincorporated association, or a nonprofit mutual~~
3464 ~~company organized by that association, all as authorized in s.~~
3465 ~~627.351(2)(c), or any subsidiary or affiliate thereof authorized~~
3466 ~~by the Department of Insurance to issue such bonds or notes.~~



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3467 Section 41. Subsection (4) of section 625.325, Florida
3468 Statutes, is amended to read:

3469 625.325 Investments in subsidiaries and related
3470 corporations.--

3471 (4) DEBT OBLIGATIONS.--Debt obligations, other than
3472 mortgage loans, made under the authority of this section must
3473 meet amortization requirements in accordance with the latest
3474 edition of the publication "Valuation of Securities" by the
3475 National Association of Insurance Commissioners or its successor
3476 organization; provided that such amortization methodology is
3477 substantially similar to the methodology used by the National
3478 Association of Insurance Commissioners in its July 1, 2002, 1988
3479 edition of such publication.

3480 Section 42. Subsections (6) and (11) of section 626.015,
3481 Florida Statutes, are amended, and present subsections (7)-(19)
3482 of said section are renumbered as subsections (6)-(18),
3483 respectively, to read:

3484 626.015 Definitions.--As used in this part:

3485 ~~(6) "Department" means the Department of Insurance.~~

3486 (10)(11) "License" means a document issued by the
3487 department or office authorizing a person to be appointed to
3488 transact insurance or adjust claims for the kind, line, or class
3489 of insurance identified in the document.

3490 Section 43. Section 626.016, Florida Statutes, is created
3491 to read:

3492 626.016 Powers and duties of department, commission, and
3493 office.--



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3494 (1) The powers and duties of the Chief Financial Officer
3495 and the department specified in part I of this chapter apply
3496 only with respect to insurance agents, managing general agents,
3497 reinsurance intermediaries, viatical settlement brokers,
3498 customer representatives, service representatives, and agencies.

3499 (2) The powers and duties of the commission and office
3500 specified in part I of this chapter apply only with respect to
3501 insurance adjusters, service companies, administrators, and
3502 viatical settlement providers and contracts.

3503 (3) The department has jurisdiction to enforce provisions
3504 of parts VIII and IX of this chapter with respect to persons who
3505 engage in actions for which a license issued by the department
3506 is legally required. The office has jurisdiction to enforce
3507 provisions of parts VIII and IX of this chapter with respect to
3508 persons who engage in actions for which a license or certificate
3509 of authority issued by the office is legally required. For
3510 persons who violate a provision of this chapter for whom a
3511 license or certificate of authority issued by either the
3512 department or office is not required, either the department or
3513 office may take administrative action against such person as
3514 authorized by this chapter, pursuant to agreement between the
3515 office and department.

3516 (4) Nothing in this section is intended to limit the
3517 authority of the department and the Division of Insurance Fraud,
3518 as specified in s. 626.989.

3519 Section 44. Subsection (16) of section 626.025, Florida
3520 Statutes, is amended to read:



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3521 626.025 Consumer protections.--To transact insurance,
3522 agents shall comply with consumer protection laws, including the
3523 following, as applicable:

3524 (16) Any other licensing requirement, restriction, or
3525 prohibition designated a consumer protection by the Chief
3526 Financial Officer ~~Insurance Commissioner~~, but not inconsistent
3527 with the requirements of Subtitle C of the Gramm-Leach-Bliley
3528 Act, 15 U.S.C.A. ss. 6751 et seq.

3529 Section 45. Paragraph (a) of subsection (1) of section
3530 626.112, Florida Statutes, is amended to read:

3531 626.112 License and appointment required; agents, customer
3532 representatives, adjusters, insurance agencies, service
3533 representatives, managing general agents.--

3534 (1)(a) No person may be, act as, or advertise or hold
3535 himself or herself out to be an insurance agent, or customer
3536 representative, ~~or adjuster~~ unless he or she is currently
3537 licensed by the department and appointed by one or more
3538 insurers. No person may be, act as, or advertise or hold himself
3539 or herself out to be an insurance adjuster unless he or she is
3540 currently licensed by the office and appointed by one or more
3541 insurers.

3542
3543 However, an employee leasing company licensed pursuant to
3544 chapter 468 which is seeking to enter into a contract with an
3545 employer that identifies products and services offered to
3546 employees may deliver proposals for the purchase of employee
3547 leasing services to prospective clients of the employee leasing
3548 company setting forth the terms and conditions of doing



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3549 business; classify employees as permitted by s. 468.529; collect
3550 information from prospective clients and other sources as
3551 necessary to perform due diligence on the prospective client and
3552 to prepare a proposal for services; provide and receive
3553 enrollment forms, plans, and other documents; and discuss or
3554 explain in general terms the conditions, limitations, options,
3555 or exclusions of insurance benefit plans available to the client
3556 or employees of the employee leasing company were the client to
3557 contract with the employee leasing company. Any advertising
3558 materials or other documents describing specific insurance
3559 coverages must identify and be from a licensed insurer or its
3560 licensed agent or a licensed and appointed agent employed by the
3561 employee leasing company. The employee leasing company may not
3562 advise or inform the prospective business client or individual
3563 employees of specific coverage provisions, exclusions, or
3564 limitations of particular plans. As to clients for which the
3565 employee leasing company is providing services pursuant to s.
3566 468.525(4), the employee leasing company may engage in
3567 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
3568 subject to the restrictions specified in those sections. If a
3569 prospective client requests more specific information concerning
3570 the insurance provided by the employee leasing company, the
3571 employee leasing company must refer the prospective business
3572 client to the insurer or its licensed agent or to a licensed and
3573 appointed agent employed by the employee leasing company.

3574 Section 46. Section 626.161, Florida Statutes, is amended
3575 to read:



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3576 626.161 Licensing forms.--The department shall prescribe
3577 and furnish all printed forms required in connection with the
3578 application for issuance of and termination of all licenses and
3579 appointments, except that, with respect to adjusters, the
3580 commission shall prescribe and the office shall furnish such
3581 forms.

3582 Section 47. Subsections (1), (2), and (5) of section
3583 626.171, Florida Statutes, are amended to read:

3584 626.171 Application for license.--

3585 (1) The department or office shall not issue a license as
3586 agent, customer representative, adjuster, insurance agency,
3587 service representative, managing general agent, or reinsurance
3588 intermediary to any person except upon written application
3589 therefor filed with it, qualification therefor, and payment in
3590 advance of all applicable fees. Any such application shall be
3591 made under the oath of the applicant and be signed by the
3592 applicant. Beginning November 1, 2002, the department shall
3593 accept the uniform application for nonresident agent licensing.
3594 The department may adopt revised versions of the uniform
3595 application by rule.

3596 (2) In the application, the applicant shall set forth:

3597 (a) His or her full name, age, social security number,
3598 residence, and place of business.

3599 (b) Proof that he or she has completed or is in the
3600 process of completing any required prelicensing course.

3601 (c) Whether he or she has been refused or has voluntarily
3602 surrendered or has had suspended or revoked a license to solicit



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3603 insurance by the department or by the supervising officials of
3604 any state.

3605 (d) Whether any insurer or any managing general agent
3606 claims the applicant is indebted under any agency contract or
3607 otherwise and, if so, the name of the claimant, the nature of
3608 the claim, and the applicant's defense thereto, if any.

3609 (e) Proof that the applicant meets the requirements for
3610 the type of license for which he or she is applying.

3611 (f) Such other or additional information as the department
3612 or office may deem proper to enable it to determine the
3613 character, experience, ability, and other qualifications of the
3614 applicant to hold himself or herself out to the public as an
3615 insurance representative.

3616 (5) An application for a license as an agent, customer
3617 representative, adjuster, insurance agency, service
3618 representative, managing general agent, or reinsurance
3619 intermediary must be accompanied by a set of the individual
3620 applicant's fingerprints, or, if the applicant is not an
3621 individual, by a set of the fingerprints of the sole proprietor,
3622 majority owner, partners, officers, and directors, on a form
3623 adopted by rule of the department or commission and accompanied
3624 by the fingerprint processing fee set forth in s. 624.501. The
3625 fingerprints shall be certified by a law enforcement officer.

3626 Section 48. Section 626.181, Florida Statutes, is amended
3627 to read:

3628 626.181 Number of applications for licensure
3629 required.--After a license as agent, customer representative, or
3630 adjuster has been issued to an individual, the same individual



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3631 shall not be required to take another examination for a similar
3632 license, regardless, in the case of an agent, of the number of
3633 insurers to be represented by him or her as agent, unless:

3634 (1) Specifically ordered by the department or office to
3635 complete a new application for license; or

3636 (2) During any period of 48 months since the filing of the
3637 original license application, such individual was not appointed
3638 as an agent, customer representative, or adjuster, unless the
3639 failure to be so appointed was due to military service, in which
3640 event the period within which a new application is not required
3641 may, in the discretion of the department or office, be extended
3642 to 12 months following the date of discharge from military
3643 service if the military service does not exceed 3 years, but in
3644 no event to extend under this clause for a period of more than 6
3645 years from the date of filing of the original application for
3646 license.

3647 Section 49. Section 626.191, Florida Statutes, is amended
3648 to read:

3649 626.191 Repeated applications.--The failure of an
3650 applicant to secure a license upon an application shall not
3651 preclude him or her from applying again as many times as
3652 desired, but the department or office shall not give
3653 consideration to or accept any further application by the same
3654 individual for a similar license dated or filed within 30 days
3655 subsequent to the date the department or office denied the last
3656 application, except as provided in s. 626.281.

3657 Section 50. Section 626.201, Florida Statutes, is amended
3658 to read:



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3659 626.201 Investigation.--The department or office may
3660 propound any reasonable interrogatories in addition to those
3661 contained in the application, to any applicant for license or
3662 appointment, or on any renewal, reinstatement, or continuation
3663 thereof, relating to his or her qualifications, residence,
3664 prospective place of business, and any other matter which, in
3665 the opinion of the department or office, is deemed necessary or
3666 advisable for the protection of the public and to ascertain the
3667 applicant's qualifications. The department or office may, upon
3668 completion of the application, make such further investigation
3669 as it may deem advisable of the applicant's character,
3670 experience, background, and fitness for the license or
3671 appointment. Such an inquiry or investigation shall be in
3672 addition to any examination required to be taken by the
3673 applicant as hereinafter in this chapter provided.

3674 Section 51. Section 626.202, Florida Statutes, is amended
3675 to read:

3676 626.202 Fingerprinting requirements.--If there is a change
3677 in ownership or control of any entity licensed under this
3678 chapter, or if a new partner, officer, or director is employed
3679 or appointed, a set of fingerprints of the new owner, partner,
3680 officer, or director must be filed with the department or office
3681 within 30 days after the change. The acquisition of 10 percent
3682 or more of the voting securities of a licensed entity is
3683 considered a change of ownership or control. The fingerprints
3684 must be certified by a law enforcement officer and be
3685 accompanied by the fingerprint processing fee in s. 624.501.



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3686 Section 52. Section 626.211, Florida Statutes, is amended
3687 to read:

3688 626.211 Approval, disapproval of application.--

3689 (1) If upon the basis of a completed application for
3690 license and such further inquiry or investigation as the
3691 department or office may make concerning an applicant the
3692 department or office is satisfied that, subject to any
3693 examination required to be taken and passed by the applicant for
3694 a license, the applicant is qualified for the license applied
3695 for and that all pertinent fees have been paid, it shall approve
3696 the application. The department or office shall not deny,
3697 delay, or withhold approval of an application due to the fact
3698 that it has not received a criminal history report based on the
3699 applicant's fingerprints.

3700 (2) Upon approval of an applicant for license as agent,
3701 customer representative, or adjuster who is subject to written
3702 examination, the department or office shall notify the applicant
3703 when and where he or she may take the required examination.

3704 (3) Upon approval of an applicant for license who is not
3705 subject to examination, the department or office shall promptly
3706 issue the license.

3707 (4) If upon the basis of the completed application and
3708 such further inquiry or investigation the department or office
3709 deems the applicant to be lacking in any one or more of the
3710 required qualifications for the license applied for, the
3711 department or office shall disapprove the application and notify
3712 the applicant, stating the grounds of disapproval.



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3713 Section 53. Section 626.221, Florida Statutes, is amended
3714 to read:

3715 626.221 Examination requirement; exemptions.--

3716 (1) The department or office shall not issue any license
3717 as agent, customer representative, or adjuster to any individual
3718 who has not qualified for, taken, and passed to the satisfaction
3719 of the department or office a written examination of the scope
3720 prescribed in s. 626.241.

3721 (2) However, no such examination shall be necessary in any
3722 of the following cases:

3723 (a) An applicant for renewal of appointment as an agent,
3724 customer representative, or adjuster, unless the department or
3725 office determines that an examination is necessary to establish
3726 the competence or trustworthiness of such applicant.

3727 (b) An applicant for limited license as agent for personal
3728 accident insurance, baggage and motor vehicle excess liability
3729 insurance, credit life or disability insurance, credit
3730 insurance, credit property insurance, in-transit and storage
3731 personal property insurance, or communications equipment
3732 property insurance or communication equipment inland marine
3733 insurance.

3734 (c) In the discretion of the department or office, an
3735 applicant for reinstatement of license or appointment as an
3736 agent, customer representative, or adjuster whose license has
3737 been suspended within 2 years prior to the date of application
3738 or written request for reinstatement.

3739 (d) An applicant who, within 2 years prior to application
3740 for license and appointment as an agent, customer



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3741 representative, or adjuster, was a full-time salaried employee
3742 of the department or office and had continuously been such an
3743 employee with responsible insurance duties for not less than 2
3744 years and who had been a licensee within 2 years prior to
3745 employment by the department or office with the same class of
3746 license as that being applied for.

3747 (e) An individual who qualified as a managing general
3748 agent, service representative, customer representative, or all-
3749 lines adjuster by passing a general lines agent's examination
3750 and subsequently was licensed and appointed and has been
3751 actively engaged in all lines of property and casualty insurance
3752 may, upon filing an application for appointment, be licensed and
3753 appointed as a general lines agent for the same kinds of
3754 business without taking another examination if he or she holds
3755 any such currently effective license referred to in this
3756 paragraph or held the license within 24 months prior to the date
3757 of filing the application with the department.

3758 (f) A person who has been licensed and appointed ~~by the~~
3759 ~~department~~ as a public adjuster or independent adjuster, or
3760 licensed and appointed either as an agent or company adjuster as
3761 to all property, casualty, and surety insurances, may be
3762 licensed and appointed as a company adjuster as to any of such
3763 insurances, or as an independent adjuster or public adjuster,
3764 without additional written examination if an application for
3765 appointment is filed with the office ~~department~~ within 24 months
3766 following the date of cancellation or expiration of the prior
3767 appointment.



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3768 (g) A person who has been licensed ~~by the department~~ as an
3769 adjuster for motor vehicle, property and casualty, workers'
3770 compensation, and health insurance may be licensed as such an
3771 adjuster without additional written examination if his or her
3772 application for appointment is filed with the office ~~department~~
3773 within 24 months after cancellation or expiration of the prior
3774 license.

3775 (h) An applicant for temporary license, except as provided
3776 in this code.

3777 (i) An applicant for a life or health license who has
3778 received the designation of chartered life underwriter (CLU)
3779 from the American College of Life Underwriters and who has been
3780 engaged in the insurance business within the past 4 years,
3781 except that such an individual may be examined on pertinent
3782 provisions of this code.

3783 (j) An applicant for license as a general lines agent,
3784 customer representative, or adjuster who has received the
3785 designation of chartered property and casualty underwriter
3786 (CPCU) from the American Institute for Property and Liability
3787 Underwriters and who has been engaged in the insurance business
3788 within the past 4 years, except that such an individual may be
3789 examined on pertinent provisions of this code.

3790 (k) An applicant for license as a customer representative
3791 who has the designation of Accredited Advisor in Insurance (AAI)
3792 from the Insurance Institute of America, the designation of
3793 Certified Insurance Counselor (CIC) from the Society of
3794 Certified Insurance Service Counselors, the designation of
3795 Accredited Customer Service Representative (ACSR) from the



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3796 Independent Insurance Agents of America, the designation of
3797 Certified Professional Service Representative (CPSR) from the
3798 National Association of Professional Insurance Agents, the
3799 designation of Certified Insurance Service Representative (CISR)
3800 from the Society of Certified Insurance Service Representatives.
3801 Also, an applicant for license as a customer representative who
3802 has the designation of Certified Customer Service Representative
3803 (CCSR) from the Florida Association of Insurance Agents, or the
3804 designation of Registered Customer Service Representative (RCSR)
3805 from a regionally accredited postsecondary institution in this
3806 state, or the designation of Professional Customer Service
3807 Representative (PCSR) from the Professional Career Institute,
3808 whose curriculum has been approved by the department and whose
3809 curriculum includes comprehensive analysis of basic property and
3810 casualty lines of insurance and testing at least equal to that
3811 of standard department testing for the customer representative
3812 license. The department shall adopt rules establishing standards
3813 for the approval of curriculum.

3814 (1) An applicant for license as an adjuster who has the
3815 designation of Accredited Claims Adjuster (ACA) from a
3816 regionally accredited postsecondary institution in this state,
3817 or the designation of Professional Claims Adjuster (PCA) from the
3818 Professional Career Institute, whose curriculum has been
3819 approved by the office ~~department~~ and whose curriculum includes
3820 comprehensive analysis of basic property and casualty lines of
3821 insurance and testing at least equal to that of standard office
3822 ~~department~~ testing for the all-lines adjuster license. The



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3823 commission ~~department~~ shall adopt rules establishing standards
3824 for the approval of curriculum.

3825 (m) An applicant qualifying for a license transfer under
3826 s. 626.292, if the applicant:

3827 1. Has successfully completed the prelicensing examination
3828 requirements in the applicant's previous state which are
3829 substantially equivalent to the examination requirements in this
3830 state, as determined by the department ~~Insurance Commissioner of~~
3831 ~~this state~~;

3832 2. Has received the designation of chartered property and
3833 casualty underwriter (CPCU) from the American Institute for
3834 Property and Liability Underwriters and has been engaged in the
3835 insurance business within the past 4 years if applying to
3836 transfer a general lines agent license; or

3837 3. Has received the designation of chartered life
3838 underwriter (CLU) from the American College of Life Underwriters
3839 and has been engaged in the insurance business within the past 4
3840 years, if applying to transfer a life or health agent license.

3841 (n) An applicant for a nonresident agent license, if the
3842 applicant:

3843 1. Has successfully completed prelicensing examination
3844 requirements in the applicant's home state which are
3845 substantially equivalent to the examination requirements in this
3846 state, as determined by the department ~~Insurance Commissioner of~~
3847 ~~this state~~, as a requirement for obtaining a resident license in
3848 his or her home state;



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3849 2. Held a general lines agent license, life agent license,
3850 or health agent license prior to the time a written examination
3851 was required;

3852 3. Has received the designation of chartered property and
3853 casualty underwriter (CPCU) from the American Institute for
3854 Property and Liability Underwriters and has been engaged in the
3855 insurance business within the past 4 years, if an applicant for
3856 a nonresident license as a general lines agent; or

3857 4. Has received the designation of chartered life
3858 underwriter (CLU) from the American College of Life Underwriters
3859 and has been in the insurance business within the past 4 years,
3860 if an applicant for a nonresident license as a life agent or
3861 health agent.

3862 (3) An individual who is already licensed as a customer
3863 representative shall not be licensed as a general lines agent
3864 without application and examination for such license.

3865 Section 54. Section 626.231, Florida Statutes, is amended
3866 to read:

3867 626.231 Eligibility for examination.--No person shall be
3868 permitted to take an examination for license until his or her
3869 application for the license has been approved and the required
3870 fees have been received by the department or office or a person
3871 designated by the department or office to administer the
3872 examination.

3873 Section 55. Subsection (1) of section 626.241, Florida
3874 Statutes, is amended to read:

3875 626.241 Scope of examination.--



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3876 (1) Each examination for a license as agent, customer
3877 representative, or adjuster shall be of such scope as is deemed
3878 by the department or office to be reasonably necessary to test
3879 the applicant's ability and competence and knowledge of the
3880 kinds of insurance and transactions to be handled under the
3881 license applied for, of the duties and responsibilities of such
3882 a licensee, and of the pertinent provisions of the laws of this
3883 state.

3884 Section 56. Section 626.251, Florida Statutes, is amended
3885 to read:

3886 626.251 Time and place of examination; notice.--

3887 (1) The department or office or a person designated by the
3888 department or office shall mail written notice of the time and
3889 place of the examination to each applicant for license required
3890 to take an examination who will be eligible to take the
3891 examination as of the examination date. The notice shall be so
3892 mailed, postage prepaid, and addressed to the applicant at his
3893 or her address shown on the application for license or at such
3894 other address as requested by the applicant in writing filed
3895 with the department or office prior to the mailing of the
3896 notice. Notice shall be deemed given when so mailed.

3897 (2) The examination shall be held in an adequate and
3898 designated examination center in this state.

3899 (3) The department or office shall make an examination
3900 available to the applicant, to be taken as soon as reasonably
3901 possible after the applicant is eligible therefor. Any
3902 examination required under this part shall be available in this
3903 state at a designated examination center.



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3904 Section 57. Section 626.261, Florida Statutes, is amended
3905 to read:

3906 626.261 Conduct of examination.--

3907 (1) The applicant for license shall appear in person and
3908 personally take the examination for license at the time and
3909 place specified by the department or office or by a person
3910 designated by the department or office.

3911 (2) The examination shall be conducted by an employee of
3912 the department or office or a person designated by the
3913 department or office for that purpose.

3914 (3) The questions propounded shall be as prepared by the
3915 department or office, or by a person designated by the
3916 department or office for that purpose, consistent with the
3917 applicable provisions of this code.

3918 (4) All examinations shall be given and graded in a fair
3919 and impartial manner and without unfair discrimination in favor
3920 of or against any particular applicant.

3921 Section 58. Section 626.266, Florida Statutes, is amended
3922 to read:

3923 626.266 Printing of examinations or related materials to
3924 preserve examination security.--A contract let for the
3925 development, administration, or grading of examinations or
3926 related materials by the department or office ~~of Insurance~~
3927 pursuant to the various agent, customer representative,
3928 solicitor, or adjuster licensing and examination provisions of
3929 this code may include the printing or furnishing of these
3930 examinations or related materials in order to preserve security.



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3931 Any such contract shall be let as a contract for a contractual
3932 service pursuant to s. 287.057.

3933 Section 59. Subsection (1) of section 626.271, Florida
3934 Statutes, is amended to read:

3935 626.271 Examination fee; determination, refund.--

3936 (1) Prior to being permitted to take an examination, each
3937 applicant who is subject to examination shall pay to the
3938 department or office or a person designated by the department or
3939 office an examination fee. A separate and additional
3940 examination fee shall be payable for each separate class of
3941 license applied for, notwithstanding that all such examinations
3942 are taken on the same date and at the same place.

3943 Section 60. Section 626.281, Florida Statutes, is amended
3944 to read:

3945 626.281 Reexamination.--

3946 (1) Any applicant for license who has either:

3947 (a) Taken an examination and failed to make a passing
3948 grade, or

3949 (b) Failed to appear for the examination or to take or
3950 complete the examination at the time and place specified in the
3951 notice of the department or office,

3952
3953 may take additional examinations, after filing with the
3954 department or office an application for reexamination together
3955 with applicable fees. The failure of an applicant to pass an
3956 examination or the failure to appear for the examination or to
3957 take or complete the examination does not preclude the applicant
3958 from taking subsequent examinations.



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3959 (2) The department or office may require any individual
3960 whose license as an agent, customer representative, or adjuster
3961 has expired or has been suspended to pass an examination prior
3962 to reinstating or relicensing the individual as to any class of
3963 license. The examination fee shall be paid as to each
3964 examination.

3965 Section 61. Subsections (5) and (6) of section 626.2815,
3966 Florida Statutes, are amended to read:

3967 626.2815 Continuing education required; application;
3968 exceptions; requirements; penalties.--

3969 (5) The department ~~of Insurance~~ shall refuse to renew the
3970 appointment of any agent who has not had his or her continuing
3971 education requirements certified unless the agent has been
3972 granted an extension by the department. The department may not
3973 issue a new appointment of the same or similar type, with any
3974 insurer, to an agent who was denied a renewal appointment for
3975 failure to complete continuing education as required until the
3976 agent completes his or her continuing education requirement.

3977 (6)(a) There is created an 11-member continuing education
3978 advisory board to be appointed by the Chief Financial Officer
3979 ~~Insurance Commissioner and Treasurer~~. Appointments shall be for
3980 terms of 4 years. The purpose of the board is to advise the
3981 department in determining standards by which courses may be
3982 evaluated and categorized as basic, intermediate, or advanced.
3983 ~~The board shall establish such criteria and the department shall~~
3984 ~~implement such criteria by January 1, 1997.~~ The board shall
3985 submit recommendations to the department of changes needed in
3986 such criteria not less frequently than every 2 years ~~thereafter~~.



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3987 The department shall require all approved course providers to
3988 submit courses for approval to the department using the
3989 criteria. All materials, brochures, and advertisements related
3990 to the approved courses must specify the level assigned to the
3991 course.

3992 (b) The board members shall be appointed as follows:

3993 1. Seven members representing agents of which at least one
3994 must be a representative from each of the following
3995 organizations: the Florida Association of Insurance Agents; the
3996 Florida Association of Life Underwriters; the Professional
3997 Insurance Agents of Florida, Inc.; the Florida Association of
3998 Health Underwriters; the Specialty Agents' Association; the
3999 Latin American Agents' Association; and the National Association
4000 of Insurance Women. Such board members must possess at least a
4001 bachelor's degree or higher from an accredited college or
4002 university with major coursework in insurance, risk management,
4003 or education or possess the designation of CLU, CPCU, CHFC, CFP,
4004 AAI, or CIC. In addition, each member must possess 5 years of
4005 classroom instruction experience or 5 years of experience in the
4006 development or design of educational programs or 10 years of
4007 experience as a licensed resident agent. Each organization may
4008 submit to the department a list of recommendations for
4009 appointment. If one organization does not submit a list of
4010 recommendations, the Chief Financial Officer Insurance
4011 ~~Commissioner~~ may select more than one recommended person from a
4012 list submitted by other eligible organizations.

4013 2. Two members representing insurance companies at least
4014 one of whom must represent a Florida Domestic Company and one of



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4015 | whom must represent the Florida Insurance Council. Such board
4016 | members must be employed within the training department of the
4017 | insurance company. At least one such member must be a member of
4018 | the Society of Insurance Trainers and Educators.

4019 | 3. One member representing the general public who is not
4020 | directly employed in the insurance industry. Such board member
4021 | must possess a minimum of a bachelor's degree or higher from an
4022 | accredited college or university with major coursework in
4023 | insurance, risk management, training, or education.

4024 | 4. One member, appointed by the Chief Financial Officer
4025 | ~~Insurance Commissioner~~, who represents the department.

4026 | (c) The members of the board shall serve at the pleasure
4027 | of the Chief Financial Officer ~~Insurance Commissioner and~~
4028 | ~~Treasurer~~. Each board member shall be entitled to reimbursement
4029 | for expenses pursuant to s. 112.061. The board shall designate
4030 | one member as chair. The board shall meet at the call of the
4031 | chair or the Chief Financial Officer ~~Insurance Commissioner and~~
4032 | ~~Treasurer~~.

4033 | Section 62. Section 626.2817, Florida Statutes, is amended
4034 | to read:

4035 | 626.2817 Regulation of course providers, instructors,
4036 | school officials, and monitor groups involved in prelicensure
4037 | education for insurance agents and other licensees.--

4038 | (1) Any course provider, instructor, school official, or
4039 | monitor group must be approved by and registered with the
4040 | department or office before offering prelicensure education
4041 | courses for insurance agents and other licensees.



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4042 (2) The department or commission shall adopt rules
4043 establishing standards for the approval, registration,
4044 discipline, or removal from registration of course providers,
4045 instructors, school officials, and monitor groups. The standards
4046 must be designed to ensure that such persons have the knowledge,
4047 competence, and integrity to fulfill the educational objectives
4048 of the prelicensure requirements of this chapter and chapter 648
4049 and to assure that insurance agents and licensees are competent
4050 to engage in the activities authorized under the license.

4051 (3) The department or commission shall adopt rules to
4052 establish a process for determining compliance with the
4053 prelicensure requirements of this chapter and chapter 648 and
4054 shall establish a prelicensure cycle for insurance agents and
4055 other licensees. The department or commission shall adopt rules
4056 prescribing the forms necessary to administer the prelicensure
4057 requirements.

4058 Section 63. Section 626.291, Florida Statutes, is amended
4059 to read:

4060 626.291 Denial, issuance of license.--

4061 (1) Within 30 days after the applicant has completed any
4062 examination required under s. 626.221, the department or office
4063 or its designee shall provide a score report; and, if it finds
4064 that the applicant has received a passing grade, the department
4065 or office shall within such period notify the applicant and
4066 issue and transmit the license to which such examination
4067 related. If it finds that the applicant did not make a passing
4068 grade on the examination for a particular license, the
4069 department or office or its designee shall within this period



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4070 provide notice to the applicant to that effect and of its denial
4071 of the license.

4072 (2) As to an applicant for a license for which no
4073 examination is required, the department or office shall promptly
4074 issue the license applied for as soon as it has approved the
4075 application.

4076 (3) The department or office shall not deny, delay, or
4077 withhold issuance of a license due to the fact that it has not
4078 received a criminal history report based on the applicant's
4079 fingerprints.

4080 Section 64. Paragraph (d) of subsection (2) of section
4081 626.292, Florida Statutes, is amended to read:

4082 626.292 Transfer of license from another state.--

4083 (2) To qualify for a license transfer, an individual
4084 applicant must meet the following requirements:

4085 (d) The individual shall satisfy prelicensing education
4086 requirements in this state, unless the completion of
4087 prelicensing education requirements was a prerequisite for
4088 licensure in the other state and the prelicensing education
4089 requirements in the other state are substantially equivalent to
4090 the prelicensing requirements of this state as determined by the
4091 department ~~Insurance Commissioner of this state~~.

4092 Section 65. Section 626.301, Florida Statutes, is amended
4093 to read:

4094 626.301 Form and contents of licenses, in general.--Each
4095 license issued by the department or office shall be in such form
4096 as the department or commission may designate and contain the
4097 licensee's name, lines of authority the licensee is authorized



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4098 to transact, the licensee's personal identification number, the
4099 date of issuance, and any other information the department or
4100 commission deems necessary to fully identify the licensee and
4101 the authority being granted. The department or commission may by
4102 rule require photographs of applicants as a part of the
4103 licensing process.

4104 Section 66. Section 626.322, Florida Statutes, is amended
4105 to read:

4106 626.322 License, appointment; certain military
4107 installations.--A natural person, not a resident of this state,
4108 may be licensed and appointed to represent an authorized life
4109 insurer domiciled in this state or an authorized foreign life
4110 insurer which maintains a regional home office in this state,
4111 provided such person represents such insurer exclusively at a
4112 United States military installation located in a foreign
4113 country. The department may, upon request of the applicant and
4114 the insurer on application forms furnished by the department and
4115 upon payment of fees as prescribed in s. 624.501, issue a
4116 license and appointment to such person. The insurer shall
4117 certify to the department that the applicant has the necessary
4118 training to hold himself or herself out as a life insurance
4119 representative, and the insurer shall further certify that it is
4120 willing to be bound by the acts of such applicant within the
4121 scope of his or her employment. Appointments shall be continued
4122 as prescribed in s. 626.381 and upon payment of a fee as
4123 prescribed in s. 624.501, unless sooner terminated. Such fees
4124 received shall be credited to the Insurance ~~Commissioner's~~
4125 Regulatory Trust Fund as provided for in s. 624.523.



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4126 Section 67. Section 626.361, Florida Statutes, is amended
4127 to read:

4128 626.361 Effective date of appointments.--All appointments
4129 shall be submitted to the department or office on a monthly
4130 basis no later than 45 days after the date of appointment. All
4131 appointments shall be effective as of the date requested on the
4132 appointment form.

4133 Section 68. Section 626.371, Florida Statutes, is amended
4134 to read:

4135 626.371 Payment of fees, taxes for appointment period
4136 without appointment.--If, upon application and qualification for
4137 an appointment and such investigation as the department or
4138 office may make, it appears to the department or office that an
4139 individual who was formerly appointed has been actively engaged
4140 or is currently actively engaged as such an appointee, but
4141 without being appointed as required, the department or office
4142 may, if it finds that such failure to be appointed was an
4143 inadvertent error on the part of the insurer or employer so
4144 represented, nevertheless issue the appointment as applied for
4145 but subject to the condition that, before the appointment is
4146 issued, all fees and taxes which would have been due had the
4147 applicant been so appointed during such current and prior
4148 periods, together with a continuation fee for such current and
4149 prior terms of appointment, shall be paid to the department or
4150 office.

4151 Section 69. Subsections (2), (3), and (4), of section
4152 626.381, Florida Statutes, are amended to read:



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4153 626.381 Renewal, continuation, reinstatement, or
4154 termination of appointment.--

4155 (2) Each appointing entity shall file with the department
4156 or office the lists, statements, and information as to
4157 appointees whose appointments are being renewed or terminated,
4158 accompanied by payment of the applicable renewal fees and taxes
4159 as prescribed in s. 624.501, by a date set forth by the
4160 department or office following the month during which the
4161 appointments will expire.

4162 (3) Renewal of an appointment which is received on a date
4163 set forth by the department or office in the succeeding month
4164 may be renewed by the department or office without penalty and
4165 shall be effective as of the day the appointment would have
4166 expired.

4167 (4) Renewal of an appointment which is received by the
4168 department or office after the date set by the department or
4169 office may be accepted and effectuated by the department or
4170 office in its discretion if an additional appointment,
4171 continuation, and reinstatement fee accompanies the renewal
4172 pursuant to s. 624.501.

4173 Section 70. Subsection (2) of section 626.431, Florida
4174 Statutes, is amended to read:

4175 626.431 Effect of expiration of license and appointment.--

4176 (2) When a licensee's last appointment for a particular
4177 class of insurance has been terminated or not renewed, the
4178 department or office must notify the licensee that his or her
4179 eligibility for appointment as such an appointee will expire



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4180 unless he or she is appointed prior to expiration of the 48-
4181 month period referred to in subsection (3).

4182 Section 71. Section 626.451, Florida Statutes, is amended
4183 to read:

4184 626.451 Appointment of agent or other representative.--

4185 (1) Each appointing entity appointing an agent, adjuster,
4186 service representative, customer representative, or managing
4187 general agent in this state shall file the appointment with the
4188 department or office and, at the same time, pay the applicable
4189 appointment fee and taxes. Every appointment shall be subject
4190 to the prior issuance of the appropriate agent's, adjuster's,
4191 service representative's, customer representative's, or managing
4192 general agent's license.

4193 (2) As a part of each appointment there shall be a
4194 certified statement or affidavit of an appropriate officer or
4195 official of the appointing entity stating what investigation the
4196 appointing entity has made concerning the proposed appointee and
4197 his or her background and the appointing entity's opinion to the
4198 best of its knowledge and belief as to the moral character,
4199 fitness, and reputation of the proposed appointee and any other
4200 information the department or office may reasonably require
4201 relative to the proposed appointee.

4202 (3) In the appointment of an agent, adjuster, service
4203 representative, customer representative, or managing general
4204 agent the appointing entity shall also certify therein that it
4205 is willing to be bound by the acts of the agent, adjuster,
4206 service representative, customer representative, or managing
4207 general agent, within the scope of his or her employment.



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4208 (4) Each appointing entity shall advise the department or
4209 office in writing within 15 days after it or its general agent,
4210 officer, or other official becomes aware that an appointee has
4211 pleaded guilty or nolo contendere to or has been found guilty of
4212 a felony after being appointed.

4213 (5) Any law enforcement agency or state attorney's office
4214 that is aware that an agent, adjuster, service representative,
4215 customer representative, or managing general agent has pleaded
4216 guilty or nolo contendere to or has been found guilty of a
4217 felony shall notify the department or office of such fact.

4218 (6) Upon the filing of an information or indictment
4219 against an agent, adjuster, service representative, customer
4220 representative, or managing general agent, the state attorney
4221 shall immediately furnish the department or office a certified
4222 copy of the information or indictment.

4223 Section 72. Section 626.461, Florida Statutes, is amended
4224 to read:

4225 626.461 Continuation of appointment of agent or other
4226 representative.--Subject to renewal or continuation by the
4227 appointing entity, the appointment of the agent, adjuster,
4228 solicitor, service representative, customer representative, or
4229 managing general agent shall continue in effect until the
4230 person's license is revoked or otherwise terminated, unless
4231 written notice of earlier termination of the appointment is
4232 filed with the department or office by either the appointing
4233 entity or the appointee.

4234 Section 73. Subsections (2), (3), (4), and (5) of section
4235 626.471, Florida Statutes, are amended to read:



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4236 | 626.471 Termination of appointment.--

4237 | (2) As soon as possible and at all events within 30 days
4238 | after terminating the appointment of an appointee, other than as
4239 | to an appointment terminated by the appointing entity's failure
4240 | to continue or renew it, the appointing entity shall file
4241 | written notice thereof with the department or office, together
4242 | with a statement that it has given the appointee notice thereof
4243 | as provided in subsection (1) and shall file with the department
4244 | or office the reasons and facts involved in such termination as
4245 | required under s. 626.511.

4246 | (3) Upon termination of the appointment of an appointee,
4247 | whether by failure to renew or continue the appointment, the
4248 | appointing entity shall:

4249 | (a) File with the department or office the information
4250 | required under s. 626.511.

4251 | (b) Subject to the exceptions provided under subsection
4252 | (1), continue the outstanding contracts transacted by an agent
4253 | until the expiration date or anniversary date when the policy is
4254 | a continuous policy with no expiration date. This paragraph
4255 | shall not be construed to prohibit the cancellation of such
4256 | contracts when not otherwise prohibited by law.

4257 | (4) An appointee may terminate the appointment at any time
4258 | by giving written notice thereof to the appointing entity and
4259 | filing a copy of the notice with the department or office. Such
4260 | termination shall be subject to the appointee's contract rights,
4261 | if any.

4262 | (5) Upon receiving notice of termination, the department
4263 | or office shall terminate the appointment.



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4264 Section 74. Section 626.511, Florida Statutes, is amended
4265 to read:

4266 626.511 Reasons for termination; confidential
4267 information.--

4268 (1) Any insurer terminating the appointment of an agent;
4269 any general lines agent terminating the appointment of a
4270 customer representative or a crop hail or multiple-peril crop
4271 insurance agent; and any employer terminating the appointment of
4272 an adjuster, service representative, or managing general agent,
4273 whether such termination is by direct action of the appointing
4274 insurer, agent, or employer or by failure to renew or continue
4275 the appointment as provided, shall file with the department or
4276 office a statement of the reasons, if any, for and the facts
4277 relative to such termination. In the case of termination of the
4278 appointment of an agent, such information may be filed by the
4279 insurer or by the general agent of the insurer.

4280 (2) In the case of terminations by failure to renew or
4281 continue the appointment, the information required under
4282 subsection (1) shall be filed with the department or office as
4283 soon as possible, and at all events within 30 days, after the
4284 date notice of intention not to so renew or continue was filed
4285 with the department or office as required in this chapter. In
4286 all other cases, the information required under subsection (1)
4287 shall be filed with the department or office at the time, or at
4288 all events within 10 days after, notice of the termination was
4289 filed with the department or office.



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4290 (3) Any information, document, record, or statement
4291 furnished to the department or office under subsection (1) is
4292 confidential and exempt from the provisions of s. 119.07(1).

4293 Section 75. Subsections (2), (3), and (5) of section
4294 626.521, Florida Statutes, are amended to read:

4295 626.521 Character, credit reports.--

4296 (2) If requested by the department or office, the insurer,
4297 manager, general agent, general lines agent, or employer, as the
4298 case may be, shall furnish to the department or office on a form
4299 adopted by the department or commission and furnished by the
4300 department or office, such information as it may reasonably
4301 require relative to such individual and investigation.

4302 (3) As to an applicant for an adjuster's or reinsurance
4303 intermediary's license who is to be self-employed, the
4304 department or office may secure, at the cost of the applicant, a
4305 full detailed credit and character report made by an established
4306 and reputable independent reporting service relative to the
4307 applicant.

4308 (5) Information contained in credit or character reports
4309 furnished to or secured by the department or office under this
4310 section is confidential and exempt from the provisions of s.
4311 119.07(1).

4312 Section 76. Subsections (1) and (2) of section 626.541,
4313 Florida Statutes, are amended to read:

4314 626.541 Firm, corporate, and business names; officers;
4315 associates; notice of changes.--

4316 (1) Any licensed agent or adjuster doing business under a
4317 firm or corporate name or under any business name other than his



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4318 or her own individual name shall, within 30 days after the
4319 initial transaction of insurance under such business name, file
4320 with the department or office, on forms adopted by the
4321 department or commission and furnished by the department or
4322 office ~~it~~, a written statement of the firm, corporate, or
4323 business name being so used, the address of any office or
4324 offices or places of business making use of such name, and the
4325 name and social security number of each officer and director of
4326 the corporation and of each individual associated in such firm
4327 or corporation as to the insurance transactions thereof or in
4328 the use of such business name.

4329 (2) In the event of any change of such name, or of any of
4330 the officers and directors, or of any of such addresses, or in
4331 the personnel so associated, written notice of such change must
4332 be filed with the department or office within 30 days by or on
4333 behalf of those licensees terminating any such firm, corporate,
4334 or business name or continuing to operate thereunder.

4335 Section 77. Section 626.551, Florida Statutes, is amended
4336 to read:

4337 626.551 Notice of change of address, name.--Every licensee
4338 shall notify the department or office in writing within 60 days
4339 after a change of name, residence address, principal business
4340 street address, or mailing address. Any licensed agent who has
4341 moved his or her residence from this state shall have his or her
4342 license and all appointments immediately terminated by the
4343 department or office. Failure to notify the department or office
4344 within the required time period shall result in a fine not to
4345 exceed \$250 for the first offense and, for subsequent offenses,



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4346 a fine of not less than \$500 or suspension or revocation of the
4347 license pursuant to s. 626.611 or s. 626.621.

4348 Section 78. Subsections (1) and (2) of section 626.561,
4349 Florida Statutes, are amended to read:

4350 626.561 Reporting and accounting for funds.--

4351 (1) All premiums, return premiums, or other funds
4352 belonging to insurers or others received by an agent, customer
4353 representative, or adjuster in transactions under his or her
4354 license are trust funds received by the licensee in a fiduciary
4355 capacity. An agent shall keep the funds belonging to each
4356 insurer for which he or she is not appointed, other than a
4357 surplus lines insurer, in a separate account so as to allow the
4358 department or office to properly audit such funds. The licensee
4359 in the applicable regular course of business shall account for
4360 and pay the same to the insurer, insured, or other person
4361 entitled thereto.

4362 (2) The licensee shall keep and make available to the
4363 department or office books, accounts, and records as will enable
4364 the department or office to determine whether such licensee is
4365 complying with the provisions of this code. Every licensee shall
4366 preserve books, accounts, and records pertaining to a premium
4367 payment for at least 3 years after payment; provided, however,
4368 the preservation of records by computer or photographic
4369 reproductions or records in photographic form shall constitute
4370 compliance with this requirement. All other records shall be
4371 maintained in accordance with s. 626.748. The 3-year
4372 requirement shall not apply to insurance binders when no policy
4373 is ultimately issued and no premium is collected.



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4374 Section 79. Section 626.591, Florida Statutes, is amended
4375 to read:

4376 626.591 Penalty for violation of s. 626.581.--

4377 (1) If any ~~insurer or~~ agent is found by the department to
4378 be in violation of s. 626.581, the department may, in its
4379 discretion, suspend or revoke ~~the insurer's certificate of~~
4380 ~~authority and~~ the agent's license. If any insurer is found by
4381 the office to be in violation of s. 626.581, the office may, in
4382 its discretion, suspend or revoke the insurer's certificate of
4383 authority.

4384 (2) Any such suspension or revocation shall be for a
4385 period of not less than 6 months, and the insurer or agent shall
4386 not subsequently be authorized or licensed to transact insurance
4387 unless the office or department is satisfied that the insurer or
4388 agent will not again violate any of the provisions of s.
4389 626.581.

4390 Section 80. Subsection (1) of section 626.592, Florida
4391 Statutes, is amended to read:

4392 626.592 Primary agents.--

4393 (1) Each person operating an insurance agency and each
4394 location of a multiple location agency shall designate a primary
4395 agent for each insurance agency location and shall file the name
4396 of the person so designated, and the address of the insurance
4397 agency location where he or she is primary agent, with the
4398 department ~~of Insurance~~, on a form approved by the department.
4399 The designation of the primary agent may be changed at the
4400 option of the agency, and any change shall be effective upon



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4401 notification to the department. Notice of change must be sent to
4402 the department within 30 days after such change.

4403 Section 81. Section 626.601, Florida Statutes, is amended
4404 to read:

4405 626.601 Improper conduct; inquiry; fingerprinting.--

4406 (1) The department or office may, upon its own motion or
4407 upon a written complaint signed by any interested person and
4408 filed with the department or office, inquire into any alleged
4409 improper conduct of any licensed agent, adjuster, service
4410 representative, managing general agent, customer representative,
4411 title insurance agent, title insurance agency, continuing
4412 education course provider, instructor, school official, or
4413 monitor group under this code. The department or office may
4414 thereafter initiate an investigation of any such licensee if it
4415 has reasonable cause to believe that the licensee has violated
4416 any provision of the insurance code. During the course of its
4417 investigation, the department or office shall contact the
4418 licensee being investigated unless it determines that contacting
4419 such person could jeopardize the successful completion of the
4420 investigation or cause injury to the public.

4421 (2) In the investigation by the department or office of
4422 the alleged misconduct, the licensee shall, whenever so required
4423 by the department or office, cause his or her books and records
4424 to be open for inspection for the purpose of such inquiries.

4425 (3) The complaints against any licensee may be informally
4426 alleged and need not be in any such language as is necessary to
4427 charge a crime on an indictment or information.



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4428 (4) The expense for any hearings or investigations under
4429 this law, as well as the fees and mileage of witnesses, may be
4430 paid out of the appropriate fund.

4431 (5) If the department or office, after investigation, has
4432 reason to believe that a licensee may have been found guilty of
4433 or pleaded guilty or nolo contendere to a felony or a crime
4434 related to the business of insurance in this or any other state
4435 or jurisdiction, the department or office may require the
4436 licensee to file with the department or office a complete set of
4437 his or her fingerprints, which shall be accompanied by the
4438 fingerprint processing fee set forth in s. 624.501. The
4439 fingerprints shall be certified by an authorized law enforcement
4440 officer.

4441 (6) The complaint and any information obtained pursuant to
4442 the investigation by the department or office are confidential
4443 and are exempt from the provisions of s. 119.07, unless the
4444 department or office files a formal administrative complaint,
4445 emergency order, or consent order against the licensee. Nothing
4446 in this subsection shall be construed to prevent the department
4447 or office from disclosing the complaint or such information as
4448 it deems necessary to conduct the investigation, to update the
4449 complainant as to the status and outcome of the complaint, or to
4450 share such information with any law enforcement agency.

4451 Section 82. Section 626.611, Florida Statutes, is amended
4452 to read:

4453 626.611 Grounds for compulsory refusal, suspension, or
4454 revocation of agent's, title agency's, adjuster's, customer
4455 representative's, service representative's, or managing general



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4456 agent's license or appointment.--The department or office shall
4457 deny an application for, suspend, revoke, or refuse to renew or
4458 continue the license or appointment of any applicant, agent,
4459 title agency, adjuster, customer representative, service
4460 representative, or managing general agent, and it shall suspend
4461 or revoke the eligibility to hold a license or appointment of
4462 any such person, if it finds that as to the applicant, licensee,
4463 or appointee any one or more of the following applicable grounds
4464 exist:

4465 (1) Lack of one or more of the qualifications for the
4466 license or appointment as specified in this code.

4467 (2) Material misstatement, misrepresentation, or fraud in
4468 obtaining the license or appointment or in attempting to obtain
4469 the license or appointment.

4470 (3) Failure to pass to the satisfaction of the department
4471 or office any examination required under this code.

4472 (4) If the license or appointment is willfully used, or to
4473 be used, to circumvent any of the requirements or prohibitions
4474 of this code.

4475 (5) Willful misrepresentation of any insurance policy or
4476 annuity contract or willful deception with regard to any such
4477 policy or contract, done either in person or by any form of
4478 dissemination of information or advertising.

4479 (6) If, as an adjuster, or agent licensed and appointed to
4480 adjust claims under this code, he or she has materially
4481 misrepresented to an insured or other interested party the terms
4482 and coverage of an insurance contract with intent and for the
4483 purpose of effecting settlement of claim for loss or damage or



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4484 benefit under such contract on less favorable terms than those
4485 provided in and contemplated by the contract.

4486 (7) Demonstrated lack of fitness or trustworthiness to
4487 engage in the business of insurance.

4488 (8) Demonstrated lack of reasonably adequate knowledge and
4489 technical competence to engage in the transactions authorized by
4490 the license or appointment.

4491 (9) Fraudulent or dishonest practices in the conduct of
4492 business under the license or appointment.

4493 (10) Misappropriation, conversion, or unlawful withholding
4494 of moneys belonging to insurers or insureds or beneficiaries or
4495 to others and received in conduct of business under the license
4496 or appointment.

4497 (11) Unlawfully rebating, attempting to unlawfully rebate,
4498 or unlawfully dividing or offering to divide his or her
4499 commission with another.

4500 (12) Having obtained or attempted to obtain, or having
4501 used or using, a license or appointment as agent or customer
4502 representative for the purpose of soliciting or handling
4503 "controlled business" as defined in s. 626.730 with respect to
4504 general lines agents, s. 626.784 with respect to life agents,
4505 and s. 626.830 with respect to health agents.

4506 (13) Willful failure to comply with, or willful violation
4507 of, any proper order or rule of the department, commission, or
4508 office or willful violation of any provision of this code.

4509 (14) Having been found guilty of or having pleaded guilty
4510 or nolo contendere to a felony or a crime punishable by
4511 imprisonment of 1 year or more under the law of the United



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4512 States of America or of any state thereof or under the law of
4513 any other country which involves moral turpitude, without regard
4514 to whether a judgment of conviction has been entered by the
4515 court having jurisdiction of such cases.

4516 (15) Fraudulent or dishonest practice in submitting or
4517 aiding or abetting any person in the submission of an
4518 application for workers' compensation coverage under chapter 440
4519 containing false or misleading information as to employee
4520 payroll or classification for the purpose of avoiding or
4521 reducing the amount of premium due for such coverage.

4522 (16) Sale of an unregistered security that was required to
4523 be registered, pursuant to chapter 517.

4524 Section 83. Section 626.621, Florida Statutes, is amended
4525 to read:

4526 626.621 Grounds for discretionary refusal, suspension, or
4527 revocation of agent's, adjuster's, customer representative's,
4528 service representative's, or managing general agent's license or
4529 appointment.--The department or office may, in its discretion,
4530 deny an application for, suspend, revoke, or refuse to renew or
4531 continue the license or appointment of any applicant, agent,
4532 adjuster, customer representative, service representative, or
4533 managing general agent, and it may suspend or revoke the
4534 eligibility to hold a license or appointment of any such person,
4535 if it finds that as to the applicant, licensee, or appointee any
4536 one or more of the following applicable grounds exist under
4537 circumstances for which such denial, suspension, revocation, or
4538 refusal is not mandatory under s. 626.611:



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4539 (1) Any cause for which issuance of the license or
4540 appointment could have been refused had it then existed and been
4541 known to the department or office.

4542 (2) Violation of any provision of this code or of any
4543 other law applicable to the business of insurance in the course
4544 of dealing under the license or appointment.

4545 (3) Violation of any lawful order or rule of the
4546 department, commission, or office.

4547 (4) Failure or refusal, upon demand, to pay over to any
4548 insurer he or she represents or has represented any money coming
4549 into his or her hands belonging to the insurer.

4550 (5) Violation of the provision against twisting, as
4551 defined in s. 626.9541(1)(1).

4552 (6) In the conduct of business under the license or
4553 appointment, engaging in unfair methods of competition or in
4554 unfair or deceptive acts or practices, as prohibited under part
4555 IX of this chapter, or having otherwise shown himself or herself
4556 to be a source of injury or loss to the public or detrimental to
4557 the public interest.

4558 (7) Willful overinsurance of any property or health
4559 insurance risk.

4560 (8) Having been found guilty of or having pleaded guilty
4561 or nolo contendere to a felony or a crime punishable by
4562 imprisonment of 1 year or more under the law of the United
4563 States of America or of any state thereof or under the law of
4564 any other country, without regard to whether a judgment of
4565 conviction has been entered by the court having jurisdiction of
4566 such cases.



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4567 (9) If a life agent, violation of the code of ethics.

4568 (10) Cheating on an examination required for licensure or
4569 violating test center or examination procedures published
4570 orally, in writing, or electronically at the test site by
4571 authorized representatives of the examination program
4572 administrator. Communication of test center and examination
4573 procedures must be clearly established and documented.

4574 (11) Failure to inform the department or office in writing
4575 within 30 days after pleading guilty or nolo contendere to, or
4576 being convicted or found guilty of, any felony or a crime
4577 punishable by imprisonment of 1 year or more under the law of
4578 the United States or of any state thereof, or under the law of
4579 any other country without regard to whether a judgment of
4580 conviction has been entered by the court having jurisdiction of
4581 the case.

4582 (12) Knowingly aiding, assisting, procuring, advising, or
4583 abetting any person in the violation of or to violate a
4584 provision of the insurance code or any order or rule of the
4585 department, commission, or office.

4586 Section 84. Section 626.631, Florida Statutes, is amended
4587 to read:

4588 626.631 Procedure for refusal, suspension, or revocation
4589 of license.--

4590 (1) If any licensee is convicted by a court of a violation
4591 of this code or a felony, the licenses and appointments of such
4592 person shall be immediately revoked by the department or office.
4593 The licensee may subsequently request a hearing pursuant to ss.
4594 120.569 and 120.57, and the department or office shall expedite



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4595 any such requested hearing. The sole issue at such hearing
4596 shall be whether the revocation should be rescinded because such
4597 person was not in fact convicted of a violation of this code or
4598 a felony.

4599 (2) The papers, documents, reports, or evidence of the
4600 department or office relative to a hearing for revocation or
4601 suspension of a license or appointment pursuant to the
4602 provisions of this chapter and chapter 120 are confidential and
4603 exempt from the provisions of s. 119.07(1) until after the same
4604 have been published at the hearing. However, such papers,
4605 documents, reports, or items of evidence are subject to
4606 discovery in a hearing for revocation or suspension of a license
4607 or appointment.

4608 Section 85. Subsections (1) and (2) of section 626.641,
4609 Florida Statutes, are amended to read:

4610 626.641 Duration of suspension or revocation.--

4611 (1) The department or office shall, in its order
4612 suspending a license or appointment or in its order suspending
4613 the eligibility of a person to hold or apply for such license or
4614 appointment, specify the period during which the suspension is
4615 to be in effect; but such period shall not exceed 2 years. The
4616 license, appointment, or eligibility shall remain suspended
4617 during the period so specified, subject, however, to any
4618 rescission or modification of the order by the department or
4619 office, or modification or reversal thereof by the court, prior
4620 to expiration of the suspension period. A license, appointment,
4621 or eligibility which has been suspended shall not be reinstated
4622 except upon request for such reinstatement; but the department



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4623 or office shall not grant such reinstatement if it finds that
4624 the circumstance or circumstances for which the license,
4625 appointment, or eligibility was suspended still exist or are
4626 likely to recur.

4627 (2) No person or appointee under any license or
4628 appointment revoked by the department or office, nor any person
4629 whose eligibility to hold same has been revoked by the
4630 department or office, shall have the right to apply for another
4631 license or appointment under this code within 2 years from the
4632 effective date of such revocation or, if judicial review of such
4633 revocation is sought, within 2 years from the date of final
4634 court order or decree affirming the revocation. The department
4635 or office shall not, however, grant a new license or appointment
4636 or reinstate eligibility to hold such license or appointment if
4637 it finds that the circumstance or circumstances for which the
4638 eligibility was revoked or for which the previous license or
4639 appointment was revoked still exist or are likely to recur; if
4640 an individual's license as agent or customer representative or
4641 eligibility to hold same has been revoked upon the ground
4642 specified in s. 626.611(12), the department or office shall
4643 refuse to grant or issue any new license or appointment so
4644 applied for.

4645 Section 86. Subsection (2) of section 626.661, Florida
4646 Statutes, is amended to read:

4647 626.661 Surrender of license.--

4648 (2) This section shall not be deemed to require the
4649 surrender to the department or office of any license unless such
4650 surrender has been requested by the department or office.



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4651 Section 87. Section 626.681, Florida Statutes, is amended
4652 to read:

4653 626.681 Administrative fine in lieu of or in addition to
4654 suspension, revocation, or refusal of license, appointment, or
4655 disapproval.--

4656 (1) Except as to insurance agencies, if the department or
4657 office finds that one or more grounds exist for the suspension,
4658 revocation, or refusal to issue, renew, or continue any license
4659 or appointment issued under this chapter, or disapproval of a
4660 continuing education course provider, instructor, school
4661 official, or monitor groups, the department or office may, in
4662 its discretion, in lieu of or in addition to such suspension or
4663 revocation, or in lieu of such refusal, or disapproval, and
4664 except on a second offense or when such suspension, revocation,
4665 or refusal is mandatory, impose upon the licensee, appointee,
4666 course provider, instructor, school official, or monitor group
4667 an administrative penalty in an amount up to \$500 or, if the
4668 department or office has found willful misconduct or willful
4669 violation on the part of the licensee, appointee, course
4670 provider, instructor, school official, or monitor group up to
4671 \$3,500. The administrative penalty may, in the discretion of the
4672 department or office, be augmented by an amount equal to any
4673 commissions received by or accruing to the credit of the
4674 licensee or appointee in connection with any transaction as to
4675 which the grounds for suspension, revocation, or refusal
4676 related.

4677 (2) With respect to insurance agencies, if the department
4678 finds that one or more grounds exist for the suspension,



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4679 | revocation, or refusal to issue, renew, or continue any license
4680 | issued under this chapter, the department may, in its
4681 | discretion, in lieu of or in addition to such suspension or
4682 | revocation, or in lieu of such refusal, impose upon the licensee
4683 | an administrative penalty in an amount not to exceed \$10,000 per
4684 | violation. The administrative penalty may, in the discretion of
4685 | the department, be augmented by an amount equal to any
4686 | commissions received by or accruing to the credit of the
4687 | licensee in connection with any transaction as to which the
4688 | grounds for suspension, revocation, or refusal related.

4689 | (3) The department or office may allow the licensee,
4690 | appointee, or continuing education course provider, instructor,
4691 | school official, or monitor group a reasonable period, not to
4692 | exceed 30 days, within which to pay to the department or office
4693 | the amount of the penalty so imposed. If the licensee,
4694 | appointee, course provider, instructor, school official, or
4695 | monitor group fails to pay the penalty in its entirety to the
4696 | department or office within the period so allowed, the license,
4697 | appointments, approval, or status of that person shall stand
4698 | suspended or revoked or issuance, renewal, or continuation shall
4699 | be refused, as the case may be, upon expiration of such period.

4700 | Section 88. Section 626.691, Florida Statutes, is amended
4701 | to read:

4702 | 626.691 Probation.--

4703 | (1) If the department or office finds that one or more
4704 | grounds exist for the suspension, revocation, or refusal to
4705 | renew or continue any license or appointment issued under this
4706 | part, the department or office may, in its discretion, except



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4707 when an administrative fine is not permissible under s. 626.681
4708 or when such suspension, revocation, or refusal is mandatory, in
4709 lieu of or in addition to such suspension or revocation, or in
4710 lieu of such refusal, or in connection with any administrative
4711 monetary penalty imposed under s. 626.681, place the offending
4712 licensee or appointee on probation for a period, not to exceed 2
4713 years, as specified by the department or office in its order.

4714 (2) As a condition to such probation or in connection
4715 therewith, the department or office may specify in its order
4716 reasonable terms and conditions to be fulfilled by the
4717 probationer during the probation period. If during the
4718 probation period the department or office has good cause to
4719 believe that the probationer has violated a term or condition,
4720 it shall suspend, revoke, or refuse to issue, renew, or continue
4721 the license or appointment of the probationer, as upon the
4722 original grounds referred to in subsection (1).

4723 Section 89. Section 626.692, Florida Statutes, is amended
4724 to read:

4725 626.692 Restitution.--If any ground exists for the
4726 suspension, revocation, or refusal of a license or appointment,
4727 the department or office may, in addition to any other penalty
4728 authorized under this chapter, order the licensee to pay
4729 restitution to any person who has been deprived of money by the
4730 licensee's misappropriation, conversion, or unlawful withholding
4731 of moneys belonging to insurers, insureds, beneficiaries, or
4732 others. In no instance shall the amount of restitution required
4733 to be paid under this section exceed the amount of money
4734 misappropriated, converted, or unlawfully withheld. Nothing in



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4735 | this section limits or restricts a person's right to seek other
4736 | remedies as provided for by law.

4737 | Section 90. Section 626.7315, Florida Statutes, is amended
4738 | to read:

4739 | 626.7315 Prohibition against the unlicensed transaction of
4740 | general lines insurance.--With respect to any line of authority
4741 | as defined in s. 626.015(6)~~(7)~~, no individual shall, unless
4742 | licensed as a general lines agent:

4743 | (1) Solicit insurance or procure applications therefor;

4744 | (2) In this state, receive or issue a receipt for any
4745 | money on account of or for any insurer, or receive or issue a
4746 | receipt for money from other persons to be transmitted to any
4747 | insurer for a policy, contract, or certificate of insurance or
4748 | any renewal thereof, even though the policy, certificate, or
4749 | contract is not signed by him or her as agent or representative
4750 | of the insurer;

4751 | (3) Directly or indirectly represent himself or herself to
4752 | be an agent of any insurer or as an agent, to collect or forward
4753 | any insurance premium, or to solicit, negotiate, effect,
4754 | procure, receive, deliver, or forward, directly or indirectly,
4755 | any insurance contract or renewal thereof or any endorsement
4756 | relating to an insurance contract, or attempt to effect the
4757 | same, of property or insurable business activities or interests,
4758 | located in this state;

4759 | (4) In this state, engage or hold himself or herself out
4760 | as engaging in the business of analyzing or abstracting
4761 | insurance policies or of counseling or advising or giving
4762 | opinions, other than as a licensed attorney at law, relative to



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4763 insurance or insurance contracts, for fee, commission, or other
4764 compensation, other than as a salaried bona fide full-time
4765 employee so counseling and advising his or her employer relative
4766 to the insurance interests of the employer and of the
4767 subsidiaries or business affiliates of the employer;

4768 (5) In any way, directly or indirectly, make or cause to
4769 be made, or attempt to make or cause to be made, any contract of
4770 insurance for or on account of any insurer;

4771 (6) Solicit, negotiate, or in any way, directly or
4772 indirectly, effect insurance contracts, if a member of a
4773 partnership or association, or a stockholder, officer, or agent
4774 of a corporation which holds an agency appointment from any
4775 insurer; or

4776 (7) Receive or transmit applications for suretyship, or
4777 receive for delivery bonds founded on applications forwarded
4778 from this state, or otherwise procure suretyship to be effected
4779 by a surety insurer upon the bonds of persons in this state or
4780 upon bonds given to persons in this state.

4781 Section 91. Subsection (3) of section 626.732, Florida
4782 Statutes, is amended to read:

4783 626.732 Requirement as to knowledge, experience, or
4784 instruction.--

4785 (3) An individual who was or became qualified to sit for
4786 an agent's, customer representative's, or adjuster's examination
4787 at or during the time he or she was employed by the department
4788 or office and who, while so employed, was employed in
4789 responsible insurance duties as a full-time bona fide employee
4790 shall be permitted to take an examination if application for



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4791 such examination is made within 90 days after the date of
4792 termination of his or her employment with the department or
4793 office.

4794 Section 92. Section 626.742, Florida Statutes, is amended
4795 to read:

4796 626.742 Nonresident agents; service of process.--

4797 (1) Each licensed nonresident agent shall appoint the
4798 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~ as
4799 his or her attorney to receive service of legal process issued
4800 against the agent in this state, upon causes of action arising
4801 within this state out of transactions under the agent's license
4802 and appointment. Service upon the Chief Financial Officer
4803 ~~Insurance Commissioner and Treasurer~~ as attorney shall
4804 constitute effective legal service upon the agent.

4805 (2) The appointment of the Chief Financial Officer
4806 ~~Insurance Commissioner and Treasurer~~ for service of process
4807 shall be irrevocable for as long as there could be any cause of
4808 action against the agent arising out of his or her insurance
4809 transactions in this state.

4810 (3) Duplicate copies of such legal process against such
4811 agent shall be served upon the Chief Financial Officer ~~Insurance~~
4812 ~~Commissioner and Treasurer~~ by a person competent to serve a
4813 summons.

4814 (4) Upon receiving such service, the Chief Financial
4815 Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith
4816 send one of the copies of the process, by registered mail with
4817 return receipt requested, to the defendant agent at his or her
4818 last address of record with the department.



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4819 (5) The Chief Financial Officer ~~Insurance Commissioner and~~
 4820 ~~Treasurer~~ shall keep a record of the day and hour of service
 4821 upon him or her of all such legal process.

4822 Section 93. Subsections (4) and (7) of section 626.7451,
 4823 Florida Statutes, are amended to read:

4824 626.7451 Managing general agents; required contract
 4825 provisions.--No person acting in the capacity of a managing
 4826 general agent shall place business with an insurer unless there
 4827 is in force a written contract between the parties which sets
 4828 forth the responsibility for a particular function, specifies
 4829 the division of responsibilities, and contains the following
 4830 minimum provisions:

4831 (4) Separate records of business written by the managing
 4832 general agent shall be maintained unless the managing general
 4833 agent is a controlled or controlling person. The insurer shall
 4834 have access and the right to copy all accounts and records
 4835 related to its business in a form usable by the insurer, and the
 4836 department and office shall have access to all books, bank
 4837 accounts, and records of the managing general agent in a form
 4838 usable to the department and office. The records shall be
 4839 retained according to s. 626.561.

4840 (7) If the contract permits the managing general agent to
 4841 settle claims on behalf of the insurer:

4842 (a) All claims must be reported to the company in a timely
 4843 manner and all claims must be adjusted by properly licensed
 4844 persons.

4845 (b) Notice shall be sent by the managing general agent to
 4846 the insurer as soon as it becomes known that the claim:



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- 4847 1. Exceeds the limit set by the insurer;
 4848 2. Involves a coverage dispute;
 4849 3. Exceeds the managing general agent's claims settlement
 4850 authority;

4851 4. Is open for more than 6 months; or

4852 5. Is closed by payment of an amount set by the office
 4853 ~~department~~ or an amount set by the insurer, whichever is less.

4854 (c) All claims files shall be the joint property of the
 4855 insurer and managing general agent. However, upon an order of
 4856 liquidation of the insurer the claims and related application
 4857 files shall become the sole property of the insurer or its
 4858 estate. The managing general agent shall have reasonable access
 4859 to and the right to copy the files on a timely basis.

4860 (d) Any settlement authority granted to the managing
 4861 general agent may be terminated for cause upon the insurer's
 4862 written notice to the managing general agent or upon the
 4863 termination of the contract. The insurer may suspend the
 4864 settlement authority during the pendency of any dispute
 4865 regarding the cause for termination.

4866
 4867 For the purposes of this section and ss. 626.7453 and 626.7454,
 4868 the term "controlling person" or "controlling" has the meaning
 4869 set forth in s. 625.012(5)(b)1., and the term "controlled
 4870 person" or "controlled" has the meaning set forth in s.
 4871 625.012(5)(b)2.

4872 Section 94. Subsections (1), (5), and (6) of section
 4873 626.7454, Florida Statutes, are amended to read:

4874 626.7454 Managing general agents; duties of insurers.--



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4875 (1) The insurer shall have on file for each managing
4876 general agent with which it has done business an independent
4877 financial examination in a form acceptable to the office
4878 ~~department~~.

4879 (5) Within 30 days after entering into or terminating a
4880 contract with a managing general agent, the insurer shall
4881 provide written notification of the appointment or termination
4882 to the department and office. Notices of appointment of a
4883 managing general agent shall include a statement of duties which
4884 the applicant is expected to perform on behalf of the insurer,
4885 the lines of insurance for which the applicant is to be
4886 authorized to act, and any other information the department or
4887 office may request.

4888 (6) An insurer shall review its books and records on a
4889 quarterly basis to determine if any producer has become a
4890 managing general agent as defined in s. 626.015. If the insurer
4891 determines that a producer has become a managing general agent,
4892 the insurer shall promptly notify the producer and the
4893 department and office of such determination and the insurer and
4894 producer must fully comply with the provisions of this section
4895 and ss. 626.7451, 626.7452, and 626.7453 within 30 days after
4896 such determination.

4897
4898 Subsections (1), (3), and (4) do not apply to a managing general
4899 agent that is a controlled or controlling person.

4900 Section 95. Subsections (6), (7), and (8) of section
4901 626.7491, Florida Statutes, are amended to read:



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4902 626.7491 Business transacted with producer controlled
4903 property and casualty insurer.--

4904 (6) AUDIT COMMITTEE.--Every controlled insurer shall have
4905 an audit committee of the board of directors composed of
4906 independent directors. The audit committee shall annually meet
4907 with management, the insurer's independent certified public
4908 accountants, and an independent casualty actuary or other
4909 independent loss reserve specialist acceptable to the office
4910 ~~department~~ to review the adequacy of the insurer's loss
4911 reserves.

4912 (7) REPORTING REQUIREMENTS.--

4913 (a) In addition to any other required loss reserve
4914 certification, the controlled insurer shall, on April 1 of each
4915 year, file with the office ~~department~~ the opinion of an
4916 independent casualty actuary, or such other independent loss
4917 reserve specialist acceptable to the office ~~department~~,
4918 reporting loss ratios for each line of business written and
4919 attesting to the adequacy of loss reserves established for
4920 losses incurred and outstanding as of the year end, including
4921 incurred but not reported losses, on business placed by the
4922 producer.

4923 (b) The controlled insurer shall annually report to the
4924 office ~~department~~ the amount of commissions paid to the
4925 producer, the percentage such amount represents of the net
4926 premiums written, and comparable amounts and percentages paid to
4927 noncontrolling producers for placements of the same kinds of
4928 insurance.

4929 (8) PENALTIES.--



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4930 (a) If the department believes that the controlling
4931 producer or any other person has not materially complied with
4932 this section, or any rule adopted or order issued hereunder, the
4933 department may order the controlling producer to cease placing
4934 business with the controlled insurer.

4935 (b) If, due to such material noncompliance, the controlled
4936 insurer or any policyholder thereof has suffered any loss or
4937 damage, the department or office may maintain a civil action or
4938 intervene in an action brought by or on behalf of the insurer or
4939 policyholder for recovery of compensatory damages for the
4940 benefit of the insurer or policyholder or other appropriate
4941 relief.

4942 (c) If an order for liquidation or rehabilitation of the
4943 controlled insurer has been entered pursuant to chapter 631 and
4944 the receiver appointed under such order believes that the
4945 controlling producer or any other person has not materially
4946 complied with this section or any rule adopted or order issued
4947 hereunder and the insurer has suffered any loss or damage
4948 therefrom, the receiver may maintain a civil action for recovery
4949 of damages or other appropriate sanctions for the benefit of the
4950 insurer.

4951 (d) Nothing contained in this section shall affect the
4952 right of the department or office to impose any other penalties
4953 provided for in the Florida Insurance Code.

4954 (e) Nothing contained in this section is intended to or
4955 shall in any manner alter or affect the rights of policyholders,
4956 claimants, creditors, or other third parties.



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4957 Section 96. Paragraph (e) of subsection (3) and
4958 subsections (11) and (12) of section 626.7492, Florida Statutes,
4959 are amended to read:

4960 626.7492 Reinsurance intermediaries.--

4961 (3) LICENSURE.--

4962 (e) If the applicant for a reinsurance intermediary
4963 license is a nonresident, the applicant, as a condition
4964 precedent to receiving or holding a license, must designate the
4965 Chief Financial Officer ~~Insurance Commissioner~~ as agent for
4966 service of process in the manner, and with the same legal
4967 effect, provided for by this section for designation of service
4968 of process upon unauthorized insurers. Such applicant shall also
4969 furnish the department with the name and address of a resident
4970 of this state upon whom notices or orders of the department or
4971 process affecting the nonresident reinsurance intermediary may
4972 be served. The licensee shall promptly notify the department in
4973 writing of each change in its designated agent for service of
4974 process, and the change shall not become effective until
4975 acknowledged by the department.

4976 (11) PENALTIES AND LIABILITIES.--

4977 (a) A reinsurance intermediary found by the department, or
4978 an insurer, or reinsurer found by the office, ~~department~~ to be
4979 in violation of any provision of this section must:

4980 1. For each separate violation pay a penalty in an amount
4981 not to exceed \$5,000;

4982 2. Be subject to revocation or suspension of its license;
4983 and



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4984 3. If a violation was committed by the reinsurance
4985 intermediary, the reinsurance intermediary must make restitution
4986 to the insurer, reinsurer, rehabilitator, or liquidator of the
4987 insurer or reinsurer for the net losses incurred by the insurer
4988 or reinsurer attributable to the violation.

4989 (b) Nothing contained in this section shall affect the
4990 right of the office or department to impose any other penalties
4991 provided in the Florida Insurance Code.

4992 (c) Nothing contained in this section is intended to or
4993 shall in any manner limit or restrict the rights of
4994 policyholders, claimants, creditors, or other third parties or
4995 confer any rights to these persons.

4996 ~~(12) No insurer or reinsurer may continue to use the~~
4997 ~~services of a reinsurance intermediary on or after April 8,~~
4998 ~~1992, unless such use is in compliance with this section.~~

4999 Section 97. Subsection (5) of section 626.752, Florida
5000 Statutes, is amended to read:

5001 626.752 Exchange of business.--

5002 (5) Within 15 days after the last day of each month, any
5003 insurer accepting business under this section shall report to
5004 the department the name, address, telephone number, and social
5005 security number of each agent from which the insurer received
5006 more than 24 personal lines risks during the calendar year,
5007 except for risks being removed from the Citizens Property
5008 Insurance Corporation Residential Property and Casualty Joint
5009 Underwriting Association and placed with that insurer by a
5010 brokering agent. Once the insurer has reported pursuant to this
5011 subsection an agent's name to the department, additional reports



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5012 on the same agent shall not be required. However, the fee set
5013 forth in s. 624.501 shall be paid for the agent by the insurer
5014 for each year until the insurer notifies the department that the
5015 insurer is no longer accepting business from the agent pursuant
5016 to this section. The insurer may require that the agent
5017 reimburse the insurer for the fee.

5018 Section 98. Subsection (2) of section 626.7845, Florida
5019 Statutes, is amended to read:

5020 626.7845 Prohibition against unlicensed transaction of
5021 life insurance.--

5022 (2) Except as provided in s. 626.112(6), with respect to
5023 any line of authority specified in s. 626.015(11)(~~12~~), no
5024 individual shall, unless licensed as a life agent:

5025 (a) Solicit insurance or annuities or procure
5026 applications; or

5027 (b) In this state, engage or hold himself or herself out
5028 as engaging in the business of analyzing or abstracting
5029 insurance policies or of counseling or advising or giving
5030 opinions to persons relative to insurance or insurance contracts
5031 other than:

5032 1. As a consulting actuary advising an insurer; or

5033 2. As to the counseling and advising of labor unions,
5034 associations, trustees, employers, or other business entities,
5035 the subsidiaries and affiliates of each, relative to their
5036 interests and those of their members or employees under
5037 insurance benefit plans.

5038 Section 99. Section 626.7851, Florida Statutes, is amended
5039 to read:



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5040 626.7851 Requirement as to knowledge, experience, or
5041 instruction.--No applicant for a license as a life agent, except
5042 for a chartered life underwriter (CLU), shall be qualified or
5043 licensed unless within the 4 years immediately preceding the
5044 date the application for a license is filed with the department
5045 he or she has:

5046 (1) Successfully completed 40 hours of classroom courses
5047 in insurance satisfactory to the department at a school or
5048 college, or extension division thereof, or other authorized
5049 course of study, approved by the department. Courses must
5050 include instruction on the subject matter of unauthorized
5051 entities engaging in the business of insurance, to include the
5052 Florida Nonprofit Multiple-Employer Welfare Arrangement Act and
5053 the Employee Retirement Income Security Act, 29 U.S.C. ss. 1001
5054 et seq., as it relates to the provision of life insurance by
5055 employers to their employees and the regulation thereof;

5056 (2) Successfully completed a correspondence course in
5057 insurance satisfactory to the department and regularly offered
5058 by accredited institutions of higher learning in this state,
5059 approved by the department. Courses must include instruction on
5060 the subject matter of unauthorized entities engaging in the
5061 business of insurance, to include the Florida Nonprofit
5062 Multiple-Employer Welfare Arrangement Act and the Employee
5063 Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as
5064 it relates to the provision of life insurance by employers to
5065 their employees and the regulation thereof;

5066 (3) Held an active license in life, or life and health,
5067 insurance in another state. This provision may not be utilized



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5068 unless the other state grants reciprocal treatment to licensees
5069 formerly licensed in Florida; or

5070 (4) Been employed by the department or office for at least
5071 1 year, full time in life or life and health insurance
5072 regulatory matters and who was not terminated for cause, and
5073 application for examination is made within 90 days after the
5074 date of termination of his or her employment with the department
5075 or office.

5076 Section 100. Section 626.8305, Florida Statutes, is
5077 amended to read:

5078 626.8305 Prohibition against the unlicensed transaction of
5079 health insurance.--Except as provided in s. 626.112(6), with
5080 respect to any line of authority specified in s. 626.015(7)~~(8)~~,
5081 no individual shall, unless licensed as a health agent:

5082 (1) Solicit insurance or procure applications; or

5083 (2) In this state, engage or hold himself or herself out
5084 as engaging in the business of analyzing or abstracting
5085 insurance policies or of counseling or advising or giving
5086 opinions to persons relative to insurance contracts other than:

5087 (a) As a consulting actuary advising insurers; or

5088 (b) As to the counseling and advising of labor unions,
5089 associations, trustees, employers, or other business entities,
5090 the subsidiaries and affiliates of each, relative to their
5091 interests and those of their members or employees under
5092 insurance benefit plans.

5093 Section 101. Subsection (4) of section 626.8311, Florida
5094 Statutes, is amended to read:



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5095 | 626.8311 Requirement as to knowledge, experience, or
5096 | instruction.--No applicant for a license as a health agent,
5097 | except for a chartered life underwriter (CLU), shall be
5098 | qualified or licensed unless within the 4 years immediately
5099 | preceding the date the application for license is filed with the
5100 | department he or she has:

5101 | (4) Been employed by the department or office for at least
5102 | 1 year, full time in health insurance regulatory matters and who
5103 | was not terminated for cause, and application for examination is
5104 | made within 90 days after the date of termination of his or her
5105 | employment with the department or office.

5106 | Section 102. Subsection (1) of section 626.8427, Florida
5107 | Statutes, is amended to read:

5108 | 626.8427 Number of applications for licensure required;
5109 | exemption; effect of expiration of license.--

5110 | (1) After a license as a title insurance agent has been
5111 | issued to a title insurance agent, the agent is not required to
5112 | file another license application for a similar license,
5113 | irrespective of the number of insurers to be represented by the
5114 | agent, unless:

5115 | (a) The agent is specifically ordered by the department to
5116 | complete a new application; or

5117 | (b) During any period of 48 months since the filing of the
5118 | original license application, the agent was not appointed,
5119 | unless in the case of individuals the failure to be so appointed
5120 | was due to military service, in which event the period within
5121 | which a new application is not required may, in the discretion
5122 | of the department ~~of Insurance~~, be extended for 12 months



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5123 following the date of discharge from military service if the
5124 military service does not exceed 3 years, but in no event shall
5125 the period be extended under this clause for a period of more
5126 than 6 years from the date of filing the original application.

5127 Section 103. Subsections (1) and (3) of section 626.8463,
5128 Florida Statutes, are amended to read:

5129 626.8463 Witnesses and evidence.--

5130 (1) As to the subject of any examination, investigation,
5131 or hearing being conducted by him or her under s. 624.5015, ss.
5132 626.8417-626.847, or s. 627.791, an examiner appointed by the
5133 department or office ~~of Insurance~~ may administer oaths, examine
5134 and cross-examine witnesses, and receive oral and documentary
5135 evidence and shall have the power to subpoena witnesses, compel
5136 their attendance and testimony, and require by subpoena the
5137 production of books, papers, records, files, correspondence,
5138 documents, or other evidence which the examiner deems relevant
5139 to the inquiry.

5140 (3) If a person refuses to comply with any such subpoena
5141 or to testify as to any matter concerning which the person may
5142 be lawfully interrogated, the circuit court in and for Leon
5143 County, or the county in which such examination, investigation,
5144 or hearing is being conducted, or the county in which such
5145 person resides, upon application by the department or office,
5146 may issue an order requiring such person to comply with the
5147 subpoena and to testify. A person who fails to obey such an
5148 order of the court may be punished by the court for contempt.

5149 Section 104. Section 626.8467, Florida Statutes, is
5150 amended to read:



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5151 | 626.8467 Testimony compelled; immunity from prosecution.--
5152 | (1) If a person asks to be excused from attending or
5153 | testifying or from producing any books, papers, records,
5154 | contracts, documents, or other evidence in connection with any
5155 | examination, hearing, or investigation being conducted under s.
5156 | 624.5015, ss. 626.8417-626.847, or s. 627.791 by the department
5157 | or office or its examiner on the ground that the testimony or
5158 | evidence required of the person may tend to incriminate him or
5159 | her or subject him or her to a penalty or forfeiture and
5160 | notwithstanding is directed to give such testimony or produce
5161 | such evidence, the person must, if so directed by the Department
5162 | of Financial Services Insurance and the Department of Legal
5163 | Affairs or by the office and the Department of Legal Affairs,
5164 | nonetheless comply with such direction, but he or she shall not
5165 | thereafter be prosecuted or subjected to any penalty or
5166 | forfeiture for or on account of any transaction, matter, or
5167 | thing concerning which he or she may have so testified or
5168 | produced evidence, and no testimony so given or evidence
5169 | produced shall be received against the person upon any criminal
5170 | action, investigation, or proceeding. However, a person so
5171 | testifying shall not be exempt from prosecution or punishment
5172 | for any perjury committed by him or her in such testimony, and
5173 | the testimony or evidence so given or produced shall be
5174 | admissible against him or her upon any criminal action,
5175 | investigation, or proceeding concerning such perjury; and such
5176 | person shall not be exempt from the refusal, suspension, or
5177 | revocation of any license or appointment, permission, or



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5178 authority conferred or to be conferred pursuant to s. 624.5015,
5179 ss. 626.8417-626.847, or s. 627.791.

5180 (2) Any such person may execute, acknowledge, and file
5181 with in the office of the Department of Financial Services or
5182 the office, as appropriate, ~~Insurance~~ a statement expressly
5183 waiving such immunity or privilege with respect to any
5184 transaction, matter, or thing specified in the statement, and
5185 thereupon the testimony of such person or such evidence in
5186 relation to such transaction, matter, or thing may be received
5187 or produced before any judge or justice, court, tribunal, or
5188 grand jury or otherwise and, if so received or produced, such
5189 person shall not be entitled to any immunity or privilege on
5190 account of any testimony he or she may so give or evidence so
5191 produced.

5192 Section 105. Section 626.847, Florida Statutes, is amended
5193 to read:

5194 626.847 Penalty for refusal to testify.--A person who
5195 refuses or fails, without lawful cause, to testify relative to
5196 the affairs of any title insurer or other person when subpoenaed
5197 under s. 626.8463 and requested by the department or office ~~of~~
5198 ~~Insurance~~ to so testify is guilty of a misdemeanor of the second
5199 degree and, upon conviction, is punishable as provided in s.
5200 775.082 or s. 775.083.

5201 Section 106. Subsection (3) of section 626.8473, Florida
5202 Statutes, is amended to read:

5203 626.8473 Escrow; trust fund.--

5204 (3) All funds received by a title insurance agent to be
5205 held in trust shall be immediately placed in a financial



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5206 institution that is located within this state and is a member of
 5207 the Federal Deposit Insurance Corporation or the National Credit
 5208 Union Share Insurance Fund. These funds shall be invested in an
 5209 escrow account in accordance with the investment requirements
 5210 and standards established for deposits and investments of state
 5211 funds in s. 17.57 ~~18.10~~, where the funds shall be kept until
 5212 disbursement thereof is properly authorized.

5213 Section 107. Section 626.8582, Florida Statutes, is
 5214 amended to read:

5215 626.8582 "Nonresident public adjuster" defined.--A
 5216 "nonresident public adjuster" is a person who:

5217 (1) Is not a resident of this state;

5218 (2) Is a currently licensed public adjuster in his or her
 5219 state of residence for the type or kinds of insurance for which
 5220 the licensee intends to adjust claims in this state or, if a
 5221 resident of a state that does not license public adjusters, has
 5222 passed the office's ~~department's~~ adjuster examination as
 5223 prescribed in s. 626.8732(1)(b); and

5224 (3) Is a self-employed public adjuster or associated with
 5225 or employed by a public adjusting firm or other public adjuster.

5226 Section 108. Section 626.8584, Florida Statutes, is
 5227 amended to read:

5228 626.8584 "Nonresident independent adjuster" defined.--A
 5229 "nonresident independent adjuster" is a person who:

5230 (1) Is not a resident of this state;

5231 (2) Is a currently licensed independent adjuster in his or
 5232 her state of residence for the type or kinds of insurance for
 5233 which the licensee intends to adjust claims in this state or, if



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5234 a resident of a state that does not license independent
5235 adjusters, has passed the office's ~~department's~~ adjuster
5236 examination as prescribed in s. 626.8734(1)(b); and

5237 (3) Is a self-employed independent adjuster or associated
5238 with or employed by an independent adjusting firm or other
5239 independent adjuster.

5240 Section 109. Section 626.859, Florida Statutes, is amended
5241 to read:

5242 626.859 "Catastrophe" or "emergency" adjuster defined.--A
5243 "catastrophe" or "emergency" adjuster is a person who is not a
5244 licensed adjuster under this part, but who has been designated
5245 and certified to the office ~~department~~ by insurers as qualified
5246 to adjust claims, losses, or damages under policies or contracts
5247 of insurance issued by such insurer, and whom the office
5248 ~~department~~ may license, in the event of a catastrophe or
5249 emergency, for the purposes and under the conditions which the
5250 office ~~department~~ shall fix and for the period of the emergency
5251 as the office ~~department~~ shall determine, to adjust claims,
5252 losses, or damages under the policies of insurance issued by the
5253 insurers.

5254 Section 110. Subsection (2) of section 626.861, Florida
5255 Statutes, is amended to read:

5256 626.861 Insurer's officers, insurer's employees,
5257 reciprocal insurer's representatives; adjustments by.--

5258 (2) If any such officer, employee, attorney, or agent in
5259 connection with the adjustment of any such claim, loss, or
5260 damage engages in any of the misconduct described in or



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5261 contemplated by s. 626.611(6), the office ~~department~~ may suspend
5262 or revoke the insurer's certificate of authority.

5263 Section 111. Subsection (2) of section 626.863, Florida
5264 Statutes, is amended to read:

5265 626.863 Licensed independent adjusters required; insurers'
5266 responsibility.--

5267 (2) Before referring any claim or loss, the insurer shall
5268 ascertain from the office ~~department~~ whether the proposed
5269 independent adjuster is currently licensed and appointed as
5270 such. Having once ascertained that a particular person is so
5271 licensed and appointed, the insurer may assume that he or she
5272 will continue to be so licensed and appointed until the insurer
5273 has knowledge, or receives information from the office
5274 ~~department~~, to the contrary.

5275 Section 112. Section 626.865, Florida Statutes, is amended
5276 to read:

5277 626.865 Public adjuster's qualifications, bond.--

5278 (1) The office ~~department~~ shall issue a license to an
5279 applicant for a public adjuster's license upon determining that
5280 the applicant has paid the applicable fees specified in s.
5281 624.501 and possesses the following qualifications:

5282 (a) Is a natural person at least 18 years of age.

5283 (b) Is a bona fide resident of this state.

5284 (c) Is trustworthy and has such business reputation as
5285 would reasonably assure that the applicant will conduct his or
5286 her business as insurance adjuster fairly and in good faith and
5287 without detriment to the public.



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5288 (d) Has had sufficient experience, training, or
5289 instruction concerning the adjusting of damages or losses under
5290 insurance contracts, other than life and annuity contracts, is
5291 sufficiently informed as to the terms and effects of the
5292 provisions of those types of insurance contracts, and possesses
5293 adequate knowledge of the laws of this state relating to such
5294 contracts as to enable and qualify him or her to engage in the
5295 business of insurance adjuster fairly and without injury to the
5296 public or any member thereof with whom the applicant may have
5297 business as a public adjuster.

5298 (e) Has passed any required written examination.

5299 (2) At the time of application for license as a public
5300 adjuster, the applicant shall file with the office ~~department~~ a
5301 bond executed and issued by a surety insurer authorized to
5302 transact such business in this state, in the amount of \$50,000,
5303 conditioned for the faithful performance of his or her duties as
5304 a public adjuster under the license applied for. The bond shall
5305 be in favor of the office ~~department~~ and shall specifically
5306 authorize recovery by the office ~~department~~ of the damages
5307 sustained in case the licensee is guilty of fraud or unfair
5308 practices in connection with his or her business as public
5309 adjuster. The aggregate liability of the surety for all such
5310 damages shall in no event exceed the amount of the bond. Such
5311 bond shall not be terminated unless at least 30 days' written
5312 notice is given to the licensee and filed with the office
5313 ~~department~~.

5314 Section 113. Section 626.866, Florida Statutes, is amended
5315 to read:



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5316 626.866 Independent adjuster's qualifications.--The office
5317 ~~department~~ shall issue a license to an applicant for an
5318 independent adjuster's license upon determining that the
5319 applicable license fee specified in s. 624.501 has been paid and
5320 that the applicant possesses the following qualifications:

5321 (1) Is a natural person at least 18 years of age.

5322 (2) Is a bona fide resident of this state.

5323 (3) Is trustworthy and has such business reputation as
5324 would reasonably assure that the applicant will conduct his or
5325 her business as insurance adjuster fairly and in good faith and
5326 without detriment to the public.

5327 (4) Has had sufficient experience, training, or
5328 instruction concerning the adjusting of damage or loss under
5329 insurance contracts, other than life and annuity contracts, is
5330 sufficiently informed as to the terms and the effects of the
5331 provisions of such types of contracts, and possesses adequate
5332 knowledge of the insurance laws of this state relating to such
5333 contracts as to enable and qualify him or her to engage in the
5334 business of insurance adjuster fairly and without injury to the
5335 public or any member thereof with whom he or she may have
5336 relations as an insurance adjuster and to adjust all claims in
5337 accordance with the policy or contract and the insurance laws of
5338 this state.

5339 (5) Has passed any required written examination.

5340 Section 114. Section 626.867, Florida Statutes, is amended
5341 to read:

5342 626.867 Company employee adjuster's qualifications.--The
5343 office ~~department~~ shall issue a license to an applicant for a



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5344 company employee 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 of risks
5355 described in his or her application, is sufficiently informed as
5356 to the terms and the effects of the provisions of insurance
5357 contracts covering such risks, and possesses adequate knowledge
5358 of the insurance laws of this state relating to such insurance
5359 contracts as to enable and qualify him or her to engage in such
5360 business as insurance adjuster fairly and without injury to the
5361 public or any member thereof with whom he or she may have
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 115. Subsection (5) of section 626.869, Florida
5367 Statutes, is amended to read:

5368 626.869 License, adjusters.--

5369 (5) Any person holding a license for 24 consecutive months
5370 or longer and who engages in adjusting workers' compensation
5371 insurance must, beginning in their birth month and every 2 years



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5372 thereafter, have completed 24 hours of courses, 2 hours of which
 5373 relate to ethics, in subjects designed to inform the licensee
 5374 regarding the current workers' compensation laws of this state,
 5375 so as to enable him or her to engage in business as a workers'
 5376 compensation insurance adjuster fairly and without injury to the
 5377 public and to adjust all claims in accordance with the policy or
 5378 contract and the workers' compensation laws of this state. In
 5379 order to qualify as an eligible course under this subsection,
 5380 the course must:

5381 (a) Have a course outline approved by the office
 5382 ~~department~~.

5383 (b) Be taught at a school training facility or other
 5384 location approved by the office ~~department~~.

5385 (c) Be taught by instructors with at least 5 years of
 5386 experience in the area of workers' compensation, general lines
 5387 of insurance, or other persons approved by the office
 5388 ~~department~~. However, a member of The Florida Bar is exempt from
 5389 the 5 years' experience requirement.

5390 (d) Furnish the attendee a certificate of completion. The
 5391 course provider shall send a roster to the office ~~department~~ in
 5392 a format prescribed by the commission ~~department~~.

5393 Section 116. Section 626.8695, Florida Statutes, is
 5394 amended to read:

5395 626.8695 Primary adjuster.--

5396 (1) Each person operating an adjusting firm and each
 5397 location of a multiple location adjusting firm must designate a
 5398 primary adjuster for each such firm or location and must file
 5399 with the office ~~department~~ the name of such primary adjuster and



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5400 the address of the firm or location where he or she is the
5401 primary adjuster, on a form approved by the commission
5402 ~~department~~. The designation of the primary adjuster may be
5403 changed at the option of the adjusting firm. Any such change is
5404 effective upon notification to the office ~~department~~. Notice of
5405 change must be sent to the office ~~department~~ within 30 days
5406 after such change.

5407 (2)(a) For purposes of this section, a "primary adjuster"
5408 is the licensed adjuster who is responsible for the hiring and
5409 supervision of all individuals within an adjusting firm location
5410 who deal with the public and who acts in the capacity of a
5411 public adjuster as defined in s. 626.854, or an independent
5412 adjuster as defined in s. 626.855. An adjuster may be
5413 designated as a primary adjuster for only one adjusting firm
5414 location.

5415 (b) For purposes of this section, an "adjusting firm" is a
5416 location where an independent or public adjuster is engaged in
5417 the business of insurance.

5418 (3) The office ~~department~~ may suspend or revoke the
5419 license of the primary adjuster if the adjusting firm employs
5420 any person who has had a license denied or any person whose
5421 license is currently suspended or revoked. However, if a person
5422 has been denied a license for failure to pass a required
5423 examination, he or she may be employed to perform clerical or
5424 administrative functions for which licensure is not required.

5425 (4) The primary adjuster in an unincorporated adjusting
5426 firm, or the primary adjuster in an incorporated adjusting firm
5427 in which no officer, director, or stockholder is an adjuster, is



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5428 responsible and accountable for the acts of salaried employees
5429 under his or her direct supervision and control while acting on
5430 behalf of the adjusting firm. Nothing in this section renders
5431 any person criminally liable or subject to any disciplinary
5432 proceedings for any act unless the person personally committed
5433 or knew or should have known of the act and of the facts
5434 constituting a violation of this code.

5435 (5) The office ~~department~~ may suspend or revoke the
5436 license of any adjuster who is employed by a person whose
5437 license is currently suspended or revoked.

5438 (6) An adjusting firm location may not conduct the
5439 business of insurance unless a primary adjuster is designated.
5440 Failure of the person operating the adjusting firm to designate
5441 a primary adjuster for the firm, or for each location, as
5442 applicable, on a form prescribed by the commission ~~department~~
5443 within 30 days after inception of the firm or change of primary
5444 adjuster designation, constitutes grounds for requiring the
5445 adjusting firm to obtain an adjusting firm license pursuant to
5446 s. 626.8696.

5447 (7) Any adjusting firm may request, on a form prescribed
5448 by the commission ~~department~~, verification from the office
5449 ~~department~~ of any person's current licensure status. If a
5450 request is mailed to the office ~~department~~ within 5 working days
5451 after the date an adjuster is hired, and the office ~~department~~
5452 subsequently notifies the adjusting firm that an employee's
5453 license is currently suspended, revoked, or has been denied, the
5454 license of the primary adjuster shall not be revoked or



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5455 suspended if the unlicensed person is immediately dismissed from
5456 employment as an adjuster with the firm.

5457 Section 117. Subsections (1) and (5) of section 626.8696,
5458 Florida Statutes, are amended to read:

5459 626.8696 Application for adjusting firm license.--

5460 (1) The application for an adjusting firm license must
5461 include:

5462 (a) The name of each majority owner, partner, officer, and
5463 director of the adjusting firm.

5464 (b) The resident address of each person required to be
5465 listed in the application under paragraph (a).

5466 (c) The name of the adjusting firm and its principal
5467 business address.

5468 (d) The location of each adjusting firm office and the
5469 name under which each office conducts or will conduct business.

5470 (e) Any additional information which the commission
5471 ~~department~~ may require.

5472 (5) An adjusting firm required to be licensed pursuant to
5473 s. 626.8695 must remain so licensed for a period of 3 years from
5474 the date of licensure, unless the license is suspended or
5475 revoked. The office ~~department~~ may suspend or revoke the
5476 adjusting firm's authority to do business for activities
5477 occurring during the time the firm is licensed, regardless of
5478 whether the licensing period has terminated.

5479 Section 118. Section 626.8697, Florida Statutes, is
5480 amended to read:

5481 626.8697 Grounds for refusal, suspension, or revocation of
5482 adjusting firm license.--



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5483 (1) The office ~~department~~ shall deny, suspend, revoke, or
 5484 refuse to continue the license of any adjusting firm if it
 5485 finds, as to any adjusting firm or as to any majority owner,
 5486 partner, manager, director, officer, or other person who manages
 5487 or controls the firm, that any of the following grounds exist:

5488 (a) Lack by the firm of one or more of the qualifications
 5489 for the license as specified in this code.

5490 (b) Material misstatement, misrepresentation, or fraud in
 5491 obtaining the license or in attempting to obtain the license.

5492 (2) The office ~~department~~ may, in its discretion, deny,
 5493 suspend, revoke, or refuse to continue the license of any
 5494 adjusting firm if it finds that any of the following applicable
 5495 grounds exist with respect to the firm or any owner, partner,
 5496 manager, director, officer, or other person who is otherwise
 5497 involved in the operation of the firm:

5498 (a) Any cause for which issuance of the license could have
 5499 been refused had it then existed and been known to the office
 5500 ~~department~~.

5501 (b) Violation of any provision of this code or of any
 5502 other law applicable to the business of insurance.

5503 (c) Violation of any order or rule of the office or
 5504 commission ~~department~~.

5505 (d) An owner, partner, manager, director, officer, or
 5506 other person who manages or controls the firm having been found
 5507 guilty of or having pleaded guilty or nolo contendere to a
 5508 felony or a crime punishable by imprisonment of 1 year or more
 5509 under the laws of the United States or of any state or under the



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5510 laws of any other country, without regard to whether
5511 adjudication was made or withheld by the court.

5512 (e) Failure to inform the office ~~department~~ in writing
5513 within 30 days after a pleading by an owner, partner, manager,
5514 director, officer, or other person managing or controlling the
5515 firm of guilty or nolo contendere to, or being convicted or
5516 found guilty of, any felony or a crime punishable by
5517 imprisonment of 1 year or more under the laws of the United
5518 States or of any state, or under the laws of any other country,
5519 without regard to whether adjudication was made or withheld by
5520 the court.

5521 (f) Knowingly aiding, assisting, procuring, advising, or
5522 abetting any person in the violation of or to violate a
5523 provision of the insurance code or any order or rule of the
5524 office or commission ~~department~~.

5525 (g) Knowingly employing any individual in a managerial
5526 capacity or in a capacity dealing with the public who is under
5527 an order of revocation or suspension issued by the office
5528 ~~department~~.

5529 (h) Committing any of the following acts with such a
5530 frequency as to have made the operation of the adjusting firm
5531 hazardous to the insurance-buying public or other persons:

5532 1. Misappropriation, conversion, or unlawful or
5533 unreasonable withholding of moneys belonging to insurers or
5534 insureds or beneficiaries or claimants or to others and received
5535 in the conduct of business under the license.



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5536 2. Misrepresentation or deception with regard to the
5537 business of insurance, dissemination of information, or
5538 advertising.

5539 3. Demonstrated lack of fitness or trustworthiness to
5540 engage in the business of insurance adjusting arising out of
5541 activities related to insurance adjusting or the adjusting firm.

5542 (i) Failure to appoint a primary adjuster.

5543 (3) In lieu of discretionary refusal, suspension, or
5544 revocation of an adjusting firm's license, the office ~~department~~
5545 may impose an administrative penalty of up to \$1,000 for each
5546 violation or ground provided under this section, not to exceed
5547 an aggregate amount of \$10,000 for all violations or grounds.

5548 (4) If any adjusting firm, having been licensed,
5549 thereafter has such license revoked or suspended, the firm shall
5550 terminate all adjusting activities while the license is revoked
5551 or suspended.

5552 Section 119. Section 626.8698, Florida Statutes, is
5553 amended to read:

5554 626.8698 Disciplinary guidelines for public
5555 adjusters.--The office ~~department~~ may deny, suspend, or revoke
5556 the license of a public adjuster, and administer a fine not to
5557 exceed \$5,000 per act, for any of the following:

5558 (1) Violating any provision of this chapter or a rule or
5559 order of the office or commission ~~department~~;

5560 (2) Receiving payment or anything of value as a result of
5561 an unfair or deceptive practice;

5562 (3) Receiving or accepting any fee, kickback, or other
5563 thing of value pursuant to any agreement or understanding, oral



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5564 or otherwise; entering into a split-fee arrangement with another
5565 person who is not a public adjuster; or being otherwise paid or
5566 accepting payment for services that have not been performed;

5567 (4) Violating s. 316.066 or s. 817.234;

5568 (5) Soliciting or otherwise taking advantage of a person
5569 who is vulnerable, emotional, or otherwise upset as the result
5570 of a trauma, accident, or other similar occurrence; or

5571 (6) Violating any ethical rule of the commission
5572 ~~department~~.

5573 Section 120. Section 626.870, Florida Statutes, is amended
5574 to read:

5575 626.870 Application for license.--

5576 (1) Application for a license under this part shall be
5577 made as provided in s. 626.171 and related sections of this
5578 code.

5579 (2) The commission ~~department~~ shall so prepare the form of
5580 the application as to elicit and require from the applicant the
5581 information necessary to enable the office ~~department~~ to
5582 determine whether the applicant possesses the qualifications
5583 prerequisite to issuance of the license to the applicant.

5584 (3) The commission ~~department~~ may, in its discretion,
5585 require that the application be supplemented by the certificate
5586 or affidavit of such person or persons as it deems necessary for
5587 its determination of the applicant's residence, business
5588 reputation, and reputation for trustworthiness. The commission
5589 ~~department~~ shall prescribe and the office may furnish the forms
5590 for such certificates and affidavits.



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5591 Section 121. Section 626.871, Florida Statutes, is amended
5592 to read:

5593 626.871 Reappointment after military service.--The office
5594 ~~department~~ may, without requiring a further written examination,
5595 issue an appointment as an adjuster to a formerly licensed and
5596 appointed adjuster of this state who held a current adjuster's
5597 appointment at the time of entering service in the Armed Forces
5598 of the United States, subject to the following conditions:

5599 (1) The period of military service must not have been in
5600 excess of 3 years;

5601 (2) The application for the appointment must be filed with
5602 the office ~~department~~ and the applicable fee paid, within 12
5603 months following the date of honorable discharge of the
5604 applicant from the military service; and

5605 (3) The new appointment will be of the same type and class
5606 as that currently effective at the time the applicant entered
5607 military service; but, if such type and class of appointment is
5608 not being currently issued under this code, the new appointment
5609 shall be of that type and class or classes most closely
5610 resembling those of the former appointment.

5611 Section 122. Subsections (1) and (5) of section 626.872,
5612 Florida Statutes, are amended to read:

5613 626.872 Temporary license.--

5614 (1) The office ~~department~~ may, in its discretion, issue a
5615 temporary license as an independent adjuster or as a company
5616 employee adjuster, subject to the following conditions:

5617 (a) The applicant must be an employee of an adjuster
5618 currently licensed by the office ~~department~~, an employee of an



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5619 authorized insurer, or an employee of an established adjusting
5620 firm or corporation which is supervised by a currently licensed
5621 independent adjuster.

5622 (b) The application must be accompanied by a certificate
5623 of employment and a report as to the applicant's integrity and
5624 moral character on a form prescribed by the commission
5625 ~~department~~ and executed by the employer.

5626 (c) The applicant must be a natural person of at least 18
5627 years of age, must be a bona fide resident of this state, must
5628 be trustworthy, and must have such business reputation as would
5629 reasonably assure that the applicant will conduct his or her
5630 business as an adjuster fairly and in good faith and without
5631 detriment to the public.

5632 (d) The applicant's employer is responsible for the
5633 adjustment acts of any licensee under this section.

5634 (e) The applicable license fee specified must be paid
5635 before issuance of the temporary license.

5636 (f) The temporary license shall be effective for a period
5637 of 1 year, but subject to earlier termination at the request of
5638 the employer, or if the licensee fails to take an examination as
5639 an independent adjuster or company employee adjuster within 6
5640 months after issuance of the temporary license, or if suspended
5641 or revoked by the office ~~department~~.

5642 (5) The office ~~department~~ shall not issue a temporary
5643 license as an independent adjuster or as a company employee
5644 adjuster to any individual who has ever held such a license in
5645 this state.



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5646 Section 123. Subsection (1) of section 626.873, Florida
5647 Statutes, is amended to read:

5648 626.873 Nonresident company employee adjusters.--

5649 (1) The office ~~department~~ shall, upon application
5650 therefor, issue a license to an applicant for a nonresident
5651 adjuster's license upon determining that the applicant has paid
5652 the applicable license fees required under s. 624.501 and:

5653 (a) Is a currently licensed insurance adjuster in his or
5654 her home state, if such state requires a license.

5655 (b) Is an employee of an insurer, or a wholly owned
5656 subsidiary of an insurer, admitted to do business in this state.

5657 (c) Has filed a certificate or letter of authorization
5658 from the insurance department of his or her home state, if such
5659 state requires an adjuster to be licensed, stating that he or
5660 she holds a current license or authorization to adjust insurance
5661 losses. Such certificate or authorization must be signed by the
5662 insurance commissioner, or his or her deputy, of the adjuster's
5663 home state and must reflect whether or not the adjuster has ever
5664 had his or her license or authorization in the adjuster's home
5665 state suspended or revoked and, if such is the case, the reason
5666 for such action.

5667 Section 124. Section 626.8732, Florida Statutes, is
5668 amended to read:

5669 626.8732 Nonresident public adjuster's qualifications,
5670 bond.--

5671 (1) The office ~~department~~ shall, upon application
5672 therefor, issue a license to an applicant for a nonresident
5673 public adjuster's license upon determining that the applicant



5674 has paid the applicable license fees required under s. 624.501
5675 and:

5676 (a) Is a natural person at least 18 years of age.

5677 (b) Has passed to the satisfaction of the office
5678 ~~department~~ a written Florida public adjuster's examination of
5679 the scope prescribed in s. 626.241(6); however, the requirement
5680 for such an examination does not apply to any of the following:

5681 1. An applicant who is licensed as a resident public
5682 adjuster in his or her state of residence, when that state
5683 requires the passing of a written examination in order to obtain
5684 the license and a reciprocal agreement with the appropriate
5685 official of that state has been entered into by the office
5686 ~~department~~; or

5687 2. An applicant who is licensed as a nonresident public
5688 adjuster in a state other than his or her state of residence
5689 when the state of licensure requires the passing of a written
5690 examination in order to obtain the license and a reciprocal
5691 agreement with the appropriate official of the state of
5692 licensure has been entered into by the office ~~department~~.

5693 (c) Is self-employed as a public adjuster or associated
5694 with or employed by a public adjusting firm or other public
5695 adjuster. Applicants licensed as nonresident public adjusters
5696 under this section must be appointed as such in accordance with
5697 the provisions of ss. 626.112 and 626.451. Appointment fees in
5698 the amount specified in s. 624.501 must be paid to the office
5699 ~~department~~ in advance. The appointment of a nonresident public
5700 adjuster shall continue in force until suspended, revoked, or
5701 otherwise terminated, but subject to biennial renewal or



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5702 continuation by the licensee in accordance with procedures
5703 prescribed in s. 626.381 for licensees in general.

5704 (d) Is trustworthy and has such business reputation as
5705 would reasonably assure that he or she will conduct his or her
5706 business as a nonresident public adjuster fairly and in good
5707 faith and without detriment to the public.

5708 (e) Has had sufficient experience, training, or
5709 instruction concerning the adjusting of damages or losses under
5710 insurance contracts, other than life and annuity contracts; is
5711 sufficiently informed as to the terms and effects of the
5712 provisions of those types of insurance contracts; and possesses
5713 adequate knowledge of the laws of this state relating to such
5714 contracts as to enable and qualify him or her to engage in the
5715 business of insurance adjuster fairly and without injury to the
5716 public or any member thereof with whom he or she may have
5717 business as a public adjuster.

5718 (2) The applicant shall furnish the following with his or
5719 her application:

5720 (a) A complete set of his or her fingerprints. The
5721 applicant's fingerprints must be certified by an authorized law
5722 enforcement officer. The office ~~department~~ may not authorize an
5723 applicant to take the required examination or issue a
5724 nonresident public adjuster's license to the applicant until the
5725 office ~~department~~ has received a report from the Florida
5726 Department of Law Enforcement and the Federal Bureau of
5727 Investigation relative to the existence or nonexistence of a
5728 criminal history report based on the applicant's fingerprints.



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5729 (b) If currently licensed as a resident public adjuster in
5730 the applicant's state of residence, a certificate or letter of
5731 authorization from the licensing authority of the applicant's
5732 state of residence, stating that the applicant holds a current
5733 or comparable license to act as a public adjuster. The
5734 certificate or letter of authorization must be signed by the
5735 insurance commissioner or his or her deputy or the appropriate
5736 licensing official and must disclose whether the adjuster has
5737 ever had any license or eligibility to hold any license
5738 declined, denied, suspended, revoked, or placed on probation or
5739 whether an administrative fine or penalty has been levied
5740 against the adjuster and, if so, the reason for the action.

5741 (c) If the applicant's state of residence does not require
5742 licensure as a public adjuster and the applicant has been
5743 licensed as a resident insurance adjuster, agent, broker, or
5744 other insurance representative in his or her state of residence
5745 or any other state within the past 3 years, a certificate or
5746 letter of authorization from the licensing authority stating
5747 that the applicant holds or has held a license to act as such an
5748 insurance adjuster, agent, or other insurance representative.
5749 The certificate or letter of authorization must be signed by the
5750 insurance commissioner or his or her deputy or the appropriate
5751 licensing official and must disclose whether or not the
5752 adjuster, agent, or other insurance representative has ever had
5753 any license or eligibility to hold any license declined, denied,
5754 suspended, revoked, or placed on probation or whether an
5755 administrative fine or penalty has been levied against the
5756 adjuster and, if so, the reason for the action.



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5757 (3) At the time of application for license as a
5758 nonresident public adjuster, the applicant shall file with the
5759 office ~~department~~ a bond executed and issued by a surety insurer
5760 authorized to transact surety business in this state, in the
5761 amount of \$50,000, conditioned for the faithful performance of
5762 his or her duties as a nonresident public adjuster under the
5763 license applied for. The bond must be in favor of the office
5764 ~~department~~ and must specifically authorize recovery by the
5765 office ~~department~~ of the damages sustained if the licensee
5766 commits fraud or unfair practices in connection with his or her
5767 business as nonresident public adjuster. The aggregate liability
5768 of the surety for all the damages may not exceed the amount of
5769 the bond. The bond may not be terminated unless at least 30
5770 days' written notice is given to the licensee and filed with the
5771 office ~~department~~.

5772 (4) The usual and customary records pertaining to
5773 transactions under the license of a nonresident public adjuster
5774 must be retained for at least 3 years after completion of the
5775 adjustment and must be made available in this state to the
5776 office ~~department~~ upon request. The failure of a nonresident
5777 public adjuster to properly maintain records and make them
5778 available to the office ~~department~~ upon request constitutes
5779 grounds for the immediate suspension of the license issued under
5780 this section.

5781 (5) After licensure as a nonresident public adjuster, as a
5782 condition of doing business in this state, the licensee must
5783 annually on or before January 1, on a form prescribed by the
5784 commission ~~department~~, submit an affidavit certifying that the



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5785 licensee is familiar with and understands the insurance code and
5786 rules adopted thereunder and the provisions of the contracts
5787 negotiated or to be negotiated. Compliance with this filing
5788 requirement is a condition precedent to the issuance,
5789 continuation, reinstatement, or renewal of a nonresident public
5790 adjuster's appointment.

5791 Section 125. Subsections (1), (3), and (4) of section
5792 626.8734, Florida Statutes, are amended to read:

5793 626.8734 Nonresident independent adjuster's
5794 qualifications.--

5795 (1) The office ~~department~~ shall, upon application
5796 therefor, issue a license to an applicant for a nonresident
5797 independent adjuster's license upon determining that the
5798 applicant has paid the applicable license fees required under s.
5799 624.501 and:

5800 (a) Is a natural person at least 18 years of age.

5801 (b) Has passed to the satisfaction of the office
5802 ~~department~~ a written Florida independent adjuster's examination
5803 of the scope prescribed in s. 626.241(6); however, the
5804 requirement for the examination does not apply to any of the
5805 following:

5806 1. An applicant who is licensed as a resident independent
5807 adjuster in his or her state of residence when that state
5808 requires the passing of a written examination in order to obtain
5809 the license and a reciprocal agreement with the appropriate
5810 official of that state has been entered into by the office
5811 ~~department~~; or



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5812 2. An applicant who is licensed as a nonresident
5813 independent adjuster in a state other than his or her state of
5814 residence when the state of licensure requires the passing of a
5815 written examination in order to obtain the license and a
5816 reciprocal agreement with the appropriate official of the state
5817 of licensure has been entered into by the office ~~department~~.

5818 (c) Is self-employed or associated with or employed by an
5819 independent adjusting firm or other independent adjuster.

5820 Applicants licensed as nonresident independent adjusters under
5821 this section must be appointed as such in accordance with the
5822 provisions of ss. 626.112 and 626.451. Appointment fees in the
5823 amount specified in s. 624.501 must be paid to the office
5824 ~~department~~ in advance. The appointment of a nonresident
5825 independent adjuster shall continue in force until suspended,
5826 revoked, or otherwise terminated, but subject to biennial
5827 renewal or continuation by the licensee in accordance with
5828 procedures prescribed in s. 626.381 for licensees in general.

5829 (d) Is trustworthy and has such business reputation as
5830 would reasonably assure that he or she will conduct his or her
5831 business as a nonresident independent adjuster fairly and in
5832 good faith and without detriment to the public.

5833 (e) Has had sufficient experience, training, or
5834 instruction concerning the adjusting of damages or losses under
5835 insurance contracts, other than life and annuity contracts; is
5836 sufficiently informed as to the terms and effects of the
5837 provisions of those types of insurance contracts; and possesses
5838 adequate knowledge of the laws of this state relating to such
5839 contracts as to enable and qualify him or her to engage in the



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5840 business of insurance adjuster fairly and without injury to the
5841 public or any member thereof with whom he or she may have
5842 business as an independent adjuster.

5843 (3) The usual and customary records pertaining to
5844 transactions under the license of a nonresident independent
5845 adjuster must be retained for at least 3 years after completion
5846 of the adjustment and must be made available in this state to
5847 the office ~~department~~ upon request. The failure of a nonresident
5848 independent adjuster to properly maintain records and make them
5849 available to the office ~~department~~ upon request constitutes
5850 grounds for the immediate suspension of the license issued under
5851 this section.

5852 (4) After licensure as a nonresident independent adjuster,
5853 as a condition of doing business in this state, the licensee
5854 must annually on or before January 1, on a form prescribed by
5855 the commission ~~department~~, submit an affidavit certifying that
5856 the licensee is familiar with and understands the insurance laws
5857 and administrative rules of this state and the provisions of the
5858 contracts negotiated or to be negotiated. Compliance with this
5859 filing requirement is a condition precedent to the issuance,
5860 continuation, reinstatement, or renewal of a nonresident
5861 independent adjuster's appointment.

5862 Section 126. Section 626.8736, Florida Statutes, is
5863 amended to read:

5864 626.8736 Nonresident independent or public adjusters;
5865 service of process.--

5866 (1) Each licensed nonresident independent or public
5867 adjuster shall appoint the Chief Financial Officer ~~Insurance~~



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5868 ~~Commissioner and Treasurer~~ and his or her successors in office
5869 as his or her attorney to receive service of legal process
5870 issued against the nonresident independent or public adjuster in
5871 this state, upon causes of action arising within this state out
5872 of transactions under his license and appointment. Service upon
5873 the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
5874 as attorney shall constitute effective legal service upon the
5875 nonresident independent or public adjuster.

5876 (2) The appointment of the Chief Financial Officer
5877 ~~Insurance Commissioner and Treasurer~~ for service of process
5878 shall be irrevocable for as long as there could be any cause of
5879 action against the nonresident independent or public adjuster
5880 arising out of his or her insurance transactions in this state.

5881 (3) Duplicate copies of legal process against the
5882 nonresident independent or public adjuster shall be served upon
5883 the Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
5884 by a person competent to serve a summons.

5885 (4) Upon receiving the service, the Chief Financial
5886 ~~Officer Insurance Commissioner and Treasurer~~ shall forthwith
5887 send one of the copies of the process, by registered mail with
5888 return receipt requested, to the defendant nonresident
5889 independent or public adjuster at his or her last address of
5890 record with the office ~~department~~.

5891 (5) The Chief Financial Officer ~~Insurance Commissioner and~~
5892 ~~Treasurer~~ shall keep a record of the day and hour of service
5893 upon him or her of all legal process received under this
5894 section.



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5895 Section 127. Section 626.8738, Florida Statutes, is
5896 amended to read:

5897 626.8738 Penalty for violation.--In addition to any other
5898 remedy imposed pursuant to this code, any person who acts as a
5899 resident or nonresident public adjuster or holds himself or
5900 herself out to be a public adjuster to adjust claims in this
5901 state, without being licensed by the office ~~department~~ as a
5902 public adjuster and appointed as a public adjuster, commits a
5903 felony of the third degree, punishable as provided in s.
5904 775.082, s. 775.083, or s. 775.084. Each act in violation of
5905 this section constitutes a separate offense.

5906 Section 128. Section 626.874, Florida Statutes, is amended
5907 to read:

5908 626.874 Catastrophe or emergency adjusters.--

5909 (1) In the event of a catastrophe or emergency, the office
5910 ~~department~~ may issue a license, for the purposes and under the
5911 conditions which it shall fix and for the period of emergency as
5912 it shall determine, to persons who are residents or nonresidents
5913 of this state and who are not licensed adjusters under this part
5914 but who have been designated and certified to it as qualified to
5915 act as adjusters by independent resident adjusters or by an
5916 authorized insurer or by a licensed general lines agent to
5917 adjust claims, losses, or damages under policies or contracts of
5918 insurance issued by such insurers. The fee for the license
5919 shall be as provided in s. 624.501(12)(c).

5920 (2) If any person not a licensed adjuster who has been
5921 permitted to adjust such losses, claims, or damages under the
5922 conditions and circumstances set forth in subsection (1),



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5923 engages in any of the misconduct described in or contemplated by
5924 ss. 626.611 and 626.621, the office ~~department~~, without notice
5925 and hearing, shall be authorized to issue its order denying such
5926 person the privileges granted under this section; and thereafter
5927 it shall be unlawful for any such person to adjust any such
5928 losses, claims, or damages in this state.

5929 Section 129. Section 626.878, Florida Statutes, is amended
5930 to read:

5931 626.878 Rules; code of ethics.--An adjuster shall
5932 subscribe to the code of ethics specified in the rules of the
5933 commission ~~department~~.

5934 Section 130. Paragraphs (d) and (m) of subsection (1) of
5935 section 626.88, Florida Statutes, are amended to read:

5936 626.88 Definitions of "administrator" and "insurer".--

5937 (1) For the purposes of this part, an "administrator" is
5938 any person who directly or indirectly solicits or effects
5939 coverage of, collects charges or premiums from, or adjusts or
5940 settles claims on residents of this state in connection with
5941 authorized commercial self-insurance funds or with insured or
5942 self-insured programs which provide life or health insurance
5943 coverage or coverage of any other expenses described in s.
5944 624.33(1) or any person who, through a health care risk contract
5945 as defined in s. 641.234 with an insurer or health maintenance
5946 organization, provides billing and collection services to health
5947 insurers and health maintenance organizations on behalf of
5948 health care providers, other than any of the following persons:

5949 (d) A health care services plan, health maintenance
5950 organization, professional service plan corporation, or person



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5951 in the business of providing continuing care, possessing a valid
5952 certificate of authority issued by the office ~~department~~, and
5953 the sales representatives thereof, if the activities of such
5954 entity are limited to the activities permitted under the
5955 certificate of authority.

5956 (m) A person approved by the department ~~of Insurance~~ who
5957 administers only self-insured workers' compensation plans.

5958

5959 A person who provides billing and collection services to health
5960 insurers and health maintenance organizations on behalf of
5961 health care providers shall comply with the provisions of ss.
5962 627.6131, 641.3155, and 641.51(4).

5963 Section 131. Section 626.8805, Florida Statutes, is
5964 amended to read:

5965 626.8805 Certificate of authority to act as
5966 administrator.--

5967 (1) It is unlawful for any person to act as or hold
5968 himself or herself out to be an administrator in this state
5969 without a valid certificate of authority issued by the office
5970 ~~department~~ pursuant to ss. 626.88-626.894. To qualify for and
5971 hold authority to act as an administrator in this state, an
5972 administrator must otherwise be in compliance with this code and
5973 with its organizational agreement. The failure of any person to
5974 hold such a certificate while acting as an administrator shall
5975 subject such person to a fine of not less than \$5,000 or more
5976 than \$10,000 for each violation.

5977 (2) The administrator shall file with the office
5978 ~~department~~ an application for a certificate of authority upon a



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5979 | form to be adopted by the commission and furnished by the office
5980 | ~~department~~, which application shall include or have attached the
5981 | following information and documents:

5982 | (a) All basic organizational documents of the
5983 | administrator, such as the articles of incorporation, articles
5984 | of association, partnership agreement, trade name certificate,
5985 | trust agreement, shareholder agreement, and other applicable
5986 | documents, and all amendments to those documents.

5987 | (b) The bylaws, rules, and regulations or similar
5988 | documents regulating the conduct or the internal affairs of the
5989 | administrator.

5990 | (c) The names, addresses, official positions, and
5991 | professional qualifications of the individuals who are
5992 | responsible for the conduct of the affairs of the administrator,
5993 | including all members of the board of directors, board of
5994 | trustees, executive committee, or other governing board or
5995 | committee, the principal officers in the case of a corporation,
5996 | the partners or members in the case of a partnership or
5997 | association, and any other person who exercises control or
5998 | influence over the affairs of the administrator.

5999 | (d) Annual statements or reports for the 3 most recent
6000 | years, or such other information as the office ~~department~~ may
6001 | require in order to review the current financial condition of
6002 | the applicant.

6003 | (e) If the applicant is not currently acting as an
6004 | administrator, a statement of the amounts and sources of the
6005 | funds available for organization expenses and the proposed



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6006 arrangements for reimbursement and compensation of incorporators
6007 or other principals.

6008 (3) The applicant shall make available for inspection by
6009 the office ~~department~~ copies of all contracts with insurers or
6010 other persons utilizing the services of the administrator.

6011 (4) The office ~~department~~ shall not issue a certificate of
6012 authority if it determines that the administrator or any
6013 principal thereof is not competent, trustworthy, financially
6014 responsible, or of good personal and business reputation or has
6015 had an insurance license denied for cause by any state.

6016 (5) A certificate of authority issued under this section
6017 shall remain valid, unless suspended or revoked by the office
6018 ~~department~~, so long as the certificateholder continues in
6019 business in this state.

6020 (6) A certificate of authority issued under this section
6021 shall indicate that the administrator is authorized to
6022 administer commercial self-insurance funds or life and health
6023 programs or both, except that a certificate of authority issued
6024 prior to October 1, 1988, does not authorize the administration
6025 of commercial self-insurance funds.

6026 Section 132. Section 626.8809, Florida Statutes, is
6027 amended to read:

6028 626.8809 Fidelity bond.--An administrator shall have and
6029 keep in full force and effect a fidelity bond equal to at least
6030 10 percent of the amount of the funds handled or managed
6031 annually by the administrator. However, the office ~~department~~
6032 may not require a bond greater than \$500,000 unless the office
6033 ~~department~~, after due notice to all interested parties and



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6034 opportunity for hearing and after consideration of the record,
6035 requires an amount in excess of \$500,000 but not more than 10
6036 percent of the amount of the funds handled or managed annually
6037 by the administrator.

6038 Section 133. Section 626.8814, Florida Statutes, is
6039 amended to read:

6040 626.8814 Disclosure of ownership or affiliation.--Each
6041 administrator shall identify to the office ~~department~~ any
6042 ownership interest or affiliation of any kind with any insurance
6043 company responsible for providing benefits directly or through
6044 reinsurance to any plan for which the administrator provides
6045 administrative services.

6046 Section 134. Subsection (2) of section 626.884, Florida
6047 Statutes, is amended to read:

6048 626.884 Maintenance of records by administrator; access;
6049 confidentiality.--

6050 (2) The office ~~department~~ shall have access to books and
6051 records maintained by the administrator for the purpose of
6052 examination, audit, and inspection. Information contained in
6053 such books and records is confidential and exempt from the
6054 provisions of s. 119.07(1) if the disclosure of such information
6055 would reveal a trade secret as defined in s. 688.002. However,
6056 the office ~~department~~ may use such information in any proceeding
6057 instituted against the administrator.

6058 Section 135. Subsections (1) and (3) of section 626.89,
6059 Florida Statutes, are amended to read:

6060 626.89 Annual financial statement and filing fee; notice
6061 of change of ownership.--



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6062 (1) Each authorized administrator shall file with the
6063 office ~~department~~ a full and true statement of its financial
6064 condition, transactions, and affairs. The statement shall be
6065 filed annually on or before March 1 or within such extension of
6066 time therefor as the office ~~department~~ for good cause may have
6067 granted and shall be for the preceding calendar year. The
6068 statement shall be in such form and contain such matters as the
6069 commission ~~department~~ prescribes and shall be verified by at
6070 least two officers of such administrator.

6071 (3) In addition, the administrator shall immediately
6072 notify the office ~~department~~ of any material change in its
6073 ownership.

6074 Section 136. Section 626.891, Florida Statutes, is amended
6075 to read:

6076 626.891 Grounds for suspension or revocation of
6077 certificate of authority.--

6078 (1) The certificate of authority of an administrator shall
6079 be suspended or revoked if the office ~~department~~ determines that
6080 the administrator:

6081 (a) Is in an unsound financial condition;

6082 (b) Has used or is using such methods or practices in the
6083 conduct of its business so as to render its further transaction
6084 of business in this state hazardous or injurious to insured
6085 persons or the public; or

6086 (c) Has failed to pay any judgment rendered against it in
6087 this state within 60 days after the judgment has become final.



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6088 (2) The office ~~department~~ may, in its discretion, suspend
6089 or revoke the certificate of authority of an administrator if it
6090 finds that the administrator:

6091 (a) Has violated any lawful rule or order of the
6092 commission or office ~~department~~ or any provision of this
6093 chapter;

6094 (b) Has refused to be examined or to produce its accounts,
6095 records, and files for examination, or if any of its officers
6096 has refused to give information with respect to its affairs or
6097 has refused to perform any other legal obligation as to such
6098 examination, when required by the office ~~department~~;

6099 (c) Has, without just cause, refused to pay proper claims
6100 or perform services arising under its contracts or has, without
6101 just cause, compelled insured persons to accept less than the
6102 amount due them or to employ attorneys or bring suit against the
6103 administrator to secure full payment or settlement of such
6104 claims;

6105 (d) Is or was affiliated with and under the same general
6106 management or interlocking directorate or ownership as another
6107 administrator which transacts business in this state without
6108 having a certificate of authority;

6109 (e) At any time fails to meet any qualification for which
6110 issuance of the certificate could have been refused had such
6111 failure then existed and been known to the office ~~department~~;

6112 (f) Has been convicted of, or has entered a plea of guilty
6113 or nolo contendere to, a felony relating to the business of
6114 insurance or insurance administration in this state or in any



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6115 other state without regard to whether adjudication was withheld;
6116 or

6117 (g) Is under suspension or revocation in another state.

6118 (3) The office department may, pursuant to s. 120.60, in
6119 its discretion and without advance notice or hearing thereon,
6120 immediately suspend the certificate of any administrator if it
6121 finds that one or more of the following circumstances exist:

6122 (a) The administrator is insolvent or impaired.

6123 (b) The fidelity bond required by s. 626.8809 is not
6124 maintained.

6125 (c) A proceeding for receivership, conservatorship,
6126 rehabilitation, or other delinquency proceeding regarding the
6127 administrator has been commenced in any state.

6128 (d) The financial condition or business practices of the
6129 administrator otherwise pose an imminent threat to the public
6130 health, safety, or welfare of the residents of this state.

6131 (4) The violation of this part by any insurer shall be a
6132 ground for suspension or revocation of the certificate of
6133 authority of that insurer in this state.

6134 Section 137. Section 626.892, Florida Statutes, is amended
6135 to read:

6136 626.892 Order of suspension or revocation of certificate
6137 of authority; notice.--

6138 (1) The suspension or revocation of a certificate of
6139 authority of an administrator shall be effected by order of the
6140 office department mailed to the administrator by registered or
6141 certified mail.



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6142 (2) In its discretion, the office ~~department~~ may cause
6143 notice of any such revocation or suspension to be published in
6144 one or more newspapers of general circulation published in this
6145 state.

6146 Section 138. Subsections (1), (3), and (4) of section
6147 626.894, Florida Statutes, are amended to read:

6148 626.894 Administrative fine in lieu of suspension or
6149 revocation.--

6150 (1) If the office ~~department~~ finds that one or more
6151 grounds exist for the suspension or revocation of a certificate
6152 of authority issued under this part, the office ~~department~~ may,
6153 in lieu of such suspension or revocation, impose a fine upon the
6154 administrator.

6155 (3) With respect to any knowing and willful violation of a
6156 lawful order or rule of the office or commission ~~department~~ or a
6157 provision of this part, the office ~~department~~ may impose a fine
6158 upon the administrator in an amount not to exceed \$5,000 for
6159 each such violation. In no event may such fine exceed an
6160 aggregate amount of \$25,000 for all knowing and willful
6161 violations arising out of the same action. In addition to such
6162 fine, the administrator shall make restitution when due in
6163 accordance with the provisions of subsection (2).

6164 (4) The failure of an administrator to make restitution
6165 when due as required under this section constitutes a willful
6166 violation of this part. However, if an administrator in good
6167 faith is uncertain as to whether any restitution is due or as to
6168 the amount of restitution due, it shall promptly notify the
6169 office ~~department~~ of the circumstances; and the failure to make



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6170 restitution pending a determination of whether restitution is
6171 due or the amount of restitution due will not constitute a
6172 violation of this part.

6173 Section 139. Section 626.895, Florida Statutes, is amended
6174 to read:

6175 626.895 Definition of "service company" or "service
6176 agent".--For the purpose of this part, a "service company" is
6177 any business entity which has met all the requirements of ss.
6178 626.895-626.899, which does not control funds, and which has
6179 obtained office ~~department~~ approval to contract with self-
6180 insurers or multiple-employer welfare arrangements for the
6181 purpose of providing all or any part of the services necessary
6182 to establish and maintain a multiple-employer welfare
6183 arrangement as defined in s. 624.437(1). The term "service
6184 agent" is synonymous with the term "service company" as used in
6185 this part.

6186 Section 140. Subsection (3) of section 626.896, Florida
6187 Statutes, is amended to read:

6188 626.896 Servicing requirements for self-insurers and
6189 multiple-employer welfare arrangements.--

6190 (3) It is the responsibility of the self-insurer or
6191 multiple-employer welfare arrangement to notify the office
6192 ~~department~~ within 90 days of changing its method of fulfilling
6193 its servicing requirements from those which were previously
6194 filed with the office ~~department~~.

6195 Section 141. Subsection (2) of section 626.897, Florida
6196 Statutes, is amended to read:



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6197 626.897 Application for authorization to act as service
6198 company; bond.--

6199 (2) Any business desiring to act as a service company for
6200 individual self-insurers or multiple-employer welfare
6201 arrangements shall be approved by the office ~~department~~. Any
6202 business acting as a service company prior to October 1, 1983,
6203 will be approved as a service company upon complying with the
6204 filing requirements of this section and s. 626.898. The failure
6205 of any person to obtain such approval while acting as a service
6206 company shall subject such person to a fine of not less than
6207 \$5,000 or more than \$10,000 for each violation.

6208 Section 142. Subsections (3) and (10) of section 626.898,
6209 Florida Statutes, are amended to read:

6210 626.898 Requirements for retaining authorization as
6211 service company; recertification.--

6212 (3)(a) Each service company shall maintain at one or more
6213 locations within this state copies of all contracts with each
6214 self-insurer or multiple-employer welfare arrangement that it
6215 services and records relating thereto which are sufficient in
6216 type and quantity to verify the accuracy and completeness of all
6217 reports and documents submitted to the office ~~department~~
6218 pursuant to this part. In the event that the service company has
6219 its records distributed in multiple locations, it shall inform
6220 the office ~~department~~ as to the location of each type of record,
6221 as well as the location of specific records for the self-
6222 insurers or multiple-employer welfare arrangements it services.

6223 (b) These records shall be open to inspection by
6224 representatives of the office ~~department~~ during regular business



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6225 | hours. All records shall be retained according to the schedule
6226 | adopted by the commission ~~department~~ for similar documents. The
6227 | location of these records shall be made known to the office
6228 | ~~department~~ as necessary.

6229 | (10) Each service company shall identify to the office
6230 | ~~department~~ any ownership interest or affiliation of any kind
6231 | with any insurance company responsible directly or through
6232 | reinsurance for providing benefits to any plan for which it
6233 | provides services.

6234 | Section 143. Section 626.899, Florida Statutes, is amended
6235 | to read:

6236 | 626.899 Withdrawal of authorization as service
6237 | company.--The failure to comply with any provision of ss.
6238 | 626.895-626.899 or with any rule or any order of the commission
6239 | or office ~~department~~ within the time prescribed shall be
6240 | considered good cause for withdrawal of the certificate of
6241 | approval. The office ~~department~~ shall by registered or
6242 | certified mail give to the service company prior written notice
6243 | of such withdrawal. The service company shall have 30 days from
6244 | the date of mailing to request a hearing. The failure to
6245 | request a hearing within the time prescribed shall result in the
6246 | withdrawal becoming effective 45 days from the date of mailing
6247 | of the original notice. In no event shall the withdrawal of the
6248 | certificate of approval be effective prior to the date upon
6249 | which a hearing, if requested, is scheduled. Copies of such
6250 | notice of withdrawal of a certificate of approval shall be
6251 | furnished by the office ~~department~~ to each self-funded program
6252 | serviced.



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6253 Section 144. Subsection (4) of section 626.901, Florida
6254 Statutes, is amended to read:

6255 626.901 Representing or aiding unauthorized insurer
6256 prohibited.--

6257 (4) This section does not apply to:

6258 (a) Matters authorized to be done by the office ~~department~~
6259 under the Unauthorized Insurers Process Law, ss. 626.904-
6260 626.912.

6261 (b) Surplus lines insurance when written pursuant to the
6262 Surplus Lines Law, ss. 626.913-626.937.

6263 (c) Transactions as to which a certificate of authority is
6264 not required of an insurer, as stated in s. 624.402.

6265 (d) Independently procured coverage written pursuant to s.
6266 626.938.

6267 Section 145. Section 626.906, Florida Statutes, is amended
6268 to read:

6269 626.906 Acts constituting Chief Financial Officer
6270 ~~Insurance Commissioner and Treasurer~~ as process agent.--Any of
6271 the following acts in this state, effected by mail or otherwise,
6272 by an unauthorized foreign insurer, alien insurer, or person
6273 representing or aiding such an insurer is equivalent to and
6274 shall constitute an appointment by such insurer or person
6275 representing or aiding such insurer of the Chief Financial
6276 Officer ~~Insurance Commissioner and Treasurer, and his or her~~
6277 ~~successor or successors in office,~~ to be its true and lawful
6278 attorney, upon whom may be served all lawful process in any
6279 action, suit, or proceeding instituted by or on behalf of an
6280 insured or beneficiary, arising out of any such contract of



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6281 insurance; and any such act shall be signification of the
6282 insurer's or person's agreement that such service of process is
6283 of the same legal force and validity as personal service of
6284 process in this state upon such insurer or person representing
6285 or aiding such insurer:

6286 (1) The issuance or delivery of contracts of insurance to
6287 residents of this state or to corporations authorized to do
6288 business therein;

6289 (2) The solicitation of applications for such contracts;

6290 (3) The collection of premiums, membership fees,
6291 assessments, or other considerations for such contracts; or

6292 (4) Any other transaction of insurance.

6293 Section 146. Subsection (1) of section 626.907, Florida
6294 Statutes, is amended to read:

6295 626.907 Service of process; judgment by default.--

6296 (1) Service of process upon an insurer or person
6297 representing or aiding such insurer pursuant to s. 626.906 shall
6298 be made by delivering to and leaving with the Chief Financial
6299 Officer ~~Insurance Commissioner and Treasurer~~ or some person in
6300 apparent charge of his or her office two copies thereof. The
6301 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
6302 shall forthwith mail by registered mail one of the copies of
6303 such process to the defendant at the defendant's last known
6304 principal place of business and shall keep a record of all
6305 process so served upon him or her. The service of process is
6306 sufficient, provided notice of such service and a copy of the
6307 process are sent within 10 days thereafter by registered mail by
6308 plaintiff or plaintiff's attorney to the defendant at the



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6309 defendant's last known principal place of business, and the
6310 defendant's receipt, or receipt issued by the post office with
6311 which the letter is registered, showing the name of the sender
6312 of the letter and the name and address of the person to whom the
6313 letter is addressed, and the affidavit of the plaintiff or
6314 plaintiff's attorney showing a compliance herewith are filed
6315 with the clerk of the court in which the action is pending on or
6316 before the date the defendant is required to appear, or within
6317 such further time as the court may allow.

6318 Section 147. Section 626.909, Florida Statutes, is amended
6319 to read:

6320 626.909 Jurisdiction of office and department; service of
6321 process on Secretary of State.--

6322 (1) The Legislature hereby declares that it is a subject
6323 of concern that the purpose of the Unauthorized Insurers Process
6324 Law as expressed in s. 626.905 may be denied by the possibility
6325 that the right of service of process provided for in that law
6326 may be restricted only to those actions, suits, or proceedings
6327 brought by insureds or beneficiaries. It therefore declares that
6328 it is the intent of s. 626.905 that it is the obligation and
6329 duty of the state to protect its residents and also proceed
6330 under this law through the office or department in the courts of
6331 this state. It further declares that it is also the intent of
6332 the Legislature to subject unauthorized insurers and persons
6333 representing or aiding such insurers to the jurisdiction of the
6334 office or department in proceedings, examinations, or hearings
6335 before it as provided for in this code.



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6336 (2) In addition to the procedure for service of process on
6337 unauthorized insurers or persons representing or aiding such
6338 insurers contained in ss. 626.906 and 626.907, the office or
6339 department shall have the right to bring any action, suit, or
6340 proceeding in the name of the state or conduct any proceeding,
6341 examination, or hearing provided for in this code against any
6342 unauthorized insurer or person representing or aiding such
6343 insurer for violation of any lawful order of the office or
6344 department or any provision of this code, specifically including
6345 but not limited to the regulation of trade practices provided
6346 for in part IX of this chapter, if the insurer or person
6347 representing or aiding such insurer transacts insurance in this
6348 state as defined in ss. 624.10 and 626.906 and the insurer does
6349 not transact such business under a subsisting certificate of
6350 authority as required by s. 624.401. In the event the
6351 transaction of business is done by mail, the venue of the act is
6352 at the point where the matter transmitted by mail is delivered
6353 and takes effect.

6354 (3) In addition to the right of action, suit, or
6355 proceeding authorized by subsection (2), the office or
6356 department shall have the right to bring a civil action in the
6357 name of the state, as parens patriae on behalf of any insured,
6358 beneficiary of any insured, claimant or dependent, or any other
6359 person or class of persons injured as a result of the
6360 transaction of any insurance business as defined in s. 626.906
6361 by any unauthorized insurer, as defined in s. 624.09 who is also
6362 an ineligible insurer as set forth in ss. 626.917 and 626.918,
6363 or any person who represents or aids any unauthorized insurer,



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6364 | in violation of s. 626.901, to recover actual damages on behalf
6365 | of individuals who were residents at the time the transaction
6366 | occurred and the cost of such suit, including a reasonable
6367 | attorney's fee. The court shall exclude from the amount of
6368 | monetary relief awarded in such action any amount of monetary
6369 | relief which duplicates amounts which have been awarded for the
6370 | same injury.

6371 | (4) Transaction of business in this state, as so defined,
6372 | by any unauthorized insurer or person representing or aiding
6373 | such insurer shall be deemed consent by the insurer or person
6374 | representing or aiding such insurer to the jurisdiction of the
6375 | office or department in proceedings, examinations, and hearings
6376 | before it as provided for in this code and shall constitute an
6377 | irrevocable appointment by the insurer or person representing or
6378 | aiding such insurer of the Secretary of State and his or her
6379 | successor or successors in office as its true and lawful
6380 | attorney upon whom may be served all lawful process in any
6381 | action, suit, or proceeding in any court by the office or
6382 | department or by the state and upon whom may be served all
6383 | notices and orders of the office or department arising out of
6384 | any such transaction of business; and such transaction of
6385 | business shall constitute the agreement of the insurer or person
6386 | representing or aiding such insurer that any such process
6387 | against it or any such notice or order which is so served shall
6388 | be of the same legal force and validity as if served personally
6389 | within this state on the insurer or person representing or
6390 | aiding such insurer. Service of process shall be in accordance
6391 | with and in the same manner as now provided for service of



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6392 process upon nonresidents under the provision of s. 48.161, and
6393 service of process shall also be valid if made as provided in s.
6394 626.907(2).

6395 (5) No plaintiff shall be entitled to a judgment by
6396 default or a decree pro confesso under this section until the
6397 expiration of 30 days after date of the filing of the affidavit
6398 of compliance.

6399 (6) Nothing in this section shall limit or abridge the
6400 right to serve any process, notice, orders, or demand upon the
6401 insurer or person representing or aiding such insurer in any
6402 other manner now or hereafter permitted by law.

6403 (7) Nothing in this section shall apply as to surplus
6404 lines insurance when written pursuant to the Surplus Lines Law,
6405 ss. 626.913-626.937, or as to transactions as to which a
6406 certificate of authority is not required of the insurer, as
6407 stated in s. 624.402.

6408 Section 148. Section 626.910, Florida Statutes, is amended
6409 to read:

6410 626.910 Penalty for violation by unauthorized insurers and
6411 persons representing or aiding such insurers.--Any unauthorized
6412 insurer or person representing or aiding such insurer
6413 transacting insurance in this state and subject to service of
6414 process as referred to in s. 626.909 shall forfeit and pay to
6415 the state a civil penalty of not more than \$1,000 for each
6416 nonwillful violation, or not more than \$10,000 for each willful
6417 violation, of any lawful order of the office or department or
6418 any provision of this code.



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6419 Section 149. Section 626.912, Florida Statutes, is amended
6420 to read:

6421 626.912 Exemptions from ss. 626.904-626.911.--The
6422 provisions of ss. 626.904-626.911 do not apply to any action,
6423 suit, or proceeding against any unauthorized foreign insurer,
6424 alien insurer, or person representing or aiding such an insurer
6425 arising out of any contract of insurance:

6426 (1) Covering reinsurance, wet marine and transportation,
6427 commercial aircraft, or railway insurance risks;

6428 (2) Against legal liability arising out of the ownership,
6429 operation, or maintenance of any property having a permanent
6430 situs outside this state;

6431 (3) Against loss of or damage to any property having a
6432 permanent situs outside this state; or

6433 (4) Issued under and in accordance with the Surplus Lines
6434 Law, when such insurer or person representing or aiding such
6435 insurer enters a general appearance or when such contract of
6436 insurance contains a provision designating the Chief Financial
6437 Officer ~~Insurance Commissioner and Treasurer and his or her~~
6438 ~~successor or successors~~ in office or designating a Florida
6439 resident agent to be the true and lawful attorney of such
6440 unauthorized insurer or person representing or aiding such
6441 insurer upon whom may be served all lawful process in any
6442 action, suit, or proceeding instituted by or on behalf of an
6443 insured or person representing or aiding such insurer or
6444 beneficiary arising out of any such contract of insurance; and
6445 service of process effected on such Chief Financial Officer
6446 ~~Insurance Commissioner and Treasurer, his or her successor or~~



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6447 ~~successors in office,~~ or such resident agent shall be deemed to
6448 confer complete jurisdiction over such unauthorized insurer or
6449 person representing or aiding such insurer in such action.

6450 Section 150. Subsection (2) of section 626.914, Florida
6451 Statutes, is amended to read:

6452 626.914 Definitions.--As used in this Surplus Lines Law,
6453 the term:

6454 (2) "Eligible surplus lines insurer" means an unauthorized
6455 insurer which has been made eligible by the office ~~department~~ to
6456 issue insurance coverage under this Surplus Lines Law.

6457 Section 151. Subsections (1) and (2) of section 626.916,
6458 Florida Statutes, are amended to read:

6459 626.916 Eligibility for export.--

6460 (1) No insurance coverage shall be eligible for export
6461 unless it meets all of the following conditions:

6462 (a) The full amount of insurance required must not be
6463 procurable, after a diligent effort has been made by the
6464 producing agent to do so, from among the insurers authorized to
6465 transact and actually writing that kind and class of insurance
6466 in this state, and the amount of insurance exported shall be
6467 only the excess over the amount so procurable from authorized
6468 insurers. Surplus lines agents must verify that a diligent
6469 effort has been made by requiring a properly documented
6470 statement of diligent effort from the retail or producing agent.
6471 However, to be in compliance with the diligent effort
6472 requirement, the surplus lines agent's reliance must be
6473 reasonable under the particular circumstances surrounding the
6474 export of that particular risk. Reasonableness shall be assessed



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6475 | by taking into account factors which include, but are not
6476 | limited to, a regularly conducted program of verification of the
6477 | information provided by the retail or producing agent.

6478 | Declinations must be documented on a risk-by-risk basis. If it
6479 | is not possible to obtain the full amount of insurance required
6480 | by layering the risk, it is permissible to export the full
6481 | amount.

6482 | (b) The premium rate at which the coverage is exported
6483 | shall not be lower than that rate applicable, if any, in actual
6484 | and current use by a majority of the authorized insurers for the
6485 | same coverage on a similar risk.

6486 | (c) The policy or contract form under which the insurance
6487 | is exported shall not be more favorable to the insured as to the
6488 | coverage or rate than under similar contracts on file and in
6489 | actual current use in this state by the majority of authorized
6490 | insurers actually writing similar coverages on similar risks;
6491 | except that a coverage may be exported under a unique form of
6492 | policy designed for use with respect to a particular subject of
6493 | insurance if a copy of such form is filed with the office
6494 | ~~department~~ by the surplus lines agent desiring to use the same
6495 | and is subject to the disapproval of the office ~~department~~
6496 | within 10 days of filing such form exclusive of Saturdays,
6497 | Sundays, and legal holidays if it finds that the use of such
6498 | special form is not reasonably necessary for the principal
6499 | purposes of the coverage or that its use would be contrary to
6500 | the purposes of this Surplus Lines Law with respect to the
6501 | reasonable protection of authorized insurers from unwarranted
6502 | competition by unauthorized insurers.



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6503 (d) Except as to extended coverage in connection with fire
6504 insurance policies and except as to windstorm insurance, the
6505 policy or contract under which the insurance is exported shall
6506 not provide for deductible amounts, in determining the existence
6507 or extent of the insurer's liability, other than those available
6508 under similar policies or contracts in actual and current use by
6509 one or more authorized insurers.

6510 (2) The commission ~~department~~ may by rule ~~rules and~~
6511 ~~regulations~~ declare eligible for export generally, and
6512 notwithstanding the provisions of paragraphs (a), (b), (c), and
6513 (d) of subsection (1), any class or classes of insurance
6514 coverage or risk for which it finds, after a hearing, that there
6515 is no reasonable or adequate market among authorized insurers.
6516 Any such rules ~~and regulations~~ shall continue in effect during
6517 the existence of the conditions upon which predicated, but
6518 subject to termination by the commission ~~department~~.

6519 Section 152. Subsection (1) of section 626.917, Florida
6520 Statutes, is amended to read:

6521 626.917 Eligibility for export; wet marine and
6522 transportation, aviation risks.--

6523 (1) Insurance coverage of wet marine and transportation
6524 risks, as defined in this code in s. 624.607(2), or aviation
6525 risks, including airport and products liability incidental
6526 thereto and hangarkeeper's liability, may be exported under the
6527 following conditions:

6528 (a) The insurance must be placed only by or through a
6529 licensed Florida surplus lines agent; and



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6530 (b) The insurer must be one made eligible by the office
6531 ~~department~~ specifically for such coverages, based upon
6532 information furnished by the insurer and indicating that the
6533 insurer is well able to meet its financial obligations.

6534 Section 153. Section 626.918, Florida Statutes, is amended
6535 to read:

6536 626.918 Eligible surplus lines insurers.--

6537 (1) No surplus lines agent shall place any coverage with
6538 any unauthorized insurer which is not then an eligible surplus
6539 lines insurer, except as permitted under subsections (5) and
6540 (6).

6541 (2) No unauthorized insurer shall be or become an eligible
6542 surplus lines insurer unless made eligible by the office
6543 ~~department~~ in accordance with the following conditions:

6544 (a) Eligibility of the insurer must be requested in
6545 writing by the Florida Surplus Lines Service Office;

6546 (b) The insurer must be currently an authorized insurer in
6547 the state or country of its domicile as to the kind or kinds of
6548 insurance proposed to be so placed and must have been such an
6549 insurer for not less than the 3 years next preceding or must be
6550 the wholly owned subsidiary of such authorized insurer or must
6551 be the wholly owned subsidiary of an already eligible surplus
6552 lines insurer as to the kind or kinds of insurance proposed for
6553 a period of not less than the 3 years next preceding. However,
6554 the office ~~department~~ may waive the 3-year requirement if the
6555 insurer provides a product or service not readily available to
6556 the consumers of this state or has operated successfully for a



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6557 | period of at least 1 year next preceding and has capital and
6558 | surplus of not less than \$25 million;

6559 | (c) Before granting eligibility, the requesting surplus
6560 | lines agent or the insurer shall furnish the office department
6561 | with a duly authenticated copy of its current annual financial
6562 | statement in the English language and with all monetary values
6563 | therein expressed in United States dollars, at an exchange rate
6564 | (in the case of statements originally made in the currencies of
6565 | other countries) then-current and shown in the statement, and
6566 | with such additional information relative to the insurer as the
6567 | office department may request;

6568 | (d)1. The insurer must have and maintain surplus as to
6569 | policyholders of not less than \$15 million; in addition, an
6570 | alien insurer must also have and maintain in the United States a
6571 | trust fund for the protection of all its policyholders in the
6572 | United States under terms deemed by the office department to be
6573 | reasonably adequate, in an amount not less than \$5.4 million.
6574 | Any such surplus as to policyholders or trust fund shall be
6575 | represented by investments consisting of eligible investments
6576 | for like funds of like domestic insurers under part II of
6577 | chapter 625 provided, however, that in the case of an alien
6578 | insurance company, any such surplus as to policyholders may be
6579 | represented by investments permitted by the domestic regulator
6580 | of such alien insurance company if such investments are
6581 | substantially similar in terms of quality, liquidity, and
6582 | security to eligible investments for like funds of like domestic
6583 | insurers under part II of chapter 625;



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6584 2. For those surplus lines insurers that were eligible on
6585 January 1, 1994, and that maintained their eligibility
6586 thereafter, the required surplus as to policyholders shall be:
6587 a. On December 31, 1994, and until December 30, 1995, \$2.5
6588 million.
6589 b. On December 31, 1995, and until December 30, 1996, \$3.5
6590 million.
6591 c. On December 31, 1996, and until December 30, 1997, \$4.5
6592 million.
6593 d. On December 31, 1997, and until December 30, 1998, \$5.5
6594 million.
6595 e. On December 31, 1998, and until December 30, 1999, \$6.5
6596 million.
6597 f. On December 31, 1999, and until December 30, 2000, \$8
6598 million.
6599 g. On December 31, 2000, and until December 30, 2001, \$9.5
6600 million.
6601 h. On December 31, 2001, and until December 30, 2002, \$11
6602 million.
6603 i. On December 31, 2002, and until December 30, 2003, \$13
6604 million.
6605 j. On December 31, 2003, and thereafter, \$15 million.
6606 3. The capital and surplus requirements as set forth in
6607 subparagraph 2. do not apply in the case of an insurance
6608 exchange created by the laws of individual states, where the
6609 exchange maintains capital and surplus pursuant to the
6610 requirements of that state, or maintains capital and surplus in
6611 an amount not less than \$50 million in the aggregate. For an



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6612 insurance exchange which maintains funds in the amount of at
6613 least \$12 million for the protection of all insurance exchange
6614 policyholders, each individual syndicate shall maintain minimum
6615 capital and surplus in an amount not less than \$3 million. If
6616 the insurance exchange does not maintain funds in the amount of
6617 at least \$12 million for the protection of all insurance
6618 exchange policyholders, each individual syndicate shall meet the
6619 minimum capital and surplus requirements set forth in
6620 subparagraph 2.;

6621 4. A surplus lines insurer which is a member of an
6622 insurance holding company that includes a member which is a
6623 Florida domestic insurer as set forth in its holding company
6624 registration statement, as set forth in s. 628.801 and rules
6625 adopted thereunder, may elect to maintain surplus as to
6626 policyholders in an amount equal to the requirements of s.
6627 624.408, subject to the requirement that the surplus lines
6628 insurer shall at all times be in compliance with the
6629 requirements of chapter 625.

6630
6631 The election shall be submitted to the office ~~department~~ and
6632 shall be effective upon the office's ~~department's~~ being
6633 satisfied that the requirements of subparagraph 4. have been
6634 met. The initial date of election shall be the date of office
6635 ~~department~~ approval. The election approval application shall be
6636 on a form adopted by commission ~~department~~ rule. The office
6637 ~~department~~ may approve an election form submitted pursuant to
6638 subparagraph 4. only if it was on file with the former
6639 Department of Insurance before February 28, 1998;



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6640 (e) The insurer must be of good reputation as to the
6641 providing of service to its policyholders and the payment of
6642 losses and claims;

6643 (f) The insurer must be eligible, as for authority to
6644 transact insurance in this state, under s. 624.404(3); and

6645 (g) This subsection does not apply as to unauthorized
6646 insurers made eligible under s. 626.917 as to wet marine and
6647 aviation risks.

6648 (3) The office ~~department~~ shall from time to time publish
6649 a list of all currently eligible surplus lines insurers and
6650 shall mail a copy thereof to each licensed surplus lines agent
6651 at his or her office of record with the office ~~department~~.

6652 (4) This section shall not be deemed to cast upon the
6653 office ~~department~~ any duty or responsibility to determine the
6654 actual financial condition or claims practices of any
6655 unauthorized insurer; and the status of eligibility, if granted
6656 by the office ~~department~~, shall indicate only that the insurer
6657 appears to be sound financially and to have satisfactory claims
6658 practices and that the office ~~department~~ has no credible
6659 evidence to the contrary.

6660 (5) When it appears that any particular insurance risk
6661 which is eligible for export, but on which insurance coverage,
6662 in whole or in part, is not procurable from the eligible surplus
6663 lines insurers, after a search of eligible surplus lines
6664 insurers, then the surplus lines agent may file a supplemental
6665 signed statement setting forth such facts and advising the
6666 office ~~department~~ that such part of the risk as shall be
6667 unprocurable, as aforesaid, is being placed with named



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6668 | unauthorized insurers, in the amounts and percentages set forth
6669 | in the statement. Such named unauthorized insurer shall,
6670 | however, before accepting any risk in this state, deposit with
6671 | the department cash or securities acceptable to the office and
6672 | department of the market value of \$50,000 for each individual
6673 | risk, contract, or certificate, which deposit shall be held by
6674 | the department for the benefit of Florida policyholders only;
6675 | and the surplus lines agent shall procure from such unauthorized
6676 | insurer and file with the office ~~department~~ a certified copy of
6677 | its statement of condition as of the close of the last calendar
6678 | year. If such statement reveals, including both capital and
6679 | surplus, net assets of at least that amount required for
6680 | licensure of a domestic insurer, then the surplus lines agent
6681 | may proceed to consummate such contract of insurance. Whenever
6682 | any insurance risk, or any part thereof, is placed with an
6683 | unauthorized insurer, as provided herein, the policy, binder, or
6684 | cover note shall contain a statement signed by the insured and
6685 | the agent with the following notation: "The insured is aware
6686 | that certain insurers participating in this risk have not been
6687 | approved to transact business in Florida nor have they been
6688 | declared eligible as surplus lines insurers by the Office of
6689 | Insurance Regulation ~~Department of Insurance~~ of Florida. The
6690 | placing of such insurance by a duly licensed surplus lines agent
6691 | in Florida shall not be construed as approval of such insurer by
6692 | the Office of Insurance Regulation ~~Department of Insurance~~ of
6693 | Florida. Consequently, the insured is aware that the insured
6694 | has severely limited the assistance available under the
6695 | insurance laws of Florida. The insured is further aware that he



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6696 or she may be charged a reasonable per policy fee, as provided
6697 in s. 626.916(4), Florida Statutes, for each policy certified
6698 for export." All other provisions of this code shall apply to
6699 such placement the same as if such risks were placed with an
6700 eligible surplus lines insurer.

6701 (6) When any particular insurance risk subject to
6702 subsection (5) is eligible for placement with an unauthorized
6703 insurer and not more than 12.5 percent of the risk is so
6704 subject, the office ~~Department of Insurance~~ may, at its
6705 discretion, permit the agent to obtain from the insured a signed
6706 statement as indicated in subsection (5). All other provisions
6707 of this code apply to such placement the same as if such risks
6708 were placed with an eligible surplus lines insurer.

6709 Section 154. Section 626.919, Florida Statutes, is amended
6710 to read:

6711 626.919 Withdrawal of eligibility; surplus lines
6712 insurer.--

6713 (1) If at any time the office ~~department~~ has reason to
6714 believe that any unauthorized insurer then on the list of
6715 eligible surplus lines insurers is insolvent or in unsound
6716 financial condition, or does not make reasonable prompt payment
6717 of just losses and claims in this state, or that it is no longer
6718 eligible under the conditions therefor provided in s. 626.918,
6719 it shall withdraw the eligibility of the insurer to insure
6720 surplus lines risks in this state.

6721 (2) If the office ~~department~~ finds that an insurer
6722 currently eligible as a surplus lines insurer has willfully
6723 violated the laws of this state or a rule of the commission



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6724 ~~department~~, it may, in its discretion, withdraw the eligibility
6725 of the insurer to insure surplus lines risks in this state.

6726 (3) The office ~~department~~ shall promptly mail notice of
6727 all such withdrawals of eligibility to each surplus lines agent
6728 at his or her address of record with the department.

6729 Section 155. Subsection (8) of section 626.921, Florida
6730 Statutes, is amended to read:

6731 626.921 Florida Surplus Lines Service Office.--

6732 (8)(a) Information furnished to the department under s.
6733 626.923 or contained in the records subject to examination by
6734 the department under s. 626.930 is confidential and exempt from
6735 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
6736 Constitution if the disclosure of the information would reveal
6737 information specific to a particular policy or policyholder.
6738 The exemption does not apply to any proceeding instituted by the
6739 department or office against an agent or insurer.

6740 (b) Information furnished to the Florida Surplus Lines
6741 Service Office under the Surplus Lines Law is confidential and
6742 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
6743 of the State Constitution if the disclosure of the information
6744 would reveal information specific to a particular policy or
6745 policyholder. This exemption does not prevent the disclosure of
6746 any information by the Florida Surplus Lines Service Office to
6747 the department, but the exemption applies to records obtained by
6748 the department from the Florida Surplus Lines Service Office.
6749 The exemption does not apply to any proceeding instituted by the
6750 department or office against an agent or insurer. This paragraph
6751 is subject to the Open Government Sunset Review Act of 1995 in



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6752 accordance with s. 119.15, and shall stand repealed on October
6753 2, 2006, unless reviewed and saved from repeal through
6754 reenactment by the Legislature.

6755 Section 156. Subsection (5) of section 626.931, Florida
6756 Statutes, is amended to read:

6757 626.931 Agent affidavit and insurer reporting
6758 requirements.--

6759 (5) The department may ~~Insurance Commissioner shall have~~
6760 ~~the authority to~~ waive the filing requirements described in
6761 subsections(3) and (4).

6762 Section 157. Subsections (2) and (5) of section 626.932,
6763 Florida Statutes, are amended to read:

6764 626.932 Surplus lines tax.--

6765 (2)(a) The surplus lines agent shall make payable to the
6766 department ~~of Insurance~~ the tax related to each calendar
6767 quarter's business as reported to the Florida Surplus Lines
6768 Service Office, and remit the tax to the Florida Surplus Lines
6769 Service Office at the same time as provided for the filing of
6770 the quarterly affidavit, under s. 626.931. The Florida Surplus
6771 Lines Service Office shall forward to the department the taxes
6772 and any interest collected pursuant to paragraph (b), within 10
6773 days of receipt.

6774 (b) The agent shall pay interest on the amount of any
6775 delinquent tax due, at the rate of 9 percent per year,
6776 compounded annually, beginning the day the amount becomes
6777 delinquent.

6778 (5) The department shall deposit 55 percent of all taxes
6779 collected under this section to the credit of the Insurance



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6780 ~~Commissioner's~~ Regulatory Trust Fund. Forty-five percent of all
6781 taxes collected under this section shall be deposited into the
6782 General Revenue Fund.

6783 Section 158. Section 626.936, Florida Statutes, is amended
6784 to read:

6785 626.936 Failure to file reports or pay tax or service fee;
6786 administrative penalty.--

6787 (1) Any licensed surplus lines agent who neglects to file
6788 a report or an affidavit in the form and within the time
6789 required or provided for in the Surplus Lines Law may be fined
6790 up to \$50 per day for each day the neglect continues, beginning
6791 the day after the report or affidavit was due until the date the
6792 report or affidavit is received. All sums collected under this
6793 section shall be deposited into the Insurance ~~Commissioner's~~
6794 Regulatory Trust Fund.

6795 (2) Any licensed surplus lines agent who neglects to pay
6796 the taxes or service fees as required under the Surplus Lines
6797 Law and within the time required may be fined up to \$500 per day
6798 for each day the failure to pay continues, beginning the day
6799 after the tax or service fees were due. The agent shall pay
6800 interest on the amount of any delinquent tax due, at the rate of
6801 9 percent per year, compounded annually, beginning the day the
6802 amount becomes delinquent. The department shall deposit all
6803 sums collected under this section into the Insurance
6804 ~~Commissioner's~~ Regulatory Trust Fund.

6805 Section 159. Section 626.9361, Florida Statutes, is
6806 amended to read:



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6807 626.9361 Failure to file report; administrative
6808 penalty.--Any eligible surplus lines insurer who fails to file a
6809 report in the form and within the time required or provided for
6810 in the Surplus Lines Law may be fined up to \$500 per day for
6811 each day such failure continues, beginning the day after the
6812 report was due, until the date the report is received. Failure
6813 to file a report may also result in withdrawal of eligibility as
6814 a surplus lines insurer in this state. All sums collected by the
6815 department under this section shall be deposited into the
6816 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

6817 Section 160. Subsections (2), (3), and (4) of section
6818 626.937, Florida Statutes, are amended to read:

6819 626.937 Actions against insurer; service of process.--

6820 (2) The unauthorized insurer accepting the risk or issuing
6821 the policy shall be deemed thereby to have authorized service of
6822 process against it in the manner and to the effect as provided
6823 in this section, and to have appointed the Chief Financial
6824 Officer ~~Insurance Commissioner and Treasurer~~ as its agent for
6825 service of process issuing upon any cause of action arising in
6826 this state under any such policy, contract, or insurance.

6827 (3) Each unauthorized insurer requesting eligibility
6828 pursuant to s. 626.918 shall file with the department its
6829 appointment of the Chief Financial Officer ~~Insurance~~
6830 ~~Commissioner and Treasurer and his or her successors in office,~~
6831 on a form as furnished by the department, as its attorney to
6832 receive service of all legal process issued against it in any
6833 civil action or proceeding in this state, and agreeing that
6834 process so served shall be valid and binding upon the insurer.



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6835 The appointment shall be irrevocable, shall bind the insurer and
6836 any successor in interest as to the assets or liabilities of the
6837 insurer, and shall remain in effect as long as there is
6838 outstanding in this state any obligation or liability of the
6839 insurer resulting from its insurance transactions therein.

6840 (4) At the time of such appointment of the Chief Financial
6841 Officer ~~Insurance Commissioner and Treasurer~~ as its process
6842 agent, the insurer shall file with the department designation of
6843 the name and address of the person to whom process against it
6844 served upon the Chief Financial Officer ~~Insurance Commissioner~~
6845 ~~and Treasurer~~ is to be forwarded. The insurer may change the
6846 designation at any time by a new filing.

6847 Section 161. Subsections (3) and (7) of section 626.938,
6848 Florida Statutes, are amended to read:

6849 626.938 Report and tax of independently procured
6850 coverages.--

6851 (3) For the general support of the government of this
6852 state, there is levied upon the obligation, chose in action, or
6853 right represented by the premium charged for such insurance a
6854 tax at the rate of 5 percent of the gross amount of such premium
6855 and a 0.3 percent service fee pursuant to s. 626.9325. The
6856 insured shall withhold the amount of the tax and service fee
6857 from the amount of premium charged by and otherwise payable to
6858 the insurer for such insurance. Within 30 days after the
6859 insurance is procured, continued, or renewed, and simultaneously
6860 with the filing of the report provided for in subsection (1)
6861 with the Florida Surplus Lines Service Office, the insured shall
6862 make payable to the department ~~of Insurance~~ the amount of the



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6863 tax and make payable to the Florida Surplus Lines Service Office
6864 the amount of the service fee. The insured shall remit the tax
6865 and the service fee to the Florida Surplus Lines Service Office.
6866 The Florida Surplus Lines Service Office shall forward to the
6867 department the taxes, and any interest collected pursuant to
6868 subsection (5), within 10 days after receipt.

6869 (7) The department shall deposit 55 percent of all taxes
6870 and interest collected under this section to the credit of the
6871 Insurance Commissioner's Regulatory Trust Fund. Forty-five
6872 percent of all taxes and interest collected under this section
6873 shall be deposited into the General Revenue Fund.

6874 Section 162. Section 626.9511, Florida Statutes, is
6875 amended to read:

6876 626.9511 Definitions.--When used in this part:

6877 (1) "Person" means any individual, corporation,
6878 association, partnership, reciprocal exchange, interinsurer,
6879 Lloyds insurer, fraternal benefit society, or business trust or
6880 any entity involved in the business of insurance.

6881 ~~(2) "Department" means the Department of Insurance of this~~
6882 ~~state.~~

6883 (2)~~(3)~~ "Insurance policy" or "insurance contract" means a
6884 written contract of, or a written agreement for or effecting,
6885 insurance, or the certificate thereof, by whatever name called,
6886 and includes all clauses, riders, endorsements, and papers which
6887 are a part thereof.

6888 Section 163. Paragraphs (h), (o), (w), and (aa) of
6889 subsection (1) of section 626.9541, Florida Statutes, are
6890 amended to read:



6891 | 626.9541 Unfair methods of competition and unfair or
6892 | deceptive acts or practices defined.--

6893 | (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
6894 | ACTS.--The following are defined as unfair methods of
6895 | competition and unfair or deceptive acts or practices:

6896 | (h) Unlawful rebates.--

6897 | 1. Except as otherwise expressly provided by law, or in an
6898 | applicable filing with the office ~~department~~, knowingly:

6899 | a. Permitting, or offering to make, or making, any
6900 | contract or agreement as to such contract other than as plainly
6901 | expressed in the insurance contract issued thereon;

6902 | b. Paying, allowing, or giving, or offering to pay, allow,
6903 | or give, directly or indirectly, as inducement to such insurance
6904 | contract, any unlawful rebate of premiums payable on the
6905 | contract, any special favor or advantage in the dividends or
6906 | other benefits thereon, or any valuable consideration or
6907 | inducement whatever not specified in the contract;

6908 | c. Giving, selling, or purchasing, or offering to give,
6909 | sell, or purchase, as inducement to such insurance contract or
6910 | in connection therewith, any stocks, bonds, or other securities
6911 | of any insurance company or other corporation, association, or
6912 | partnership, or any dividends or profits accrued thereon, or
6913 | anything of value whatsoever not specified in the insurance
6914 | contract.

6915 | 2. Nothing in paragraph (g) or subparagraph 1. of this
6916 | paragraph shall be construed as including within the definition
6917 | of discrimination or unlawful rebates:



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6918 a. In the case of any contract of life insurance or life
6919 annuity, paying bonuses to all policyholders or otherwise
6920 abating their premiums in whole or in part out of surplus
6921 accumulated from nonparticipating insurance; provided that any
6922 such bonuses or abatement of premiums is fair and equitable to
6923 all policyholders and for the best interests of the company and
6924 its policyholders.

6925 b. In the case of life insurance policies issued on the
6926 industrial debit plan, making allowance to policyholders who
6927 have continuously for a specified period made premium payments
6928 directly to an office of the insurer in an amount which fairly
6929 represents the saving in collection expenses.

6930 c. Readjustment of the rate of premium for a group
6931 insurance policy based on the loss or expense thereunder, at the
6932 end of the first or any subsequent policy year of insurance
6933 thereunder, which may be made retroactive only for such policy
6934 year.

6935 d. Issuance of life insurance policies or annuity
6936 contracts at rates less than the usual rates of premiums for
6937 such policies or contracts, as group insurance or employee
6938 insurance as defined in this code.

6939 e. Issuing life or disability insurance policies on a
6940 salary savings, bank draft, preauthorized check, payroll
6941 deduction, or other similar plan at a reduced rate reasonably
6942 related to the savings made by the use of such plan.

6943 3.a. No title insurer, or any member, employee, attorney,
6944 agent, agency, or solicitor thereof, shall pay, allow, or give,
6945 or offer to pay, allow, or give, directly or indirectly, as



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6946 | inducement to title insurance, or after such insurance has been
6947 | effected, any rebate or abatement of the agent's, agency's, or
6948 | title insurer's share of the premium or any charge for related
6949 | title services below the cost for providing such services, or
6950 | provide any special favor or advantage, or any monetary
6951 | consideration or inducement whatever. Nothing herein contained
6952 | shall preclude an abatement in an attorney's fee charged for
6953 | legal services.

6954 | b. Nothing in this subparagraph shall be construed as
6955 | prohibiting the payment of fees to attorneys at law duly
6956 | licensed to practice law in the courts of this state, for
6957 | professional services, or as prohibiting the payment of earned
6958 | portions of the premium to duly appointed agents or agencies who
6959 | actually perform services for the title insurer.

6960 | c. No insured named in a policy, or any other person
6961 | directly or indirectly connected with the transaction involving
6962 | the issuance of such policy, including, but not limited to, any
6963 | mortgage broker, real estate broker, builder, or attorney, any
6964 | employee, agent, agency, or representative thereof, or any other
6965 | person whatsoever, shall knowingly receive or accept, directly
6966 | or indirectly, any rebate or abatement of said charge, or any
6967 | monetary consideration or inducement, other than as set forth in
6968 | sub-subparagraph b.

6969 | (o) Illegal dealings in premiums; excess or reduced
6970 | charges for insurance.--

6971 | 1. Knowingly collecting any sum as a premium or charge for
6972 | insurance, which is not then provided, or is not in due course
6973 | to be provided, subject to acceptance of the risk by the



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6974 insurer, by an insurance policy issued by an insurer as
6975 permitted by this code.

6976 2. Knowingly collecting as a premium or charge for
6977 insurance any sum in excess of or less than the premium or
6978 charge applicable to such insurance, in accordance with the
6979 applicable classifications and rates as filed with and approved
6980 by the office ~~department~~, and as specified in the policy; or, in
6981 cases when classifications, premiums, or rates are not required
6982 by this code to be so filed and approved, premiums and charges
6983 in excess of or less than those specified in the policy and as
6984 fixed by the insurer. This provision shall not be deemed to
6985 prohibit the charging and collection, by surplus lines agents
6986 licensed under part VIII of this chapter, of the amount of
6987 applicable state and federal taxes, or fees as authorized by s.
6988 626.916(4), in addition to the premium required by the insurer
6989 or the charging and collection, by licensed agents, of the exact
6990 amount of any discount or other such fee charged by a credit
6991 card facility in connection with the use of a credit card, as
6992 authorized by subparagraph (q)3., in addition to the premium
6993 required by the insurer. This subparagraph shall not be
6994 construed to prohibit collection of a premium for a universal
6995 life or a variable or indeterminate value insurance policy made
6996 in accordance with the terms of the contract.

6997 3.a. Imposing or requesting an additional premium for a
6998 policy of motor vehicle liability, personal injury protection,
6999 medical payment, or collision insurance or any combination
7000 thereof or refusing to renew the policy solely because the
7001 insured was involved in a motor vehicle accident unless the



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7002 insurer's file contains information from which the insurer in
7003 good faith determines that the insured was substantially at
7004 fault in the accident.

7005 b. An insurer which imposes and collects such a surcharge
7006 or which refuses to renew such policy shall, in conjunction with
7007 the notice of premium due or notice of nonrenewal, notify the
7008 named insured that he or she is entitled to reimbursement of
7009 such amount or renewal of the policy under the conditions listed
7010 below and will subsequently reimburse him or her or renew the
7011 policy, if the named insured demonstrates that the operator
7012 involved in the accident was:

7013 (I) Lawfully parked;

7014 (II) Reimbursed by, or on behalf of, a person responsible
7015 for the accident or has a judgment against such person;

7016 (III) Struck in the rear by another vehicle headed in the
7017 same direction and was not convicted of a moving traffic
7018 violation in connection with the accident;

7019 (IV) Hit by a "hit-and-run" driver, if the accident was
7020 reported to the proper authorities within 24 hours after
7021 discovering the accident;

7022 (V) Not convicted of a moving traffic violation in
7023 connection with the accident, but the operator of the other
7024 automobile involved in such accident was convicted of a moving
7025 traffic violation;

7026 (VI) Finally adjudicated not to be liable by a court of
7027 competent jurisdiction;

7028 (VII) In receipt of a traffic citation which was dismissed
7029 or nolle prossed; or



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7030 (VIII) Not at fault as evidenced by a written statement
7031 from the insured establishing facts demonstrating lack of fault
7032 which are not rebutted by information in the insurer's file from
7033 which the insurer in good faith determines that the insured was
7034 substantially at fault.

7035 c. In addition to the other provisions of this
7036 subparagraph, an insurer may not fail to renew a policy if the
7037 insured has had only one accident in which he or she was at
7038 fault within the current 3-year period. However, an insurer may
7039 nonrenew a policy for reasons other than accidents in accordance
7040 with s. 627.728. This subparagraph does not prohibit nonrenewal
7041 of a policy under which the insured has had three or more
7042 accidents, regardless of fault, during the most recent 3-year
7043 period.

7044 4. Imposing or requesting an additional premium for, or
7045 refusing to renew, a policy for motor vehicle insurance solely
7046 because the insured committed a noncriminal traffic infraction
7047 as described in s. 318.14 unless the infraction is:

7048 a. A second infraction committed within an 18-month
7049 period, or a third or subsequent infraction committed within a
7050 36-month period.

7051 b. A violation of s. 316.183, when such violation is a
7052 result of exceeding the lawful speed limit by more than 15 miles
7053 per hour.

7054 5. Upon the request of the insured, the insurer and
7055 licensed agent shall supply to the insured the complete proof of
7056 fault or other criteria which justifies the additional charge or
7057 cancellation.



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7058 | 6. No insurer shall impose or request an additional
7059 | premium for motor vehicle insurance, cancel or refuse to issue a
7060 | policy, or refuse to renew a policy because the insured or the
7061 | applicant is a handicapped or physically disabled person, so
7062 | long as such handicap or physical disability does not
7063 | substantially impair such person's mechanically assisted driving
7064 | ability.

7065 | 7. No insurer may cancel or otherwise terminate any
7066 | insurance contract or coverage, or require execution of a
7067 | consent to rate endorsement, during the stated policy term for
7068 | the purpose of offering to issue, or issuing, a similar or
7069 | identical contract or coverage to the same insured with the same
7070 | exposure at a higher premium rate or continuing an existing
7071 | contract or coverage with the same exposure at an increased
7072 | premium.

7073 | 8. No insurer may issue a nonrenewal notice on any
7074 | insurance contract or coverage, or require execution of a
7075 | consent to rate endorsement, for the purpose of offering to
7076 | issue, or issuing, a similar or identical contract or coverage
7077 | to the same insured at a higher premium rate or continuing an
7078 | existing contract or coverage at an increased premium without
7079 | meeting any applicable notice requirements.

7080 | 9. No insurer shall, with respect to premiums charged for
7081 | motor vehicle insurance, unfairly discriminate solely on the
7082 | basis of age, sex, marital status, or scholastic achievement.

7083 | 10. Imposing or requesting an additional premium for motor
7084 | vehicle comprehensive or uninsured motorist coverage solely



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7085 | because the insured was involved in a motor vehicle accident or
7086 | was convicted of a moving traffic violation.

7087 | 11. No insurer shall cancel or issue a nonrenewal notice
7088 | on any insurance policy or contract without complying with any
7089 | applicable cancellation or nonrenewal provision required under
7090 | the Florida Insurance Code.

7091 | 12. No insurer shall impose or request an additional
7092 | premium, cancel a policy, or issue a nonrenewal notice on any
7093 | insurance policy or contract because of any traffic infraction
7094 | when adjudication has been withheld and no points have been
7095 | assessed pursuant to s. 318.14(9) and (10). However, this
7096 | subparagraph does not apply to traffic infractions involving
7097 | accidents in which the insurer has incurred a loss due to the
7098 | fault of the insured.

7099 | (w) Soliciting or accepting new or renewal insurance risks
7100 | by insolvent or impaired insurer prohibited; penalty.--

7101 | 1. Whether or not delinquency proceedings as to the
7102 | insurer have been or are to be initiated, but while such
7103 | insolvency or impairment exists, no director or officer of an
7104 | insurer, except with the written permission of the office
7105 | ~~Department of Insurance~~, shall authorize or permit the insurer
7106 | to solicit or accept new or renewal insurance risks in this
7107 | state after such director or officer knew, or reasonably should
7108 | have known, that the insurer was insolvent or impaired.

7109 | "Impaired" includes impairment of capital or surplus, as defined
7110 | in s. 631.011(12) and (13).

7111 | 2. Any such director or officer, upon conviction of a
7112 | violation of this paragraph, is guilty of a felony of the third



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7113 degree, punishable as provided in s. 775.082, s. 775.083, or s.
7114 775.084.

7115 (aa) Churning.--

7116 1. Churning is the practice whereby policy values in an
7117 existing life insurance policy or annuity contract, including,
7118 but not limited to, cash, loan values, or dividend values, and
7119 in any riders to that policy or contract, are utilized to
7120 purchase another insurance policy or annuity contract with that
7121 same insurer for the purpose of earning additional premiums,
7122 fees, commissions, or other compensation:

7123 a. Without an objectively reasonable basis for believing
7124 that the replacement or extraction will result in an actual and
7125 demonstrable benefit to the policyholder;

7126 b. In a fashion that is fraudulent, deceptive, or
7127 otherwise misleading or that involves a deceptive omission;

7128 c. ~~Effective October 1, 1995,~~ When the applicant is not
7129 informed that the policy values including cash values,
7130 dividends, and other assets of the existing policy or contract
7131 will be reduced, forfeited, or utilized in the purchase of the
7132 replacing or additional policy or contract, if this is the case;
7133 or

7134 d. ~~Effective October 1, 1995,~~ Without informing the
7135 applicant that the replacing or additional policy or contract
7136 will not be a paid-up policy or that additional premiums will be
7137 due, if this is the case.

7138

7139 Churning by an insurer or an agent is an unfair method of
7140 competition and an unfair or deceptive act or practice.



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7141 2. ~~Effective October 1, 1995,~~ Each insurer shall comply
7142 with sub-subparagraphs 1.c. and 1.d. by disclosing to the
7143 applicant at the time of the offer on a form designed and
7144 adopted by rule by the commission ~~department~~ if, how, and the
7145 extent to which the policy or contract values (including cash
7146 value, dividends, and other assets) of a previously issued
7147 policy or contract will be used to purchase a replacing or
7148 additional policy or contract with the same insurer. The form
7149 shall include disclosure of the premium, the death benefit of
7150 the proposed replacing or additional policy, and the date when
7151 the policy values of the existing policy or contract will be
7152 insufficient to pay the premiums of the replacing or additional
7153 policy or contract.

7154 3. ~~Effective October 1, 1995,~~ Each insurer shall adopt
7155 written procedures to reasonably avoid churning of policies or
7156 contracts that it has issued, and failure to adopt written
7157 procedures sufficient to reasonably avoid churning shall be an
7158 unfair method of competition and an unfair or deceptive act or
7159 practice.

7160 Section 164. Section 626.9545, Florida Statutes, is
7161 amended to read:

7162 626.9545 Improper charge identification incentive
7163 program.--No section or provision of the Florida Insurance Code
7164 shall be construed as prohibiting an insurer from establishing a
7165 financial incentive program for remunerating a policyholder or
7166 an insured person with a selected percentage or stated portion
7167 of any health care charge identified by the policyholder or the
7168 insured person as an error or overcharge if the health care



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7169 charge is recovered by the insurer. The financial incentive
7170 program shall be written and shall be available for inspection
7171 by the office ~~department~~.

7172 Section 165. Subsection (5) of section 626.9551, Florida
7173 Statutes, is amended to read:

7174 626.9551 Favored agent or insurer; coercion of debtors.--

7175 (5) The department or office may investigate the affairs
7176 of any person to whom this section applies to determine whether
7177 such person has violated this section. If a violation of this
7178 section is found to have been committed knowingly, the person in
7179 violation shall be subject to the same procedures and penalties
7180 as provided in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

7181 Section 166. Section 626.9561, Florida Statutes, is
7182 amended to read:

7183 626.9561 Power of department and office.--The department
7184 and office shall each have power within its respective
7185 regulatory jurisdiction to examine and investigate the affairs
7186 of every person involved in the business of insurance in this
7187 state in order to determine whether such person has been or is
7188 engaged in any unfair method of competition or in any unfair or
7189 deceptive act or practice prohibited by s. 626.9521, and shall
7190 each have the powers and duties specified in ss. 626.9571-
7191 626.9601 in connection therewith.

7192 Section 167. Section 626.9571, Florida Statutes, is
7193 amended to read:

7194 626.9571 Defined practices; hearings, witnesses,
7195 appearances, production of books and service of process.--



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7196 (1) Whenever the department or office has reason to
7197 believe that any person has engaged, or is engaging, in this
7198 state in any unfair method of competition or any unfair or
7199 deceptive act or practice as defined in s. 626.9541 or s.
7200 626.9551 or is engaging in the business of insurance without
7201 being properly licensed as required by this code and that a
7202 proceeding by it in respect thereto would be to the interest of
7203 the public, it shall conduct or cause to have conducted a
7204 hearing in accordance with chapter 120.

7205 (2) The department or office, a duly empowered hearing
7206 officer, or an administrative law judge shall, during the
7207 conduct of such hearing, have those powers enumerated in s.
7208 120.569; however, the penalties for failure to comply with a
7209 subpoena or with an order directing discovery shall be limited
7210 to a fine not to exceed \$1,000 per violation.

7211 (3) Statements of charges, notices, and orders under this
7212 act may be served by anyone duly authorized by the department or
7213 office, either in the manner provided by law for service of
7214 process in civil actions or by certifying and mailing a copy
7215 thereof to the person affected by such statement, notice, order,
7216 or other process at his or her or its residence or principal
7217 office or place of business. The verified return by the person
7218 so serving such statement, notice, order, or other process,
7219 setting forth the manner of the service, shall be proof of the
7220 same, and the return postcard receipt for such statement,
7221 notice, order, or other process, certified and mailed as
7222 aforesaid, shall be proof of service of the same.



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7223 Section 168. Section 626.9581, Florida Statutes, is
7224 amended to read:

7225 626.9581 Cease and desist and penalty orders.--After the
7226 hearing provided in s. 626.9571, the department or office shall
7227 enter a final order in accordance with s. 120.569. If it is
7228 determined that the person charged has engaged in an unfair or
7229 deceptive act or practice or the unlawful transaction of
7230 insurance, the department or office shall also issue an order
7231 requiring the violator to cease and desist from engaging in such
7232 method of competition, act, or practice or the unlawful
7233 transaction of insurance. Further, if the act or practice is a
7234 violation of s. 626.9541 or s. 626.9551, the department or
7235 office may, at its discretion, order any one or more of the
7236 following:

7237 (1) Suspension or revocation of the person's certificate
7238 of authority, license, or eligibility for any certificate of
7239 authority or license, if he or she knew, or reasonably should
7240 have known, he or she was in violation of this act.

7241 (2) Such other relief as may be provided in the insurance
7242 code.

7243 Section 169. Section 626.9591, Florida Statutes, is
7244 amended to read:

7245 626.9591 Appeals from the department or office.--Any
7246 person subject to an order of the department or office under s.
7247 626.9581 or s. 626.9601 may obtain a review of such order by
7248 filing an appeal therefrom in accordance with the provisions and
7249 procedures for appeal from the orders of the department or
7250 office in general under s. 120.68.



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7251 Section 170. Section 626.9601, Florida Statutes, is
7252 amended to read:

7253 626.9601 Penalty for violation of cease and desist
7254 orders.--Any person who violates a cease and desist order of the
7255 department or office under s. 626.9581 while such order is in
7256 effect, after notice and hearing as provided in s. 626.9571,
7257 shall be subject, at the discretion of the department or office,
7258 to any one or more of the following:

7259 (1) A monetary penalty of not more than \$50,000 as to all
7260 matters determined in such hearing.

7261 (2) Suspension or revocation of such person's certificate
7262 of authority, license, or eligibility to hold such certificate
7263 of authority or license.

7264 (3) Such other relief as may be provided in the insurance
7265 code.

7266 Section 171. Section 626.9611, Florida Statutes, is
7267 amended to read:

7268 626.9611 Rules.--The department or commission may, in
7269 accordance with chapter 120, adopt ~~promulgate~~ reasonable rules
7270 as are necessary or proper to identify specific methods of
7271 competition or acts or practices which are prohibited by s.
7272 626.9541 or s. 626.9551, but the rules shall not enlarge upon or
7273 extend the provisions of ss. 626.9541 and 626.9551.

7274 Section 172. Section 626.9621, Florida Statutes, is
7275 amended to read:

7276 626.9621 Provisions of part additional to existing
7277 law.--The powers vested in the department, commission, and



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7278 | office by this part shall be additional to any other powers to
7279 | enforce any penalties, fines, or forfeitures authorized by law.

7280 | Section 173. Section 626.9631, Florida Statutes, is
7281 | amended to read:

7282 | 626.9631 Civil liability.--The provisions of this part are
7283 | cumulative to rights under the general civil and common law, and
7284 | no action of the department, commission, or office shall
7285 | abrogate such rights to damages or other relief in any court.

7286 | Section 174. Subsection (1) of section 626.9641, Florida
7287 | Statutes, is amended to read:

7288 | 626.9641 Policyholders, bill of rights.--

7289 | (1) The principles expressed in the following statements
7290 | shall serve as standards to be followed by the department,
7291 | commission, and office in exercising their ~~its~~ powers and
7292 | duties, in exercising administrative discretion, in dispensing
7293 | administrative interpretations of the law, and in adopting
7294 | ~~promulgating~~ rules:

7295 | (a) Policyholders shall have the right to competitive
7296 | pricing practices and marketing methods that enable them to
7297 | determine the best value among comparable policies.

7298 | (b) Policyholders shall have the right to obtain
7299 | comprehensive coverage.

7300 | (c) Policyholders shall have the right to insurance
7301 | advertising and other selling approaches that provide accurate
7302 | and balanced information on the benefits and limitations of a
7303 | policy.

7304 | (d) Policyholders shall have a right to an insurance
7305 | company that is financially stable.



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7306 (e) Policyholders shall have the right to be serviced by a
7307 competent, honest insurance agent or broker.

7308 (f) Policyholders shall have the right to a readable
7309 policy.

7310 (g) Policyholders shall have the right to an insurance
7311 company that provides an economic delivery of coverage and that
7312 tries to prevent losses.

7313 (h) Policyholders shall have the right to a balanced and
7314 positive regulation by the department, commission, and office.

7315 Section 175. Section 626.9651, Florida Statutes, is
7316 amended to read:

7317 626.9651 Privacy.--The department and commission shall
7318 each adopt rules consistent with other provisions of the Florida
7319 Insurance Code to govern the use of a consumer's nonpublic
7320 personal financial and health information. These rules must be
7321 based on, consistent with, and not more restrictive than the
7322 Privacy of Consumer Financial and Health Information Regulation,
7323 adopted September 26, 2000, by the National Association of
7324 Insurance Commissioners; however, the rules must permit the use
7325 and disclosure of nonpublic personal health information for
7326 scientific, medical, or public policy research, in accordance
7327 with federal law. In addition, these rules must be consistent
7328 with, and not more restrictive than, the standards contained in
7329 Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-
7330 102. If the office ~~department~~ determines that a health insurer
7331 or health maintenance organization is in compliance with, or is
7332 actively undertaking compliance with, the consumer privacy
7333 protection rules adopted by the United States Department of



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7334 Health and Human Services, in conformance with the Health
 7335 Insurance Portability and Affordability Act, that health insurer
 7336 or health maintenance organization is in compliance with this
 7337 section.

7338 Section 176. Paragraph (e) of subsection (4) and
 7339 subsections (5) and (9) of section 626.989, Florida Statutes,
 7340 are amended to read:

7341 626.989 Investigation by department or Division of
 7342 Insurance Fraud; compliance; immunity; confidential information;
 7343 reports to division; division investigator's power of arrest.--

7344 (4)

7345 (e) The Chief Financial Officer ~~Insurance Commissioner~~ and
 7346 any employee or agent of the department, commission, office, or
 7347 division, when acting without malice and in the absence of fraud
 7348 or bad faith, is not subject to civil liability for libel,
 7349 slander, or any other relevant tort, and no civil cause of
 7350 action of any nature exists against such person by virtue of the
 7351 execution of official activities or duties of the department,
 7352 commission, or office under this section or by virtue of the
 7353 publication of any report or bulletin related to the official
 7354 activities or duties of the department, ~~or~~ division, commission,
 7355 or office under this section.

7356 (5) The office's and the department's papers, documents,
 7357 reports, or evidence relative to the subject of an investigation
 7358 under this section are confidential and exempt from the
 7359 provisions of s. 119.07(1) until such investigation is completed
 7360 or ceases to be active. For purposes of this subsection, an
 7361 investigation is considered "active" while the investigation is



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7362 | being conducted by the office or department with a reasonable,
7363 | good faith belief that it could lead to the filing of
7364 | administrative, civil, or criminal proceedings. An investigation
7365 | does not cease to be active if the office or department is
7366 | proceeding with reasonable dispatch and has a good faith belief
7367 | that action could be initiated by the office or department or
7368 | other administrative or law enforcement agency. After an
7369 | investigation is completed or ceases to be active, portions of
7370 | records relating to the investigation shall remain exempt from
7371 | the provisions of s. 119.07(1) if disclosure would:

7372 | (a) Jeopardize the integrity of another active
7373 | investigation;

7374 | (b) Impair the safety and soundness of an insurer;

7375 | (c) Reveal personal financial information;

7376 | (d) Reveal the identity of a confidential source;

7377 | (e) Defame or cause unwarranted damage to the good name or
7378 | reputation of an individual or jeopardize the safety of an
7379 | individual; or

7380 | (f) Reveal investigative techniques or procedures.

7381 | Further, such papers, documents, reports, or evidence relative
7382 | to the subject of an investigation under this section shall not
7383 | be subject to discovery until the investigation is completed or
7384 | ceases to be active. Office, department, or division
7385 | investigators shall not be subject to subpoena in civil actions
7386 | by any court of this state to testify concerning any matter of
7387 | which they have knowledge pursuant to a pending insurance fraud
7388 | investigation by the division.



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7389 (9) In recognition of the complementary roles of
7390 investigating instances of workers' compensation fraud and
7391 enforcing compliance with the workers' compensation coverage
7392 requirements under chapter 440, the department ~~of Insurance~~ is
7393 directed to prepare and submit a joint performance report to the
7394 President of the Senate and the Speaker of the House of
7395 Representatives by November 1, 2003, and then by November 1
7396 every 3 years thereafter, describing the results obtained in
7397 achieving compliance with the workers' compensation coverage
7398 requirements and reducing the incidence of workers' compensation
7399 fraud.

7400 Section 177. Subsection (1) of section 626.9892, Florida
7401 Statutes, is amended to read:

7402 626.9892 Anti-Fraud Reward Program; reporting of insurance
7403 fraud.--

7404 (1) The Anti-Fraud Reward Program is hereby established
7405 within the department, to be funded from the Insurance
7406 ~~Commissioner's~~ Regulatory Trust Fund.

7407 Section 178. Paragraph (k) of subsection (5) of section
7408 626.99, Florida Statutes, is amended to read:

7409 626.99 Life insurance solicitation.--

7410 (5) GENERAL RULES RELATING TO SOLICITATION.--

7411 (k) If an appropriately licensed agent proposes to replace
7412 a life insurance policy or an in-force annuity with a registered
7413 securities product, preapplication notice requirements ~~to the~~
7414 ~~department~~ shall not apply.

7415 Section 179. Section 626.9911, Florida Statutes, is
7416 amended to read:



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7417 626.9911 Definitions.--As used in this act, the term:
 7418 ~~(1) "Department" means the Department of Insurance.~~
 7419 (1)~~(2)~~ "Independent third-party trustee or escrow agent"
 7420 means an attorney, certified public accountant, financial
 7421 institution, or other person providing escrow services under the
 7422 authority of a regulatory body. The term does not include any
 7423 person associated, affiliated, or under common control with a
 7424 viatical settlement provider or viatical settlement broker.
 7425 (2)~~(3)~~ "Person" has the meaning specified in s. 1.01.
 7426 (3)~~(4)~~ "Viatical settlement broker" means a person who, on
 7427 behalf of a viator and for a fee, commission, or other valuable
 7428 consideration, offers or attempts to negotiate viatical
 7429 settlement contracts between a viator resident in this state and
 7430 one or more viatical settlement providers. Notwithstanding the
 7431 manner in which the viatical settlement broker is compensated, a
 7432 viatical settlement broker is deemed to represent only the
 7433 viator and owes a fiduciary duty to the viator to act according
 7434 to the viator's instructions and in the best interest of the
 7435 viator. The term does not include an attorney, licensed
 7436 Certified Public Accountant, or investment adviser lawfully
 7437 registered ~~with the department of Banking and Finance~~ under
 7438 chapter 517, who is retained to represent the viator and whose
 7439 compensation is paid directly by or at the direction and on
 7440 behalf of the viator.
 7441 (4)~~(5)~~ "Viatical settlement contract" means a written
 7442 agreement entered into between a viatical settlement provider,
 7443 or its related provider trust, and a viator. The viatical
 7444 settlement contract includes an agreement to transfer ownership



7445 or change the beneficiary designation of a life insurance policy
 7446 at a later date, regardless of the date that compensation is
 7447 paid to the viator. The agreement must establish the terms
 7448 under which the viatical settlement provider will pay
 7449 compensation or anything of value, which compensation or value
 7450 is less than the expected death benefit of the insurance policy
 7451 or certificate, in return for the viator's assignment, transfer,
 7452 sale, devise, or bequest of the death benefit or ownership of
 7453 all or a portion of the insurance policy or certificate of
 7454 insurance to the viatical settlement provider. A viatical
 7455 settlement contract also includes a contract for a loan or other
 7456 financial transaction secured primarily by an individual or
 7457 group life insurance policy, other than a loan by a life
 7458 insurance company pursuant to the terms of the life insurance
 7459 contract, or a loan secured by the cash value of a policy.

7460 (5)~~(6)~~ "Viatical settlement provider" means a person who,
 7461 in this state, from this state, or with a resident of this
 7462 state, effectuates a viatical settlement contract. The term
 7463 does not include:

7464 (a) Any bank, savings bank, savings and loan association,
 7465 credit union, or other licensed lending institution that takes
 7466 an assignment of a life insurance policy as collateral for a
 7467 loan.;

7468 (b) A life and health insurer that has lawfully issued a
 7469 life insurance policy that provides accelerated benefits to
 7470 terminally ill policyholders or certificateholders.;~~or~~

7471 (c) Any natural person who enters into no more than one
 7472 viatical settlement contract with a viator in 1 calendar year,



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7473 unless such natural person has previously been licensed under
7474 this act or is currently licensed under this act.

7475 (d) A trust that meets the definition of a "related
7476 provider trust."

7477 (e) A viator in this state.

7478 (f) A viatical settlement purchaser.

7479 (g) A financing entity.

7480 (6)~~(7)~~ "Viator" means the owner of a life insurance policy
7481 or a certificateholder under a group policy who enters or seeks
7482 to enter into a viatical settlement contract. This term does not
7483 include a viatical settlement purchaser or a viatical settlement
7484 provider or any person acquiring a policy or interest in a
7485 policy from a viatical settlement provider, nor does it include
7486 an independent third-party trustee or escrow agent.

7487 (7)~~(8)~~ "Related provider trust" means a titling trust or
7488 other trust established by a licensed viatical settlement
7489 provider or financing entity for the sole purpose of holding the
7490 ownership or beneficial interest in purchased policies in
7491 connection with a financing transaction. The trust must have a
7492 written agreement with a licensed viatical settlement provider
7493 or financing entity under which the licensed viatical settlement
7494 provider or financing entity is responsible for insuring
7495 compliance with all statutory and regulatory requirements and
7496 under which the trust agrees to make all records and files
7497 relating to viatical settlement transactions available to the
7498 office department ~~department~~ as if those records and files were maintained
7499 directly by the licensed viatical settlement provider. This term
7500 does not include an independent third-party trustee or escrow



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7501 agent or a trust that does not enter into agreements with a
7502 viator. A related provider trust shall be subject to all
7503 provisions of this act that apply to the viatical settlement
7504 provider who established the related provider trust, except s.
7505 626.9912, which shall not be applicable. A viatical settlement
7506 provider may establish no more than one related provider trust,
7507 and the sole trustee of such related provider trust shall be the
7508 viatical settlement provider licensed under s. 626.9912. The
7509 name of the licensed viatical settlement provider shall be
7510 included within the name of the related provider trust.

7511 (8)~~(9)~~ "Viatical settlement purchase agreement" means a
7512 contract or agreement, entered into by a viatical settlement
7513 purchaser, to which the viator is not a party, to purchase a
7514 life insurance policy or an interest in a life insurance policy,
7515 which is entered into for the purpose of deriving an economic
7516 benefit. The term also includes purchases made by viatical
7517 settlement purchasers from any person other than the provider
7518 who effectuated the viatical settlement contract.

7519 (9)~~(10)~~ "Viatical settlement purchaser" means a person who
7520 gives a sum of money as consideration for a life insurance
7521 policy or an equitable or legal interest in the death benefits
7522 of a life insurance policy that has been or will be the subject
7523 of a viatical settlement contract, for the purpose of deriving
7524 an economic benefit, including purchases made from any person
7525 other than the provider who effectuated the viatical settlement
7526 contract or an entity affiliated with the provider. The term
7527 does not include a licensee under this part, an accredited
7528 investor as defined in Rule 501, Regulation D of the Securities



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7529 Act Rules, or a qualified institutional buyer as defined by Rule
7530 144(a) of the Federal Securities Act, a special purpose entity,
7531 a financing entity, or a contingency insurer. The above
7532 references to Rule 501, Regulation D and Rule 144(a) of the
7533 Federal Securities Act are used strictly for defining purposes
7534 and shall not be interpreted in any other manner. Any person who
7535 claims to be an accredited investor shall sign an affidavit
7536 stating that he or she is an accredited investor, the basis of
7537 that claim, and that he or she understands that as an accredited
7538 investor he or she will not be entitled to certain protections
7539 of the Viatical Settlement Act. This affidavit must be kept with
7540 other documents required to be maintained by this act.

7541 (10)~~(11)~~ "Viatical settlement sales agent" means a person
7542 other than a licensed viatical settlement provider who arranges
7543 the purchase through a viatical settlement purchase agreement of
7544 a life insurance policy or an interest in a life insurance
7545 policy.

7546 (11)~~(12)~~ "Viaticated policy" means a life insurance
7547 policy, or a certificate under a group policy, which is the
7548 subject of a viatical settlement contract.

7549 (12)~~(13)~~ "Related form" means any form, created by or on
7550 behalf of a licensee, which a viator or viatical settlement
7551 purchaser is required to sign or initial. The forms include, but
7552 are not limited to, a power of attorney, a release of medical
7553 information form, a suitability questionnaire, a disclosure
7554 document, or any addendum, schedule, or amendment to a viatical
7555 settlement contract or viatical settlement purchase agreement



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7556 considered necessary by a provider to effectuate a viatical
7557 settlement transaction.

7558 (13)~~(14)~~ "Special purpose entity" means an entity
7559 established by a licensed viatical settlement provider or by a
7560 financing entity, which may be a corporation, partnership,
7561 trust, limited liability company, or other similar entity formed
7562 solely to provide, either directly or indirectly, access to
7563 institutional capital markets to a viatical settlement provider
7564 or financing entity. A special purpose entity shall not enter
7565 into a viatical settlement contract or a viatical settlement
7566 purchase agreement.

7567 (14)~~(15)~~ "Financing entity" means an underwriter,
7568 placement agent, lender, purchaser of securities, or purchaser
7569 of a policy or certificate from a viatical settlement provider,
7570 credit enhancer, or any entity that has direct ownership in a
7571 policy or certificate that is the subject of a viatical
7572 settlement contract, but whose principal activity related to the
7573 transaction is providing funds or credit enhancement to effect
7574 the viatical settlement or the purchase of one or more viatical
7575 policies and who has an agreement in writing with one or more
7576 licensed viatical settlement providers to finance the
7577 acquisition of viatical settlement contracts. The term does not
7578 include a nonaccredited investor, a viatical settlement
7579 purchaser, or other natural person. A financing entity may not
7580 enter into a viatical settlement contract.

7581 Section 180. Section 626.9912, Florida Statutes, is
7582 amended to read:



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7583 626.9912 Viatical settlement provider license required;
7584 application for license.--

7585 (1) A person may not perform the functions of a viatical
7586 settlement provider as defined in this act or enter into or
7587 solicit a viatical settlement contract without first having
7588 obtained a license from the office ~~department~~.

7589 (2) Application for a viatical settlement provider license
7590 must be made to the office ~~department~~ by the applicant on a form
7591 prescribed by the commission ~~department~~, under oath and signed
7592 by the applicant. The application must be accompanied by a fee
7593 of \$500. If the applicant is a corporation, the application must
7594 be under oath and signed by the president and the secretary of
7595 the corporation.

7596 (3) In the application, the applicant must provide all of
7597 the following:

7598 (a) The applicant's full name, age, residence address, and
7599 business address, and all occupations engaged in by the
7600 applicant during the 5 years preceding the date of the
7601 application.

7602 (b) A copy of the applicant's basic organizational
7603 documents, if any, including the articles of incorporation,
7604 articles of association, partnership agreement, trust agreement,
7605 or other similar documents, together with all amendments to such
7606 documents.

7607 (c) Copies of all bylaws, rules, regulations, or similar
7608 documents regulating the conduct of the applicant's internal
7609 affairs.



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7610 (d) A list showing the name, business and residence
7611 addresses, and official position of each individual who is
7612 responsible for conduct of the applicant's affairs, including,
7613 but not limited to, any member of the applicant's board of
7614 directors, board of trustees, executive committee, or other
7615 governing board or committee and any other person or entity
7616 owning or having the right to acquire 10 percent or more of the
7617 voting securities of the applicant.

7618 (e) With respect to each individual identified under
7619 paragraph (d):

7620 1. A sworn biographical statement on forms adopted by the
7621 commission and supplied by the office ~~department~~.

7622 2. A set of fingerprints on forms prescribed by the
7623 commission ~~department~~, certified by a law enforcement officer,
7624 and accompanied by the fingerprinting fee specified in s.
7625 624.501.

7626 3. Authority for release of information relating to the
7627 investigation of the individual's background.

7628 (f) All applications, viatical settlement contract forms,
7629 viatical settlement purchase agreement forms, escrow forms, and
7630 other related forms proposed to be used by the applicant.

7631 (g) Such other information as the commission or office
7632 ~~department~~ deems necessary to determine that the applicant and
7633 the individuals identified under paragraph (d) are competent and
7634 trustworthy and can lawfully and successfully act as a viatical
7635 settlement provider.

7636 (4) The office ~~department~~ may not issue a license to an
7637 entity other than a natural person if it is not satisfied that



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7638 all officers, directors, employees, stockholders, partners, and
7639 any other persons who exercise or have the ability to exercise
7640 effective control of the entity or who have the ability to
7641 influence the transaction of business by the entity meet the
7642 standards of this act and have not violated any provision of
7643 this act or rules of the commission ~~department~~ related to the
7644 business of viatical settlement contracts or viatical settlement
7645 purchase agreements.

7646 (5) Upon the filing of a sworn application and the payment
7647 of the license fee, the office ~~department~~ shall investigate each
7648 applicant and may issue the applicant a license if the office
7649 ~~department~~ finds that the applicant:

7650 (a) Has provided a detailed plan of operation.

7651 (b) Is competent and trustworthy and intends to act in
7652 good faith in the business authorized by the license applied
7653 for.

7654 (c) Has a good business reputation and has had experience,
7655 training, or education that qualifies the applicant to conduct
7656 the business authorized by the license applied for.

7657 (d) If the applicant is a corporation, is a corporation
7658 incorporated under the laws of this state, or is a foreign
7659 corporation authorized to transact business in this state.

7660 (e) Has designated the Chief Financial Officer ~~Insurance~~
7661 ~~Commissioner and Treasurer~~ as its agent for service of process.

7662 (f) Has made the deposit required by s. 626.9913(3).

7663 Section 181. Subsections (2) and (3) of section 626.9913,
7664 Florida Statutes, are amended to read:



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7665 | 626.9913 Viatical settlement provider license continuance;
7666 | annual report; fees; deposit.--

7667 | (2) Annually, on or before March 1, the viatical
7668 | settlement provider licensee shall file a statement containing
7669 | information the commission ~~department~~ requires and shall pay to
7670 | the office ~~department~~ a license fee in the amount of \$500. A
7671 | viatical settlement provider shall include in all statements
7672 | filed with the office ~~department~~ all information requested by
7673 | the office ~~department~~ regarding a related provider trust
7674 | established by the viatical settlement provider. The office
7675 | ~~department~~ may require more frequent reporting. Failure to
7676 | timely file the annual statement or to timely pay the license
7677 | fee is grounds for immediate suspension of the license.

7678 | (3) A viatical settlement provider licensee must deposit
7679 | and maintain deposited in trust with the department securities
7680 | eligible for deposit under s. 625.52, having at all times a
7681 | value of not less than \$100,000. As an alternative to meeting
7682 | the \$100,000 deposit requirement, the provider may deposit and
7683 | maintain deposited in trust with the department such securities
7684 | in the amount of \$25,000 and post with the office ~~department~~ a
7685 | surety bond acceptable to the office ~~department~~ in the amount of
7686 | \$75,000.

7687 | Section 182. Section 626.9914, Florida Statutes, is
7688 | amended to read:

7689 | 626.9914 Suspension, revocation, or nonrenewal of viatical
7690 | settlement provider license; grounds; administrative fine.--



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7691 (1) The office ~~department~~ shall suspend, revoke, or refuse
7692 to renew the license of any viatical settlement provider if the
7693 office ~~department~~ finds that the licensee:

7694 (a) Has made a misrepresentation in the application for
7695 the license;

7696 (b) Has engaged in fraudulent or dishonest practices, or
7697 otherwise has been shown to be untrustworthy or incompetent to
7698 act as a viatical settlement provider;

7699 (c) Demonstrates a pattern of unreasonable payments to
7700 viators;

7701 (d) Has been found guilty of, or has pleaded guilty or
7702 nolo contendere to, any felony, or a misdemeanor involving fraud
7703 or moral turpitude, regardless of whether a judgment of
7704 conviction has been entered by the court;

7705 (e) Has issued viatical settlement contracts that have not
7706 been approved pursuant to this act;

7707 (f) Has failed to honor contractual obligations related to
7708 the business of viatical settlement contracts;

7709 (g) Deals in bad faith with viators;

7710 (h) Has violated any provision of the insurance code or of
7711 this act;

7712 (i) Employs any person who materially influences the
7713 licensee's conduct and who fails to meet the requirements of
7714 this act; or

7715 (j) No longer meets the requirements for initial
7716 licensure.

7717 (2) The office ~~department~~ may, in lieu of or in addition
7718 to any suspension or revocation, assess an administrative fine



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7719 not to exceed \$2,500 for each nonwillful violation or \$10,000
7720 for each willful violation by a viatical settlement provider
7721 licensee. The office ~~department~~ may also place a viatical
7722 settlement provider licensee on probation for a period not to
7723 exceed 2 years.

7724 (3) If an employee of a viatical settlement provider
7725 violates any provision of this act, the office ~~department~~ may
7726 take disciplinary action against such employee as if the
7727 employee were licensed under this act, including suspending or
7728 otherwise prohibiting the employee from performing the functions
7729 of a viatical settlement provider or viatical settlement broker
7730 as defined in this act.

7731 (4) If a viatical settlement provider establishes a
7732 related provider trust as permitted by this act, the viatical
7733 settlement provider shall be liable and responsible for the
7734 performance of all obligations of the related provider trust
7735 under all viatical settlement contracts entered into by the
7736 related provider trust, and for the compliance of the related
7737 provider trust with all provisions of this act. Any violation of
7738 this act by the related provider trust shall be deemed a
7739 violation of this act by the viatical settlement provider as
7740 well as the related provider trust. If the related provider
7741 trust violates any provisions of this act, the office ~~department~~
7742 may exercise all remedies set forth in this act for such
7743 violations against the viatical settlement provider, as well as
7744 the related provider trust.

7745 Section 183. Subsections (1), (2), and (4) of section
7746 626.9915, Florida Statutes, are amended to read:



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7747 626.9915 Effect of suspension or revocation of viatical
7748 settlement provider license; duration of suspension;
7749 reinstatement.--

7750 (1) When its license is suspended or revoked, the provider
7751 must proceed, immediately following the effective date of the
7752 suspension or revocation, to conclude the affairs it is
7753 transacting under its license. The provider may not solicit,
7754 negotiate, advertise, or effectuate new contracts. The office
7755 ~~department~~ retains jurisdiction over the provider until all
7756 contracts have been fulfilled or canceled or have expired. A
7757 provider whose license is suspended or revoked may continue to
7758 maintain and service viaticated policies subject to the approval
7759 of the office ~~department~~.

7760 (2) The suspension of the license of a viatical settlement
7761 provider licensee may be for such period, not to exceed 2 years,
7762 as determined by the office ~~department~~. The office ~~department~~
7763 may shorten, rescind, or modify the suspension.

7764 (4) If, upon expiration of the suspension order, the
7765 license has not otherwise been terminated, the office ~~department~~
7766 must reinstate the license only upon written request by the
7767 suspended licensee unless the office ~~department~~ finds that the
7768 grounds giving rise to the suspension have not been removed or
7769 that the licensee is otherwise not in compliance with the
7770 requirements of this act. The office ~~department~~ shall give the
7771 licensee notice of its findings no later than 90 days after
7772 receipt of the request or upon expiration of the suspension
7773 order, whichever occurs later. If a license is not reinstated
7774 pursuant to the procedures set forth in this subsection, it



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7775 expires at the end of the suspension or on the date it otherwise
7776 would have expired, whichever is sooner.

7777 Section 184. Subsections (7), (8), and (9) of section
7778 626.9916, Florida Statutes, are amended to read:

7779 626.9916 Viatical settlement broker license required;
7780 application for license.--

7781 (7) Upon the filing of a sworn application and the payment
7782 of the license fee and all other applicable fees under this act,
7783 the department shall investigate each applicant and may issue
7784 the applicant a license if the department finds that the
7785 applicant:

7786 (a) Is competent and trustworthy and intends to act in
7787 good faith in the business authorized by the license applied
7788 for.

7789 (b) Has a good business reputation and has had experience,
7790 training, or education that qualifies the applicant to conduct
7791 the business authorized by the license applied for.

7792 (c) Except with respect to applicants for nonresident
7793 licenses, is a bona fide resident of this state and actually
7794 resides in this state at least 180 days a year. If an applicant
7795 holds a similar license or an insurance agent's or broker's
7796 license in another state at the time of applying for a license
7797 under this section, the applicant may be found to meet the
7798 residency requirement of this paragraph only after he or she
7799 furnishes a letter of clearance satisfactory to the department
7800 or other proof that the applicant's resident licenses have been
7801 canceled or changed to nonresident status and that the applicant
7802 is in good standing with the licensing authority.



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7803 (d) Is a corporation, a corporation incorporated under the
7804 laws of this state, or a foreign corporation authorized to
7805 transact business in this state.

7806 (e) Has designated the Chief Financial Officer ~~Insurance~~
7807 ~~Commissioner and Treasurer~~ as its agent for service of process.

7808 (8) An applicant for a nonresident viatical settlement
7809 broker license must, in addition to designating the Chief
7810 Financial Officer ~~Insurance Commissioner and Treasurer~~ as agent
7811 for service of process as required by this section, also furnish
7812 the department with the name and address of a resident of this
7813 state upon whom notices or orders of the department or process
7814 affecting the applicant or licensee may be served. After
7815 issuance of the license, the licensee must also notify the
7816 department of change of the person to receive such notices,
7817 orders, or process; such change is not effective until
7818 acknowledged by the department.

7819 (9) ~~Beginning July 1, 1997,~~ The department may, by rule,
7820 specify experience, educational, or other training standards
7821 required for licensure under this section.

7822 Section 185. Section 626.9919, Florida Statutes, is
7823 amended to read:

7824 626.9919 Notice of change of licensee address or
7825 name.--Each viatical settlement provider licensee, viatical
7826 settlement broker licensee, and viatical settlement sales agent
7827 licensee must provide the office or department, as applicable,
7828 at least 30 days' advance notice of any change in the licensee's
7829 name, residence address, principal business address, or mailing
7830 address.



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7831 Section 186. Section 626.9921, Florida Statutes, is
7832 amended to read:

7833 626.9921 Filing of forms; required procedures; approval.--

7834 (1) A viatical settlement contract form, viatical
7835 settlement purchase agreement form, escrow form, or related form
7836 may be used in this state only after the form has been filed
7837 with the office ~~department~~ and only after the form has been
7838 approved by the office ~~department~~.

7839 (2) The viatical settlement contract form, viatical
7840 settlement purchase agreement form, escrow form, or related form
7841 must be filed with the office ~~department~~ at least 60 days before
7842 its use. The form is considered approved on the 60th day after
7843 its date of filing unless it has been previously disapproved by
7844 the office ~~department~~. The office ~~department~~ must disapprove a
7845 viatical settlement contract form, viatical settlement purchase
7846 agreement form, escrow form, or related form that is
7847 unreasonable, contrary to the public interest, discriminatory,
7848 or misleading or unfair to the viator or the purchaser.

7849 (3) If a viatical settlement provider elects to use a
7850 related provider trust in accordance with this act, the viatical
7851 settlement provider shall file notice of its intention to use a
7852 related provider trust with the office ~~department~~, including a
7853 copy of the trust agreement of the related provider trust. The
7854 organizational documents of the trust must be submitted to and
7855 approved by the office ~~department~~ before the transacting of
7856 business by the trust.



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7857 (4) The commission ~~department~~ may adopt, by rule,
7858 standardized forms to be used by licensees, at the licensee's
7859 option in place of separately approved forms.

7860 Section 187. Section 626.9922, Florida Statutes, is
7861 amended to read:

7862 626.9922 Examination.--

7863 (1) The office or department may examine the business and
7864 affairs of any of its respective licensees or applicants
7865 ~~licensee or applicant~~ for a license. The office or department
7866 may order any such licensee or applicant to produce any records,
7867 books, files, advertising and solicitation materials, or other
7868 information and may take statements under oath to determine
7869 whether the licensee or applicant is in violation of the law or
7870 is acting contrary to the public interest. The expenses
7871 incurred in conducting any examination or investigation must be
7872 paid by the licensee or applicant. Examinations and
7873 investigations must be conducted as provided in chapter 624, and
7874 licensees are subject to all applicable provisions of the
7875 insurance code.

7876 (2) All accounts, books and records, documents, files,
7877 contracts, and other information relating to all transactions of
7878 viatical settlement contracts or viatical settlement purchase
7879 agreements must be maintained by the licensee for a period of at
7880 least 3 years after the death of the insured and must be
7881 available to the office or department for inspection during
7882 reasonable business hours.

7883 (3) All such records or accurate copies of such records
7884 must be maintained at the licensee's home office. As used in



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7885 | this section, the term "home office" means the principal place
7886 | of business and any other single storage facility, the street
7887 | address of which shall be disclosed to the office or department
7888 | within 20 days after its initial use, or within 20 days of the
7889 | effective date of this subsection.

7890 | (4) The originals of records required to be maintained
7891 | under this section must be made available to the office or
7892 | department for examination at the office's or department's
7893 | request.

7894 | Section 188. Subsection (2) of section 626.99235, Florida
7895 | Statutes, is amended to read:

7896 | 626.99235 Disclosures to viatical settlement purchasers;
7897 | misrepresentations.--

7898 | (2) The viatical settlement provider and the viatical
7899 | settlement sales agent, themselves or through another person,
7900 | shall provide in writing the following disclosures to any
7901 | viatical settlement purchaser or purchaser prospect:

7902 | (a) That the return represented as being available under
7903 | the viatical settlement purchase agreement is directly tied to
7904 | the projected life span of one or more insureds.

7905 | (b) If a return is represented, the disclosure shall
7906 | indicate the projected life span of the insured or insureds
7907 | whose life or lives are tied to the return.

7908 | (c) If required by the terms of the viatical settlement
7909 | purchase agreement, that the viatical settlement purchaser shall
7910 | be responsible for the payment of insurance premiums on the life
7911 | of the insured, late or surrender fees, or other costs related



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7912 to the life insurance policy on the life of the insured or
7913 insureds which may reduce the return.

7914 (d) The amount of any trust fees, commissions, deductions,
7915 or other expenses, if any, to be charged to the viatical
7916 settlement purchaser.

7917 (e) The name and address of the person responsible for
7918 tracking the insured.

7919 (f) That group policies may contain limitations or caps in
7920 the conversion rights, that additional premiums may have to be
7921 paid if the policy is converted, and that the party responsible
7922 for the payment of such additional premiums shall be identified.

7923 (g) That the life expectancy and rate of return are only
7924 estimates and cannot be guaranteed.

7925 (h) That the purchase of a viatical settlement contract
7926 should not be considered a liquid purchase, since it is
7927 impossible to predict the exact timing of its maturity and the
7928 funds may not be available until the death of the insured.

7929 (i) The name and address of the person with the
7930 responsibility for paying the premium until the death of the
7931 insured.

7932

7933 The written disclosure required under this subsection shall be
7934 conspicuously displayed in any viatical settlement purchase
7935 agreement, and in any solicitation material furnished to the
7936 viatical settlement purchaser by such viatical settlement
7937 provider, related provider trust, or person, and shall be in
7938 contrasting color and in not less than 10-point type or no
7939 smaller than the largest type on the page if larger than 10-



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7940 point type. The commission may ~~department is authorized to~~ adopt
7941 by rule the disclosure form to be used. The disclosures need not
7942 be furnished in an invitation to inquire, the objective of which
7943 is to create a desire to inquire further about entering into a
7944 viatical settlement purchase agreement. The invitation to
7945 inquire may not quote rates of return, may not include material
7946 attendant to the execution of any specific viatical settlement
7947 purchase agreement, and may not relate to any specific viator.

7948 Section 189. Section 626.99245, Florida Statutes, is
7949 amended to read:

7950 626.99245 Conflict of regulation of viaticals.--

7951 (1) A viatical settlement provider who from this state
7952 enters into a viatical settlement purchase agreement with a
7953 purchaser who is a resident of another state that has enacted
7954 statutes or adopted regulations governing viatical settlement
7955 purchase agreements, shall be governed in the effectuation of
7956 that viatical settlement purchase agreement by the statutes and
7957 regulations of the purchaser's state of residence. If the state
7958 in which the purchaser is a resident has not enacted statutes or
7959 regulations governing viatical settlement purchase agreements,
7960 the provider shall give the purchaser notice that neither
7961 Florida nor his or her state regulates the transaction upon
7962 which he or she is entering. For transactions in these states,
7963 however, the viatical settlement provider is to maintain all
7964 records required as if the transactions were executed in
7965 Florida. However, the forms used in those states need not be
7966 approved by the office ~~department~~.



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7967 (2) A viatical settlement provider who from this state
7968 enters into a viatical settlement contract with a viator who is
7969 a resident of another state that has enacted statutes or adopted
7970 regulations governing viatical settlement contracts shall be
7971 governed in the effectuation of that viatical settlement
7972 contract by the statutes and regulations of the viator's state
7973 of residence. If the state in which the viator is a resident has
7974 not enacted statutes or regulations governing viatical
7975 settlement agreements, the provider shall give the viator notice
7976 that neither Florida nor his or her state regulates the
7977 transaction upon which he or she is entering. For transactions
7978 in those states, however, the viatical settlement provider is to
7979 maintain all records required as if the transactions were
7980 executed in Florida. The forms used in those states need not be
7981 approved by the office ~~department~~.

7982 (3) This section does not affect the requirement of ss.
7983 626.9911(5)~~(6)~~ and 626.9912(1) that a viatical settlement
7984 provider doing business from this state must obtain a viatical
7985 settlement license from the office ~~department~~. As used in this
7986 subsection, the term "doing business from this state" includes
7987 effectuating viatical settlement contracts and effectuating
7988 viatical settlement purchase agreements from offices in this
7989 state, regardless of the state of residence of the viator or the
7990 viatical settlement purchaser.

7991 Section 190. Section 626.9925, Florida Statutes, is
7992 amended to read:

7993 626.9925 Rules.--The commission ~~department~~ may adopt rules
7994 to administer this act, including rules establishing standards



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7995 | for evaluating advertising by licensees; rules providing for the
7996 | collection of data, for disclosures to viators or purchasers,
7997 | and for the reporting of life expectancies; and rules defining
7998 | terms used in this act and prescribing recordkeeping
7999 | requirements relating to executed viatical settlement contracts
8000 | and viatical settlement purchase agreements.

8001 | Section 191. Section 626.9926, Florida Statutes, is
8002 | amended to read:

8003 | 626.9926 Rate regulation not authorized.--Nothing in this
8004 | act shall be construed to authorize the office or department to
8005 | directly or indirectly regulate the amount paid as consideration
8006 | for entry into a viatical settlement contract or viatical
8007 | settlement purchase agreement.

8008 | Section 192. Subsection (2) of section 626.9927, Florida
8009 | Statutes, is amended to read:

8010 | 626.9927 Unfair trade practices; cease and desist;
8011 | injunctions; civil remedy.--

8012 | (2) In addition to the penalties and other enforcement
8013 | provisions of this act, if any person violates this act or any
8014 | rule implementing this act, the office or department, as
8015 | appropriate, may seek an injunction in the circuit court of the
8016 | county where the person resides or has a principal place of
8017 | business and may apply for temporary and permanent orders that
8018 | the office or department determines necessary to restrain the
8019 | person from committing the violation.

8020 | Section 193. Section 626.99272, Florida Statutes, is
8021 | amended to read:

8022 | 626.99272 Cease and desist orders and fines.--



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8023 (1) The office or department as appropriate may issue a
8024 cease and desist order upon a person that violates any provision
8025 of this part, any rule or order adopted by the commission,
8026 office, or department, or any written agreement entered into
8027 with the office or department.

8028 (2) When the office or department finds that such an
8029 action presents an immediate danger to the public which requires
8030 an immediate final order, it may issue an emergency cease and
8031 desist order reciting with particularity the facts underlying
8032 such findings. The emergency cease and desist order is effective
8033 immediately upon service of a copy of the order on the
8034 respondent and remains effective for 90 days. If the office or
8035 department begins nonemergency cease and desist proceedings
8036 under subsection(1), the emergency cease and desist order
8037 remains effective, absent an order by an appellate court of
8038 competent jurisdiction pursuant to s. 120.68, until the
8039 conclusion of proceedings under ss. 120.569 and 120.57.

8040 (3) The office or department may impose and collect an
8041 administrative fine not to exceed \$10,000 for each nonwillful
8042 violation and \$25,000 for each willful violation of any
8043 provision of this part.

8044 Section 194. Section 626.99285, Florida Statutes, is
8045 amended to read:

8046 626.99285 Applicability of insurance code.--In addition to
8047 other applicable provisions cited in the insurance code, the
8048 office or department, as appropriate, has the authority granted
8049 under ss. 624.310, 626.901, and 626.989 to regulate viatical
8050 settlement providers, viatical settlement brokers, viatical



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8051 settlement sales agents, viatical settlement contracts, viatical
8052 settlement purchase agreements, and viatical settlement
8053 transactions.

8054 Section 195. Section 626.99295, Florida Statutes, is
8055 amended to read:

8056 626.99295 Grace period.--An unlicensed viatical settlement
8057 provider or viatical settlement broker that was legally
8058 transacting business in this state on June 30, 2000, may
8059 continue to transact such business, in the absence of any orders
8060 by the office, department, or the former Department of Insurance
8061 to the contrary, until the office or department, as applicable,
8062 approves or disapproves the viatical settlement provider's
8063 application for licensure if the viatical settlement provider or
8064 viatical settlement broker filed ~~files~~ with the former
8065 department an application for licensure no later than August 1,
8066 2000, and if the viatical settlement provider or viatical
8067 settlement broker complies with all other provisions of this
8068 act. Any form for which former department approval was ~~is~~
8069 required under this part must have been ~~be~~ filed by August 1,
8070 2000, and may continue to be used until disapproved by the
8071 office or department.

8072 Section 196. Paragraphs (a), (b), and (c) of subsection
8073 (2) and paragraph (c) of subsection(3) of section 627.0628,
8074 Florida Statutes, are amended to read:

8075 627.0628 Florida Commission on Hurricane Loss Projection
8076 Methodology.--

8077 (2) COMMISSION CREATED.--



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8078 (a) There is created the Florida Commission on Hurricane
 8079 Loss Projection Methodology, which is assigned to the State
 8080 Board of Administration. For the purposes of this section, the
 8081 term "commission" means the Florida Commission on Hurricane Loss
 8082 Projection Methodology. The commission shall be administratively
 8083 housed within the State Board of Administration, but it shall
 8084 independently exercise the powers and duties specified in this
 8085 section.

8086 (b) The commission shall consist of the following 11
 8087 members:

- 8088 1. The insurance consumer advocate.
- 8089 2. The senior employee of the State Board of
 8090 Administration responsible for operations ~~Chief Operating~~
 8091 ~~Officer~~ of the Florida Hurricane Catastrophe Fund.
- 8092 3. The Executive Director of the Citizens Property
 8093 Insurance Corporation ~~Residential Property and Casualty Joint~~
 8094 ~~Underwriting Association.~~
- 8095 4. The Director of the Division of Emergency Management of
 8096 the Department of Community Affairs.
- 8097 5. The actuary member of the Florida Hurricane Catastrophe
 8098 Fund Advisory Council.
- 8099 6. Six members appointed by the Chief Financial Officer
 8100 ~~Insurance Commissioner~~, as follows:
 - 8101 a. An employee of the office ~~Department of Insurance~~ who
 8102 is an actuary responsible for property insurance rate filings.
 - 8103 b. An actuary who is employed full time by a property and
 8104 casualty insurer which was responsible for at least 1 percent of
 8105 the aggregate statewide direct written premium for homeowner's



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8106 insurance in the calendar year preceding the member's
8107 appointment to the commission.

8108 c. An expert in insurance finance who is a full time
8109 member of the faculty of the State University System and who has
8110 a background in actuarial science.

8111 d. An expert in statistics who is a full time member of
8112 the faculty of the State University System and who has a
8113 background in insurance.

8114 e. An expert in computer system design who is a full time
8115 member of the faculty of the State University System.

8116 f. An expert in meteorology who is a full time member of
8117 the faculty of the State University System and who specializes
8118 in hurricanes.

8119 (c) Members designated under subparagraphs (b)1.-5. shall
8120 serve on the commission as long as they maintain the respective
8121 offices designated in subparagraphs (b)1.-5. Members appointed
8122 by the Chief Financial Officer ~~Insurance Commissioner~~ under
8123 subparagraph (b)6. shall serve on the commission until the end
8124 of the term of office of the Chief Financial Officer ~~Insurance~~
8125 ~~Commissioner~~ who appointed them, unless earlier removed by the
8126 Chief Financial Officer ~~Insurance Commissioner~~ for cause.
8127 Vacancies on the commission shall be filled in the same manner
8128 as the original appointment.

8129 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

8130 (c) With respect to a rate filing under s. 627.062, an
8131 insurer may employ actuarial methods, principles, standards,
8132 models, or output ranges found by the commission to be accurate
8133 or reliable to determine hurricane loss factors for use in a



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8134 rate filing under s. 627.062, which findings and factors are
8135 admissible and relevant in consideration of a rate filing by the
8136 office ~~department~~ or in any arbitration or administrative or
8137 judicial review.

8138 Section 197. Paragraph (b) of subsection (2) and
8139 subsections (5), (6), and (9) of section 627.0629, Florida
8140 Statutes, are amended to read:

8141 627.0629 Residential property insurance; rate filings.--
8142 (2)

8143 (b) A rate filing for residential property insurance made
8144 more than 150 days after approval by the office ~~department~~ of a
8145 building code rating factor plan submitted by a statewide rating
8146 organization shall include positive and negative rate factors
8147 that reflect the manner in which building code enforcement in a
8148 particular jurisdiction addresses risk of wind damage. The rate
8149 filing shall include variations from standard rate factors on an
8150 individual basis based on inspection of a particular structure
8151 by a licensed home inspector. If an inspection is requested by
8152 the insured, the insurer may require the insured to pay the
8153 reasonable cost of the inspection. This paragraph applies to
8154 structures constructed or renovated after the implementation of
8155 this paragraph.

8156 (5) In order to provide an appropriate transition period,
8157 an insurer may, in its sole discretion, implement an approved
8158 rate filing for residential property insurance over a period of
8159 years. An insurer electing to phase in its rate filing must
8160 provide an informational notice to the office ~~department~~ setting



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8161 out its schedule for implementation of the phased-in rate
8162 filing.

8163 (6) An insurer may not write a residential property
8164 insurance policy without providing windstorm coverage or
8165 hurricane coverage as defined in s. 627.4025. This subsection
8166 does not apply with respect to risks located in an area eligible
8167 for coverage under the high-risk account of the Citizens
8168 Property Insurance Corporation pursuant to s. 627.351(6) Florida
8169 Windstorm Underwriting Association under s. 627.351(2).

8170 (9) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
8171 SOUNDNESS.--

8172 (a) It is the intent of the Legislature to provide a
8173 program whereby homeowners may obtain an evaluation of the wind
8174 resistance of their homes with respect to preventing damage from
8175 hurricanes, together with a recommendation of reasonable steps
8176 that may be taken to upgrade their homes to better withstand
8177 hurricane force winds.

8178 (b) To the extent that funds are provided for this purpose
8179 in the General Appropriations Act, the Legislature hereby
8180 authorizes the establishment of a program to be administered by
8181 the Citizens Property Insurance Corporation for homeowners
8182 insured in the high-risk account Florida Windstorm Underwriting
8183 Association.

8184 (c) The program shall provide grants to homeowners, for
8185 the purpose of providing homeowner applicants with funds to
8186 conduct an evaluation of the integrity of their homes with
8187 respect to withstanding hurricane force winds, recommendations



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8188 to retrofit the homes to better withstand damage from such
8189 winds, and the estimated cost to make the recommended retrofits.

8190 (d) The Department of Community Affairs shall establish by
8191 rule standards to govern the quality of the evaluation, the
8192 quality of the recommendations for retrofitting, the eligibility
8193 of the persons conducting the evaluation, and the selection of
8194 applicants under the program. In establishing the rule, the
8195 Department of Community Affairs shall consult with the advisory
8196 committee to minimize the possibility of fraud or abuse in the
8197 evaluation and retrofitting process, and to ensure that funds
8198 spent by homeowners acting on the recommendations achieve
8199 positive results.

8200 (e) The Citizens Property Insurance Corporation Florida
8201 ~~Windstorm Underwriting Association~~ shall identify areas of this
8202 state with the greatest wind risk to residential properties and
8203 recommend annually to the Department of Community Affairs
8204 priority target areas for such evaluations and inclusion with
8205 the associated residential construction mitigation program.

8206 Section 198. Subsections (2) and (3) and paragraphs (a),
8207 (b), (c), (e), (f), and (g) of subsection (4) of section
8208 627.311, Florida Statutes, are amended to read:

8209 627.311 Joint underwriters and joint reinsurers.--

8210 (2) If the office ~~department~~ finds that any activity or
8211 practice of any such group, association, or other organization
8212 is unfair or unreasonable or otherwise inconsistent with the
8213 provisions of this chapter, it may issue a written order
8214 specifying in what respects such activity or practice is unfair
8215 or unreasonable or otherwise inconsistent with the provisions of



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8216 | this chapter, and requiring the discontinuance of such activity
8217 | or practice.

8218 | (3) The office ~~department~~ may, after consultation with
8219 | insurers licensed to write automobile insurance in this state,
8220 | approve a joint underwriting plan for purposes of equitable
8221 | apportionment or sharing among insurers of automobile liability
8222 | insurance and other motor vehicle insurance, as an alternate to
8223 | the plan required in s. 627.351(1). All insurers authorized to
8224 | write automobile insurance in this state shall subscribe to the
8225 | plan and participate therein. The plan shall be subject to
8226 | continuous review by the office ~~department~~ which may at any time
8227 | disapprove the entire plan or any part thereof if it determines
8228 | that conditions have changed since prior approval and that in
8229 | view of the purposes of the plan changes are warranted. Any
8230 | disapproval by the office ~~department~~ shall be subject to the
8231 | provisions of chapter 120. If adopted, the plan and the
8232 | association created under the plan:

8233 | (a) Must be subject to all provisions of s. 627.351(1),
8234 | except apportionment of applicants.

8235 | (b) May provide for one or more designated insurers, able
8236 | and willing to provide policy and claims service, to act on
8237 | behalf of all other insurers to provide insurance for applicants
8238 | who are in good faith entitled to, but unable to, procure
8239 | insurance through the voluntary insurance market at standard
8240 | rates.

8241 | (c) Must provide that designated insurers will issue
8242 | policies of insurance and provide policyholder and claims



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8243 service on behalf of all insurers for the joint underwriting
8244 association.

8245 (d) Must provide for the equitable apportionment among
8246 insurers of losses and expenses incurred.

8247 (e) Must provide that the joint underwriting association
8248 will operate subject to the supervision and approval of a board
8249 of governors consisting of 11 individuals, including 1 who will
8250 be elected as chair. Five members of the board must be appointed
8251 by the Chief Financial Officer ~~Insurance Commissioner~~. Two of
8252 the Chief Financial Officer's ~~commissioner's~~ appointees must be
8253 chosen from the insurance industry. Any board member appointed
8254 by the Chief Financial Officer ~~Insurance Commissioner~~ may be
8255 removed and replaced by her or him at any time without cause.
8256 Six members of the board must be appointed by the participating
8257 insurers, two of whom must be from the insurance agents'
8258 associations. All board members, including the chair, must be
8259 appointed to serve for 2-year terms beginning annually on a date
8260 designated by the plan.

8261 (f) Must provide that an agent appointed to a servicing
8262 carrier must be a licensed general lines agent of an insurer
8263 which is authorized to write automobile liability and physical
8264 damage insurance in the state and which is actively writing such
8265 coverage in the county in which the agent is located, or the
8266 immediately adjoining counties, or an agent who places a volume
8267 of other property and casualty insurance in an amount equal to
8268 the premium volume placed with the Florida Joint Underwriting
8269 Association. The office ~~department~~ may, however, determine that
8270 an agent may be appointed to a servicing carrier if, after



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8271 public hearing, the office department finds that consumers in
8272 the agent's operating area would not have adequate and
8273 reasonable access to the purchase of automobile insurance if the
8274 agent were not appointed to a servicing carrier.

8275 (g) Must make available noncancelable coverage as provided
8276 in s. 627.7275(2).

8277 (h) Must provide for the furnishing of a list of insureds
8278 and their mailing addresses upon the request of a member of the
8279 association or an insurance agent licensed to place business
8280 with an association member. The list must indicate whether the
8281 insured is currently receiving a good driver discount from the
8282 association. The plan may charge a reasonable fee to cover the
8283 cost incurred in providing the list.

8284 (i) Must not provide a renewal credit or discount or any
8285 other inducement designed to retain a risk.

8286 (j) Must not provide any other good driver credit or
8287 discount that is not actuarially sound. In addition to other
8288 criteria that the plan may specify, to be eligible for a good
8289 driver credit, an insured must not have any criminal traffic
8290 violations within the most recent 36-month period preceding the
8291 date the discount is received.

8292 (k) Shall have no liability, and no cause of action of any
8293 nature shall arise against, any member insurer or its agents or
8294 employees, agents or employees of the association, members of
8295 the board of governors of the association, the Chief Financial
8296 Officer, or the office department or its representatives, for
8297 any action taken by them in the performance of their duties or
8298 responsibilities under this subsection. Such immunity does not



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8299 | apply to actions for or arising out of breach of any contract or
8300 | agreement pertaining to insurance, or any willful tort.

8301 | (1)1. Shall be subject to the public records requirements
8302 | of chapter 119 and the public meeting requirements of s.
8303 | 286.011. However, the following records of the Florida
8304 | Automobile Joint Underwriting Association are confidential and
8305 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
8306 | Constitution:

8307 | a. Underwriting files, except that a policyholder or an
8308 | applicant shall have access to his or her own underwriting
8309 | files.

8310 | b. Claims files, until termination of all litigation and
8311 | settlement of all claims arising out of the same incident,
8312 | although portions of the claims files may remain exempt, as
8313 | otherwise provided by law. Confidential and exempt claims file
8314 | records may be released to other governmental agencies upon
8315 | written request and demonstration of need; such records held by
8316 | the receiving agency remain confidential and exempt as provided
8317 | by this paragraph.

8318 | c. Records obtained or generated by an internal auditor
8319 | pursuant to a routine audit, until the audit is completed or, if
8320 | the audit is conducted as part of an investigation, until the
8321 | investigation is closed or ceases to be active. An
8322 | investigation is considered "active" while the investigation is
8323 | being conducted with a reasonable, good faith belief that it
8324 | could lead to the filing of administrative, civil, or criminal
8325 | proceedings.



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8326 d. Matters reasonably encompassed in privileged attorney-
8327 client communications.

8328 e. Proprietary information licensed to the association
8329 under contract when the contract provides for the
8330 confidentiality of such proprietary information.

8331 f. All information relating to the medical condition or
8332 medical status of an association employee which is not relevant
8333 to the employee's capacity to perform his or her duties, except
8334 as otherwise provided in this paragraph. Information which is
8335 exempt shall include, but is not limited to, information
8336 relating to workers' compensation, insurance benefits, and
8337 retirement or disability benefits.

8338 g. All records relative to an employee's participation in
8339 an employee assistance program designed to assist any employee
8340 who has a behavioral or medical disorder, substance abuse
8341 problem, or emotional difficulty which affects the employee's
8342 job performance, except as otherwise provided in s.
8343 112.0455(11).

8344 h. Information relating to negotiations for financing,
8345 reinsurance, depopulation, or contractual services, until the
8346 conclusion of the negotiations.

8347 i. Minutes of closed meetings regarding underwriting
8348 files, and minutes of closed meetings regarding an open claims
8349 file until termination of all litigation and settlement of all
8350 claims with regard to that claim, except that information
8351 otherwise confidential or exempt by law must be redacted.

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8353 | When an authorized insurer is considering underwriting a risk
8354 | insured by the association, relevant underwriting files and
8355 | confidential claims files may be released to the insurer
8356 | provided the insurer agrees in writing, notarized and under
8357 | oath, to maintain the confidentiality of such files. When a
8358 | file is transferred to an insurer, that file is no longer a
8359 | public record because it is not held by an agency subject to the
8360 | provisions of the public records law. The association may make
8361 | the following information obtained from underwriting files and
8362 | confidential claims files available to licensed general lines
8363 | insurance agents: name, address, and telephone number of the
8364 | automobile owner or insured; location of the risk; rating
8365 | information; loss history; and policy type. The receiving
8366 | licensed general lines insurance agent must retain the
8367 | confidentiality of the information received.

8368 | 2. Portions of meetings of the Florida Automobile Joint
8369 | Underwriting Association during which confidential underwriting
8370 | files or confidential open claims files are discussed are exempt
8371 | from the provisions of s. 286.011 and s. 24(b), Art. I of the
8372 | State Constitution. All portions of association meetings which
8373 | are closed to the public shall be recorded by a court reporter.
8374 | The court reporter shall record the times of commencement and
8375 | termination of the meeting, all discussion and proceedings, the
8376 | names of all persons present at any time, and the names of all
8377 | persons speaking. No portion of any closed meeting shall be off
8378 | the record. Subject to the provisions of this paragraph and s.
8379 | 119.07(2)(a), the court reporter's notes of any closed meeting
8380 | shall be retained by the association for a minimum of 5 years.



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8381 A copy of the transcript, less any exempt matters, of any closed
8382 meeting during which claims are discussed shall become public as
8383 to individual claims after settlement of the claim.

8384

8385 This paragraph is subject to the Open Government Sunset Review
8386 Act of 1995 in accordance with s. 119.15, and shall stand
8387 repealed on October 2, 2003, unless reviewed and saved from
8388 repeal through reenactment by the Legislature.

8389 (4)(a) ~~Effective upon this act becoming a law, The office~~
8390 ~~department~~ shall, after consultation with insurers, approve a
8391 joint underwriting plan of insurers which shall operate as a
8392 nonprofit entity. For the purposes of this subsection, the term
8393 "insurer" includes group self-insurance funds authorized by s.
8394 624.4621, commercial self-insurance funds authorized by s.
8395 624.462, assessable mutual insurers authorized under s.
8396 628.6011, and insurers licensed to write workers' compensation
8397 and employer's liability insurance in this state. The purpose of
8398 the plan is to provide workers' compensation and employer's
8399 liability insurance to applicants who are required by law to
8400 maintain workers' compensation and employer's liability
8401 insurance and who are in good faith entitled to but who are
8402 unable to purchase such insurance through the voluntary market.
8403 ~~The joint underwriting plan shall issue policies beginning~~
8404 ~~January 1, 1994.~~ The plan must have actuarially sound rates that
8405 assure that the plan is self-supporting.

8406 (b) The operation of the plan is subject to the
8407 supervision of a 13-member board of governors. The board of
8408 governors shall be comprised of:



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- 8409 1. Five of the 20 domestic insurers, as defined in s.
8410 624.06(1), having the largest voluntary direct premiums written
8411 in this state for workers' compensation and employer's liability
8412 insurance, which shall be elected by those 20 domestic insurers;
8413 2. Five of the 20 foreign insurers as defined in s.
8414 624.06(2) having the largest voluntary direct premiums written
8415 in this state for workers' compensation and employer's liability
8416 insurance, which shall be elected by those 20 foreign insurers;
8417 3. One person, who shall serve as the chair, appointed by
8418 the Chief Financial Officer ~~Insurance Commissioner~~;
8419 4. One person appointed by the largest property and
8420 casualty insurance agents' association in this state; and
8421 5. The consumer advocate appointed under s. 627.0613 or
8422 the consumer advocate's designee.

8423

8424 Each board member shall serve a 4-year term and may serve
8425 consecutive terms. No board member shall be an insurer which
8426 provides service to the plan or which has an affiliate which
8427 provides services to the plan or which is serviced by a service
8428 company or third-party administrator which provides services to
8429 the plan or which has an affiliate which provides services to
8430 the plan. The minutes, audits, and procedures of the board of
8431 governors are subject to chapter 119.

8432 (c) The operation of the plan shall be governed by a plan
8433 of operation that is prepared at the direction of the board of
8434 governors. The plan of operation may be changed at any time by
8435 the board of governors or upon request of the office ~~department~~.



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8436 The plan of operation and all changes thereto are subject to the
8437 approval of the office ~~department~~. The plan of operation shall:

8438 1. Authorize the board to engage in the activities
8439 necessary to implement this subsection, including, but not
8440 limited to, borrowing money.

8441 2. Develop criteria for eligibility for coverage by the
8442 plan, including, but not limited to, documented rejection by at
8443 least two insurers which reasonably assures that insureds
8444 covered under the plan are unable to acquire coverage in the
8445 voluntary market. Any insured may voluntarily elect to accept
8446 coverage from an insurer for a premium equal to or greater than
8447 the plan premium if the insurer writing the coverage adheres to
8448 the provisions of s. 627.171.

8449 3. Require notice from the agent to the insured at the
8450 time of the application for coverage that the application is for
8451 coverage with the plan and that coverage may be available
8452 through an insurer, group self-insurers' fund, commercial self-
8453 insurance fund, or assessable mutual insurer through another
8454 agent at a lower cost.

8455 4. Establish programs to encourage insurers to provide
8456 coverage to applicants of the plan in the voluntary market and
8457 to insureds of the plan, including, but not limited to:

8458 a. Establishing procedures for an insurer to use in
8459 notifying the plan of the insurer's desire to provide coverage
8460 to applicants to the plan or existing insureds of the plan and
8461 in describing the types of risks in which the insurer is
8462 interested. The description of the desired risks must be on a
8463 form developed by the plan.



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8464 b. Developing forms and procedures that provide an insurer
8465 with the information necessary to determine whether the insurer
8466 wants to write particular applicants to the plan or insureds of
8467 the plan.

8468 c. Developing procedures for notice to the plan and the
8469 applicant to the plan or insured of the plan that an insurer
8470 will insure the applicant or the insured of the plan, and notice
8471 of the cost of the coverage offered; and developing procedures
8472 for the selection of an insuring entity by the applicant or
8473 insured of the plan.

8474 d. Provide for a market-assistance plan to assist in the
8475 placement of employers. All applications for coverage in the
8476 plan received 45 days before the effective date for coverage
8477 shall be processed through the market-assistance plan. A market-
8478 assistance plan specifically designed to serve the needs of
8479 small good policyholders as defined by the board must be
8480 finalized by January 1, 1994.

8481 5. Provide for policy and claims services to the insureds
8482 of the plan of the nature and quality provided for insureds in
8483 the voluntary market.

8484 6. Provide for the review of applications for coverage
8485 with the plan for reasonableness and accuracy, using any
8486 available historic information regarding the insured.

8487 7. Provide for procedures for auditing insureds of the
8488 plan which are based on reasonable business judgment and are
8489 designed to maximize the likelihood that the plan will collect
8490 the appropriate premiums.



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8491 8. Authorize the plan to terminate the coverage of and
8492 refuse future coverage for any insured that submits a fraudulent
8493 application to the plan or provides fraudulent or grossly
8494 erroneous records to the plan or to any service provider of the
8495 plan in conjunction with the activities of the plan.

8496 9. Establish service standards for agents who submit
8497 business to the plan.

8498 10. Establish criteria and procedures to prohibit any
8499 agent who does not adhere to the established service standards
8500 from placing business with the plan or receiving, directly or
8501 indirectly, any commissions for business placed with the plan.

8502 11. Provide for the establishment of reasonable safety
8503 programs for all insureds in the plan.

8504 12. Authorize the plan to terminate the coverage of and
8505 refuse future coverage to any insured who fails to pay premiums
8506 or surcharges when due; who, at the time of application, is
8507 delinquent in payments of workers' compensation or employer's
8508 liability insurance premiums or surcharges owed to an insurer,
8509 group self-insurers' fund, commercial self-insurance fund, or
8510 assessable mutual insurer licensed to write such coverage in
8511 this state; or who refuses to substantially comply with any
8512 safety programs recommended by the plan.

8513 13. Authorize the board of governors to provide the
8514 services required by the plan through staff employed by the
8515 plan, through reasonably compensated service providers who
8516 contract with the plan to provide services as specified by the
8517 board of governors, or through a combination of employees and
8518 service providers.



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8519 14. Provide for service standards for service providers,
8520 methods of determining adherence to those service standards,
8521 incentives and disincentives for service, and procedures for
8522 terminating contracts for service providers that fail to adhere
8523 to service standards.

8524 15. Provide procedures for selecting service providers and
8525 standards for qualification as a service provider that
8526 reasonably assure that any service provider selected will
8527 continue to operate as an ongoing concern and is capable of
8528 providing the specified services in the manner required.

8529 16. Provide for reasonable accounting and data-reporting
8530 practices.

8531 17. Provide for annual review of costs associated with the
8532 administration and servicing of the policies issued by the plan
8533 to determine alternatives by which costs can be reduced.

8534 18. Authorize the acquisition of such excess insurance or
8535 reinsurance as is consistent with the purposes of the plan.

8536 19. Provide for an annual report to the office ~~department~~
8537 on a date specified by the office ~~department~~ and containing such
8538 information as the office ~~department~~ reasonably requires.

8539 20. Establish multiple rating plans for various
8540 classifications of risk which reflect risk of loss, hazard
8541 grade, actual losses, size of premium, and compliance with loss
8542 control. At least one of such plans must be a preferred-rating
8543 plan to accommodate small-premium policyholders with good
8544 experience as defined in sub-subparagraph 22.a.

8545 21. Establish agent commission schedules.

8546 22. Establish three subplans as follows:



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8547 a. Subplan "A" must include those insureds whose annual
8548 premium does not exceed \$2,500 and who have neither incurred any
8549 lost-time claims nor incurred medical-only claims exceeding 50
8550 percent of their premium for the immediate 2 years.

8551 b. Subplan "B" must include insureds that are employers
8552 identified by the board of governors as high-risk employers due
8553 solely to the nature of the operations being performed by those
8554 insureds and for whom no market exists in the voluntary market,
8555 and whose experience modifications are less than 1.00.

8556 c. Subplan "C" must include all other insureds within the
8557 plan.

8558 (e) The plan shall establish and use its rates and rating
8559 plans, and the plan may establish and use changes in rating
8560 plans at any time, but no more frequently than two times per any
8561 rating class for any calendar year. By December 1, 1993, and
8562 December 1 of each year thereafter, the board shall establish
8563 and use actuarially sound rates for use by the plan to assure
8564 that the plan is self-funding while those rates are in effect.
8565 Such rates and rating plans must be filed with the office
8566 ~~department~~ within 30 calendar days after their effective dates,
8567 and shall be considered a "use and file" filing. Any disapproval
8568 by the office ~~department~~ must have an effective date that is at
8569 least 60 days from the date of disapproval of the rates and
8570 rating plan and must have prospective effect only. The plan may
8571 not be subject to any order by the office ~~department~~ to return
8572 to policyholders any portion of the rates disapproved by the
8573 office ~~department~~. The office ~~department~~ may not disapprove any
8574 rates or rating plans unless it demonstrates that such rates and



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8575 rating plans are excessive, inadequate, or unfairly
8576 discriminatory.

8577 (f) No later than June 1 of each year, the plan shall
8578 obtain an independent actuarial certification of the results of
8579 the operations of the plan for prior years, and shall furnish a
8580 copy of the certification to the office ~~department~~. If, after
8581 the effective date of the plan, the projected ultimate incurred
8582 losses and expenses and dividends for prior years exceed
8583 collected premiums, accrued net investment income, and prior
8584 assessments for prior years, the certification is subject to
8585 review and approval by the office ~~department~~ before it becomes
8586 final.

8587 (g) Whenever a deficit exists, the plan shall, within 90
8588 days, provide the office ~~department~~ with a program to eliminate
8589 the deficit within a reasonable time. The deficit may be funded
8590 through increased premiums charged to insureds of the plan for
8591 subsequent years, through the use of policyholder surplus
8592 attributable to any year, and through assessments on insureds in
8593 the plan if the plan uses assessable policies.

8594 Section 199. Section 627.3111, Florida Statutes, is
8595 amended to read:

8596 627.3111 Public records exemption.--All bank account
8597 numbers and debit, charge, and credit card numbers, and all
8598 other personal financial and health information of a consumer
8599 held by the department or office ~~of Insurance~~ or their ~~its~~
8600 service providers or agents, relating to a consumer's complaint
8601 or inquiry regarding a matter or activity regulated under the
8602 Florida Insurance Code, are confidential and exempt from s.



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8603 119.07(1) and s. 24(a), Art. I of the State Constitution. For
8604 the purpose of this section, the term "consumer" includes but is
8605 not limited to a prospective purchaser, purchaser, or
8606 beneficiary of, or applicant for, any product or service
8607 regulated under the Florida Insurance Code, and a family member
8608 or dependent of a consumer, a subscriber under a group policy,
8609 or a policyholder. This information shall be redacted from
8610 records that contain nonexempt information prior to disclosure.
8611 This exemption applies to information made confidential and
8612 exempt by this section held by the department or office of
8613 ~~Insurance~~ or their ~~its~~ service providers or agents before, on,
8614 or after the effective date of this exemption. Such confidential
8615 and exempt information may be disclosed to another governmental
8616 entity, if disclosure is necessary for the receiving entity to
8617 perform its duties and responsibilities, and may be disclosed to
8618 the National Association of Insurance Commissioners. The
8619 receiving governmental entity and the association must maintain
8620 the confidential and exempt status of such information. The
8621 information made confidential and exempt by this section may be
8622 used in a criminal, civil, or administrative proceeding so long
8623 as the confidential and exempt status of such information is
8624 maintained. This exemption does not include the name and address
8625 of an inquirer or complainant to the department or office or the
8626 name of an insurer or other regulated entity which is the
8627 subject of the inquiry or complaint. This section is subject to
8628 the Open Government Sunset Review Act of 1995 in accordance with
8629 s. 119.15 and shall stand repealed on October 2, 2007, unless



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8630 reviewed and saved from repeal through reenactment by the
8631 Legislature.

8632 Section 200. Subsection (1), paragraphs (a) and (c) of
8633 subsection (3), paragraphs (a), (c), and (d) of subsection (4),
8634 and subsections (5) and (6) of section 627.351, Florida
8635 Statutes, are amended, and paragraph (f) is added to subsection
8636 (2) of that section to read:

8637 627.351 Insurance risk apportionment plans.--

8638 (1) MOTOR VEHICLE INSURANCE RISK
8639 APPORTIONMENT.--Agreements may be made among casualty and surety
8640 insurers with respect to the equitable apportionment among them
8641 of insurance which may be afforded applicants who are in good
8642 faith entitled to, but are unable to, procure such insurance
8643 through ordinary methods, and such insurers may agree among
8644 themselves on the use of reasonable rate modifications for such
8645 insurance. Such agreements and rate modifications shall be
8646 subject to the approval of the office ~~department~~. The office
8647 ~~department~~ shall, after consultation with the insurers licensed
8648 to write automobile liability insurance in this state, adopt a
8649 reasonable plan or plans for the equitable apportionment among
8650 such insurers of applicants for such insurance who are in good
8651 faith entitled to, but are unable to, procure such insurance
8652 through ordinary methods, and, when such plan has been adopted,
8653 all such insurers shall subscribe thereto and shall participate
8654 therein. Such plan or plans shall include rules for
8655 classification of risks and rates therefor. The plan or plans
8656 shall make available noncancelable coverage as provided in s.
8657 627.7275(2). Any insured placed with the plan shall be notified



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8658 | of the fact that insurance coverage is being afforded through
8659 | the plan and not through the private market, and such
8660 | notification shall be given in writing within 10 days of such
8661 | placement. To assure that plan rates are made adequate to pay
8662 | claims and expenses, insurers shall develop a means of obtaining
8663 | loss and expense experience at least annually, and the plan
8664 | shall file such experience, when available, with the office
8665 | ~~department~~ in sufficient detail to make a determination of rate
8666 | adequacy. Prior to the filing of such experience with the office
8667 | ~~department~~, the plan shall poll each member insurer as to the
8668 | need for an actuary who is a member of the Casualty Actuarial
8669 | Society and who is not affiliated with the plan's statistical
8670 | agent to certify the plan's rate adequacy. If a majority of
8671 | those insurers responding indicate a need for such
8672 | certification, the plan shall include the certification as part
8673 | of its experience filing. Such experience shall be filed with
8674 | the office ~~department~~ not more than 9 months following the end
8675 | of the annual statistical period under review, together with a
8676 | rate filing based on said experience. The office ~~department~~
8677 | shall initiate proceedings to disapprove the rate and so notify
8678 | the plan or shall finalize its review within 60 days of receipt
8679 | of the filing. Notification to the plan by the office ~~department~~
8680 | of its preliminary findings, which include a point of entry to
8681 | the plan pursuant to chapter 120, shall toll the 60-day period
8682 | during any such proceedings and subsequent judicial review. The
8683 | rate shall be deemed approved if the office ~~department~~ does not
8684 | issue notice to the plan of its preliminary findings within 60
8685 | days of the filing. In addition to provisions for claims and



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8686 expenses, the ratemaking formula shall include a factor for
8687 projected claims trending and 5 percent for contingencies. In no
8688 instance shall the formula include a renewal discount for plan
8689 insureds. However, the plan shall reunderwrite each insured on
8690 an annual basis, based upon all applicable rating factors
8691 approved by the office ~~department~~. Trend factors shall not be
8692 found to be inappropriate if not in excess of trend factors
8693 normally used in the development of residual market rates by the
8694 appropriate licensed rating organization. Each application for
8695 coverage in the plan shall include, in boldfaced 12-point type
8696 immediately preceding the applicant's signature, the following
8697 statement:

8698
8699 "THIS INSURANCE IS BEING AFFORDED THROUGH THE FLORIDA JOINT
8700 UNDERWRITING ASSOCIATION AND NOT THROUGH THE PRIVATE MARKET.
8701 PLEASE BE ADVISED THAT COVERAGE WITH A PRIVATE INSURER MAY BE
8702 AVAILABLE FROM ANOTHER AGENT AT A LOWER COST. AGENT AND COMPANY
8703 LISTINGS ARE AVAILABLE IN THE LOCAL YELLOW PAGES."

8704
8705 The plan shall annually report to the office ~~department~~ the
8706 number and percentage of plan insureds who are not surcharged
8707 due to their driving record.

8708 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

8709 (f) As used in this subsection, the term "department"
8710 means the former Department of Insurance.

8711 (3) POLITICAL SUBDIVISION; CASUALTY INSURANCE RISK
8712 APPORTIONMENT.--



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8713 (a) The office ~~department~~ shall, after consultation with
8714 the casualty insurers licensed in this state, adopt a plan or
8715 plans for the equitable apportionment among them of casualty
8716 insurance coverage which may be afforded political subdivisions
8717 which are in good faith entitled to, but are unable to, procure
8718 such coverage through the voluntary market at standard rates or
8719 through a statutorily approved plan authorized by the office
8720 ~~department~~. The office ~~department~~ may adopt a joint underwriting
8721 plan which shall provide for one or more designated insurers
8722 able and willing to provide policyholder and claims service,
8723 including the issuance of insurance policies, to act on behalf
8724 of all other insurers required to participate in the joint
8725 underwriting plan. Any joint underwriting plan adopted shall
8726 provide for the equitable apportionment of any profits realized,
8727 or of losses and expenses incurred, among participating
8728 insurers. The plan shall include, but shall not be limited to:

- 8729 1. Rules for the classification of risks and rates which
8730 reflect the past loss experience and prospective loss experience
8731 in different geographic areas.
- 8732 2. A rating plan which reasonably reflects the prior
8733 claims experience of the insureds.
- 8734 3. Excess coverage by insurers if the office ~~Insurance~~
8735 ~~Commissioner~~, in its ~~his or her~~ discretion, requires such
8736 coverage by insurers participating in the joint underwriting
8737 plan.

8738 (c) Any deficit sustained under the plan shall first be
8739 recovered through a premium contingency assessment.
8740 Concurrently, the rates for insureds shall be adjusted for the



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8741 next year so as to be actuarially sound in conformance with
8742 rules adopted by ~~of the~~ commission ~~department~~.

8743 (4) MEDICAL MALPRACTICE RISK APPORTIONMENT.--

8744 (a) The office ~~department~~ shall, after consultation with
8745 insurers as set forth in paragraph (b), adopt a joint
8746 underwriting plan as set forth in paragraph (d).

8747 (c) The Joint Underwriting Association shall operate
8748 subject to the supervision and approval of a board of governors
8749 consisting of representatives of five of the insurers
8750 participating in the Joint Underwriting Association, an attorney
8751 to be named by The Florida Bar, a physician to be named by the
8752 Florida Medical Association, a dentist to be named by the
8753 Florida Dental Association, and a hospital representative to be
8754 named by the Florida Hospital Association. The Chief Financial
8755 Officer shall select the representatives of the five insurers.
8756 One insurer representative shall be selected from
8757 recommendations of the American Insurance Association. One
8758 insurer representative shall be selected from recommendations of
8759 the National Association of Independent Insurers. One insurer
8760 representative shall be selected from recommendations of the
8761 Alliance of American Insurers. Two insurer representatives shall
8762 be selected to represent insurers that are not affiliated with
8763 these associations. The board of governors shall choose, during
8764 the first meeting of the board after June 30 of each year, one
8765 of its members to serve as chair of the board and another member
8766 to serve as vice chair of the board. There shall be no
8767 liability on the part of, and no cause of action of any nature
8768 shall arise against, any member insurer, self-insurer, or its



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8769 agents or employees, the Joint Underwriting Association or its
8770 agents or employees, members of the board of governors, or the
8771 office department or its representatives for any action taken by
8772 them in the performance of their powers and duties under this
8773 subsection.

8774 (d) The plan shall provide coverage for claims arising out
8775 of the rendering of, or failure to render, medical care or
8776 services and, in the case of health care facilities, coverage
8777 for bodily injury or property damage to the person or property
8778 of any patient arising out of the insured's activities, in
8779 appropriate policy forms for all health care providers as
8780 defined in paragraph (h). The plan shall include, but shall not
8781 be limited to:

8782 1. Classifications of risks and rates which reflect past
8783 and prospective loss and expense experience in different areas
8784 of practice and in different geographical areas. To assure that
8785 plan rates are adequate to pay claims and expenses, the Joint
8786 Underwriting Association shall develop a means of obtaining loss
8787 and expense experience; and the plan shall file such experience,
8788 when available, with the office department in sufficient detail
8789 to make a determination of rate adequacy. Within 60 days after a
8790 rate filing, the office department shall approve such rates or
8791 rate revisions as are fully supported by the filing. In addition
8792 to provisions for claims and expenses, the ratemaking formula
8793 may include a factor for projected claims trending and a margin
8794 for contingencies. The use of trend factors shall not be found
8795 to be inappropriate.



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- 8796 2. A rating plan which reasonably recognizes the prior
8797 claims experience of insureds.
- 8798 3. Provisions as to rates for:
- 8799 a. Insureds who are retired or semiretired.
- 8800 b. The estates of deceased insureds.
- 8801 c. Part-time professionals.
- 8802 4. Protection in an amount not to exceed \$250,000 per
8803 claim, \$750,000 annual aggregate for health care providers other
8804 than hospitals and in an amount not to exceed \$1.5 million per
8805 claim, \$5 million annual aggregate for hospitals. Such coverage
8806 for health care providers other than hospitals shall be
8807 available as primary coverage and as excess coverage for the
8808 layer of coverage between the primary coverage and the total
8809 limits of \$250,000 per claim, \$750,000 annual aggregate. The
8810 plan shall also provide tail coverage in these amounts to
8811 insureds whose claims-made coverage with another insurer or
8812 trust has or will be terminated. Such tail coverage shall
8813 provide coverage for incidents that occurred during the claims-
8814 made policy period for which a claim is made after the policy
8815 period.
- 8816 5. A risk management program for insureds of the
8817 association. This program shall include, but not be limited to:
8818 investigation and analysis of frequency, severity, and causes of
8819 adverse or untoward medical injuries; development of measures to
8820 control these injuries; systematic reporting of medical
8821 incidents; investigation and analysis of patient complaints; and
8822 auditing of association members to assure implementation of this
8823 program. The plan may refuse to insure any insured who refuses



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8824 or fails to comply with the risk management program implemented
8825 by the association. Prior to cancellation or refusal to renew
8826 an insured, the association shall provide the insured 60 days'
8827 notice of intent to cancel or nonrenew and shall further notify
8828 the insured of any action which must be taken to be in
8829 compliance with the risk management program.

8830 (5) PROPERTY AND CASUALTY INSURANCE RISK
8831 APPORTIONMENT.--The commission ~~department~~ shall adopt by rule a
8832 joint underwriting plan to equitably apportion among insurers
8833 authorized in this state to write property insurance as defined
8834 in s. 624.604 or casualty insurance as defined in s. 624.605,
8835 the underwriting of one or more classes of property insurance or
8836 casualty insurance, except for the types of insurance that are
8837 included within property insurance or casualty insurance for
8838 which an equitable apportionment plan, assigned risk plan, or
8839 joint underwriting plan is authorized under s. 627.311 or
8840 subsection (1), subsection (2), subsection(3), subsection (4),
8841 or subsection (6) and except for risks eligible for flood
8842 insurance written through the federal flood insurance program to
8843 persons with risks eligible under subparagraph (a)1. and who are
8844 in good faith entitled to, but are unable to, obtain such
8845 property or casualty insurance coverage, including excess
8846 coverage, through the voluntary market. For purposes of this
8847 subsection, an adequate level of coverage means that coverage
8848 which is required by state law or by responsible or prudent
8849 business practices. The Joint Underwriting Association shall not
8850 be required to provide coverage for any type of risk for which
8851 there are no insurers providing similar coverage in this state.



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8852 | The office ~~department~~ may designate one or more participating
8853 | insurers who agree to provide policyholder and claims service,
8854 | including the issuance of policies, on behalf of the
8855 | participating insurers.

8856 | (a) The plan shall provide:

8857 | 1. A means of establishing eligibility of a risk for
8858 | obtaining insurance through the plan, which provides that:

8859 | a. A risk shall be eligible for such property insurance or
8860 | casualty insurance as is required by Florida law if the
8861 | insurance is unavailable in the voluntary market, including the
8862 | market assistance program and the surplus lines market.

8863 | b. A commercial risk not eligible under sub-subparagraph
8864 | a. shall be eligible for property or casualty insurance if:

8865 | (I) The insurance is unavailable in the voluntary market,
8866 | including the market assistance plan and the surplus lines
8867 | market;

8868 | (II) Failure to secure the insurance would substantially
8869 | impair the ability of the entity to conduct its affairs; and

8870 | (III) The risk is not determined by the Risk Underwriting
8871 | Committee to be uninsurable.

8872 | c. In the event the Federal Government terminates the
8873 | Federal Crime Insurance Program established under 44 C.F.R. ss.
8874 | 80-83, Florida commercial and residential risks previously
8875 | insured under the federal program shall be eligible under the
8876 | plan.

8877 | d.(I) In the event a risk is eligible under this paragraph
8878 | and in the event the market assistance plan receives a minimum
8879 | of 100 applications for coverage within a 3-month period, or 200



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8880 applications for coverage within a 1-year period or less, for a
8881 given class of risk contained in the classification system
8882 defined in the plan of operation of the Joint Underwriting
8883 Association, and unless the market assistance plan provides a
8884 quotation for at least 80 percent of such applicants, such
8885 classification shall immediately be eligible for coverage in the
8886 Joint Underwriting Association.

8887 (II) Any market assistance plan application which is
8888 rejected because an individual risk is so hazardous as to be
8889 practically uninsurable, considering whether the likelihood of a
8890 loss for such a risk is substantially higher than for other
8891 risks of the same class due to individual risk characteristics,
8892 prior loss experience, unwillingness to cooperate with a prior
8893 insurer, physical characteristics and physical location shall
8894 not be included in the minimum percentage calculation provided
8895 above. In the event that there is any legal or administrative
8896 challenge to a determination by the office ~~department~~ that the
8897 conditions of this subparagraph have been met for eligibility
8898 for coverage in the Joint Underwriting Association for a given
8899 classification, any eligible risk may obtain coverage during the
8900 pendency of any such challenge.

8901 e. In order to qualify as a quotation for the purpose of
8902 meeting the minimum percentage calculation in this subparagraph,
8903 the quoted premium must meet the following criteria:

8904 (I) In the case of an admitted carrier, the quoted premium
8905 must not exceed the premium available for a given classification
8906 currently in use by the Joint Underwriting Association or the
8907 premium developed by using the rates and rating plans on file



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8908 with the office ~~department~~ by the quoting insurer, whichever is
8909 greater.

8910 (II) In the case of an authorized surplus lines insurer,
8911 the quoted premium must not exceed the premium available for a
8912 given classification currently in use by the Joint Underwriting
8913 Association by more than 25 percent, after consideration of any
8914 individual risk surcharge or credit.

8915 f. Any agent who falsely certifies the unavailability of
8916 coverage as provided by sub-subparagraphs a. and b., is subject
8917 to the penalties provided in s. 626.611.

8918 2. A means for the equitable apportionment of profits or
8919 losses and expenses among participating insurers.

8920 3. Rules for the classification of risks and rates which
8921 reflect the past and prospective loss experience.

8922 4. A rating plan which reasonably reflects the prior
8923 claims experience of the insureds. Such rating plan shall
8924 include at least two levels of rates for risks that have
8925 favorable loss experience and risks that have unfavorable loss
8926 experience, as established by the plan.

8927 5. Reasonable limits to available amounts of insurance.
8928 Such limits may not be less than the amounts of insurance
8929 required of eligible risks by Florida law.

8930 6. Risk management requirements for insurance where such
8931 requirements are reasonable and are expected to reduce losses.

8932 7. Deductibles as may be necessary to meet the needs of
8933 insureds.



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8934 8. Policy forms which are consistent with the forms in use
8935 by the majority of the insurers providing coverage in the
8936 voluntary market for the coverage requested by the applicant.

8937 9. A means to remove risks from the plan once such risks
8938 no longer meet the eligibility requirements of this paragraph.
8939 For this purpose, the plan shall include the following
8940 requirements: At each 6-month interval after the activation of
8941 any class of insureds, the board of governors or its designated
8942 committee shall review the number of applications to the market
8943 assistance plan for that class. If, based on these latest
8944 numbers, at least 90 percent of such applications have been
8945 provided a quotation, the Joint Underwriting Association shall
8946 cease underwriting new applications for such class within 30
8947 days, and notification of this decision shall be sent to the
8948 office Insurance Commissioner, the major agents' associations,
8949 and the board of directors of the market assistance plan. A
8950 quotation for the purpose of this subparagraph shall meet the
8951 same criteria for a quotation as provided in sub-subparagraph
8952 1.e sub-subparagraph d. All policies which were previously
8953 written for that class shall continue in force until their
8954 normal expiration date, at which time, subject to the required
8955 timely notification of nonrenewal by the Joint Underwriting
8956 Association, the insured may then elect to reapply to the Joint
8957 Underwriting Association according to the requirements of
8958 eligibility. If, upon reapplication, those previously insured
8959 Joint Underwriting Association risks meet the eligibility
8960 requirements, the Joint Underwriting Association shall provide
8961 the coverage requested.



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8962 10. A means for providing credits to insurers against any
8963 deficit assessment levied pursuant to paragraph (c), for risks
8964 voluntarily written through the market assistance plan by such
8965 insurers.

8966 11. That the Joint Underwriting Association shall operate
8967 subject to the supervision and approval of a board of governors
8968 consisting of 13 individuals appointed by the Chief Financial
8969 Officer Insurance Commissioner, and shall have an executive or
8970 underwriting committee. At least four of the members shall be
8971 representatives of insurance trade associations as follows: one
8972 member from the American Insurance Association, one member from
8973 the Alliance of American Insurers, one member from the National
8974 Association of Independent Insurers, and one member from an
8975 unaffiliated insurer writing coverage on a national basis. Two
8976 representatives shall be from two of the statewide agents'
8977 associations. Each board member shall be appointed to serve for
8978 2-year terms beginning on a date designated by the plan and
8979 shall serve at the pleasure of the Chief Financial Officer
8980 ~~commissioner~~. Members may be reappointed for subsequent terms.

8981 (b) Rates used by the Joint Underwriting Association shall
8982 be actuarially sound. To the extent applicable, the rate
8983 standards set forth in s. 627.062 shall be considered by the
8984 office department in establishing rates to be used by the joint
8985 underwriting plan. The initial rate level shall be determined
8986 using the rates, rules, rating plans, and classifications
8987 contained in the most current Insurance Services Office (ISO)
8988 filing with the office department or the filing of other
8989 licensed rating organizations with an additional increment of 25



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8990 percent of premium. For any type of coverage or classification
8991 which lends itself to manual rating for which the Insurance
8992 Services Office or another licensed rating organization does not
8993 file or publish a rate, the Joint Underwriting Association shall
8994 file and use an initial rate based on the average current market
8995 rate. The initial rate level for the rate plan shall also be
8996 subject to an experience and schedule rating plan which may
8997 produce a maximum of 25 percent debits or credits. For any risk
8998 which does not lend itself to manual rating and for which no
8999 rate has been promulgated under the rate plan, the board shall
9000 develop and file with the office commissioner, subject to its
9001 ~~his or her~~ approval, appropriate criteria and factors for rating
9002 the individual risk. Such criteria and factors shall include,
9003 but not be limited to, loss rating plans, composite rating
9004 plans, and unique and unusual risk rating plans. The initial
9005 rates required under this paragraph shall be adjusted in
9006 conformity with future filings by the Insurance Services Office
9007 with the office department and shall remain in effect until such
9008 time as the Joint Underwriting Association has sufficient data
9009 as to independently justify an actuarially sound change in such
9010 rates.

9011 (c)1. In the event an underwriting deficit exists for any
9012 policy year the plan is in effect, any surplus which has accrued
9013 from previous years and is not projected within reasonable
9014 actuarial certainty to be needed for payment for claims in the
9015 year the surplus arose shall be used to offset the deficit to
9016 the extent available.



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9017 2. As to any remaining deficit, the board of governors of
9018 the Joint Underwriting Association shall levy and collect an
9019 assessment in an amount sufficient to offset such deficit. Such
9020 assessment shall be levied against the insurers participating in
9021 the plan during the year giving rise to the assessment. Any
9022 assessments against insurers for the lines of property and
9023 casualty insurance issued to commercial risks shall be recovered
9024 from the participating insurers in the proportion that the net
9025 direct premium of each insurer for commercial risks written
9026 during the preceding calendar year bears to the aggregate net
9027 direct premium written for commercial risks by all members of
9028 the plan for the lines of insurance included in the plan. Any
9029 assessments against insurers for the lines of property and
9030 casualty insurance issued to personal risks eligible under sub-
9031 subparagraph (a)1.a. or sub-subparagraph (a)1.c. shall be
9032 recovered from the participating insurers in the proportion that
9033 the net direct premium of each insurer for personal risks
9034 written during the preceding calendar year bears to the
9035 aggregate net direct premium written for personal risks by all
9036 members of the plan for the lines of insurance included in the
9037 plan.

9038 3. The board shall take all reasonable and prudent steps
9039 necessary to collect the amount of assessment due from each
9040 participating insurer and policyholder, including, if prudent,
9041 filing suit to collect such assessment. If the board is unable
9042 to collect an assessment from any insurer, the uncollected
9043 assessments shall be levied as an additional assessment against
9044 the participating insurers and any participating insurer



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9045 required to pay an additional assessment as a result of such
9046 failure to pay shall have a cause of action against such
9047 nonpaying insurer.

9048 4. Any funds or entitlements that the state may be
9049 eligible to receive by virtue of the Federal Government's
9050 termination of the Federal Crime Insurance Program referenced in
9051 sub-subparagraph (a)1.c. may be used under the plan to offset
9052 any subsequent underwriting deficits that may occur from risks
9053 previously insured with the Federal Crime Insurance Program.

9054 5. Assessments shall be included as an appropriate factor
9055 in the making of rates as provided in s. 627.3512.

9056 6.a. The Legislature finds that the potential for
9057 unlimited assessments under this paragraph may induce insurers
9058 to attempt to reduce their writings in the voluntary market, and
9059 that such actions would worsen the availability problems that
9060 the association was created to remedy. It is the intent of the
9061 Legislature that insurers remain fully responsible for covering
9062 any deficits of the association; however, it is also the intent
9063 of the Legislature to provide a means by which assessment
9064 liabilities may be amortized over a period of years.

9065 b. The total amount of deficit assessments under this
9066 paragraph with respect to any year may not exceed 10 percent of
9067 the statewide total gross written premium for all insurers for
9068 the coverages referred to in the introductory language of this
9069 subsection for the prior year, except that if the deficit with
9070 respect to any plan year exceeds such amount and bonds are
9071 issued under sub-subparagraph c. to defray the deficit, the
9072 total amount of assessments with respect to such deficit may not



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9073 | in any year exceed 10 percent of the deficit, or such lesser
9074 | percentage as is sufficient to retire the bonds as determined by
9075 | the board, and shall continue annually until the bonds are
9076 | retired.

9077 | c. The governing body of any unit of local government, any
9078 | residents or businesses of which are insured by the association,
9079 | may issue bonds as defined in s. 125.013 or s. 166.101 from time
9080 | to time to fund an assistance program, in conjunction with the
9081 | association, for the purpose of defraying deficits of the
9082 | association. Revenue bonds may not be issued until validated
9083 | pursuant to chapter 75, unless a state of emergency is declared
9084 | by executive order or proclamation of the Governor pursuant to
9085 | s. 252.36 making such findings as are necessary to determine
9086 | that it is in the best interests of, and necessary for, the
9087 | protection of the public health, safety, and general welfare of
9088 | residents of this state and the protection and preservation of
9089 | the economic stability of insurers operating in this state, and
9090 | declaring it an essential public purpose to permit certain
9091 | municipalities or counties to issue such bonds as will provide
9092 | relief to claimants and policyholders of the joint underwriting
9093 | association and insurers responsible for apportionment of
9094 | association losses. The unit of local government shall enter
9095 | into such contracts with the association as are necessary to
9096 | carry out this paragraph. Any bonds issued under this sub-
9097 | paragraph shall be payable from and secured by moneys
9098 | received by the association from assessments under this
9099 | paragraph, and assigned and pledged to or on behalf of the unit
9100 | of local government for the benefit of the holders of such



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9101 | bonds. The funds, credit, property, and taxing power of the
9102 | state or of the unit of local government shall not be pledged
9103 | for the payment of such bonds. If any of the bonds remain unsold
9104 | 60 days after issuance, the office ~~department~~ shall require all
9105 | insurers subject to assessment to purchase the bonds, which
9106 | shall be treated as admitted assets; each insurer shall be
9107 | required to purchase that percentage of the unsold portion of
9108 | the bond issue that equals the insurer's relative share of
9109 | assessment liability under this subsection. An insurer shall not
9110 | be required to purchase the bonds to the extent that the office
9111 | ~~department~~ determines that the purchase would endanger or impair
9112 | the solvency of the insurer.

9113 | 7. The plan shall provide for the deferment, in whole or
9114 | in part, of the assessment of an insurer if the office
9115 | ~~department~~ finds that payment of the assessment would endanger
9116 | or impair the solvency of the insurer. In the event an
9117 | assessment against an insurer is deferred in whole or in part,
9118 | the amount by which such assessment is deferred may be assessed
9119 | against the other member insurers in a manner consistent with
9120 | the basis for assessments set forth in subparagraph 2.

9121 | (d) Upon adoption of the plan, all insurers authorized in
9122 | this state to underwrite property or casualty insurance shall
9123 | participate in the plan.

9124 | (e) A Risk Underwriting Committee of the Joint
9125 | Underwriting Association composed of three members experienced
9126 | in evaluating insurance risks is created to review risks
9127 | rejected by the voluntary market for which application is made
9128 | for insurance through the joint underwriting plan. The committee



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9129 shall consist of a representative of the market assistance plan
9130 created under s. 627.3515, a member selected by the insurers
9131 participating in the Joint Underwriting Association, and a
9132 member named by the Chief Financial Officer Insurance
9133 ~~Commissioner~~. The Risk Underwriting Committee shall appoint such
9134 advisory committees as are provided for in the plan and are
9135 necessary to conduct its functions. The salaries and expenses of
9136 the members of the Risk Underwriting Committee and its advisory
9137 committees shall be paid by the joint underwriting plan. The
9138 plan approved by the office ~~department~~ shall establish criteria
9139 and procedures for use by the Risk Underwriting Committee for
9140 determining whether an individual risk is so hazardous as to be
9141 uninsurable. In making this determination and in establishing
9142 the criteria and procedures, the following shall be considered:

- 9143 1. Whether the likelihood of a loss for the individual
9144 risk is substantially higher than for other risks of the same
9145 class; and
- 9146 2. Whether the uncertainty associated with the individual
9147 risk is such that an appropriate premium cannot be determined.

9148

9149 The acceptance or rejection of a risk by the underwriting
9150 committee shall be construed as the private placement of
9151 insurance, and the provisions of chapter 120 shall not apply.

9152 (f) There shall be no liability on the part of, and no
9153 cause of action of any nature shall arise against, any member
9154 insurer or its agents or employees, the Florida Property and
9155 Casualty Joint Underwriting Association or its agents or
9156 employees, members of the board of governors, the Chief



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9157 | Financial Officer, or the office ~~department~~ or its
9158 | representatives for any action taken by them in the performance
9159 | of their duties under this subsection. Such immunity does not
9160 | apply to actions for breach of any contract or agreement
9161 | pertaining to insurance, or any other willful tort.

9162 | (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

9163 | (a)1. The Legislature finds that actual and threatened
9164 | catastrophic losses to property in this state from hurricanes
9165 | have caused insurers to be unwilling or unable to provide
9166 | property insurance coverage to the extent sought and needed. It
9167 | is in the public interest and a public purpose to assist in
9168 | assuring that property in the state is insured so as to
9169 | facilitate the remediation, reconstruction, and replacement of
9170 | damaged or destroyed property in order to reduce or avoid the
9171 | negative effects otherwise resulting to the public health,
9172 | safety, and welfare; to the economy of the state; and to the
9173 | revenues of the state and local governments needed to provide
9174 | for the public welfare. It is necessary, therefore, to provide
9175 | property insurance to applicants who are in good faith entitled
9176 | to procure insurance through the voluntary market but are unable
9177 | to do so. The Legislature intends by this subsection that
9178 | property insurance be provided and that it continues, as long as
9179 | necessary, through an entity organized to achieve efficiencies
9180 | and economies, all toward the achievement of the foregoing
9181 | public purposes. Because it is essential for the corporation to
9182 | have the maximum financial resources to pay claims following a
9183 | catastrophic hurricane, it is the intent of the Legislature that
9184 | the income of the corporation be exempt from federal income



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9185 | taxation and that interest on the debt obligations issued by the
9186 | corporation be exempt from federal income taxation.

9187 | 2. The Residential Property and Casualty Joint
9188 | Underwriting Association originally created by this statute
9189 | shall be known, as of July 1, 2002, as the Citizens Property
9190 | Insurance Corporation. The corporation shall provide insurance
9191 | for residential and commercial property, for applicants who are
9192 | in good faith entitled, but are unable, to procure insurance
9193 | through the voluntary market. The corporation shall operate
9194 | pursuant to a plan of operation approved by order of the office
9195 | ~~department~~. The plan is subject to continuous review by the
9196 | office department. The office department may, by order, withdraw
9197 | approval of all or part of a plan if the office department
9198 | determines that conditions have changed since approval was
9199 | granted and that the purposes of the plan require changes in the
9200 | plan. For the purposes of this subsection, residential coverage
9201 | includes both personal lines residential coverage, which
9202 | consists of the type of coverage provided by homeowner's, mobile
9203 | home owner's, dwelling, tenant's, condominium unit owner's, and
9204 | similar policies, and commercial lines residential coverage,
9205 | which consists of the type of coverage provided by condominium
9206 | association, apartment building, and similar policies.

9207 | (b)1. All insurers authorized to write one or more subject
9208 | lines of business in this state are subject to assessment by the
9209 | corporation and, for the purposes of this subsection, are
9210 | referred to collectively as "assessable insurers." Insurers
9211 | writing one or more subject lines of business in this state
9212 | pursuant to part VIII of chapter 626 are not assessable



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9213 insurers, but insureds who procure one or more subject lines of
9214 business in this state pursuant to part VIII of chapter 626 are
9215 subject to assessment by the corporation and are referred to
9216 collectively as "assessable insureds." An authorized insurer's
9217 assessment liability shall begin on the first day of the
9218 calendar year following the year in which the insurer was issued
9219 a certificate of authority to transact insurance for subject
9220 lines of business in this state and shall terminate 1 year after
9221 the end of the first calendar year during which the insurer no
9222 longer holds a certificate of authority to transact insurance
9223 for subject lines of business in this state.

9224 2.a. All revenues, assets, liabilities, losses, and
9225 expenses of the corporation shall be divided into three separate
9226 accounts as follows:

9227 (I) A personal lines account for personal residential
9228 policies issued by the corporation or issued by the Residential
9229 Property and Casualty Joint Underwriting Association and renewed
9230 by the corporation that provide comprehensive, multiperil
9231 coverage on risks that are not located in areas eligible for
9232 coverage in the Florida Windstorm Underwriting Association as
9233 those areas were defined on January 1, 2002 and for such
9234 policies that do not provide coverage for the peril of wind on
9235 risks that are located in such areas;

9236 (II) A commercial lines account for commercial residential
9237 policies issued by the corporation or issued by the Residential
9238 Property and Casualty Joint Underwriting Association and renewed
9239 by the corporation that provide coverage for basic property
9240 perils on risks that are not located in areas eligible for



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9241 coverage in the Florida Windstorm Underwriting Association as
9242 those areas were defined on January 1, 2002, and for such
9243 policies that do not provide coverage for the peril of wind on
9244 risks that are located in such areas; and

9245 (III) A high-risk account for personal residential
9246 policies and commercial residential and commercial
9247 nonresidential property policies issued by the corporation or
9248 transferred to the corporation that provide coverage for the
9249 peril of wind on risks that are located in areas eligible for
9250 coverage in the Florida Windstorm Underwriting Association as
9251 those areas were defined on January 1, 2002. The high-risk
9252 account must also include quota share primary insurance under
9253 subparagraph (c)2. The area eligible for coverage under the
9254 high-risk account also includes the area within Port Canaveral,
9255 which is bordered on the south by the City of Cape Canaveral,
9256 bordered on the west by the Banana River, and bordered on the
9257 north by Federal Government property. The office department may
9258 remove territory from the area eligible for wind-only and quota
9259 share coverage if, after a public hearing, the office department
9260 finds that authorized insurers in the voluntary market are
9261 willing and able to write sufficient amounts of personal and
9262 commercial residential coverage for all perils in the territory,
9263 including coverage for the peril of wind, such that risks
9264 covered by wind-only policies in the removed territory could be
9265 issued a policy by the corporation in either the personal lines
9266 or commercial lines account without a significant increase in
9267 the corporation's probable maximum loss in such account. Removal
9268 of territory from the area eligible for wind-only or quota share



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9269 coverage does not alter the assignment of wind coverage written
9270 in such areas to the high-risk account.

9271 b. The three separate accounts must be maintained as long
9272 as financing obligations entered into by the Florida Windstorm
9273 Underwriting Association or Residential Property and Casualty
9274 Joint Underwriting Association are outstanding, in accordance
9275 with the terms of the corresponding financing documents. When
9276 the financing obligations are no longer outstanding, in
9277 accordance with the terms of the corresponding financing
9278 documents, the corporation may use a single account for all
9279 revenues, assets, liabilities, losses, and expenses of the
9280 corporation.

9281 c. Creditors of the Residential Property and Casualty
9282 Joint Underwriting Association shall have a claim against, and
9283 recourse to, the accounts referred to in sub-sub-subparagraphs
9284 a.(I) and (II) and shall have no claim against, or recourse to,
9285 the account referred to in sub-sub-subparagraph a.(III).
9286 Creditors of the Florida Windstorm Underwriting Association
9287 shall have a claim against, and recourse to, the account
9288 referred to in sub-sub-subparagraph a.(III) and shall have no
9289 claim against, or recourse to, the accounts referred to in sub-
9290 sub-subparagraphs a.(I) and (II).

9291 d. Revenues, assets, liabilities, losses, and expenses not
9292 attributable to particular accounts shall be prorated among the
9293 accounts.

9294 e. The Legislature finds that the revenues of the
9295 corporation are revenues that are necessary to meet the



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9296 requirements set forth in documents authorizing the issuance of
9297 bonds under this subsection.

9298 f. No part of the income of the corporation may inure to
9299 the benefit of any private person.

9300 3. With respect to a deficit in an account:

9301 a. When the deficit incurred in a particular calendar year
9302 is not greater than 10 percent of the aggregate statewide direct
9303 written premium for the subject lines of business for the prior
9304 calendar year, the entire deficit shall be recovered through
9305 regular assessments of assessable insurers under paragraph (g)
9306 and assessable insureds.

9307 b. When the deficit incurred in a particular calendar year
9308 exceeds 10 percent of the aggregate statewide direct written
9309 premium for the subject lines of business for the prior calendar
9310 year, the corporation shall levy regular assessments on
9311 assessable insurers under paragraph (g) and on assessable
9312 insureds in an amount equal to the greater of 10 percent of the
9313 deficit or 10 percent of the aggregate statewide direct written
9314 premium for the subject lines of business for the prior calendar
9315 year. Any remaining deficit shall be recovered through emergency
9316 assessments under sub-subparagraph d.

9317 c. Each assessable insurer's share of the amount being
9318 assessed under sub-subparagraph a. or sub-subparagraph b. shall
9319 be in the proportion that the assessable insurer's direct
9320 written premium for the subject lines of business for the year
9321 preceding the assessment bears to the aggregate statewide direct
9322 written premium for the subject lines of business for that year.
9323 The assessment percentage applicable to each assessable insured



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9324 is the ratio of the amount being assessed under sub-subparagraph
9325 a. or sub-subparagraph b. to the aggregate statewide direct
9326 written premium for the subject lines of business for the prior
9327 year. Assessments levied by the corporation on assessable
9328 insurers under sub-subparagraphs a. and b. shall be paid as
9329 required by the corporation's plan of operation and paragraph
9330 (g). Assessments levied by the corporation on assessable
9331 insureds under sub-subparagraphs a. and b. shall be collected by
9332 the surplus lines agent at the time the surplus lines agent
9333 collects the surplus lines tax required by s. 626.932 and shall
9334 be paid to the Florida Surplus Lines Service Office at the time
9335 the surplus lines agent pays the surplus lines tax to the
9336 Florida Surplus Lines Service Office. Upon receipt of regular
9337 assessments from surplus lines agents, the Florida Surplus Lines
9338 Service Office shall transfer the assessments directly to the
9339 corporation as determined by the corporation.

9340 d. Upon a determination by the board of governors that a
9341 deficit in an account exceeds the amount that will be recovered
9342 through regular assessments under sub-subparagraph a. or sub-
9343 subparagraph b., the board shall levy, after verification by the
9344 office department, emergency assessments, for as many years as
9345 necessary to cover the deficits, to be collected by assessable
9346 insurers and the corporation and collected from assessable
9347 insureds upon issuance or renewal of policies for subject lines
9348 of business, excluding National Flood Insurance policies. The
9349 amount of the emergency assessment collected in a particular
9350 year shall be a uniform percentage of that year's direct written
9351 premium for subject lines of business and all accounts of the



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9352 corporation, excluding National Flood Insurance Program policy
9353 premiums, as annually determined by the board and verified by
9354 the office ~~department~~. The office ~~department~~ shall verify the
9355 arithmetic calculations involved in the board's determination
9356 within 30 days after receipt of the information on which the
9357 determination was based. Notwithstanding any other provision of
9358 law, the corporation and each assessable insurer that writes
9359 subject lines of business shall collect emergency assessments
9360 from its policyholders without such obligation being affected by
9361 any credit, limitation, exemption, or deferment. Emergency
9362 assessments levied by the corporation on assessable insureds
9363 shall be collected by the surplus lines agent at the time the
9364 surplus lines agent collects the surplus lines tax required by
9365 s. 626.932 and shall be paid to the Florida Surplus Lines
9366 Service Office at the time the surplus lines agent pays the
9367 surplus lines tax to the Florida Surplus Lines Service Office.
9368 The emergency assessments so collected shall be transferred
9369 directly to the corporation on a periodic basis as determined by
9370 the corporation and shall be held by the corporation solely in
9371 the applicable account. The aggregate amount of emergency
9372 assessments levied for an account under this sub-subparagraph in
9373 any calendar year may not exceed the greater of 10 percent of
9374 the amount needed to cover the original deficit, plus interest,
9375 fees, commissions, required reserves, and other costs associated
9376 with financing of the original deficit, or 10 percent of the
9377 aggregate statewide direct written premium for subject lines of
9378 business and for all accounts of the corporation for the prior



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9379 | year, plus interest, fees, commissions, required reserves, and
9380 | other costs associated with financing the original deficit.

9381 | e. The corporation may pledge the proceeds of assessments,
9382 | projected recoveries from the Florida Hurricane Catastrophe
9383 | Fund, other insurance and reinsurance recoverables, market
9384 | equalization surcharges and other surcharges, and other funds
9385 | available to the corporation as the source of revenue for and to
9386 | secure bonds issued under paragraph (g), bonds or other
9387 | indebtedness issued under subparagraph (c)3., or lines of credit
9388 | or other financing mechanisms issued or created under this
9389 | subsection, or to retire any other debt incurred as a result of
9390 | deficits or events giving rise to deficits, or in any other way
9391 | that the board determines will efficiently recover such
9392 | deficits. The purpose of the lines of credit or other financing
9393 | mechanisms is to provide additional resources to assist the
9394 | corporation in covering claims and expenses attributable to a
9395 | catastrophe. As used in this subsection, the term "assessments"
9396 | includes regular assessments under sub-subparagraph a., sub-
9397 | subparagraph b., or subparagraph (g)1. and emergency assessments
9398 | under sub-subparagraph d. Emergency assessments collected under
9399 | sub-subparagraph d. are not part of an insurer's rates, are not
9400 | premium, and are not subject to premium tax, fees, or
9401 | commissions; however, failure to pay the emergency assessment
9402 | shall be treated as failure to pay premium. The emergency
9403 | assessments under sub-subparagraph d. shall continue as long as
9404 | any bonds issued or other indebtedness incurred with respect to
9405 | a deficit for which the assessment was imposed remain
9406 | outstanding, unless adequate provision has been made for the



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9407 | payment of such bonds or other indebtedness pursuant to the
9408 | documents governing such bonds or other indebtedness.

9409 | f. As used in this subsection, the term "subject lines of
9410 | business" means insurance written by assessable insurers or
9411 | procured by assessable insureds on real or personal property, as
9412 | defined in s. 624.604, including insurance for fire, industrial
9413 | fire, allied lines, farmowners multiperil, homeowners
9414 | multiperil, commercial multiperil, and mobile homes, and
9415 | including liability coverage on all such insurance, but
9416 | excluding inland marine as defined in s. 624.607(3) and
9417 | excluding vehicle insurance as defined in s. 624.605(1) other
9418 | than insurance on mobile homes used as permanent dwellings.

9419 | g. The Florida Surplus Lines Service Office shall
9420 | determine annually the aggregate statewide written premium in
9421 | subject lines of business procured by assessable insureds and
9422 | shall report that information to the corporation in a form and
9423 | at a time the corporation specifies to ensure that the
9424 | corporation can meet the requirements of this subsection and the
9425 | corporation's financing obligations.

9426 | h. The Florida Surplus Lines Service Office shall verify
9427 | the proper application by surplus lines agents of assessment
9428 | percentages for regular assessments and emergency assessments
9429 | levied under this subparagraph on assessable insureds and shall
9430 | assist the corporation in ensuring the accurate, timely
9431 | collection and payment of assessments by surplus lines agents as
9432 | required by the corporation.

9433 | (c) The plan of operation of the corporation:



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9434 1. Must provide for adoption of residential property and
9435 casualty insurance policy forms and commercial residential and
9436 nonresidential property insurance forms, which forms must be
9437 approved by the office ~~department~~ prior to use. The corporation
9438 shall adopt the following policy forms:

9439 a. Standard personal lines policy forms that are
9440 comprehensive multiperil policies providing full coverage of a
9441 residential property equivalent to the coverage provided in the
9442 private insurance market under an HO-3, HO-4, or HO-6 policy.

9443 b. Basic personal lines policy forms that are policies
9444 similar to an HO-8 policy or a dwelling fire policy that provide
9445 coverage meeting the requirements of the secondary mortgage
9446 market, but which coverage is more limited than the coverage
9447 under a standard policy.

9448 c. Commercial lines residential policy forms that are
9449 generally similar to the basic perils of full coverage
9450 obtainable for commercial residential structures in the admitted
9451 voluntary market.

9452 d. Personal lines and commercial lines residential
9453 property insurance forms that cover the peril of wind only. The
9454 forms are applicable only to residential properties located in
9455 areas eligible for coverage under the high-risk account referred
9456 to in sub-subparagraph (b)2.a.

9457 e. Commercial lines nonresidential property insurance
9458 forms that cover the peril of wind only. The forms are
9459 applicable only to nonresidential properties located in areas
9460 eligible for coverage under the high-risk account referred to in
9461 sub-subparagraph (b)2.a.



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9462 2.a. Must provide that the corporation adopt a program in
9463 which the corporation and authorized insurers enter into quota
9464 share primary insurance agreements for hurricane coverage, as
9465 defined in s. 627.4025(2)(a), for eligible risks, and adopt
9466 property insurance forms for eligible risks which cover the
9467 peril of wind only. As used in this subsection, the term:

9468 (I) "Quota share primary insurance" means an arrangement
9469 in which the primary hurricane coverage of an eligible risk is
9470 provided in specified percentages by the corporation and an
9471 authorized insurer. The corporation and authorized insurer are
9472 each solely responsible for a specified percentage of hurricane
9473 coverage of an eligible risk as set forth in a quota share
9474 primary insurance agreement between the corporation and an
9475 authorized insurer and the insurance contract. The
9476 responsibility of the corporation or authorized insurer to pay
9477 its specified percentage of hurricane losses of an eligible
9478 risk, as set forth in the quota share primary insurance
9479 agreement, may not be altered by the inability of the other
9480 party to the agreement to pay its specified percentage of
9481 hurricane losses. Eligible risks that are provided hurricane
9482 coverage through a quota share primary insurance arrangement
9483 must be provided policy forms that set forth the obligations of
9484 the corporation and authorized insurer under the arrangement,
9485 clearly specify the percentages of quota share primary insurance
9486 provided by the corporation and authorized insurer, and
9487 conspicuously and clearly state that neither the authorized
9488 insurer nor the corporation may be held responsible beyond its
9489 specified percentage of coverage of hurricane losses.



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9490 (II) "Eligible risks" means personal lines residential and
9491 commercial lines residential risks that meet the underwriting
9492 criteria of the corporation and are located in areas that were
9493 eligible for coverage by the Florida Windstorm Underwriting
9494 Association on January 1, 2002.

9495 b. The corporation may enter into quota share primary
9496 insurance agreements with authorized insurers at corporation
9497 coverage levels of 90 percent and 50 percent.

9498 c. If the corporation determines that additional coverage
9499 levels are necessary to maximize participation in quota share
9500 primary insurance agreements by authorized insurers, the
9501 corporation may establish additional coverage levels. However,
9502 the corporation's quota share primary insurance coverage level
9503 may not exceed 90 percent.

9504 d. Any quota share primary insurance agreement entered
9505 into between an authorized insurer and the corporation must
9506 provide for a uniform specified percentage of coverage of
9507 hurricane losses, by county or territory as set forth by the
9508 corporation board, for all eligible risks of the authorized
9509 insurer covered under the quota share primary insurance
9510 agreement.

9511 e. Any quota share primary insurance agreement entered
9512 into between an authorized insurer and the corporation is
9513 subject to review and approval by the office ~~department~~.
9514 However, such agreement shall be authorized only as to insurance
9515 contracts entered into between an authorized insurer and an
9516 insured who is already insured by the corporation for wind
9517 coverage.



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9518 f. For all eligible risks covered under quota share
9519 primary insurance agreements, the exposure and coverage levels
9520 for both the corporation and authorized insurers shall be
9521 reported by the corporation to the Florida Hurricane Catastrophe
9522 Fund. For all policies of eligible risks covered under quota
9523 share primary insurance agreements, the corporation and the
9524 authorized insurer shall maintain complete and accurate records
9525 for the purpose of exposure and loss reimbursement audits as
9526 required by Florida Hurricane Catastrophe Fund rules. The
9527 corporation and the authorized insurer shall each maintain
9528 duplicate copies of policy declaration pages and supporting
9529 claims documents.

9530 g. The corporation board shall establish in its plan of
9531 operation standards for quota share agreements which ensure that
9532 there is no discriminatory application among insurers as to the
9533 terms of quota share agreements, pricing of quota share
9534 agreements, incentive provisions if any, and consideration paid
9535 for servicing policies or adjusting claims.

9536 h. The quota share primary insurance agreement between the
9537 corporation and an authorized insurer must set forth the
9538 specific terms under which coverage is provided, including, but
9539 not limited to, the sale and servicing of policies issued under
9540 the agreement by the insurance agent of the authorized insurer
9541 producing the business, the reporting of information concerning
9542 eligible risks, the payment of premium to the corporation, and
9543 arrangements for the adjustment and payment of hurricane claims
9544 incurred on eligible risks by the claims adjuster and personnel
9545 of the authorized insurer. Entering into a quota sharing



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9546 insurance agreement between the corporation and an authorized
9547 insurer shall be voluntary and at the discretion of the
9548 authorized insurer.

9549 3. May provide that the corporation may employ or
9550 otherwise contract with individuals or other entities to provide
9551 administrative or professional services that may be appropriate
9552 to effectuate the plan. The corporation shall have the power to
9553 borrow funds, by issuing bonds or by incurring other
9554 indebtedness, and shall have other powers reasonably necessary
9555 to effectuate the requirements of this subsection. The
9556 corporation may, but is not required to, seek judicial
9557 validation of its bonds or other indebtedness under chapter 75.
9558 The corporation may issue bonds or incur other indebtedness, or
9559 have bonds issued on its behalf by a unit of local government
9560 pursuant to subparagraph(g)2., in the absence of a hurricane or
9561 other weather-related event, upon a determination by the
9562 corporation, subject to approval by the office ~~department~~, that
9563 such action would enable it to efficiently meet the financial
9564 obligations of the corporation and that such financings are
9565 reasonably necessary to effectuate the requirements of this
9566 subsection. The corporation is authorized to take all actions
9567 needed to facilitate tax-free status for any such bonds or
9568 indebtedness, including formation of trusts or other affiliated
9569 entities. The corporation shall have the authority to pledge
9570 assessments, projected recoveries from the Florida Hurricane
9571 Catastrophe Fund, other reinsurance recoverables, market
9572 equalization and other surcharges, and other funds available to
9573 the corporation as security for bonds or other indebtedness. In



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9574 recognition of s. 10, Art. I of the State Constitution,
9575 prohibiting the impairment of obligations of contracts, it is
9576 the intent of the Legislature that no action be taken whose
9577 purpose is to impair any bond indenture or financing agreement
9578 or any revenue source committed by contract to such bond or
9579 other indebtedness.

9580 4.a. Must require that the corporation operate subject to
9581 the supervision and approval of a board of governors consisting
9582 of 7 individuals who are residents of this state, from different
9583 geographical areas of this state, appointed by the Chief
9584 Financial Officer ~~Treasurer~~. The Chief Financial Officer
9585 ~~Treasurer~~ shall designate one of the appointees as chair. All
9586 board members serve at the pleasure of the Chief Financial
9587 Officer ~~Treasurer~~. All board members, including the chair, must
9588 be appointed to serve for 3-year terms beginning annually on a
9589 date designated by the plan. Any board vacancy shall be filled
9590 for the unexpired term by the Chief Financial Officer ~~Treasurer~~.
9591 The Chief Financial Officer ~~Treasurer~~ shall appoint a technical
9592 advisory group to provide information and advice to the board of
9593 governors in connection with the board's duties under this
9594 subsection. The executive director and senior managers of the
9595 corporation shall be engaged by the Chief Financial Officer
9596 ~~Treasurer~~ and serve at the pleasure of the Chief Financial
9597 Officer ~~Treasurer~~. The executive director is responsible for
9598 employing other staff as the corporation may require, subject to
9599 review and concurrence by the Office of the Chief Financial
9600 Officer ~~Treasurer~~.



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9601 ~~b. To ensure the effective and efficient implementation of~~
9602 ~~this subsection, the Treasurer shall appoint the board of~~
9603 ~~governors by July 1, 2002. The board of governors shall work in~~
9604 ~~conjunction with the Residential Property Insurance Market~~
9605 ~~Coordinating Council to address appropriate organizational,~~
9606 ~~operational, and financial matters relating to the corporation.~~
9607 ~~In addition, after consultation with the Residential Property~~
9608 ~~Insurance Market Coordinating Council, the bond trustees and~~
9609 ~~rating agencies, the Treasurer may postpone for a period not to~~
9610 ~~exceed 180 days after the effective date, the implementation of~~
9611 ~~the corporation or the implementation of one or more of the~~
9612 ~~provisions relating to transfer of Florida Windstorm~~
9613 ~~Underwriting Association policies, obligations, rights, assets,~~
9614 ~~and liabilities into the high risk accounts and such other~~
9615 ~~provisions that may be affected thereby if the Treasurer~~
9616 ~~determines that postponement is necessary:~~

9617 ~~(I) Due to emergency conditions;~~

9618 ~~(II) To ensure the effective and efficient implementation~~
9619 ~~of the corporation's operations; or~~

9620 ~~(III) To maintain existing financing arrangements without~~
9621 ~~a material adverse effect on the creditors of the Residential~~
9622 ~~Property and Casualty Joint Underwriting Association or the~~
9623 ~~Florida Windstorm Underwriting Association.~~

9624 5. Must provide a procedure for determining the
9625 eligibility of a risk for coverage, as follows:

9626 a. Subject to the provisions of s. 627.3517, with respect
9627 to personal lines residential risks, if the risk is offered
9628 coverage from an authorized insurer at the insurer's approved



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9629 rate under either a standard policy including wind coverage or,
9630 if consistent with the insurer's underwriting rules as filed
9631 with the office department, a basic policy including wind
9632 coverage, the risk is not eligible for any policy issued by the
9633 corporation association. If the risk is not able to obtain any
9634 such offer, the risk is eligible for either a standard policy
9635 including wind coverage or a basic policy including wind
9636 coverage issued by the corporation association; however, if the
9637 risk could not be insured under a standard policy including wind
9638 coverage regardless of market conditions, the risk shall be
9639 eligible for a basic policy including wind coverage unless
9640 rejected under subparagraph 8. The corporation association shall
9641 determine the type of policy to be provided on the basis of
9642 objective standards specified in the underwriting manual and
9643 based on generally accepted underwriting practices.

9644 (I) If the risk accepts an offer of coverage through the
9645 market assistance plan or an offer of coverage through a
9646 mechanism established by the corporation association before a
9647 policy is issued to the risk by the corporation association or
9648 during the first 30 days of coverage by the corporation
9649 association, and the producing agent who submitted the
9650 application to the plan or to the corporation association is not
9651 currently appointed by the insurer, the insurer shall:

9652 (A) Pay to the producing agent of record of the policy,
9653 for the first year, an amount that is the greater of the
9654 insurer's usual and customary commission for the type of policy
9655 written or a fee equal to the usual and customary commission of
9656 the corporation association; or



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9657 (B) Offer to allow the producing agent of record of the
9658 policy to continue servicing the policy for a period of not less
9659 than 1 year and offer to pay the agent the greater of the
9660 insurer's or the corporation's ~~association's~~ usual and customary
9661 commission for the type of policy written.

9662

9663 If the producing agent is unwilling or unable to accept
9664 appointment, the new insurer shall pay the agent in accordance
9665 with sub-sub-sub-subparagraph (A).

9666 (II) When the corporation ~~association~~ enters into a
9667 contractual agreement for a take-out plan, the producing agent
9668 of record of the corporation ~~association~~ policy is entitled to
9669 retain any unearned commission on the policy, and the insurer
9670 shall:

9671 (A) Pay to the producing agent of record of the
9672 corporation ~~association~~ policy, for the first year, an amount
9673 that is the greater of the insurer's usual and customary
9674 commission for the type of policy written or a fee equal to the
9675 usual and customary commission of the corporation ~~association~~;
9676 or

9677 (B) Offer to allow the producing agent of record of the
9678 corporation ~~association~~ policy to continue servicing the policy
9679 for a period of not less than 1 year and offer to pay the agent
9680 the greater of the insurer's or the corporation's ~~association's~~
9681 usual and customary commission for the type of policy written.

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9683 If the producing agent is unwilling or unable to accept
9684 appointment, the new insurer shall pay the agent in accordance
9685 with sub-sub-sub-subparagraph (A).

9686 b. With respect to commercial lines residential risks, if
9687 the risk is offered coverage under a policy including wind
9688 coverage from an authorized insurer at its approved rate, the
9689 risk is not eligible for any policy issued by the corporation
9690 ~~association~~. If the risk is not able to obtain any such offer,
9691 the risk is eligible for a policy including wind coverage issued
9692 by the corporation association.

9693 (I) If the risk accepts an offer of coverage through the
9694 market assistance plan or an offer of coverage through a
9695 mechanism established by the corporation association before a
9696 policy is issued to the risk by the corporation association or
9697 during the first 30 days of coverage by the corporation
9698 ~~association~~, and the producing agent who submitted the
9699 application to the plan or the corporation association is not
9700 currently appointed by the insurer, the insurer shall:

9701 (A) Pay to the producing agent of record of the policy,
9702 for the first year, an amount that is the greater of the
9703 insurer's usual and customary commission for the type of policy
9704 written or a fee equal to the usual and customary commission of
9705 the corporation association; or

9706 (B) Offer to allow the producing agent of record of the
9707 policy to continue servicing the policy for a period of not less
9708 than 1 year and offer to pay the agent the greater of the
9709 insurer's or the corporation's association's usual and customary
9710 commission for the type of policy written.



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9711
9712 If the producing agent is unwilling or unable to accept
9713 appointment, the new insurer shall pay the agent in accordance
9714 with sub-sub-sub-subparagraph (A).

9715 (II) When the corporation ~~association~~ enters into a
9716 contractual agreement for a take-out plan, the producing agent
9717 of record of the corporation ~~association~~ policy is entitled to
9718 retain any unearned commission on the policy, and the insurer
9719 shall:

9720 (A) Pay to the producing agent of record of the
9721 corporation ~~association~~ policy, for the first year, an amount
9722 that is the greater of the insurer's usual and customary
9723 commission for the type of policy written or a fee equal to the
9724 usual and customary commission of the corporation ~~association~~;
9725 or

9726 (B) Offer to allow the producing agent of record of the
9727 corporation ~~association~~ policy to continue servicing the policy
9728 for a period of not less than 1 year and offer to pay the agent
9729 the greater of the insurer's or the corporation's ~~association's~~
9730 usual and customary commission for the type of policy written.

9731
9732 If the producing agent is unwilling or unable to accept
9733 appointment, the new insurer shall pay the agent in accordance
9734 with sub-sub-sub-subparagraph (A).

9735 ~~e. This subparagraph does not require the association to~~
9736 ~~provide wind coverage or hurricane coverage in any area in which~~
9737 ~~such coverage is available through the Florida Windstorm~~
9738 ~~Underwriting Association.~~



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9739 6. Must include rules for classifications of risks and
9740 rates therefor.

9741 7. Must provide that if premium and investment income for
9742 an account attributable to a particular calendar year are in
9743 excess of projected losses and expenses for the account
9744 attributable to that year, such excess shall be held in surplus
9745 in the account. Such surplus shall be available to defray
9746 deficits in that account as to future years and shall be used
9747 for that purpose prior to assessing assessable insurers and
9748 assessable insureds as to any calendar year.

9749 8. Must provide objective criteria and procedures to be
9750 uniformly applied for all applicants in determining whether an
9751 individual risk is so hazardous as to be uninsurable. In making
9752 this determination and in establishing the criteria and
9753 procedures, the following shall be considered:

9754 a. Whether the likelihood of a loss for the individual
9755 risk is substantially higher than for other risks of the same
9756 class; and

9757 b. Whether the uncertainty associated with the individual
9758 risk is such that an appropriate premium cannot be determined.

9759
9760 The acceptance or rejection of a risk by the corporation shall
9761 be construed as the private placement of insurance, and the
9762 provisions of chapter 120 shall not apply.

9763 9. Must provide that the corporation shall make its best
9764 efforts to procure catastrophe reinsurance at reasonable rates,
9765 as determined by the board of governors.



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9766 10. Must provide that in the event of regular deficit
9767 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
9768 (b)3.b., in the personal lines account, the commercial lines
9769 residential account, or the high-risk account, the corporation
9770 shall levy upon corporation policyholders in its next rate
9771 filing, or by a separate rate filing solely for this purpose, a
9772 market equalization surcharge arising from a regular assessment
9773 in such account in a percentage equal to the total amount of
9774 such regular assessments divided by the aggregate statewide
9775 direct written premium for subject lines of business for the
9776 prior calendar year. Market equalization surcharges under this
9777 subparagraph are not considered premium and are not subject to
9778 commissions, fees, or premium taxes; however, failure to pay a
9779 market equalization surcharge shall be treated as failure to pay
9780 premium.

9781 11. The policies issued by the corporation must provide
9782 that, if the corporation or the market assistance plan obtains
9783 an offer from an authorized insurer to cover the risk at its
9784 approved rates, the risk is no longer eligible for renewal
9785 through the corporation.

9786 12. Corporation policies and applications must include a
9787 notice that the corporation policy could, under this section, be
9788 replaced with a policy issued by an authorized insurer that does
9789 not provide coverage identical to the coverage provided by the
9790 corporation. The notice shall also specify that acceptance of
9791 corporation coverage creates a conclusive presumption that the
9792 applicant or policyholder is aware of this potential.



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9793 | 13. May establish, subject to approval by the office
9794 | ~~department~~, different eligibility requirements and operational
9795 | procedures for any line or type of coverage for any specified
9796 | county or area if the board determines that such changes to the
9797 | eligibility requirements and operational procedures are
9798 | justified due to the voluntary market being sufficiently stable
9799 | and competitive in such area or for such line or type of
9800 | coverage and that consumers who, in good faith, are unable to
9801 | obtain insurance through the voluntary market through ordinary
9802 | methods would continue to have access to coverage from the
9803 | corporation. When coverage is sought in connection with a real
9804 | property transfer, such requirements and procedures shall not
9805 | provide for an effective date of coverage later than the date of
9806 | the closing of the transfer as established by the transferor,
9807 | the transferee, and, if applicable, the lender.

9808 | 14. Must provide that, with respect to the high-risk
9809 | account, any assessable insurer with a surplus as to
9810 | policyholders of \$25 million or less writing 25 percent or more
9811 | of its total countrywide property insurance premiums in this
9812 | state may petition the office ~~department~~, within the first 90
9813 | days of each calendar year, to qualify as a limited
9814 | apportionment company. In no event shall a limited apportionment
9815 | company be required to participate in the portion of any
9816 | assessment, within the high-risk account, pursuant to sub-
9817 | subparagraph (b)3.a. or sub-subparagraph (b)3.b. in the
9818 | aggregate which exceeds \$50 million after payment of available
9819 | high-risk account funds in any calendar year. However, a limited
9820 | apportionment company shall collect from its policyholders any



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9821 emergency assessment imposed under sub-subparagraph (b)3.d. The
9822 plan shall provide that, if the office ~~department~~ determines
9823 that any regular assessment will result in an impairment of the
9824 surplus of a limited apportionment company, the office
9825 ~~department~~ may direct that all or part of such assessment be
9826 deferred as provided in subparagraph (g)4. However, there shall
9827 be no limitation or deferment of an emergency assessment to be
9828 collected from policyholders under sub-subparagraph(b)3.d.

9829 15. Must provide that the corporation appoint as its
9830 licensed agents only those agents who also hold an appointment
9831 as defined in s. 626.104 with an insurer who at the time of the
9832 agent's initial appointment by the corporation is authorized to
9833 write and is actually writing personal lines residential
9834 property coverage, commercial residential property coverage, or
9835 commercial nonresidential property coverage within the state.

9836 (d)1. It is the intent of the Legislature that the rates
9837 for coverage provided by the corporation be actuarially sound
9838 and not competitive with approved rates charged in the admitted
9839 voluntary market, so that the corporation functions as a
9840 residual market mechanism to provide insurance only when the
9841 insurance cannot be procured in the voluntary market. Rates
9842 shall include an appropriate catastrophe loading factor that
9843 reflects the actual catastrophic exposure of the corporation.

9844 2. For each county, the average rates of the corporation
9845 for each line of business for personal lines residential
9846 policies excluding rates for wind-only policies shall be no
9847 lower than the average rates charged by the insurer that had the
9848 highest average rate in that county among the 20 insurers with



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9849 | the greatest total direct written premium in the state for that
9850 | line of business in the preceding year, except that with respect
9851 | to mobile home coverages, the average rates of the corporation
9852 | shall be no lower than the average rates charged by the insurer
9853 | that had the highest average rate in that county among the 5
9854 | insurers with the greatest total written premium for mobile home
9855 | owner's policies in the state in the preceding year.

9856 | 3. Rates for personal lines residential wind-only policies
9857 | must be actuarially sound and not competitive with approved
9858 | rates charged by authorized insurers. However, for personal
9859 | lines residential wind-only policies issued or renewed between
9860 | July 1, 2002, and June 30, 2003, the maximum premium increase
9861 | must be no greater than 10 percent of the Florida Windstorm
9862 | Underwriting Association premium for that policy in effect on
9863 | June 30, 2002, as adjusted for coverage changes and seasonal
9864 | occupancy surcharges. The personal lines residential wind-only
9865 | rates for the corporation effective July 1, 2003, must be based
9866 | on a rate filing by the corporation which establishes rates
9867 | which are actuarially sound and not competitive with approved
9868 | rates charged by authorized insurers. Corporation rate manuals
9869 | shall include a rate surcharge for seasonal occupancy. To
9870 | ensure that personal lines residential wind-only rates effective
9871 | on or after July 1, 2003, are not competitive with approved
9872 | rates charged by authorized insurers, the office department, by
9873 | March 1 of each year, shall provide the corporation, for each
9874 | county in which there are geographical areas in which personal
9875 | lines residential wind-only policies may be issued, the average
9876 | rates charged by the insurer that had the highest average rate



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9877 | in that county for wind coverage in that insurer's rating
9878 | territories which most closely approximate the geographical area
9879 | in that county in which personal lines residential wind-only
9880 | policies may be written by the corporation. The average rates
9881 | provided must be from an insurer among the 20 insurers with the
9882 | greatest total direct written premium in the state for personal
9883 | lines residential property insurance for the preceding year.
9884 | With respect to mobile homes, the five insurers with the
9885 | greatest total written premium for that line of business in the
9886 | preceding year shall be used. The corporation shall certify to
9887 | the office department that its average personal lines
9888 | residential wind-only rates are no lower in each county than the
9889 | average rates provided by the office department. The commission
9890 | ~~may department is authorized to~~ adopt rules to establish
9891 | reporting requirements to obtain the necessary wind-only rate
9892 | information from insurers to implement this provision.

9893 | 4. Rates for commercial lines coverage shall not be
9894 | subject to the requirements of subparagraph 2., but shall be
9895 | subject to all other requirements of this paragraph and s.
9896 | 627.062.

9897 | 5. Nothing in this paragraph shall require or allow the
9898 | corporation to adopt a rate that is inadequate under s. 627.062.

9899 | 6. The corporation shall make a rate filing at least once
9900 | a year, but no more often than quarterly.

9901 | 7. In addition to the rates otherwise determined pursuant
9902 | to this paragraph, the corporation shall impose and collect an
9903 | amount equal to the premium tax provided for in s. 624.509 to
9904 | augment the financial resources of the corporation.



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9905 (e) If coverage in an account is deactivated pursuant to
9906 paragraph (f), coverage through the corporation shall be
9907 reactivated by order of the office ~~department~~ only under one of
9908 the following circumstances:

9909 1. If the market assistance plan receives a minimum of 100
9910 applications for coverage within a 3-month period, or 200
9911 applications for coverage within a 1-year period or less for
9912 residential coverage, unless the market assistance plan provides
9913 a quotation from admitted carriers at their filed rates for at
9914 least 90 percent of such applicants. Any market assistance plan
9915 application that is rejected because an individual risk is so
9916 hazardous as to be uninsurable using the criteria specified in
9917 subparagraph (c)8. shall not be included in the minimum
9918 percentage calculation provided herein. In the event that there
9919 is a legal or administrative challenge to a determination by the
9920 office ~~department~~ that the conditions of this subparagraph have
9921 been met for eligibility for coverage in the corporation, any
9922 eligible risk may obtain coverage during the pendency of such
9923 challenge.

9924 2. In response to a state of emergency declared by the
9925 Governor under s. 252.36, the office ~~department~~ may activate
9926 coverage by order for the period of the emergency upon a finding
9927 by the office ~~department~~ that the emergency significantly
9928 affects the availability of residential property insurance.

9929 (f)1. The corporation shall file with the office
9930 ~~department~~ quarterly statements of financial condition, an
9931 annual statement of financial condition, and audited financial
9932 statements in the manner prescribed by law. In addition, the



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9933 corporation shall report to the office ~~department~~ monthly on the
9934 types, premium, exposure, and distribution by county of its
9935 policies in force, and shall submit other reports as the office
9936 ~~department~~ requires to carry out its oversight of the
9937 corporation.

9938 2. The activities of the corporation shall be reviewed at
9939 least annually by the office ~~department~~ to determine whether
9940 coverage shall be deactivated in an account on the basis that
9941 the conditions giving rise to its activation no longer exist.

9942 (g)1. The corporation shall certify to the office
9943 ~~department~~ its needs for annual assessments as to a particular
9944 calendar year, and for any interim assessments that it deems to
9945 be necessary to sustain operations as to a particular year
9946 pending the receipt of annual assessments. Upon verification,
9947 the office ~~department~~ shall approve such certification, and the
9948 corporation shall levy such annual or interim assessments. Such
9949 assessments shall be prorated as provided in paragraph (b). The
9950 corporation shall take all reasonable and prudent steps
9951 necessary to collect the amount of assessment due from each
9952 assessable insurer, including, if prudent, filing suit to
9953 collect such assessment. If the corporation is unable to collect
9954 an assessment from any assessable insurer, the uncollected
9955 assessments shall be levied as an additional assessment against
9956 the assessable insurers and any assessable insurer required to
9957 pay an additional assessment as a result of such failure to pay
9958 shall have a cause of action against such nonpaying assessable
9959 insurer. Assessments shall be included as an appropriate factor
9960 in the making of rates. The failure of a surplus lines agent to



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9961 collect and remit any regular or emergency assessment levied by
9962 the corporation is considered to be a violation of s. 626.936
9963 and subjects the surplus lines agent to the penalties provided
9964 in that section.

9965 2. The governing body of any unit of local government, any
9966 residents of which are insured by the corporation, may issue
9967 bonds as defined in s. 125.013 or s. 166.101 from time to time
9968 to fund an assistance program, in conjunction with the
9969 corporation, for the purpose of defraying deficits of the
9970 corporation. In order to avoid needless and indiscriminate
9971 proliferation, duplication, and fragmentation of such assistance
9972 programs, any unit of local government, any residents of which
9973 are insured by the corporation, may provide for the payment of
9974 losses, regardless of whether or not the losses occurred within
9975 or outside of the territorial jurisdiction of the local
9976 government. Revenue bonds under this subparagraph may not be
9977 issued until validated pursuant to chapter 75, unless a state of
9978 emergency is declared by executive order or proclamation of the
9979 Governor pursuant to s. 252.36 making such findings as are
9980 necessary to determine that it is in the best interests of, and
9981 necessary for, the protection of the public health, safety, and
9982 general welfare of residents of this state and declaring it an
9983 essential public purpose to permit certain municipalities or
9984 counties to issue such bonds as will permit relief to claimants
9985 and policyholders of the corporation. Any such unit of local
9986 government may enter into such contracts with the corporation
9987 and with any other entity created pursuant to this subsection as
9988 are necessary to carry out this paragraph. Any bonds issued



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9989 | under this subparagraph shall be payable from and secured by
9990 | moneys received by the corporation from emergency assessments
9991 | under sub-subparagraph (b)3.d., and assigned and pledged to or
9992 | on behalf of the unit of local government for the benefit of the
9993 | holders of such bonds. The funds, credit, property, and taxing
9994 | power of the state or of the unit of local government shall not
9995 | be pledged for the payment of such bonds. If any of the bonds
9996 | remain unsold 60 days after issuance, the office ~~department~~
9997 | shall require all insurers subject to assessment to purchase the
9998 | bonds, which shall be treated as admitted assets; each insurer
9999 | shall be required to purchase that percentage of the unsold
10000 | portion of the bond issue that equals the insurer's relative
10001 | share of assessment liability under this subsection. An insurer
10002 | shall not be required to purchase the bonds to the extent that
10003 | the office ~~department~~ determines that the purchase would
10004 | endanger or impair the solvency of the insurer.

10005 | 3.a. The corporation shall adopt one or more programs
10006 | subject to approval by the office ~~department~~ for the reduction
10007 | of both new and renewal writings in the corporation. The
10008 | corporation may consider any prudent and not unfairly
10009 | discriminatory approach to reducing corporation writings, and
10010 | may adopt a credit against assessment liability or other
10011 | liability that provides an incentive for insurers to take risks
10012 | out of the corporation and to keep risks out of the corporation
10013 | by maintaining or increasing voluntary writings in counties or
10014 | areas in which corporation risks are highly concentrated and a
10015 | program to provide a formula under which an insurer voluntarily
10016 | taking risks out of the corporation by maintaining or increasing



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10017 | voluntary writings will be relieved wholly or partially from
10018 | assessments under sub-subparagraphs (b)3.a. and b. When the
10019 | corporation enters into a contractual agreement for a take-out
10020 | plan, the producing agent of record of the corporation policy is
10021 | entitled to retain any unearned commission on such policy, and
10022 | the insurer shall either:

10023 | (I) Pay to the producing agent of record of the policy,
10024 | for the first year, an amount which is the greater of the
10025 | insurer's usual and customary commission for the type of policy
10026 | written or a policy fee equal to the usual and customary
10027 | commission of the corporation; or

10028 | (II) Offer to allow the producing agent of record of the
10029 | policy to continue servicing the policy for a period of not less
10030 | than 1 year and offer to pay the agent the insurer's usual and
10031 | customary commission for the type of policy written. If the
10032 | producing agent is unwilling or unable to accept appointment by
10033 | the new insurer, the new insurer shall pay the agent in
10034 | accordance with sub-sub-subparagraph (I).

10035 | b. Any credit or exemption from regular assessments
10036 | adopted under this subparagraph shall last no longer than the 3
10037 | years following the cancellation or expiration of the policy by
10038 | the corporation. With the approval of the office ~~department~~, the
10039 | board may extend such credits for an additional year if the
10040 | insurer guarantees an additional year of renewability for all
10041 | policies removed from the corporation, or for 2 additional years
10042 | if the insurer guarantees 2 additional years of renewability for
10043 | all policies so removed.



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10044 c. There shall be no credit, limitation, exemption, or
10045 deferment from emergency assessments to be collected from
10046 policyholders pursuant to sub-subparagraph (b)3.d.

10047 4. The plan shall provide for the deferment, in whole or
10048 in part, of the assessment of an assessable insurer, other than
10049 an emergency assessment collected from policyholders pursuant to
10050 sub-subparagraph (b)3.d., if the office ~~department~~ finds that
10051 payment of the assessment would endanger or impair the solvency
10052 of the insurer. In the event an assessment against an assessable
10053 insurer is deferred in whole or in part, the amount by which
10054 such assessment is deferred may be assessed against the other
10055 assessable insurers in a manner consistent with the basis for
10056 assessments set forth in paragraph (b).

10057 (h) Nothing in this subsection shall be construed to
10058 preclude the issuance of residential property insurance coverage
10059 pursuant to part VIII of chapter 626.

10060 (i) There shall be no liability on the part of, and no
10061 cause of action of any nature shall arise against, any
10062 assessable insurer or its agents or employees, the corporation
10063 or its agents or employees, members of the board of governors or
10064 their respective designees at a board meeting, corporation
10065 committee members, or the office ~~department~~ or its
10066 representatives, for any action taken by them in the performance
10067 of their duties or responsibilities under this subsection. Such
10068 immunity does not apply to:

10069 1. Any of the foregoing persons or entities for any
10070 willful tort;



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10071 2. The corporation or its producing agents for breach of
10072 any contract or agreement pertaining to insurance coverage;

10073 3. The corporation with respect to issuance or payment of
10074 debt; or

10075 4. Any assessable insurer with respect to any action to
10076 enforce an assessable insurer's obligations to the corporation
10077 under this subsection.

10078 (j) For the purposes of s. 199.183(1), the corporation
10079 shall be considered a political subdivision of the state and
10080 shall be exempt from the corporate income tax. The premiums,
10081 assessments, investment income, and other revenue of the
10082 corporation are funds received for providing property insurance
10083 coverage as required by this subsection, paying claims for
10084 Florida citizens insured by the corporation, securing and
10085 repaying debt obligations issued by the corporation, and
10086 conducting all other activities of the corporation, and shall
10087 not be considered taxes, fees, licenses, or charges for services
10088 imposed by the Legislature on individuals, businesses, or
10089 agencies outside state government. Bonds and other debt
10090 obligations issued by or on behalf of the corporation are not to
10091 be considered "state bonds" within the meaning of s.

10092 215.58(8)~~(10)~~. The corporation is not subject to the procurement
10093 provisions of chapter 287, and policies and decisions of the
10094 corporation relating to incurring debt, levying of assessments
10095 and the sale, issuance, continuation, terms and claims under
10096 corporation policies, and all services relating thereto, are not
10097 subject to the provisions of chapter 120. The corporation is not
10098 required to obtain or to hold a certificate of authority issued



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10099 | by the office department, nor is it required to participate as a
 10100 | member insurer of the Florida Insurance Guaranty Association.
 10101 | However, the corporation is required to pay, in the same manner
 10102 | as an authorized insurer, assessments pledged by the Florida
 10103 | Insurance Guaranty Association to secure bonds issued or other
 10104 | indebtedness incurred to pay covered claims arising from insurer
 10105 | insolvencies caused by, or proximately related to, hurricane
 10106 | losses. It is the intent of the Legislature that the tax
 10107 | exemptions provided in this paragraph will augment the financial
 10108 | resources of the corporation to better enable the corporation to
 10109 | fulfill its public purposes. Any bonds issued by the
 10110 | corporation, their transfer, and the income therefrom, including
 10111 | any profit made on the sale thereof, shall at all times be free
 10112 | from taxation of every kind by the state and any political
 10113 | subdivision or local unit or other instrumentality thereof;
 10114 | however, this exemption does not apply to any tax imposed by
 10115 | chapter 220 ~~chapter 200~~ on interest, income, or profits on debt
 10116 | obligations owned by corporations other than the corporation.

10117 | (k) Upon a determination by the office department that the
 10118 | conditions giving rise to the establishment and activation of
 10119 | the corporation no longer exist, the corporation is dissolved.
 10120 | Upon dissolution, the assets of the corporation ~~association~~
 10121 | shall be applied first to pay all debts, liabilities, and
 10122 | obligations of the corporation, including the establishment of
 10123 | reasonable reserves for any contingent liabilities or
 10124 | obligations, and all remaining assets of the corporation shall
 10125 | become property of the state and be deposited in the Florida
 10126 | Hurricane Catastrophe Fund. However, no dissolution shall take



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10127 effect as long as the corporation has bonds or other financial
10128 obligations outstanding unless adequate provision has been made
10129 for the payment of the bonds or other financial obligations
10130 pursuant to the documents authorizing the issuance of the bonds
10131 or other financial obligations.

10132 (1)1. Effective July 1, 2002, policies of the Residential
10133 Property and Casualty Joint Underwriting Association shall
10134 become policies of the corporation. All obligations, rights,
10135 assets and liabilities of the Residential Property and Casualty
10136 Joint Underwriting Association, including bonds, note and debt
10137 obligations, and the financing documents pertaining to them
10138 become those of the corporation as of July 1, 2002. The
10139 corporation is not required to issue endorsements or
10140 certificates of assumption to insureds during the remaining term
10141 of in-force transferred policies.

10142 2. Effective July 1, 2002, policies of the Florida
10143 Windstorm Underwriting Association are transferred to the
10144 corporation and shall become policies of the corporation. All
10145 obligations, rights, assets, and liabilities of the Florida
10146 Windstorm Underwriting Association, including bonds, note, and
10147 debt obligations, and the financing documents pertaining to them
10148 are transferred to and assumed by the corporation on July 1,
10149 2002. The corporation is not required to issue endorsement or
10150 certificates of assumption to insureds during the remaining term
10151 of in-force transferred policies.

10152 3. The Florida Windstorm Underwriting Association and the
10153 Residential Property and Casualty Joint Underwriting Association
10154 shall take all actions as may be proper to further evidence the



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10155 | transfers and shall provide the documents and instruments of
10156 | further assurance as may reasonably be requested by the
10157 | corporation for that purpose. The corporation shall execute
10158 | assumptions and instruments as the trustees or other parties to
10159 | the financing documents of the Florida Windstorm Underwriting
10160 | Association or the Residential Property and Casualty Joint
10161 | Underwriting Association may reasonably request to further
10162 | evidence the transfers and assumptions, which transfers and
10163 | assumptions, however, are effective on the date provided under
10164 | this paragraph whether or not, and regardless of the date on
10165 | which, the assumptions or instruments are executed by the
10166 | corporation. Subject to the relevant financing documents
10167 | pertaining to their outstanding bonds, notes, indebtedness, or
10168 | other financing obligations, the moneys, investments,
10169 | receivables, choses in action, and other intangibles of the
10170 | Florida Windstorm Underwriting Association shall be credited to
10171 | the high-risk account of the corporation, and those of the
10172 | personal lines residential coverage account and the commercial
10173 | lines residential coverage account of the Residential Property
10174 | and Casualty Joint Underwriting Association shall be credited to
10175 | the personal lines account and the commercial lines account,
10176 | respectively, of the corporation.

10177 | 4. Effective July 1, 2002, a new applicant for property
10178 | insurance coverage who would otherwise have been eligible for
10179 | coverage in the Florida Windstorm Underwriting Association is
10180 | eligible for coverage from the corporation as provided in this
10181 | subsection.



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10182 5. The transfer of all policies, obligations, rights,
10183 assets, and liabilities from the Florida Windstorm Underwriting
10184 Association to the corporation and the renaming of the
10185 Residential Property and Casualty Joint Underwriting Association
10186 as the corporation shall in no way affect the coverage with
10187 respect to covered policies as defined in s. 215.555(2)(c)
10188 provided to these entities by the Florida Hurricane Catastrophe
10189 Fund. The coverage provided by the Florida Hurricane Catastrophe
10190 Fund to the Florida Windstorm Underwriting Association based on
10191 its exposures as of June 30, 2002, and each June 30 thereafter
10192 shall be redesignated as coverage for the high-risk account of
10193 the corporation. Notwithstanding any other provision of law, the
10194 coverage provided by the Florida Hurricane Catastrophe Fund to
10195 the Residential Property and Casualty Joint Underwriting
10196 Association based on its exposures as of June 30, 2002, and each
10197 June 30 thereafter shall be transferred to the personal lines
10198 account and the commercial lines account of the corporation.
10199 Notwithstanding any other provision of law, the high-risk
10200 account shall be treated, for all Florida Hurricane Catastrophe
10201 Fund purposes, as if it were a separate participating insurer
10202 with its own exposures, reimbursement premium, and loss
10203 reimbursement. Likewise, the personal lines and commercial lines
10204 accounts shall be viewed together, for all Florida Hurricane
10205 Catastrophe Fund purposes, as if the two accounts were one and
10206 represent a single, separate participating insurer with its own
10207 exposures, reimbursement premium, and loss reimbursement. The
10208 coverage provided by the Florida Hurricane Catastrophe Fund to
10209 the corporation shall constitute and operate as a full transfer



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10210 of coverage from the Florida Windstorm Underwriting Association
10211 and Residential Property and Casualty Joint Underwriting to the
10212 corporation.

10213 (m) Notwithstanding any other provision of law:

10214 1. The pledge or sale of, the lien upon, and the security
10215 interest in any rights, revenues, or other assets of the
10216 corporation created or purported to be created pursuant to any
10217 financing documents to secure any bonds or other indebtedness of
10218 the corporation shall be and remain valid and enforceable,
10219 notwithstanding the commencement of and during the continuation
10220 of, and after, any rehabilitation, insolvency, liquidation,
10221 bankruptcy, receivership, conservatorship, reorganization, or
10222 similar proceeding against the corporation under the laws of
10223 this state.

10224 2. No such proceeding shall relieve the corporation of its
10225 obligation, or otherwise affect its ability to perform its
10226 obligation, to continue to collect, or levy and collect,
10227 assessments, market equalization or other surcharges under
10228 subparagraph (c)10., or any other rights, revenues, or other
10229 assets of the corporation pledged pursuant to any financing
10230 documents.

10231 3. Each such pledge or sale of, lien upon, and security
10232 interest in, including the priority of such pledge, lien, or
10233 security interest, any such assessments, market equalization or
10234 other surcharges, or other rights, revenues, or other assets
10235 which are collected, or levied and collected, after the
10236 commencement of and during the pendency of, or after, any such
10237 proceeding shall continue unaffected by such proceeding. As



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10238 used in this subsection, the term "financing documents" means
10239 any agreement or agreements, instrument or instruments, or other
10240 document or documents now existing or hereafter created
10241 evidencing any bonds or other indebtedness of the corporation or
10242 pursuant to which any such bonds or other indebtedness has been
10243 or may be issued and pursuant to which any rights, revenues, or
10244 other assets of the corporation are pledged or sold to secure
10245 the repayment of such bonds or indebtedness, together with the
10246 payment of interest on such bonds or such indebtedness, or the
10247 payment of any other obligation or financial product, as defined
10248 in the plan of operation of the corporation related to such
10249 bonds or indebtedness.

10250 4. Any such pledge or sale of assessments, revenues,
10251 contract rights, or other rights or assets of the corporation
10252 shall constitute a lien and security interest, or sale, as the
10253 case may be, that is immediately effective and attaches to such
10254 assessments, revenues, or contract rights or other rights or
10255 assets, whether or not imposed or collected at the time the
10256 pledge or sale is made. Any such pledge or sale is effective,
10257 valid, binding, and enforceable against the corporation or other
10258 entity making such pledge or sale, and valid and binding against
10259 and superior to any competing claims or obligations owed to any
10260 other person or entity, including policyholders in this state,
10261 asserting rights in any such assessments, revenues, or contract
10262 rights or other rights or assets to the extent set forth in and
10263 in accordance with the terms of the pledge or sale contained in
10264 the applicable financing documents, whether or not any such
10265 person or entity has notice of such pledge or sale and without



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10266 the need for any physical delivery, recordation, filing, or
10267 other action.

10268 (n)1. The following records of the corporation are
10269 confidential and exempt from the provisions of s. 119.07(1) and
10270 s. 24(a), Art. I of the State Constitution:

10271 a. Underwriting files, except that a policyholder or an
10272 applicant shall have access to his or her own underwriting
10273 files.

10274 b. Claims files, until termination of all litigation and
10275 settlement of all claims arising out of the same incident,
10276 although portions of the claims files may remain exempt, as
10277 otherwise provided by law. Confidential and exempt claims file
10278 records may be released to other governmental agencies upon
10279 written request and demonstration of need; such records held by
10280 the receiving agency remain confidential and exempt as provided
10281 for herein.

10282 c. Records obtained or generated by an internal auditor
10283 pursuant to a routine audit, until the audit is completed, or if
10284 the audit is conducted as part of an investigation, until the
10285 investigation is closed or ceases to be active. An
10286 investigation is considered "active" while the investigation is
10287 being conducted with a reasonable, good faith belief that it
10288 could lead to the filing of administrative, civil, or criminal
10289 proceedings.

10290 d. Matters reasonably encompassed in privileged attorney-
10291 client communications.



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10292 e. Proprietary information licensed to the corporation
10293 under contract and the contract provides for the confidentiality
10294 of such proprietary information.

10295 f. All information relating to the medical condition or
10296 medical status of a corporation employee which is not relevant
10297 to the employee's capacity to perform his or her duties, except
10298 as otherwise provided in this paragraph. Information which is
10299 exempt shall include, but is not limited to, information
10300 relating to workers' compensation, insurance benefits, and
10301 retirement or disability benefits.

10302 g. Upon an employee's entrance into the employee
10303 assistance program, a program to assist any employee who has a
10304 behavioral or medical disorder, substance abuse problem, or
10305 emotional difficulty which affects the employee's job
10306 performance, all records relative to that participation shall be
10307 confidential and exempt from the provisions of s. 119.07(1) and
10308 s. 24(a), Art. I of the State Constitution, except as otherwise
10309 provided in s. 112.0455(11).

10310 h. Information relating to negotiations for financing,
10311 reinsurance, depopulation, or contractual services, until the
10312 conclusion of the negotiations.

10313 i. Minutes of closed meetings regarding underwriting
10314 files, and minutes of closed meetings regarding an open claims
10315 file until termination of all litigation and settlement of all
10316 claims with regard to that claim, except that information
10317 otherwise confidential or exempt by law will be redacted.

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10319 | When an authorized insurer is considering underwriting a risk
10320 | insured by the corporation, relevant underwriting files and
10321 | confidential claims files may be released to the insurer
10322 | provided the insurer agrees in writing, notarized and under
10323 | oath, to maintain the confidentiality of such files. When a
10324 | file is transferred to an insurer that file is no longer a
10325 | public record because it is not held by an agency subject to the
10326 | provisions of the public records law. Underwriting files and
10327 | confidential claims files may also be released to staff of and
10328 | the board of governors of the market assistance plan established
10329 | pursuant to s. 627.3515, who must retain the confidentiality of
10330 | such files, except such files may be released to authorized
10331 | insurers that are considering assuming the risks to which the
10332 | files apply, provided the insurer agrees in writing, notarized
10333 | and under oath, to maintain the confidentiality of such files.
10334 | Finally, the corporation or the board or staff of the market
10335 | assistance plan may make the following information obtained from
10336 | underwriting files and confidential claims files available to
10337 | licensed general lines insurance agents: name, address, and
10338 | telephone number of the residential property owner or insured;
10339 | location of the risk; rating information; loss history; and
10340 | policy type. The receiving licensed general lines insurance
10341 | agent must retain the confidentiality of the information
10342 | received.

10343 | 2. Portions of meetings of the corporation are exempt from
10344 | the provisions of s. 286.011 and s. 24(b), Art. I of the State
10345 | Constitution wherein confidential underwriting files or
10346 | confidential open claims files are discussed. All portions of



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10347 corporation meetings which are closed to the public shall be
10348 recorded by a court reporter. The court reporter shall record
10349 the times of commencement and termination of the meeting, all
10350 discussion and proceedings, the names of all persons present at
10351 any time, and the names of all persons speaking. No portion of
10352 any closed meeting shall be off the record. Subject to the
10353 provisions hereof and s. 119.07(2)(a), the court reporter's
10354 notes of any closed meeting shall be retained by the corporation
10355 for a minimum of 5 years. A copy of the transcript, less any
10356 exempt matters, of any closed meeting wherein claims are
10357 discussed shall become public as to individual claims after
10358 settlement of the claim.

10359 (o) It is the intent of the Legislature that the
10360 amendments to this subsection enacted in 2002 should, over time,
10361 reduce the probable maximum windstorm losses in the residual
10362 markets and should reduce the potential assessments to be levied
10363 on property insurers and policyholders statewide. In
10364 furtherance of this intent:

10365 1. The board shall, on or before February 1 of each year,
10366 provide a report to the President of the Senate and the Speaker
10367 of the House of Representatives showing the reduction or
10368 increase in the 100-year probable maximum loss attributable to
10369 wind-only coverages and the quota share program under this
10370 subsection combined, as compared to the benchmark 100-year
10371 probable maximum loss of the Florida Windstorm Underwriting
10372 Association. For purposes of this paragraph, the benchmark 100-
10373 year probable maximum loss of the Florida Windstorm Underwriting
10374 Association shall be the calculation dated February 2001 and



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10375 based on November 30, 2000, exposures. In order to ensure
10376 comparability of data, the board shall use the same methods for
10377 calculating its probable maximum loss as were used to calculate
10378 the benchmark probable maximum loss.

10379 2. Beginning February 1, 2007, if the report under
10380 subparagraph 1. for any year indicates that the 100-year
10381 probable maximum loss attributable to wind-only coverages and
10382 the quota share program combined does not reflect a reduction of
10383 at least 25 percent from the benchmark, the board shall reduce
10384 the boundaries of the high-risk area eligible for wind-only
10385 coverages under this subsection in a manner calculated to reduce
10386 such probable maximum loss to an amount at least 25 percent
10387 below the benchmark.

10388 3. Beginning February 1, 2012, if the report under
10389 subparagraph 1. for any year indicates that the 100-year
10390 probable maximum loss attributable to wind-only coverages and
10391 the quota share program combined does not reflect a reduction of
10392 at least 50 percent from the benchmark, the boundaries of the
10393 high-risk area eligible for wind-only coverages under this
10394 subsection shall be reduced by the elimination of any area that
10395 is not seaward of a line 1,000 feet inland from the Intracoastal
10396 Waterway.

10397 (p) In enacting the provisions of this section, the
10398 Legislature recognizes that both the Florida Windstorm
10399 Underwriting Association and the Residential Property and
10400 Casualty Joint Underwriting Association have entered into
10401 financing arrangements that obligate each entity to service its
10402 debts and maintain the capacity to repay funds secured under



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10403 | these financing arrangements. It is the intent of the
10404 | Legislature that nothing in this section be construed to
10405 | compromise, diminish, or interfere with the rights of creditors
10406 | under such financing arrangements. It is further the intent of
10407 | the Legislature to preserve the obligations of the Florida
10408 | Windstorm Underwriting Association and Residential Property and
10409 | Casualty Joint Underwriting Association with regard to
10410 | outstanding financing arrangements, with such obligations
10411 | passing entirely and unchanged to the corporation and,
10412 | specifically, to the applicable account of the corporation. So
10413 | long as any bonds, notes, indebtedness, or other financing
10414 | obligations of the Florida Windstorm Underwriting Association or
10415 | the Residential Property and Casualty Joint Underwriting
10416 | Association are outstanding, under the terms of the financing
10417 | documents pertaining to them, the governing board of the
10418 | corporation shall have and shall exercise the authority to levy,
10419 | charge, collect, and receive all premiums, assessments,
10420 | surcharges, charges, revenues, and receipts that the
10421 | associations had authority to levy, charge, collect, or receive
10422 | under the provisions of subsection (2) and this subsection,
10423 | respectively, as they existed on January 1, 2002, to provide
10424 | moneys, without exercise of the authority provided by this
10425 | subsection, in at least the amounts, and by the times, as would
10426 | be provided under those former provisions of subsection (2) or
10427 | this subsection, respectively, so that the value, amount, and
10428 | collectability of any assets, revenues, or revenue source
10429 | pledged or committed to, or any lien thereon securing such
10430 | outstanding bonds, notes, indebtedness, or other financing



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10431 obligations will not be diminished, impaired, or adversely
10432 affected by the amendments made by this act and to permit
10433 compliance with all provisions of financing documents pertaining
10434 to such bonds, notes, indebtedness, or other financing
10435 obligations, or the security or credit enhancement for them, and
10436 any reference in this subsection to bonds, notes, indebtedness,
10437 financing obligations, or similar obligations, of the
10438 corporation shall include like instruments or contracts of the
10439 Florida Windstorm Underwriting Association and the Residential
10440 Property and Casualty Joint Underwriting Association to the
10441 extent not inconsistent with the provisions of the financing
10442 documents pertaining to them.

10443 ~~(g) Effective January 7, 2003, any reference in this~~
10444 ~~subsection to the Treasurer shall be deemed to be a reference to~~
10445 ~~the Chief Financial Officer and any reference to the Department~~
10446 ~~of Insurance shall be deemed to be a reference to the Department~~
10447 ~~of Insurance and Financial Services or other successor to the~~
10448 ~~Department of Insurance specified by law.~~

10449 (g)(r) The corporation shall not require the securing of
10450 flood insurance as a condition of coverage if the insured or
10451 applicant executes a form approved by the office ~~department~~
10452 affirming that flood insurance is not provided by the
10453 corporation and that if flood insurance is not secured by the
10454 applicant or insured in addition to coverage by the corporation,
10455 the risk will not be covered for flood damage. A corporation
10456 policyholder electing not to secure flood insurance and
10457 executing a form as provided herein making a claim for water
10458 damage against the corporation shall have the burden of proving



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10459 | the damage was not caused by flooding. Notwithstanding other
 10460 | provisions of this subsection, the corporation may deny coverage
 10461 | to an applicant or insured who refuses to execute the form
 10462 | described herein.

10463 | Section 201. Section 627.3511, Florida Statutes, is
 10464 | amended to read:

10465 | 627.3511 Depopulation of Citizens Property Insurance
 10466 | Corporation Residential Property and Casualty Joint Underwriting
 10467 | Association.--

10468 | (1) LEGISLATIVE INTENT.--The Legislature finds that the
 10469 | public policy of this state requires the maintenance of a
 10470 | residual market for residential property insurance. It is the
 10471 | intent of the Legislature to provide a variety of financial
 10472 | incentives to encourage the replacement of the highest possible
 10473 | number of Citizens Property Insurance Corporation Residential
 10474 | Property and Casualty Joint Underwriting Association policies
 10475 | with policies written by admitted insurers at approved rates.

10476 | (2) TAKE-OUT BONUS.--The Citizens Property Insurance
 10477 | Corporation Residential Property and Casualty Joint Underwriting
 10478 | Association shall pay the sum of up to \$100 to an insurer for
 10479 | each risk that the insurer removes from the corporation
 10480 | association, either by issuance of a policy upon expiration or
 10481 | cancellation of the corporation association policy or by
 10482 | assumption of the corporation's association's obligations with
 10483 | respect to an in-force policy. Such payment is subject to
 10484 | approval of the corporation association board. In order to
 10485 | qualify for the bonus under this subsection, the take-out plan
 10486 | must include a minimum of 25,000 policies. Within 30 days after



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10487 approval by the board, the office ~~department~~ may reject the
 10488 insurer's take-out plan and disqualify the insurer from the
 10489 bonus, based on the following criteria:

10490 (a) The capacity of the insurer to absorb the policies
 10491 proposed to be taken out of the corporation ~~association~~ and the
 10492 concentration of risks of those policies.

10493 (b) Whether the geographic and risk characteristics of
 10494 policies in the proposed take-out plan serve to reduce the
 10495 exposure of the corporation ~~association~~ sufficiently to justify
 10496 the bonus.

10497 (c) Whether coverage for risks to be taken out otherwise
 10498 exists in the admitted voluntary market.

10499 (d) The degree to which the take-out bonus is promoting
 10500 new capital being allocated by the insurer to Florida
 10501 residential property coverage.

10502 (3) EXEMPTION FROM DEFICIT ASSESSMENTS.--

10503 (a) The calculation of an insurer's assessment liability
 10504 under s. 627.351(6)(b)3.a. or b. shall, for an insurer that in
 10505 any calendar year removes 50,000 or more risks from the Citizens
 10506 Property Insurance Corporation Residential Property and Casualty
 10507 ~~Joint Underwriting Association~~, either by issuance of a policy
 10508 upon expiration or cancellation of the corporation ~~association~~
 10509 policy or by assumption of the corporation's ~~association's~~
 10510 obligations with respect to in-force policies, exclude such
 10511 removed policies for the succeeding 3 years, as follows:

10512 1. In the first year following removal of the risks, the
 10513 risks are excluded from the calculation to the extent of 100
 10514 percent.



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10515 2. In the second year following removal of the risks, the
10516 risks are excluded from the calculation to the extent of 75
10517 percent.

10518 3. In the third year following removal of the risks, the
10519 risks are excluded from the calculation to the extent of 50
10520 percent.

10521
10522 If the removal of risks is accomplished through assumption of
10523 obligations with respect to in-force policies, the corporation
10524 ~~association~~ shall pay to the assuming insurer all unearned
10525 premium with respect to such policies less any policy
10526 acquisition costs agreed to by the corporation ~~association~~ and
10527 assuming insurer. The term "policy acquisition costs" is defined
10528 as costs of issuance of the policy by the corporation
10529 ~~association~~ which includes agent commissions, servicing company
10530 fees, and premium tax. This paragraph does not apply to an
10531 insurer that, at any time within 5 years before removing the
10532 risks, had a market share in excess of 0.1 percent of the
10533 statewide aggregate gross direct written premium for any line of
10534 property insurance, or to an affiliate of such an insurer. This
10535 paragraph does not apply unless either at least 40 percent of
10536 the risks removed from the corporation ~~association~~ are located
10537 in Dade, Broward, and Palm Beach Counties, or at least 30
10538 percent of the risks removed from the corporation ~~association~~
10539 are located in such counties and an additional 50 percent of the
10540 risks removed from the corporation ~~association~~ are located in
10541 other coastal counties.



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10542 (b) An insurer that first wrote personal lines residential
10543 property coverage in this state on or after July 1, 1994, is
10544 exempt from regular deficit assessments imposed pursuant to s.
10545 627.351(6)(b)3.a. and b., but not emergency assessments
10546 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,
10547 of the Citizens Property Insurance Corporation ~~Residential~~
10548 ~~Property and Casualty Joint Underwriting Association~~ until the
10549 earlier of the following:

10550 1. The end of the calendar year in which it first wrote
10551 0.5 percent or more of the statewide aggregate direct written
10552 premium for any line of residential property coverage; or

10553 2. December 31, 1997, or December 31 of the third year in
10554 which it wrote such coverage in this state, whichever is later.

10555 (c) Other than an insurer that is exempt under paragraph
10556 (b), an insurer that in any calendar year increases its total
10557 structure exposure subject to wind coverage by 25 percent or
10558 more over its exposure for the preceding calendar year is, with
10559 respect to that year, exempt from deficit assessments imposed
10560 pursuant to s. 627.351(6)(b)3.a. and b., but not emergency
10561 assessments collected from policyholders pursuant to s.
10562 627.351(6)(b)3.d., of the Citizens Property Insurance
10563 Corporation ~~Residential Property and Casualty Joint Underwriting~~
10564 ~~Association~~ attributable to such increase in exposure.

10565 (d) Any exemption or credit from regular assessments
10566 authorized by this section shall last no longer than 3 years
10567 following the cancellation or expiration of the policy by the
10568 corporation ~~association~~. With the approval of the office
10569 ~~department~~, the board may extend such credits for an additional



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10570 year if the insurer guarantees an additional year of
10571 renewability for all policies removed from the corporation
10572 ~~association~~, or for 2 additional years if the insurer guarantees
10573 2 additional years of renewability for all policies so removed.

10574 (4) AGENT BONUS.--When the corporation ~~Residential~~
10575 ~~Property and Casualty Joint Underwriting Association~~ enters into
10576 a contractual agreement for a take-out plan that provides a
10577 bonus to the insurer, the producing agent of record of the
10578 corporation ~~association~~ policy is entitled to retain any
10579 unearned commission on such policy, and the insurer shall
10580 either:

10581 (a) Pay to the producing agent of record of the
10582 association policy, for the first year, an amount that is the
10583 greater of the insurer's usual and customary commission for the
10584 type of policy written or a fee equal to the usual and customary
10585 commission of the corporation ~~association~~; or

10586 (b) Offer to allow the producing agent of record of the
10587 corporation ~~association~~ policy to continue servicing the policy
10588 for a period of not less than 1 year and offer to pay the agent
10589 the greater of the insurer's or the corporation's ~~association's~~
10590 usual and customary commission for the type of policy written.

10591
10592 If the producing agent is unwilling or unable to accept
10593 appointment, the new insurer shall pay the agent in accordance
10594 with paragraph (a). The requirement of this subsection that the
10595 producing agent of record is entitled to retain the unearned
10596 commission on an association policy does not apply to a policy
10597 for which coverage has been provided in the association for 30



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10598 | days or less or for which a cancellation notice has been issued
10599 | pursuant to s. 627.351(6)(c)11. during the first 30 days of
10600 | coverage.

10601 | (5) APPLICABILITY.--

10602 | (a) The take-out bonus provided by subsection (2) and the
10603 | exemption from assessment provided by paragraph (3)(a) apply
10604 | only if the corporation ~~association~~ policy is replaced by either
10605 | a standard policy including wind coverage or, if consistent with
10606 | the insurer's underwriting rules as filed with the office
10607 | ~~department~~, a basic policy including wind coverage; however,
10608 | with respect to risks located in areas where coverage through
10609 | the high-risk account of the corporation ~~Florida Windstorm~~
10610 | ~~Underwriting Association~~ is available, the replacement policy
10611 | need not provide wind coverage. The insurer must renew the
10612 | replacement policy at approved rates on substantially similar
10613 | terms for two additional 1-year terms, unless canceled by the
10614 | insurer for a lawful reason other than reduction of hurricane
10615 | exposure. If an insurer assumes the corporation's ~~association's~~
10616 | obligations for a policy, it must issue a replacement policy for
10617 | a 1-year term upon expiration of the corporation ~~association~~
10618 | policy and must renew the replacement policy at approved rates
10619 | on substantially similar terms for two additional 1-year terms,
10620 | unless canceled by the insurer for a lawful reason other than
10621 | reduction of hurricane exposure. For each replacement policy
10622 | canceled or nonrenewed by the insurer for any reason during the
10623 | 3-year coverage period required by this paragraph, the insurer
10624 | must remove from the corporation ~~association~~ one additional
10625 | policy covering a risk similar to the risk covered by the



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10626 canceled or nonrenewed policy. In addition to these
10627 requirements, the corporation ~~association~~ must place the bonus
10628 moneys in escrow for a period of 3 years; such moneys may be
10629 released from escrow only to pay claims. A take-out bonus
10630 provided by subsection (2) or subsection (6) shall not be
10631 considered premium income for purposes of taxes and assessments
10632 under the Florida Insurance Code and shall remain the property
10633 of the corporation ~~Residential Property and Casualty Joint~~
10634 ~~Underwriting Association~~, subject to the prior security interest
10635 of the insurer under the escrow agreement until it is released
10636 from escrow, and after it is released from escrow it shall be
10637 considered an asset of the insurer and credited to the insurer's
10638 capital and surplus.

10639 (b) It is the intent of the Legislature that an insurer
10640 eligible for the exemption under paragraph (3)(a) establish a
10641 preference in appointment of agents for those agents who lose a
10642 substantial amount of business as a result of risks being
10643 removed from the corporation ~~association~~.

10644 (6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.--

10645 (a) The corporation ~~Residential Property and Casualty~~
10646 ~~Joint Underwriting Association~~ shall pay a bonus to an insurer
10647 for each commercial residential policy that the insurer removes
10648 from the corporation ~~association~~ pursuant to an approved take-
10649 out plan, either by issuance of a new policy upon expiration of
10650 the corporation ~~association~~ policy or by assumption of the
10651 corporation's ~~association's~~ obligations with respect to an in-
10652 force policy. The corporation ~~association~~ board shall determine
10653 the amount of the bonus based on such factors as the coverage



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10654 provided, relative hurricane risk, the length of time that the
10655 property has been covered by the corporation ~~association~~, and
10656 the criteria specified in paragraphs (b) and (c). The amount of
10657 the bonus with respect to a particular policy may not exceed 25
10658 percent of the corporation's ~~association's~~ 1-year premium for
10659 the policy. Such payment is subject to approval of the
10660 corporation ~~association~~ board. In order to qualify for the bonus
10661 under this subsection, the take-out plan must include policies
10662 reflecting at least \$100 million in structure exposure.

10663 (b) In order for a plan to qualify for approval:

10664 1. At least 40 percent of the policies removed from the
10665 corporation ~~association~~ under the plan must be located in Dade,
10666 Broward, and Palm Beach Counties, or at least 30 percent of the
10667 policies removed from the corporation ~~association~~ under the plan
10668 must be located in such counties and an additional 50 percent of
10669 the policies removed from the corporation ~~association~~ must be
10670 located in other coastal counties.

10671 2. The insurer must renew the replacement policy at
10672 approved rates on substantially similar terms for two additional
10673 1-year terms, unless canceled or nonrenewed by the insurer for a
10674 lawful reason other than reduction of hurricane exposure. If an
10675 insurer assumes the corporation's ~~association's~~ obligations for
10676 a policy, it must issue a replacement policy for a 1-year term
10677 upon expiration of the corporation ~~association~~ policy and must
10678 renew the replacement policy at approved rates on substantially
10679 similar terms for two additional 1-year terms, unless canceled
10680 by the insurer for a lawful reason other than reduction of
10681 hurricane exposure. For each replacement policy canceled or



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10682 nonrenewed by the insurer for any reason during the 3-year
10683 coverage period required by this subparagraph, the insurer must
10684 remove from the corporation ~~association~~ one additional policy
10685 covering a risk similar to the risk covered by the canceled or
10686 nonrenewed policy.

10687 (c) A take-out plan is deemed approved unless the office
10688 ~~department~~, within 120 days after the board votes to recommend
10689 the plan, disapproves the plan based on:

10690 1. The capacity of the insurer to absorb the policies
10691 proposed to be taken out of the corporation ~~association~~ and the
10692 concentration of risks of those policies.

10693 2. Whether the geographic and risk characteristics of
10694 policies in the proposed take-out plan serve to reduce the
10695 exposure of the corporation ~~association~~ sufficiently to justify
10696 the bonus.

10697 3. Whether coverage for risks to be taken out otherwise
10698 exists in the admitted voluntary market.

10699 4. The degree to which the take-out bonus is promoting new
10700 capital being allocated by the insurer to residential property
10701 coverage in this state.

10702 (d) The calculation of an insurer's regular assessment
10703 liability under s. 627.351(b)3.a. and b., but not emergency
10704 assessments collected from policyholders pursuant to s.
10705 627.351(6)(b)3.d., shall, with respect to commercial residential
10706 policies removed from the corporation ~~association~~ under an
10707 approved take-out plan, exclude such removed policies for the
10708 succeeding 3 years, as follows:



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10709 | 1. In the first year following removal of the policies,
10710 | the policies are excluded from the calculation to the extent of
10711 | 100 percent.

10712 | 2. In the second year following removal of the policies,
10713 | the policies are excluded from the calculation to the extent of
10714 | 75 percent.

10715 | 3. In the third year following removal of the policies,
10716 | the policies are excluded from the calculation to the extent of
10717 | 50 percent.

10718 | (e) An insurer that first wrote commercial residential
10719 | property coverage in this state on or after June 1, 1996, is
10720 | exempt from regular assessments under s. 627.351(6)(b)3.a. and
10721 | b., but not emergency assessments collected from policyholders
10722 | pursuant to s. 627.351(6)(b)3.d., with respect to commercial
10723 | residential policies until the earlier of:

10724 | 1. The end of the calendar year in which such insurer
10725 | first wrote 0.5 percent or more of the statewide aggregate
10726 | direct written premium for commercial residential property
10727 | coverage; or

10728 | 2. December 31 of the third year in which such insurer
10729 | wrote commercial residential property coverage in this state.

10730 | (f) An insurer that is not otherwise exempt from regular
10731 | assessments under s. 627.351(6)(b)3.a. and b. with respect to
10732 | commercial residential policies is, for any calendar year in
10733 | which such insurer increased its total commercial residential
10734 | hurricane exposure by 25 percent or more over its exposure for
10735 | the preceding calendar year, exempt from regular assessments
10736 | under s. 627.351(6)(b)3.a. and b., but not emergency assessments



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10737 collected from policyholders pursuant to s. 627.351(6)(b)3.d.,
10738 attributable to such increased exposure.

10739 (7) A minority business, which is at least 51 percent
10740 owned by minority persons as described in s. 288.703(3),
10741 desiring to operate or become licensed as a property and
10742 casualty insurer may exempt up to \$50 of the escrow requirements
10743 of the take-out bonus, as described in this section. Such
10744 minority business, which has applied for a certificate of
10745 authority to engage in business as a property and casualty
10746 insurer, may simultaneously file the business' proposed take-out
10747 plan, as described in this section, with the corporation ~~to the~~
10748 ~~Residential Property and Casualty Joint Underwriting~~
10749 ~~Association.~~

10750 Section 202. Section 627.3513, Florida Statutes, is
10751 amended to read:

10752 627.3513 Standards for sale of bonds by Citizens Property
10753 Insurance Corporation ~~underwriting associations.~~--

10754 (1)(a) The purpose of this section is to provide standards
10755 for the sale of bonds pursuant to s. 627.351(2) and (6).

10756 (b) The term "corporation," as used in this section, means
10757 the Citizens Property Insurance Corporation. ~~"Association" or~~
10758 ~~"associations," for purposes of this section, means the Florida~~
10759 ~~Windstorm Underwriting Association and the Residential Property~~
10760 ~~and Casualty Joint Underwriting Association as established~~
10761 ~~pursuant to s. 627.351(2) and (6), and any corporation or other~~
10762 ~~entity established pursuant to those subsections.~~

10763 (2) The plan of operation of the corporation ~~each~~
10764 ~~association~~ shall provide for the selection of financial



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10765 services providers and underwriters. Such provisions shall
10766 include the method for publicizing or otherwise providing
10767 reasonable notice to potential financial services providers,
10768 underwriters, and other interested parties, which may include
10769 expedited procedures and methods for emergency situations. The
10770 corporation ~~associations~~ shall not engage the services of any
10771 person or firm as a securities broker or bond underwriter that
10772 is not eligible to be engaged by the state under the provisions
10773 of s. 215.684. The corporation ~~associations~~ shall make all
10774 selections of financial service providers and managing
10775 underwriters at a noticed public meeting.

10776 (3) The plan of operation of the corporation ~~each~~
10777 ~~association~~ shall provide for any managing underwriter or
10778 financial adviser to provide to the corporation ~~association~~ a
10779 disclosure statement containing at least the following
10780 information:

10781 (a) An itemized list setting forth the nature and
10782 estimated amounts of expenses to be incurred by the managing
10783 underwriter in connection with the issuance of such bonds.
10784 Notwithstanding the foregoing, any such list may include an item
10785 for miscellaneous expenses, provided such item includes only
10786 minor items of expense which cannot be easily categorized
10787 elsewhere in the statement.

10788 (b) The names, addresses, and estimated amounts of
10789 compensation of any finders connected with the issuance of the
10790 bonds.



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10791 (c) The amount of underwriting spread expected to be
10792 realized and the amount of fees and expenses expected to be paid
10793 to the financial adviser.

10794 (d) Any management fee charged by the managing
10795 underwriter.

10796 (e) Any other fee, bonus, or compensation estimated to be
10797 paid by the managing underwriter in connection with the bond
10798 issue to any person not regularly employed or retained by it.

10799 (f) The name and address of each financial adviser or
10800 managing underwriter, if any, connected with the bond issue.

10801 (g) Any other disclosure which the corporation ~~association~~
10802 may require.

10803 (4)(a) No underwriter, commercial bank, investment banker,
10804 or financial consultant or adviser shall pay any finder any
10805 bonus, fee, or gratuity in connection with the sale of bonds
10806 issued by the corporation ~~association~~ unless full disclosure is
10807 made in writing to the corporation ~~association~~ prior to or
10808 concurrently with the submission of a purchase proposal for
10809 bonds by the underwriter, commercial bank, investment banker, or
10810 financial consultant or adviser, providing the name and address
10811 of any finder and the amount of bonus, fee, or gratuity paid to
10812 such finder. A violation of this subsection shall not affect the
10813 validity of the bond issue.

10814 (b) As used in this subsection, the term "finder" means a
10815 person who is neither regularly employed by, nor a partner or
10816 officer of, an underwriter, bank, banker, or financial
10817 consultant or adviser and who enters into an understanding with
10818 either the issuer or the managing underwriter, or both, for any



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10819 | paid or promised compensation or valuable consideration,
10820 | directly or indirectly, expressed or implied, to act solely as
10821 | an intermediary between such issuer and managing underwriter for
10822 | the purpose of influencing any transaction in the purpose of
10823 | such bonds.

10824 | (5) This section is not intended to restrict or prohibit
10825 | the employment of professional services relating to bonds issued
10826 | under s. 627.351(6) ~~s. 627.351(2) or (6)~~ or the issuance of
10827 | bonds by the corporation ~~associations~~.

10828 | (6) The failure of the corporation ~~association~~ to comply
10829 | with one or more provisions of this section shall not affect the
10830 | validity of the bond issue; however, the failure of the
10831 | corporation ~~either association~~ to comply in good faith both with
10832 | this section and with the plan as amended shall be a violation
10833 | of its plan of operation and a violation of the insurance code.

10834 | Section 203. Section 627.3515, Florida Statutes, is
10835 | amended to read:

10836 | 627.3515 Market assistance plan; property and casualty
10837 | risks.--

10838 | (1) The office ~~department~~ shall adopt a market assistance
10839 | plan to assist in the placement of risks of applicants who are
10840 | unable to procure property insurance as defined in s. 624.604 or
10841 | casualty insurance as defined in s. 624.605(1)(b), (e), (f),
10842 | (g), or (h) from authorized insurers when such insurance is
10843 | otherwise generally available from insurers authorized to
10844 | transact and actually writing that kind and class of insurance
10845 | in this state. Through such measures as are found appropriate by
10846 | the board of governors, the market assistance plan shall take



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10847 affirmative steps to assist in the removal from the Citizens
10848 Property Insurance Corporation ~~Residential Property and Casualty~~
10849 ~~Joint Underwriting Association~~ any risk that can be placed in
10850 the voluntary market. All property and casualty insurers
10851 licensed in this state shall participate in the plan.

10852 (2)(a) Each person serving as a member of the board of
10853 governors of the Citizens Property Insurance Corporation
10854 ~~Residential Property and Casualty Joint Underwriting Association~~
10855 shall also serve as a member of the board of governors of the
10856 market assistance plan.

10857 (b) The plan shall be funded through payments from the
10858 Citizens Property Insurance Corporation ~~Residential Property and~~
10859 ~~Casualty Joint Underwriting Association~~ and annual assessments
10860 of residential property insurers in the amount of \$450.

10861 (c) The plan is not required to assist in the placement of
10862 any workers' compensation, employer's liability, malpractice, or
10863 motor vehicle insurance coverage.

10864 Section 204. Subsections (2), (4), and (6), paragraphs (c)
10865 and (h) of subsection (7), and subsection (8) of section
10866 627.357, Florida Statutes, are amended to read:

10867 627.357 Medical malpractice self-insurance.--

10868 (2) A group or association of health care providers
10869 composed of any number of members, is authorized to self-insure
10870 against claims arising out of the rendering of, or failure to
10871 render, medical care or services, or against claims for injury
10872 or death to the insured's patients arising out of the insured's
10873 activities, upon obtaining approval from the office ~~department~~
10874 and upon complying with the following conditions:



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10875 (a) Establishment of a Medical Malpractice Risk Management
10876 Trust Fund to provide coverage against professional medical
10877 malpractice liability.

10878 (b) Employment of professional consultants for loss
10879 prevention and claims management coordination under a risk
10880 management program.

10881 (4) The fund is subject to regulation and investigation by
10882 the office ~~department~~. The fund is subject to rules of the
10883 commission ~~department~~ and to part IX of chapter 626, relating to
10884 trade practices and frauds.

10885 (6) The commission ~~department~~ shall adopt rules to
10886 implement this section, including rules that ensure that a trust
10887 fund maintains a sufficient reserve to cover contingent
10888 liabilities under subsection (7) in the event of its
10889 dissolution.

10890 (7)

10891 (c) The trust fund may from time to time assess members of
10892 the fund liable therefor under the terms of their policies and
10893 pursuant to this section. The office ~~department~~ may assess the
10894 members in the event of liquidation of the fund.

10895 (h) If the trust fund fails to make an assessment as
10896 required by paragraph(g), the office ~~department~~ shall order the
10897 fund to do so. If the deficiency is not sufficiently made up
10898 within 60 days after the date of the order, the fund is deemed
10899 insolvent and grounds exist to proceed against the fund as
10900 provided for in part I of chapter 631.

10901 (8) The expense factors associated with rates used by a
10902 fund shall be filed with the office ~~department~~ at least 30 days



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10903 prior to use and may not be used until approved by the office
 10904 ~~department~~. The office ~~department~~ shall disapprove the rates
 10905 unless the filed expense factors associated therewith are
 10906 justified and reasonable for the benefits and services provided.

10907 Section 205. Paragraph (a) of subsection (3) of section
 10908 627.4236, Florida Statutes, is amended to read:

10909 627.4236 Coverage for bone marrow transplant procedures.--

10910 (3)(a) The Agency for Health Care Administration shall
 10911 adopt rules specifying the bone marrow transplant procedures
 10912 that are accepted within the appropriate oncological specialty
 10913 and are not experimental for purposes of this section. The rules
 10914 must be based upon recommendations of an advisory panel
 10915 appointed by the secretary of the agency, composed of:

10916 1. One adult oncologist, selected from a list of three
 10917 names recommended by the Florida Medical Association;

10918 2. One pediatric oncologist, selected from a list of three
 10919 names recommended by the Florida Pediatric Society;

10920 3. One representative of the J. Hillis Miller Health
 10921 Center at the University of Florida;

10922 4. One representative of the H. Lee Moffitt Cancer Center
 10923 and Research Institute, Inc.;

10924 5. One consumer representative, selected from a list of
 10925 three names recommended by the Chief Financial Officer ~~Insurance~~
 10926 ~~Commissioner~~;

10927 6. One representative of the Health Insurance Association
 10928 of America;

10929 7. Two representatives of health insurers, one of whom
 10930 represents the insurer with the largest Florida health insurance



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10931 premium volume and one of whom represents the insurer with the
10932 second largest Florida health insurance premium volume; and

10933 8. One representative of the insurer with the largest
10934 Florida small group health insurance premium volume.

10935 Section 206. Paragraphs (a) and (e) of subsection (2),
10936 subsection (3), paragraphs (e), (j), and (k) of subsection (4),
10937 and subsection (6) of section 627.6488, Florida Statutes, are
10938 amended to read:

10939 627.6488 Florida Comprehensive Health Association.--

10940 (2)(a) The association shall operate subject to the
10941 supervision and approval of a three-member board of directors.
10942 The board of directors shall be appointed by the Chief Financial
10943 Officer ~~Insurance Commissioner~~ as follows:

10944 1. The chair of the board shall be the Chief Financial
10945 Officer ~~Insurance Commissioner~~ or his or her designee.

10946 2. One representative of policyholders who is not
10947 associated with the medical profession, a hospital, or an
10948 insurer.

10949 3. One representative of insurers.

10950
10951 The administrator or his or her affiliate shall not be a member
10952 of the board. Any board member appointed by the Chief Financial
10953 Officer ~~commissioner~~ may be removed and replaced by him or her
10954 at any time without cause.

10955 (e) There shall be no liability on the part of, and no
10956 cause of action of any nature shall arise against, any member
10957 insurer, or its agents or employees, agents or employees of the
10958 association, members of the board of directors of the



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10959 association, or the Chief Financial Officer's ~~departmental~~
10960 representatives for any act or omission taken by them in the
10961 performance of their powers and duties under this act, unless
10962 such act or omission by such person is in intentional disregard
10963 of the rights of the claimant.

10964 (3) The association shall adopt a plan pursuant to this
10965 act and submit its articles, bylaws, and operating rules to the
10966 office ~~department~~ for approval. If the association fails to
10967 adopt such plan and suitable articles, bylaws, and operating
10968 rules within 180 days after the appointment of the board, the
10969 commission ~~department~~ shall adopt rules to effectuate the
10970 provisions of this act; and such rules shall remain in effect
10971 until superseded by a plan and articles, bylaws, and operating
10972 rules submitted by the association and approved by the office
10973 ~~department~~.

10974 (4) The association shall:

10975 (e) Require that all policy forms issued by the
10976 association conform to standard forms developed by the
10977 association. The forms shall be approved by the office
10978 ~~department~~.

10979 (j) Make a report to the Governor, the office ~~Insurance~~
10980 ~~Commissioner~~, the President of the Senate, the Speaker of the
10981 House of Representatives, and the Minority Leaders of the Senate
10982 and House of Representatives, not later than 45 days after the
10983 close of each calendar quarter, which includes, for the prior
10984 quarter, current data and estimates of net written and earned
10985 premiums, the expenses of administration, and the paid and
10986 incurred losses. The report shall identify any statutorily



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10987 mandated program that has not been fully implemented by the
10988 board.

10989 (k) To facilitate preparation of assessments and for other
10990 purposes, the board shall direct preparation of annual audited
10991 financial statements for each calendar year as soon as feasible
10992 following the conclusion of that calendar year, and shall,
10993 within 30 days after rendition of such statements, file with the
10994 office ~~department~~ the annual report containing such information
10995 as required by the office ~~department~~ to be filed on March 1 of
10996 each year.

10997 (6) The office ~~department~~ shall examine and investigate
10998 the association in the manner provided in part II of chapter
10999 624.

11000 Section 207. Paragraph (a) of subsection (3), paragraphs
11001 (c), (d), (e), and (i) of subsection (5), paragraphs (a) and (b)
11002 of subsection (6), paragraphs (b), (c), and (d) of subsection
11003 (8), paragraphs (a) and (b) of subsection (9), subsection (10),
11004 paragraphs (b), (c), (d), (e), (g), (h), (j), and (m) of
11005 subsection (11), subsection (12), paragraph (i) of subsection
11006 (13), paragraph(a) of subsection (15), and subsection (16) of
11007 section 627.6699, Florida Statutes, are amended to read:

11008 627.6699 Employee Health Care Access Act.--

11009 (3) DEFINITIONS.--As used in this section, the term:

11010 (a) "Actuarial certification" means a written statement,
11011 by a member of the American Academy of Actuaries or another
11012 person acceptable to the office ~~department~~, that a small
11013 employer carrier is in compliance with subsection (6), based
11014 upon the person's examination, including a review of the



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11015 appropriate records and of the actuarial assumptions and methods
11016 used by the carrier in establishing premium rates for applicable
11017 health benefit plans.

11018 (5) AVAILABILITY OF COVERAGE.--

11019 (c) Every small employer carrier must, as a condition of
11020 transacting business in this state:

11021 1. ~~Beginning July 1, 2000,~~ Offer and issue all small
11022 employer health benefit plans on a guaranteed-issue basis to
11023 every eligible small employer, with 2 to 50 eligible employees,
11024 that elects to be covered under such plan, agrees to make the
11025 required premium payments, and satisfies the other provisions of
11026 the plan. A rider for additional or increased benefits may be
11027 medically underwritten and may only be added to the standard
11028 health benefit plan. The increased rate charged for the
11029 additional or increased benefit must be rated in accordance with
11030 this section.

11031 2. ~~Beginning July 1, 2000, and until July 31, 2001, offer~~
11032 ~~and issue basic and standard small employer health benefit plans~~
11033 ~~on a guaranteed-issue basis to every eligible small employer~~
11034 ~~which is eligible for guaranteed renewal, has less than two~~
11035 ~~eligible employees, is not formed primarily for the purpose of~~
11036 ~~buying health insurance, elects to be covered under such plan,~~
11037 ~~agrees to make the required premium payments, and satisfies the~~
11038 ~~other provisions of the plan. A rider for additional or~~
11039 ~~increased benefits may be medically underwritten and may be~~
11040 ~~added only to the standard benefit plan. The increased rate~~
11041 ~~charged for the additional or increased benefit must be rated in~~
11042 ~~accordance with this section. For purposes of this subparagraph,~~



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11043 | ~~a person, his or her spouse, and his or her dependent children~~
11044 | ~~shall constitute a single eligible employee if that person and~~
11045 | ~~spouse are employed by the same small employer and either one~~
11046 | ~~has a normal work week of less than 25 hours.~~

11047 | ~~2.3.~~ Beginning August 1, 2001, Offer and issue basic and
11048 | standard small employer health benefit plans on a guaranteed-
11049 | issue basis, during a 31-day open enrollment period of August 1
11050 | through August 31 of each year, to every eligible small
11051 | employer, with fewer than two eligible employees, which small
11052 | employer is not formed primarily for the purpose of buying
11053 | health insurance and which elects to be covered under such plan,
11054 | agrees to make the required premium payments, and satisfies the
11055 | other provisions of the plan. Coverage provided under this
11056 | subparagraph shall begin on October 1 of the same year as the
11057 | date of enrollment, unless the small employer carrier and the
11058 | small employer agree to a different date. A rider for additional
11059 | or increased benefits may be medically underwritten and may only
11060 | be added to the standard health benefit plan. The increased
11061 | rate charged for the additional or increased benefit must be
11062 | rated in accordance with this section. For purposes of this
11063 | subparagraph, a person, his or her spouse, and his or her
11064 | dependent children constitute a single eligible employee if that
11065 | person and spouse are employed by the same small employer and
11066 | either that person or his or her spouse has a normal work week
11067 | of less than 25 hours.

11068 | ~~3.4.~~ This paragraph does not limit a carrier's ability to
11069 | offer other health benefit plans to small employers if the



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11070 standard and basic health benefit plans are offered and
11071 rejected.

11072 (d) A small employer carrier must file with the office
11073 ~~department~~, in a format and manner prescribed by the committee,
11074 a standard health care plan and a basic health care plan to be
11075 used by the carrier.

11076 (e) The office ~~department~~ at any time may, after providing
11077 notice and an opportunity for a hearing, disapprove the
11078 continued use by the small employer carrier of the standard or
11079 basic health benefit plan on the grounds that such plan does not
11080 meet the requirements of this section.

11081 (i)1. A small employer carrier need not offer coverage or
11082 accept applications pursuant to paragraph (a):

11083 a. To a small employer if the small employer is not
11084 physically located in an established geographic service area of
11085 the small employer carrier, provided such geographic service
11086 area shall not be less than a county;

11087 b. To an employee if the employee does not work or reside
11088 within an established geographic service area of the small
11089 employer carrier; or

11090 c. To a small employer group within an area in which the
11091 small employer carrier reasonably anticipates, and demonstrates
11092 to the satisfaction of the office ~~department~~, that it cannot,
11093 within its network of providers, deliver service adequately to
11094 the members of such groups because of obligations to existing
11095 group contract holders and enrollees.

11096 2. A small employer carrier that cannot offer coverage
11097 pursuant to sub-subparagraph 1.c. may not offer coverage in the



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11098 applicable area to new cases of employer groups having more than
11099 50 eligible employees or small employer groups until the later
11100 of 180 days following each such refusal or the date on which the
11101 carrier notifies the office ~~department~~ that it has regained its
11102 ability to deliver services to small employer groups.

11103 3.a. A small employer carrier may deny health insurance
11104 coverage in the small-group market if the carrier has
11105 demonstrated to the office ~~department~~ that:

11106 (I) It does not have the financial reserves necessary to
11107 underwrite additional coverage; and

11108 (II) It is applying this sub-subparagraph uniformly to all
11109 employers in the small-group market in this state consistent
11110 with this section and without regard to the claims experience of
11111 those employers and their employees and their dependents or any
11112 health-status-related factor that relates to such employees and
11113 dependents.

11114 b. A small employer carrier, upon denying health insurance
11115 coverage in connection with health benefit plans in accordance
11116 with sub-subparagraph a., may not offer coverage in connection
11117 with group health benefit plans in the small-group market in
11118 this state for a period of 180 days after the date such coverage
11119 is denied or until the insurer has demonstrated to the office
11120 ~~department~~ that the insurer has sufficient financial reserves to
11121 underwrite additional coverage, whichever is later. The office
11122 ~~department~~ may provide for the application of this sub-
11123 subparagraph on a service-area-specific basis.

11124 4. ~~Beginning in 1994,~~ The commission ~~department~~ shall, by
11125 rule, require each small employer carrier to report, on or



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11126 before March 1 of each year, its gross annual premiums for all
11127 health benefit plans issued to small employers during the
11128 previous calendar year, and also to report its gross annual
11129 premiums for new, but not renewal, standard and basic health
11130 benefit plans subject to this section issued during the previous
11131 calendar year. No later than May 1 of each year, the office
11132 ~~department~~ shall calculate each carrier's percentage of all
11133 small employer group health premiums for the previous calendar
11134 year and shall calculate the aggregate gross annual premiums for
11135 new, but not renewal, standard and basic health benefit plans
11136 for the previous calendar year.

11137 (6) RESTRICTIONS RELATING TO PREMIUM RATES.--

11138 (a) The commission ~~department~~ may, by rule, establish
11139 regulations to administer this section and to assure that rating
11140 practices used by small employer carriers are consistent with
11141 the purpose of this section, including assuring that differences
11142 in rates charged for health benefit plans by small employer
11143 carriers are reasonable and reflect objective differences in
11144 plan design, not including differences due to the nature of the
11145 groups assumed to select particular health benefit plans.

11146 (b) For all small employer health benefit plans that are
11147 subject to this section and are issued by small employer
11148 carriers on or after January 1, 1994, premium rates for health
11149 benefit plans subject to this section are subject to the
11150 following:

11151 1. Small employer carriers must use a modified community
11152 rating methodology in which the premium for each small employer
11153 must be determined solely on the basis of the eligible



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11154 employee's and eligible dependent's gender, age, family
11155 composition, tobacco use, or geographic area as determined under
11156 paragraph (5)(j) and in which the premium may be adjusted as
11157 permitted by this paragraph.

11158 2. Rating factors related to age, gender, family
11159 composition, tobacco use, or geographic location may be
11160 developed by each carrier to reflect the carrier's experience.
11161 The factors used by carriers are subject to office ~~department~~
11162 review and approval.

11163 3. Small employer carriers may not modify the rate for a
11164 small employer for 12 months from the initial issue date or
11165 renewal date, unless the composition of the group changes or
11166 benefits are changed. However, a small employer carrier may
11167 modify the rate one time prior to 12 months after the initial
11168 issue date for a small employer who enrolls under a previously
11169 issued group policy that has a common anniversary date for all
11170 employers covered under the policy if:

11171 a. The carrier discloses to the employer in a clear and
11172 conspicuous manner the date of the first renewal and the fact
11173 that the premium may increase on or after that date.

11174 b. The insurer demonstrates to the office ~~department~~ that
11175 efficiencies in administration are achieved and reflected in the
11176 rates charged to small employers covered under the policy.

11177 4. A carrier may issue a group health insurance policy to
11178 a small employer health alliance or other group association with
11179 rates that reflect a premium credit for expense savings
11180 attributable to administrative activities being performed by the
11181 alliance or group association if such expense savings are



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11182 specifically documented in the insurer's rate filing and are
11183 approved by the office ~~department~~. Any such credit may not be
11184 based on different morbidity assumptions or on any other factor
11185 related to the health status or claims experience of any person
11186 covered under the policy. Nothing in this subparagraph exempts
11187 an alliance or group association from licensure for any
11188 activities that require licensure under the insurance code. A
11189 carrier issuing a group health insurance policy to a small
11190 employer health alliance or other group association shall allow
11191 any properly licensed and appointed agent of that carrier to
11192 market and sell the small employer health alliance or other
11193 group association policy. Such agent shall be paid the usual and
11194 customary commission paid to any agent selling the policy.

11195 5. Any adjustments in rates for claims experience, health
11196 status, or duration of coverage may not be charged to individual
11197 employees or dependents. For a small employer's policy, such
11198 adjustments may not result in a rate for the small employer
11199 which deviates more than 15 percent from the carrier's approved
11200 rate. Any such adjustment must be applied uniformly to the rates
11201 charged for all employees and dependents of the small employer.
11202 A small employer carrier may make an adjustment to a small
11203 employer's renewal premium, not to exceed 10 percent annually,
11204 due to the claims experience, health status, or duration of
11205 coverage of the employees or dependents of the small employer.
11206 Semiannually, small group carriers shall report information on
11207 forms adopted by rule by the commission ~~department~~, to enable
11208 the office ~~department~~ to monitor the relationship of aggregate
11209 adjusted premiums actually charged policyholders by each carrier



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11210 to the premiums that would have been charged by application of
11211 the carrier's approved modified community rates. If the
11212 aggregate resulting from the application of such adjustment
11213 exceeds the premium that would have been charged by application
11214 of the approved modified community rate by 5 percent for the
11215 current reporting period, the carrier shall limit the
11216 application of such adjustments only to minus adjustments
11217 beginning not more than 60 days after the report is sent to the
11218 office ~~department~~. For any subsequent reporting period, if the
11219 total aggregate adjusted premium actually charged does not
11220 exceed the premium that would have been charged by application
11221 of the approved modified community rate by 5 percent, the
11222 carrier may apply both plus and minus adjustments. A small
11223 employer carrier may provide a credit to a small employer's
11224 premium based on administrative and acquisition expense
11225 differences resulting from the size of the group. Group size
11226 administrative and acquisition expense factors may be developed
11227 by each carrier to reflect the carrier's experience and are
11228 subject to office ~~department~~ review and approval.

11229 6. A small employer carrier rating methodology may include
11230 separate rating categories for one dependent child, for two
11231 dependent children, and for three or more dependent children for
11232 family coverage of employees having a spouse and dependent
11233 children or employees having dependent children only. A small
11234 employer carrier may have fewer, but not greater, numbers of
11235 categories for dependent children than those specified in this
11236 subparagraph.



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11237 7. Small employer carriers may not use a composite rating
11238 methodology to rate a small employer with fewer than 10
11239 employees. For the purposes of this subparagraph, a "composite
11240 rating methodology" means a rating methodology that averages the
11241 impact of the rating factors for age and gender in the premiums
11242 charged to all of the employees of a small employer.

11243 8.a. A carrier may separate the experience of small
11244 employer groups with less than 2 eligible employees from the
11245 experience of small employer groups with 2-50 eligible employees
11246 for purposes of determining an alternative modified community
11247 rating.

11248 b. If a carrier separates the experience of small employer
11249 groups as provided in sub-subparagraph a., the rate to be
11250 charged to small employer groups of less than 2 eligible
11251 employees may not exceed 150 percent of the rate determined for
11252 small employer groups of 2-50 eligible employees. However, the
11253 carrier may charge excess losses of the experience pool
11254 consisting of small employer groups with less than 2 eligible
11255 employees to the experience pool consisting of small employer
11256 groups with 2-50 eligible employees so that all losses are
11257 allocated and the 150-percent rate limit on the experience pool
11258 consisting of small employer groups with less than 2 eligible
11259 employees is maintained. Notwithstanding s. 627.411(1), the rate
11260 to be charged to a small employer group of fewer than 2 eligible
11261 employees, insured as of July 1, 2002, may be up to 125 percent
11262 of the rate determined for small employer groups of 2-50
11263 eligible employees for the first annual renewal and 150 percent
11264 for subsequent annual renewals.



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11265 (8) MAINTENANCE OF RECORDS.--

11266 (b) Each small employer carrier must file with the office
11267 ~~department~~ on or before March 15 of each year an actuarial
11268 certification that the carrier is in compliance with this
11269 section and that the rating methods of the carrier are
11270 actuarially sound. The certification must be in a form and
11271 manner and contain the information prescribed by the commission
11272 ~~department~~. The carrier must retain a copy of the certification
11273 at its principal place of business.

11274 (c) A small employer carrier must make the information and
11275 documentation described in paragraph (a) available to the office
11276 ~~department~~ upon request. The information constitutes
11277 proprietary and trade secret information and may not be
11278 disclosed by the office department to persons outside the office
11279 ~~department~~, except as agreed to by the carrier or as ordered by
11280 a court of competent jurisdiction.

11281 (d) Each small employer carrier must file with the office
11282 ~~department~~ quarterly an enrollment report as directed by the
11283 office department. Such report shall not constitute proprietary
11284 or trade secret information.

11285 (9) SMALL EMPLOYER CARRIER'S ELECTION TO BECOME A RISK-
11286 ASSUMING CARRIER OR A REINSURING CARRIER.--

11287 (a) A small employer carrier must elect to become either a
11288 risk-assuming carrier or a reinsuring carrier. Each small
11289 employer carrier must make an initial election, binding through
11290 January 1, 1994. The carrier's initial election must be made no
11291 later than October 31, 1992. By October 31, 1993, all small
11292 employer carriers must file a final election, which is binding



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11293 for 2 years, from January 1, 1994, through December 31, 1995,
11294 after which an election shall be binding for a period of 5
11295 years. Any carrier that is not a small employer carrier on
11296 October 31, 1992, and intends to become a small employer carrier
11297 after October 31, 1992, must file its designation when it files
11298 the forms and rates it intends to use for small employer group
11299 health insurance; such designation shall be binding for 2 years
11300 after the date of approval of the forms and rates, and any
11301 subsequent designation is binding for 5 years. The office
11302 ~~department~~ may permit a carrier to modify its election at any
11303 time for good cause shown, after a hearing.

11304 (b) The commission ~~department~~ shall establish an
11305 application process for small employer carriers seeking to
11306 change their status under this subsection.

11307 (10) ELECTION PROCESS TO BECOME A RISK-ASSUMING CARRIER.--

11308 (a)1. A small employer carrier may become a risk-assuming
11309 carrier by filing with the office ~~department~~ a designation of
11310 election under subsection (9) in a format and manner prescribed
11311 by the commission ~~department~~. The office ~~department~~ shall
11312 approve the election of a small employer carrier to become a
11313 risk-assuming carrier if the office ~~department~~ finds that the
11314 carrier is capable of assuming that status pursuant to the
11315 criteria set forth in paragraph (b).

11316 2. The office ~~department~~ must approve or disapprove any
11317 designation as a risk-assuming carrier within 60 days after
11318 filing.



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11319 (b) In determining whether to approve an application by a
11320 small employer carrier to become a risk-assuming carrier, the
11321 office department shall consider:

11322 1. The carrier's financial ability to support the
11323 assumption of the risk of small employer groups.

11324 2. The carrier's history of rating and underwriting small
11325 employer groups.

11326 3. The carrier's commitment to market fairly to all small
11327 employers in the state or its service area, as applicable.

11328 4. The carrier's ability to assume and manage the risk of
11329 enrolling small employer groups without the protection of the
11330 reinsurance program provided in subsection (11).

11331 (c) A small employer carrier that becomes a risk-assuming
11332 carrier pursuant to this subsection is not subject to the
11333 assessment provisions of subsection(11).

11334 (d) The office department shall provide public notice of a
11335 small employer carrier's designation of election under
11336 subsection(9) to become a risk-assuming carrier and shall
11337 provide at least a 21-day period for public comment prior to
11338 making a decision on the election. The office department shall
11339 hold a hearing on the election at the request of the carrier.

11340 (e) The office department may rescind the approval granted
11341 to a risk-assuming carrier under this subsection if the office
11342 ~~department~~ finds that the carrier no longer meets the criteria
11343 of paragraph (b).

11344 (11) SMALL EMPLOYER HEALTH REINSURANCE PROGRAM.--

11345 (b)1. The program shall operate subject to the supervision
11346 and control of the board.



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11347 2. Effective upon this act becoming a law, the board shall
11348 consist of the Chief Financial Officer ~~commissioner~~ or his or
11349 her designee, who shall serve as the chairperson, and 13
11350 additional members who are representatives of carriers and
11351 insurance agents and are appointed by the Chief Financial
11352 Officer ~~commissioner~~ and serve as follows:

11353 a. The Chief Financial Officer ~~commissioner~~ shall include
11354 representatives of small employer carriers subject to assessment
11355 under this subsection. If two or more carriers elect to be
11356 risk-assuming carriers, the membership must include at least two
11357 representatives of risk-assuming carriers; if one carrier is
11358 risk-assuming, one member must be a representative of such
11359 carrier. At least one member must be a carrier who is subject
11360 to the assessments, but is not a small employer carrier.
11361 Subject to such restrictions, at least five members shall be
11362 selected from individuals recommended by small employer carriers
11363 pursuant to procedures provided by rule of the commission
11364 ~~department~~. Three members shall be selected from a list of
11365 health insurance carriers that issue individual health insurance
11366 policies. At least two of the three members selected must be
11367 reinsuring carriers. Two members shall be selected from a list
11368 of insurance agents who are actively engaged in the sale of
11369 health insurance.

11370 b. A member appointed under this subparagraph shall serve
11371 a term of 4 years and shall continue in office until the
11372 member's successor takes office, except that, in order to
11373 provide for staggered terms, the Chief Financial Officer
11374 ~~commissioner~~ shall designate two of the initial appointees under



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11375 | this subparagraph to serve terms of 2 years and shall designate
 11376 | three of the initial appointees under this subparagraph to serve
 11377 | terms of 3 years.

11378 | 3. The Chief Financial Officer ~~commissioner~~ may remove a
 11379 | member for cause.

11380 | 4. Vacancies on the board shall be filled in the same
 11381 | manner as the original appointment for the unexpired portion of
 11382 | the term.

11383 | 5. The Chief Financial Officer ~~commissioner~~ may require an
 11384 | entity that recommends persons for appointment to submit
 11385 | additional lists of recommended appointees.

11386 | (c)1. ~~No later than August 15, 1992,~~ The board shall
 11387 | submit to the office ~~department~~ a plan of operation to assure
 11388 | the fair, reasonable, and equitable administration of the
 11389 | program. The board may at any time submit to the office
 11390 | ~~department~~ any amendments to the plan that the board finds to be
 11391 | necessary or suitable.

11392 | 2. ~~No later than September 15, 1992,~~ The office ~~department~~
 11393 | shall, after notice and hearing, approve the plan of operation
 11394 | if it determines that the plan submitted by the board is
 11395 | suitable to assure the fair, reasonable, and equitable
 11396 | administration of the program and provides for the sharing of
 11397 | program gains and losses equitably and proportionately in
 11398 | accordance with paragraph (j).

11399 | 3. The plan of operation, or any amendment thereto,
 11400 | becomes effective upon written approval of the office
 11401 | ~~department~~.

11402 | (d) The plan of operation must, among other things:



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11403 | 1. Establish procedures for handling and accounting for
11404 | program assets and moneys and for an annual fiscal reporting to
11405 | the office ~~department~~.

11406 | 2. Establish procedures for selecting an administering
11407 | carrier and set forth the powers and duties of the administering
11408 | carrier.

11409 | 3. Establish procedures for reinsuring risks.

11410 | 4. Establish procedures for collecting assessments from
11411 | participating carriers to provide for claims reinsured by the
11412 | program and for administrative expenses, other than amounts
11413 | payable to the administrative carrier, incurred or estimated to
11414 | be incurred during the period for which the assessment is made.

11415 | 5. Provide for any additional matters at the discretion of
11416 | the board.

11417 | (e) The board shall recommend to the office ~~department~~
11418 | market conduct requirements and other requirements for carriers
11419 | and agents, including requirements relating to:

11420 | 1. Registration by each carrier with the office ~~department~~
11421 | of its intention to be a small employer carrier under this
11422 | section;

11423 | 2. Publication by the office ~~department~~ of a list of all
11424 | small employer carriers, including a requirement applicable to
11425 | agents and carriers that a health benefit plan may not be sold
11426 | by a carrier that is not identified as a small employer carrier;

11427 | 3. The availability of a broadly publicized, toll-free
11428 | telephone number for access by small employers to information
11429 | concerning this section;



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11430 4. Periodic reports by carriers and agents concerning
11431 health benefit plans issued; and

11432 5. Methods concerning periodic demonstration by small
11433 employer carriers and agents that they are marketing or issuing
11434 health benefit plans to small employers.

11435 (g) A reinsuring carrier may reinsure with the program
11436 coverage of an eligible employee of a small employer, or any
11437 dependent of such an employee, subject to each of the following
11438 provisions:

11439 1. With respect to a standard and basic health care plan,
11440 the program must reinsure the level of coverage provided; and,
11441 with respect to any other plan, the program must reinsure the
11442 coverage up to, but not exceeding, the level of coverage
11443 provided under the standard and basic health care plan.

11444 2. Except in the case of a late enrollee, a reinsuring
11445 carrier may reinsure an eligible employee or dependent within 60
11446 days after the commencement of the coverage of the small
11447 employer. A newly employed eligible employee or dependent of a
11448 small employer may be reinsured within 60 days after the
11449 commencement of his or her coverage.

11450 3. A small employer carrier may reinsure an entire
11451 employer group within 60 days after the commencement of the
11452 group's coverage under the plan. The carrier may choose to
11453 reinsure newly eligible employees and dependents of the
11454 reinsured group pursuant to subparagraph 1.

11455 4. The program may not reimburse a participating carrier
11456 with respect to the claims of a reinsured employee or dependent
11457 until the carrier has paid incurred claims of at least \$5,000 in



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11458 a calendar year for benefits covered by the program. In
11459 addition, the reinsuring carrier shall be responsible for 10
11460 percent of the next \$50,000 and 5 percent of the next \$100,000
11461 of incurred claims during a calendar year and the program shall
11462 reinsure the remainder.

11463 5. The board annually shall adjust the initial level of
11464 claims and the maximum limit to be retained by the carrier to
11465 reflect increases in costs and utilization within the standard
11466 market for health benefit plans within the state. The adjustment
11467 shall not be less than the annual change in the medical
11468 component of the "Consumer Price Index for All Urban Consumers"
11469 of the Bureau of Labor Statistics of the Department of Labor,
11470 unless the board proposes and the office ~~department~~ approves a
11471 lower adjustment factor.

11472 6. A small employer carrier may terminate reinsurance for
11473 all reinsured employees or dependents on any plan anniversary.

11474 7. The premium rate charged for reinsurance by the program
11475 to a health maintenance organization that is approved by the
11476 Secretary of Health and Human Services as a federally qualified
11477 health maintenance organization pursuant to 42 U.S.C. s.
11478 300e(c)(2)(A) and that, as such, is subject to requirements that
11479 limit the amount of risk that may be ceded to the program, which
11480 requirements are more restrictive than subparagraph 4., shall be
11481 reduced by an amount equal to that portion of the risk, if any,
11482 which exceeds the amount set forth in subparagraph 4. which may
11483 not be ceded to the program.

11484 8. The board may consider adjustments to the premium rates
11485 charged for reinsurance by the program for carriers that use



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11486 effective cost containment measures, including high-cost case
11487 management, as defined by the board.

11488 9. A reinsuring carrier shall apply its case-management
11489 and claims-handling techniques, including, but not limited to,
11490 utilization review, individual case management, preferred
11491 provider provisions, other managed care provisions or methods of
11492 operation, consistently with both reinsured business and
11493 nonreinsured business.

11494 (h)1. The board, as part of the plan of operation, shall
11495 establish a methodology for determining premium rates to be
11496 charged by the program for reinsuring small employers and
11497 individuals pursuant to this section. The methodology shall
11498 include a system for classification of small employers that
11499 reflects the types of case characteristics commonly used by
11500 small employer carriers in the state. The methodology shall
11501 provide for the development of basic reinsurance premium rates,
11502 which shall be multiplied by the factors set for them in this
11503 paragraph to determine the premium rates for the program. The
11504 basic reinsurance premium rates shall be established by the
11505 board, subject to the approval of the office ~~department~~, and
11506 shall be set at levels which reasonably approximate gross
11507 premiums charged to small employers by small employer carriers
11508 for health benefit plans with benefits similar to the standard
11509 and basic health benefit plan. The premium rates set by the
11510 board may vary by geographical area, as determined under this
11511 section, to reflect differences in cost. The multiplying
11512 factors must be established as follows:



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11513 a. The entire group may be reinsured for a rate that is
11514 1.5 times the rate established by the board.

11515 b. An eligible employee or dependent may be reinsured for
11516 a rate that is 5 times the rate established by the board.

11517 2. The board periodically shall review the methodology
11518 established, including the system of classification and any
11519 rating factors, to assure that it reasonably reflects the claims
11520 experience of the program. The board may propose changes to the
11521 rates which shall be subject to the approval of the office
11522 ~~department~~.

11523 (j)1. Before March 1 of each calendar year, the board
11524 shall determine and report to the office ~~department~~ the program
11525 net loss for the previous year, including administrative
11526 expenses for that year, and the incurred losses for the year,
11527 taking into account investment income and other appropriate
11528 gains and losses.

11529 2. Any net loss for the year shall be recouped by
11530 assessment of the carriers, as follows:

11531 a. The operating losses of the program shall be assessed
11532 in the following order subject to the specified limitations.
11533 The first tier of assessments shall be made against reinsuring
11534 carriers in an amount which shall not exceed 5 percent of each
11535 reinsuring carrier's premiums from health benefit plans covering
11536 small employers. If such assessments have been collected and
11537 additional moneys are needed, the board shall make a second tier
11538 of assessments in an amount which shall not exceed 0.5 percent
11539 of each carrier's health benefit plan premiums. Except as
11540 provided in paragraph (n), risk-assuming carriers are exempt



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11541 from all assessments authorized pursuant to this section. The
11542 amount paid by a reinsuring carrier for the first tier of
11543 assessments shall be credited against any additional assessments
11544 made.

11545 b. The board shall equitably assess carriers for operating
11546 losses of the plan based on market share. The board shall
11547 annually assess each carrier a portion of the operating losses
11548 of the plan. The first tier of assessments shall be determined
11549 by multiplying the operating losses by a fraction, the numerator
11550 of which equals the reinsuring carrier's earned premium
11551 pertaining to direct writings of small employer health benefit
11552 plans in the state during the calendar year for which the
11553 assessment is levied, and the denominator of which equals the
11554 total of all such premiums earned by reinsuring carriers in the
11555 state during that calendar year. The second tier of assessments
11556 shall be based on the premiums that all carriers, except risk-
11557 assuming carriers, earned on all health benefit plans written in
11558 this state. The board may levy interim assessments against
11559 carriers to ensure the financial ability of the plan to cover
11560 claims expenses and administrative expenses paid or estimated to
11561 be paid in the operation of the plan for the calendar year prior
11562 to the association's anticipated receipt of annual assessments
11563 for that calendar year. Any interim assessment is due and
11564 payable within 30 days after receipt by a carrier of the interim
11565 assessment notice. Interim assessment payments shall be credited
11566 against the carrier's annual assessment. Health benefit plan
11567 premiums and benefits paid by a carrier that are less than an



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11568 amount determined by the board to justify the cost of collection
11569 may not be considered for purposes of determining assessments.

11570 c. Subject to the approval of the office ~~department~~, the
11571 board shall make an adjustment to the assessment formula for
11572 reinsuring carriers that are approved as federally qualified
11573 health maintenance organizations by the Secretary of Health and
11574 Human Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the
11575 extent, if any, that restrictions are placed on them that are
11576 not imposed on other small employer carriers.

11577 3. Before March 1 of each year, the board shall determine
11578 and file with the office ~~department~~ an estimate of the
11579 assessments needed to fund the losses incurred by the program in
11580 the previous calendar year.

11581 4. If the board determines that the assessments needed to
11582 fund the losses incurred by the program in the previous calendar
11583 year will exceed the amount specified in subparagraph 2., the
11584 board shall evaluate the operation of the program and report its
11585 findings, including any recommendations for changes to the plan
11586 of operation, to the office ~~department~~ within 90 days following
11587 the end of the calendar year in which the losses were incurred.
11588 The evaluation shall include an estimate of future assessments,
11589 the administrative costs of the program, the appropriateness of
11590 the premiums charged and the level of carrier retention under
11591 the program, and the costs of coverage for small employers. If
11592 the board fails to file a report with the office ~~department~~
11593 within 90 days following the end of the applicable calendar
11594 year, the office ~~department~~ may evaluate the operations of the
11595 program and implement such amendments to the plan of operation



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11596 the office ~~department~~ deems necessary to reduce future losses
11597 and assessments.

11598 5. If assessments exceed the amount of the actual losses
11599 and administrative expenses of the program, the excess shall be
11600 held as interest and used by the board to offset future losses
11601 or to reduce program premiums. As used in this paragraph, the
11602 term "future losses" includes reserves for incurred but not
11603 reported claims.

11604 6. Each carrier's proportion of the assessment shall be
11605 determined annually by the board, based on annual statements and
11606 other reports considered necessary by the board and filed by the
11607 carriers with the board.

11608 7. Provision shall be made in the plan of operation for
11609 the imposition of an interest penalty for late payment of an
11610 assessment.

11611 8. A carrier may seek, from the office ~~commissioner~~, a
11612 deferment, in whole or in part, from any assessment made by the
11613 board. The office ~~department~~ may defer, in whole or in part,
11614 the assessment of a carrier if, in the opinion of the office
11615 ~~department~~, the payment of the assessment would place the
11616 carrier in a financially impaired condition. If an assessment
11617 against a carrier is deferred, in whole or in part, the amount
11618 by which the assessment is deferred may be assessed against the
11619 other carriers in a manner consistent with the basis for
11620 assessment set forth in this section. The carrier receiving such
11621 deferment remains liable to the program for the amount deferred
11622 and is prohibited from reinsuring any individuals or groups in
11623 the program if it fails to pay assessments.



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11624 (m) The board shall monitor compliance with this section,
11625 including the market conduct of small employer carriers, and
11626 shall report to the office ~~department~~ any unfair trade practices
11627 and misleading or unfair conduct by a small employer carrier
11628 that has been reported to the board by agents, consumers, or any
11629 other person. The office ~~department~~ shall investigate all
11630 reports and, upon a finding of noncompliance with this section
11631 or of unfair or misleading practices, shall take action against
11632 the small employer carrier as permitted under the insurance code
11633 or chapter 641. The board is not given investigatory or
11634 regulatory powers, but must forward all reports of cases or
11635 abuse or misrepresentation to the office ~~department~~.

11636 (12) STANDARD, BASIC, AND LIMITED HEALTH BENEFIT PLANS.--

11637 (a)1. ~~By May 15, 1993,~~ The Chief Financial Officer
11638 ~~commissioner~~ shall appoint a health benefit plan committee
11639 composed of four representatives of carriers which shall include
11640 at least two representatives of HMOs, at least one of which is a
11641 staff model HMO, two representatives of agents, four
11642 representatives of small employers, and one employee of a small
11643 employer. The carrier members shall be selected from a list of
11644 individuals recommended by the board. The Chief Financial
11645 Officer ~~commissioner~~ may require the board to submit additional
11646 recommendations of individuals for appointment.

11647 2. The plans shall comply with all of the requirements of
11648 this subsection.

11649 3. The plans must be filed with and approved by the office
11650 ~~department~~ prior to issuance or delivery by any small employer
11651 carrier.



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11652 4. After approval of the revised health benefit plans, if
11653 the office ~~department~~ determines that modifications to a plan
11654 might be appropriate, the Chief Financial Officer ~~commissioner~~
11655 shall appoint a new health benefit plan committee in the manner
11656 provided in subparagraph 1. to submit recommended modifications
11657 to the office ~~department~~ for approval.

11658 (b)1. Each small employer carrier issuing new health
11659 benefit plans shall offer to any small employer, upon request, a
11660 standard health benefit plan and a basic health benefit plan
11661 that meets the criteria set forth in this section.

11662 2. For purposes of this subsection, the terms "standard
11663 health benefit plan" and "basic health benefit plan" mean
11664 policies or contracts that a small employer carrier offers to
11665 eligible small employers that contain:

11666 a. An exclusion for services that are not medically
11667 necessary or that are not covered preventive health services;
11668 and

11669 b. A procedure for preauthorization by the small employer
11670 carrier, or its designees.

11671 3. A small employer carrier may include the following
11672 managed care provisions in the policy or contract to control
11673 costs:

11674 a. A preferred provider arrangement or exclusive provider
11675 organization or any combination thereof, in which a small
11676 employer carrier enters into a written agreement with the
11677 provider to provide services at specified levels of
11678 reimbursement or to provide reimbursement to specified
11679 providers. Any such written agreement between a provider and a



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11680 small employer carrier must contain a provision under which the
 11681 parties agree that the insured individual or covered member has
 11682 no obligation to make payment for any medical service rendered
 11683 by the provider which is determined not to be medically
 11684 necessary. A carrier may use preferred provider arrangements or
 11685 exclusive provider arrangements to the same extent as allowed in
 11686 group products that are not issued to small employers.

11687 b. A procedure for utilization review by the small
 11688 employer carrier or its designees.

11689

11690 This subparagraph does not prohibit a small employer carrier
 11691 from including in its policy or contract additional managed care
 11692 and cost containment provisions, subject to the approval of the
 11693 office department, which have potential for controlling costs in
 11694 a manner that does not result in inequitable treatment of
 11695 insureds or subscribers. The carrier may use such provisions to
 11696 the same extent as authorized for group products that are not
 11697 issued to small employers.

11698 4. The standard health benefit plan shall include:

11699 a. Coverage for inpatient hospitalization;

11700 b. Coverage for outpatient services;

11701 c. Coverage for newborn children pursuant to s. 627.6575;

11702 d. Coverage for child care supervision services pursuant
 11703 to s. 627.6579;

11704 e. Coverage for adopted children upon placement in the
 11705 residence pursuant to s. 627.6578;

11706 f. Coverage for mammograms pursuant to s. 627.6613;



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11707 g. Coverage for handicapped children pursuant to s.
11708 627.6615;

11709 h. Emergency or urgent care out of the geographic service
11710 area; and

11711 i. Coverage for services provided by a hospice licensed
11712 under s. 400.602 in cases where such coverage would be the most
11713 appropriate and the most cost-effective method for treating a
11714 covered illness.

11715 5. The standard health benefit plan and the basic health
11716 benefit plan may include a schedule of benefit limitations for
11717 specified services and procedures. If the committee develops
11718 such a schedule of benefits limitation for the standard health
11719 benefit plan or the basic health benefit plan, a small employer
11720 carrier offering the plan must offer the employer an option for
11721 increasing the benefit schedule amounts by 4 percent annually.

11722 6. The basic health benefit plan shall include all of the
11723 benefits specified in subparagraph 4.; however, the basic health
11724 benefit plan shall place additional restrictions on the benefits
11725 and utilization and may also impose additional cost containment
11726 measures.

11727 7. Sections 627.419(2), (3), and (4), 627.6574, 627.6612,
11728 627.66121, 627.66122, 627.6616, 627.6618, 627.668, and 627.66911
11729 apply to the standard health benefit plan and to the basic
11730 health benefit plan. However, notwithstanding said provisions,
11731 the plans may specify limits on the number of authorized
11732 treatments, if such limits are reasonable and do not
11733 discriminate against any type of provider.



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11734 8. Each small employer carrier that provides for inpatient
11735 and outpatient services by allopathic hospitals may provide as
11736 an option of the insured similar inpatient and outpatient
11737 services by hospitals accredited by the American Osteopathic
11738 Association when such services are available and the osteopathic
11739 hospital agrees to provide the service.

11740 (c) If a small employer rejects, in writing, the standard
11741 health benefit plan and the basic health benefit plan, the small
11742 employer carrier may offer the small employer a limited benefit
11743 policy or contract.

11744 (d)1. Upon offering coverage under a standard health
11745 benefit plan, a basic health benefit plan, or a limited benefit
11746 policy or contract for any small employer, the small employer
11747 carrier shall provide such employer group with a written
11748 statement that contains, at a minimum:

11749 a. An explanation of those mandated benefits and providers
11750 that are not covered by the policy or contract;

11751 b. An explanation of the managed care and cost control
11752 features of the policy or contract, along with all appropriate
11753 mailing addresses and telephone numbers to be used by insureds
11754 in seeking information or authorization; and

11755 c. An explanation of the primary and preventive care
11756 features of the policy or contract.

11757

11758 Such disclosure statement must be presented in a clear and
11759 understandable form and format and must be separate from the
11760 policy or certificate or evidence of coverage provided to the
11761 employer group.



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11762 2. Before a small employer carrier issues a standard
11763 health benefit plan, a basic health benefit plan, or a limited
11764 benefit policy or contract, it must obtain from the prospective
11765 policyholder a signed written statement in which the prospective
11766 policyholder:

11767 a. Certifies as to eligibility for coverage under the
11768 standard health benefit plan, basic health benefit plan, or
11769 limited benefit policy or contract;

11770 b. Acknowledges the limited nature of the coverage and an
11771 understanding of the managed care and cost control features of
11772 the policy or contract;

11773 c. Acknowledges that if misrepresentations are made
11774 regarding eligibility for coverage under a standard health
11775 benefit plan, a basic health benefit plan, or a limited benefit
11776 policy or contract, the person making such misrepresentations
11777 forfeits coverage provided by the policy or contract; and

11778 d. If a limited plan is requested, acknowledges that the
11779 prospective policyholder had been offered, at the time of
11780 application for the insurance policy or contract, the
11781 opportunity to purchase any health benefit plan offered by the
11782 carrier and that the prospective policyholder had rejected that
11783 coverage.

11784

11785 A copy of such written statement shall be provided to the
11786 prospective policyholder no later than at the time of delivery
11787 of the policy or contract, and the original of such written
11788 statement shall be retained in the files of the small employer



11789 carrier for the period of time that the policy or contract
11790 remains in effect or for 5 years, whichever period is longer.

11791 3. Any material statement made by an applicant for
11792 coverage under a health benefit plan which falsely certifies as
11793 to the applicant's eligibility for coverage serves as the basis
11794 for terminating coverage under the policy or contract.

11795 4. Each marketing communication that is intended to be
11796 used in the marketing of a health benefit plan in this state
11797 must be submitted for review by the office ~~department~~ prior to
11798 use and must contain the disclosures stated in this subsection.

11799 (e) A small employer carrier may not use any policy,
11800 contract, form, or rate under this section, including
11801 applications, enrollment forms, policies, contracts,
11802 certificates, evidences of coverage, riders, amendments,
11803 endorsements, and disclosure forms, until the insurer has filed
11804 it with the office ~~department~~ and the office ~~department~~ has
11805 approved it under ss. 627.410 and 627.411 and this section.

11806 (13) STANDARDS TO ASSURE FAIR MARKETING.--

11807 (i) The commission ~~department~~ may establish regulations
11808 setting forth additional standards to provide for the fair
11809 marketing and broad availability of health benefit plans to
11810 small employers in this state.

11811 (15) APPLICABILITY OF OTHER STATE LAWS.--

11812 (a) Except as expressly provided in this section, a law
11813 requiring coverage for a specific health care service or
11814 benefit, or a law requiring reimbursement, utilization, or
11815 consideration of a specific category of licensed health care
11816 practitioner, does not apply to a standard or basic health



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11817 benefit plan policy or contract or a limited benefit policy or
11818 contract offered or delivered to a small employer unless that
11819 law is made expressly applicable to such policies or contracts.
11820 A law restricting or limiting deductibles, coinsurance,
11821 copayments, or annual or lifetime maximum payments does not
11822 apply to any health plan policy, including a standard or basic
11823 health benefit plan policy or contract, offered or delivered to
11824 a small employer unless such law is made expressly applicable to
11825 such policy or contract. However, every small employer carrier
11826 must offer to eligible small employers the standard benefit plan
11827 and the basic benefit plan, as required by subsection (5), as
11828 such plans have been approved by the office ~~department~~ pursuant
11829 to subsection (12).

11830 (16) RULEMAKING AUTHORITY.--The commission ~~department~~ may
11831 adopt rules to administer this section, including rules
11832 governing compliance by small employer carriers and small
11833 employers.

11834 Section 208. Section 627.7015, Florida Statutes, is
11835 amended to read:

11836 627.7015 Alternative procedure for resolution of disputed
11837 property insurance claims.--

11838 (1) PURPOSE AND SCOPE.--This section sets forth a
11839 nonadversarial alternative dispute resolution procedure for a
11840 mediated claim resolution conference prompted by the need for
11841 effective, fair, and timely handling of property insurance
11842 claims. There is a particular need for an informal,
11843 nonthreatening forum for helping parties who elect this
11844 procedure to resolve their claims disputes because most



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11845 homeowner's insurance policies obligate insureds to participate
11846 in a potentially expensive and time-consuming adversarial
11847 appraisal process prior to litigation. The procedure set forth
11848 in this section is designed to bring the parties together for a
11849 mediated claims settlement conference without any of the
11850 trappings or drawbacks of an adversarial process. Before
11851 resorting to these procedures, insureds and insurers are
11852 encouraged to resolve claims as quickly and fairly as possible.
11853 This section is available with respect to claims under personal
11854 lines policies for all claimants and insurers prior to
11855 commencing the appraisal process, or commencing litigation. If
11856 requested by the insured, participation by legal counsel shall
11857 be permitted. Mediation under this section is also available to
11858 litigants referred to the department by a county court or
11859 circuit court. This section does not apply to commercial
11860 coverages, to private passenger motor vehicle insurance
11861 coverages, or to disputes relating to liability coverages in
11862 policies of property insurance.

11863 (2) At the time a first-party claim within the scope of
11864 this section is filed, the insurer shall notify all first-party
11865 claimants of their right to participate in the mediation program
11866 under this section. The department shall prepare a consumer
11867 information pamphlet for distribution to persons participating
11868 in mediation under this section.

11869 (3) The costs of mediation shall be reasonable, and the
11870 insurer shall bear all of the cost of conducting mediation
11871 conferences, except as otherwise provided in this section. If an
11872 insured fails to appear at the conference, the conference shall



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11873 | be rescheduled upon the insured's payment of the costs of a
11874 | rescheduled conference. If the insurer fails to appear at the
11875 | conference, the insurer shall pay the insured's actual cash
11876 | expenses incurred in attending the conference if the insurer's
11877 | failure to attend was not due to a good cause acceptable to the
11878 | department. An insurer will be deemed to have failed to appear
11879 | if the insurer's representative lacks authority to settle the
11880 | full value of the claim. The insurer shall incur an additional
11881 | fee for a rescheduled conference necessitated by the insurer's
11882 | failure to appear at a scheduled conference. The fees assessed
11883 | by the administrator shall include a charge necessary to defray
11884 | the expenses of the department related to its duties under this
11885 | section and shall be deposited in the Insurance ~~Commissioner's~~
11886 | Regulatory Trust Fund.

11887 | (4) The department shall adopt by rule a property
11888 | insurance mediation program to be administered by the department
11889 | or its designee. The department may also adopt special rules
11890 | which are applicable in cases of an emergency within the state.
11891 | The rules shall be modeled after practices and procedures set
11892 | forth in mediation rules of procedure adopted by the Supreme
11893 | Court. The rules shall provide for:

11894 | (a) Reasonable requirement for processing and scheduling
11895 | of requests for mediation.

11896 | (b) Qualifications of mediators as provided in s. 627.745
11897 | and in the Florida Rules of Certified and Court Appointed
11898 | Mediators, and for such other individuals as are qualified by
11899 | education, training, or experience as the department determines
11900 | to be appropriate.



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11901 (c) Provisions governing who may attend mediation
 11902 conferences.
 11903 (d) Selection of mediators.
 11904 (e) Criteria for the conduct of mediation conferences.
 11905 (f) Right to legal counsel.
 11906 (5) All statements made and documents produced at a
 11907 mediation conference shall be deemed to be settlement
 11908 negotiations in anticipation of litigation within the scope of
 11909 s. 90.408. All parties to the mediation must negotiate in good
 11910 faith and must have the authority to immediately settle the
 11911 claim. Mediators are deemed to be agents of the department and
 11912 shall have the immunity from suit provided in s. 44.107.
 11913 (6) Mediation is nonbinding; however, if a written
 11914 settlement is reached, the insured has 3 business days within
 11915 which the insured may rescind the settlement unless the insured
 11916 has cashed or deposited any check or draft disbursed to the
 11917 insured for the disputed matters as a result of the conference.
 11918 If a settlement agreement is reached and is not rescinded, it
 11919 shall be binding and act as a release of all specific claims
 11920 that were presented in that mediation conference.
 11921 (7) If the insurer requests the mediation, and the
 11922 mediation results are rejected by either party, the insured
 11923 shall not be required to submit to or participate in any
 11924 contractual loss appraisal process of the property loss damage
 11925 as a precondition to legal action for breach of contract against
 11926 the insurer for its failure to pay the policyholder's claims
 11927 covered by the policy.



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11928 (8) The department may designate an entity or person to
 11929 serve as administrator to carry out any of the provisions of
 11930 this section and may take this action by means of a written
 11931 contract or agreement.

11932 Section 209. Section 628.4615, Florida Statutes, is
 11933 amended to read:

11934 628.4615 Specialty insurers; acquisition of controlling
 11935 stock, ownership interest, assets, or control; merger or
 11936 consolidation.--

11937 (1) For the purposes of this section, the term "specialty
 11938 insurer" means any person holding a license or certificate of
 11939 authority as:

11940 (a) A motor vehicle service agreement company authorized
 11941 to issue motor vehicle service agreements as those terms are
 11942 defined in s. 634.011~~(7)(8)~~ and~~(8)(9)~~;

11943 (b) A home warranty association authorized to issue "home
 11944 warranties" as those terms are defined in s. 634.301~~(3)(4)~~ and
 11945 ~~(4)(5)~~;

11946 (c) A service warranty association authorized to issue
 11947 "service warranties" as those terms are defined in s.
 11948 634.401~~(13)(14)~~ and ~~(14)(15)~~;

11949 (d) A prepaid limited health service organization
 11950 authorized to issue prepaid limited health service contracts, as
 11951 those terms are defined in chapter 636 ~~An optometric service~~
 11952 ~~plan corporation authorized to issue optometric service plan~~
 11953 ~~contracts as those terms are defined in s. 637.001(2) and (3);~~



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11954 ~~(e) A pharmaceutical service plan corporation authorized~~
 11955 ~~to issue pharmaceutical service plan contracts as those terms~~
 11956 ~~are defined in s. 637.1701(2) and (3);~~

11957 ~~(f) A dental service plan corporation licensed to issue~~
 11958 ~~contracts for dental services pursuant to a dental service plan~~
 11959 ~~as that term is defined in s. 637.401(1);~~

11960 ~~(g) An ambulance service association authorized to issue~~
 11961 ~~ambulance service contracts as those terms are defined in s.~~
 11962 ~~638.021(1) and (2);~~

11963 (e)~~(h)~~ An authorized health maintenance organization
 11964 operating pursuant to s. 641.21;

11965 (f)~~(i)~~ An authorized prepaid health clinic operating
 11966 pursuant to s. 641.405;

11967 (g)~~(j)~~ A legal expense insurance corporation authorized to
 11968 engage in a legal expense insurance business pursuant to s.
 11969 642.021;

11970 (h)~~(k)~~ A provider which is licensed to operate a facility
 11971 which undertakes to provide continuing care as those terms are
 11972 defined in s. 651.011(2), (4), (5), and (6), ~~and (7);~~

11973 (i)~~(l)~~ A multiple-employer welfare arrangement operating
 11974 pursuant to ss. 624.436-624.446;

11975 (j)~~(m)~~ A premium finance company authorized to finance
 11976 insurance premiums pursuant to s. 627.828; or

11977 (k)~~(n)~~ A corporation authorized to accept donor annuity
 11978 agreements pursuant to s. 627.481.

11979 (2) No person shall, individually or in conjunction with
 11980 any affiliated person of such person, directly or indirectly,
 11981 conclude a tender offer or exchange offer for, enter into any



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11982 agreement to exchange securities for, or otherwise finally
 11983 acquire, 10 percent or more of the outstanding voting securities
 11984 of a specialty insurer which is a stock corporation or of a
 11985 controlling company of a specialty insurer which is a stock
 11986 corporation; or conclude an acquisition of, or otherwise finally
 11987 acquire, 10 percent or more of the ownership interest of a
 11988 specialty insurer which is not a stock corporation or of a
 11989 controlling company of a specialty insurer which is not a stock
 11990 corporation, unless:

11991 (a) The person or affiliated person has filed with the
 11992 office department and sent by registered mail to the principal
 11993 office of the specialty insurer and controlling company an
 11994 application, signed under oath and prepared on forms prescribed
 11995 by the commission department, that contains the information
 11996 specified in subsection(4) no later than 5 days after any form
 11997 of tender offer or exchange offer is proposed, or no later than
 11998 5 days after the acquisition of the securities or ownership
 11999 interest if no tender offer or exchange offer is involved.

12000 (b) The office department has approved the tender offer or
 12001 exchange offer, or acquisition if no tender offer or exchange
 12002 offer is involved.

12003 (3) This section does not apply to any acquisition of
 12004 voting securities or ownership interest of a specialty insurer
 12005 or of a controlling company by any person who, on July 9, 1986,
 12006 is the owner of a majority of such voting securities or
 12007 ownership interest or who, on or after July 9, 1986, becomes the
 12008 owner of a majority of such voting securities or ownership



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12009 interest with the approval of the office ~~department~~ pursuant to
12010 this section.

12011 (4) The application to be filed with the office ~~department~~
12012 and furnished to the specialty insurer and controlling company
12013 shall contain the following information and any additional
12014 information as the office deems ~~department may deem~~ necessary to
12015 determine the character, experience, ability, and other
12016 qualifications of the person or affiliated person of such person
12017 for the protection of the insureds of the insurer and of the
12018 public:

12019 (a)1. The identity of, and the background information
12020 specified in subsection (5) on, each natural person by whom, or
12021 on whose behalf, the acquisition is to be made; and,

12022 2. If the acquisition is to be made by, or on behalf of, a
12023 person other than a natural person and as to any person who
12024 controls, either directly or indirectly, such other person, the
12025 identity of, and the background information specified in
12026 subsection (5) on:

12027 a. Each director, officer, or trustee, if a corporation,
12028 or

12029 b. Each partner, owner, manager, or joint venturer, or
12030 other person performing duties similar to those of persons in
12031 the aforementioned positions, if not a corporation,

12032
12033 for the person.

12034 (b) The source and amount of the funds or other
12035 consideration used, or to be used, in making the acquisition.



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12036 (c) Any plans or proposals which such persons may have
12037 made to liquidate the specialty insurer, to sell any of its
12038 assets or merge or consolidate it with any person, or to make
12039 any other major change in its business or corporate structure or
12040 management; and any plans or proposals which such persons may
12041 have made to liquidate any controlling company of the specialty
12042 insurer, to sell any of its assets or merge or consolidate it
12043 with any person, or to make any other major change in its
12044 business or corporate structure or management.

12045 (d) The nature and the extent of the controlling interest
12046 which the person or affiliated person of such person proposes to
12047 acquire, the terms of the proposed acquisition, and the manner
12048 in which the controlling interest is to be acquired of a
12049 specialty insurer or controlling company which is not a stock
12050 corporation.

12051 (e) The number of shares or other securities which the
12052 person or affiliated person of such person proposes to acquire,
12053 the terms of the proposed acquisition, and the manner in which
12054 the securities are to be acquired.

12055 (f) Information as to any contract, arrangement, or
12056 understanding with any party with respect to any of the
12057 securities of the specialty insurer or controlling company,
12058 including, but not limited to, information relating to the
12059 transfer of any of the securities, option arrangements, puts or
12060 calls, or the giving or withholding of proxies, which
12061 information names the party with whom the contract, arrangement,
12062 or understanding has been entered into and gives the details
12063 thereof.



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12064 (5)(a) The information as to the background and identity
12065 of each natural person, which information is required to be
12066 furnished pursuant to paragraph(4)(a), shall include:

12067 1. The natural person's occupations, positions of
12068 employment, and offices held during the past 10 years.

12069 2. The principal business and address of any business,
12070 corporation, or organization in which each such office of the
12071 natural person was held, or in which each such occupation or
12072 position of employment was carried on.

12073 3. Whether the natural person was, at any time during such
12074 10-year period, convicted of any crime other than a traffic
12075 violation.

12076 4. Whether the natural person has been, during such 10-
12077 year period, the subject of any proceeding for the revocation of
12078 any license and, if so, the nature of the proceeding and the
12079 disposition of the proceeding.

12080 5. Whether, during the 10-year period, the natural person
12081 has been the subject of any proceeding under the federal
12082 Bankruptcy Act; or whether, during the 10-year period, any
12083 person or other business or organization in which the natural
12084 person was a director, officer, trustee, partner, owner,
12085 manager, or other official has been subject to any such
12086 proceeding, either during the time in which the natural person
12087 was a director, officer, or trustee, if a corporation, or a
12088 partner, owner, manager, joint venturer, or other official, if
12089 not a corporation, or within 12 months thereafter.

12090 6. Whether, during the 10-year period, the natural person
12091 has been enjoined, either temporarily or permanently, by a court



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12092 of competent jurisdiction from violating any federal or state
12093 law regulating the business of insurance, securities, or
12094 banking, or from carrying out any particular practice or
12095 practices in the course of the business of insurance,
12096 securities, or banking, together with details as to any such
12097 event.

12098 7. Fingerprints of each person referred to in subsection
12099 (4).

12100 (b) Any person filing the statement required by this
12101 section shall give all required information that is within the
12102 knowledge of:

12103 1. The directors, officers, or trustees, if a corporation,
12104 or

12105 2. The partners, owners, managers, or joint venturers, or
12106 others performing functions similar to those of a director,
12107 officer, or trustee, if not a corporation,

12108
12109 of the person making the filing and of any person controlling
12110 either directly or indirectly such person. If any material
12111 change occurs in the facts set forth in the application filed
12112 with the office ~~department~~ pursuant to this section, an
12113 amendment setting forth such changes shall be filed immediately
12114 with the office ~~department~~, and a copy of the amendment shall be
12115 sent by registered mail to the principal office of the specialty
12116 insurer and to the principal office of the controlling company.

12117 (6)(a) The acquisition application shall be reviewed in
12118 accordance with chapter 120. The office ~~department~~ may on its
12119 own initiate, or, if requested to do so in writing by a



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12120 substantially affected person, shall conduct, a proceeding to
12121 consider the appropriateness of the proposed filing. Time
12122 periods for purposes of chapter 120 shall be tolled during the
12123 pendency of the proceeding. Any written request for a proceeding
12124 must be filed with the office ~~department~~ within 10 days of the
12125 date notice of the filing is given. During the pendency of the
12126 proceeding or review period by the office ~~department~~, any person
12127 or affiliated person complying with the filing requirements of
12128 this section may proceed and take all steps necessary to
12129 conclude the acquisition so long as the acquisition becoming
12130 final is conditioned upon obtaining office ~~departmental~~
12131 approval. The office ~~department~~ shall, however, at any time it
12132 finds an immediate danger to the public health, safety, and
12133 welfare of the insureds exists, immediately order, pursuant to
12134 s. 120.569(2)(n), the proposed acquisition disapproved and any
12135 further steps to conclude the acquisition ceased.

12136 (b) During the pendency of the office's ~~department's~~
12137 review of any acquisition subject to the provisions of this
12138 section, the acquiring person shall not make any material change
12139 in the operation of the specialty insurer or controlling company
12140 unless the office ~~department~~ has specifically approved the
12141 change nor shall the acquiring person make any material change
12142 in the management of the specialty insurer unless advance
12143 written notice of the change in management is furnished to the
12144 office ~~department~~. A material change in the operation of the
12145 specialty insurer is a transaction which disposes of or
12146 obligates 5 percent or more of the capital and surplus of the
12147 specialty insurer. A material change in the management of the



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12148 specialty insurer is any change in management involving officers
12149 or directors of the specialty insurer or any person of the
12150 specialty insurer or controlling company having authority to
12151 dispose of or obligate 5 percent or more of the specialty
12152 insurer's capital or surplus. The office ~~department~~ shall
12153 approve a material change in operations if it finds the
12154 applicable provisions of subsection (8) have been met. The
12155 office ~~department~~ may disapprove a material change in management
12156 if it finds that the applicable provisions of subsection (8)
12157 have not been met and in such case the specialty insurer shall
12158 promptly change management as acceptable to the office
12159 ~~department~~.

12160 (c) If a request for a proceeding is filed, the proceeding
12161 shall be conducted within 60 days after the date the written
12162 request for a proceeding is received by the office ~~department~~. A
12163 recommended order shall be issued within 20 days of the date of
12164 the close of the proceedings. A final order shall be issued
12165 within 20 days of the date of the recommended order or, if
12166 exceptions to the recommended order are filed, within 20 days of
12167 the date the exceptions are filed.

12168 (7) The office ~~department~~ may disapprove any acquisition
12169 subject to the provisions of this section by any person or any
12170 affiliated person of such person who:

12171 (a) Willfully violates this section;

12172 (b) In violation of an order of the office ~~department~~
12173 issued pursuant to subsection (11), fails to divest himself or
12174 herself of any stock or ownership interest obtained in violation
12175 of this section or fails to divest himself or herself of any



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12176 direct or indirect control of such stock or ownership interest,
12177 within 25 days after such order; or

12178 (c) In violation of an order issued by the office
12179 ~~department~~ pursuant to subsection (11), acquires an additional
12180 stock or ownership interest in a specialty insurer or
12181 controlling company or direct or indirect control of such stock
12182 or ownership interest, without complying with this section.

12183 (8) The person or persons filing the application required
12184 by subsection(2) shall have the burden of proof. The office
12185 ~~department~~ shall approve any such acquisition if it finds, on
12186 the basis of the record made during any proceeding or on the
12187 basis of the filed application if no proceeding is conducted,
12188 that:

12189 (a) Upon completion of the acquisition, the specialty
12190 insurer will be able to satisfy the requirements for the
12191 issuance of a license or certificate to write the line of
12192 insurance for which it is presently licensed or certificated.

12193 (b) The financial condition of the acquiring person or
12194 persons will not jeopardize the financial stability of the
12195 specialty insurer or prejudice the interests of its insureds or
12196 the public.

12197 (c) Any plan or proposal which the acquiring person has,
12198 or acquiring persons have, made:

12199 1. To liquidate the specialty insurer, sell its assets, or
12200 merge or consolidate it with any person, or to make any other
12201 major change in its business or corporate structure or
12202 management, or



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12203 2. To liquidate any controlling company, sell its assets,
12204 or merge or consolidate it with any person, or to make any major
12205 change in its business or corporate structure or management
12206 which would have an effect upon the specialty insurer,
12207

12208 is fair and free of prejudice to the insureds of the specialty
12209 insurer or to the public.

12210 (d) The competence, experience, and integrity of those
12211 persons who will control directly or indirectly the operation of
12212 the specialty insurer indicate that the acquisition is in the
12213 best interest of the insureds of the insurer and in the public
12214 interest.

12215 (e) The natural persons for whom background information is
12216 required to be furnished pursuant to this section have such
12217 backgrounds as to indicate that it is in the best interests of
12218 the insureds of the specialty insurer and in the public interest
12219 to permit such persons to exercise control over the specialty
12220 insurer.

12221 (f) The directors and officers, if such specialty insurer
12222 or controlling company is a stock corporation, or the trustees,
12223 partners, owners, managers, or joint venturers or other persons
12224 performing duties similar to those of persons in the
12225 aforementioned positions, if such specialty insurer or
12226 controlling company is not a stock corporation, to be employed
12227 after the acquisition have sufficient insurance experience and
12228 ability to assure reasonable promise of successful operation.

12229 (g) The management of the specialty insurer after the
12230 acquisition will be competent and trustworthy, and will possess



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12231 sufficient managerial experience so as to make the proposed
 12232 operation of the specialty insurer not hazardous to the
 12233 insurance-buying public.

12234 (h) The management of the specialty insurer after the
 12235 acquisition shall not include any person who has directly or
 12236 indirectly through ownership, control, reinsurance transactions,
 12237 or other insurance or business relations unlawfully manipulated
 12238 the assets, accounts, finances, or books of any insurer or
 12239 otherwise acted in bad faith with respect thereto.

12240 (i) The acquisition is not likely to be hazardous or
 12241 prejudicial to the insureds of the insurer or to the public.

12242 (j) The effect of the acquisition would not substantially
 12243 lessen competition in the line of insurance for which the
 12244 specialty insurer is licensed or certified in this state or
 12245 would not tend to create a monopoly therein.

12246 (9) No vote by the stockholder of record, or by any other
 12247 person, of any security acquired in contravention of the
 12248 provisions of this section is valid. Any acquisition contrary
 12249 to the provisions of this section is void. Upon the petition of
 12250 the specialty insurer or the controlling company, the circuit
 12251 court for the county in which the principal office of the
 12252 specialty insurer is located may, without limiting the
 12253 generality of its authority, order the issuance or entry of an
 12254 injunction or other order to enforce the provisions of this
 12255 section. There shall be a private right of action in favor of
 12256 the specialty insurer or controlling company to enforce the
 12257 provisions of this section. No demand upon the office
 12258 ~~department~~ that it perform its functions shall be required as a



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12259 prerequisite to any suit by the specialty insurer or controlling
12260 company against any other person, and in no case shall the
12261 office department be deemed a necessary party to any action by
12262 the specialty insurer or controlling company to enforce the
12263 provisions of this section. Any person who makes or proposes an
12264 acquisition requiring the filing of an application pursuant to
12265 this section, or who files such an application, shall be deemed
12266 to have thereby designated the Chief Financial Officer Insurance
12267 ~~Commissioner and Treasurer~~, or his or her assistant or deputy or
12268 another person in charge of his or her office, as such person's
12269 agent for service of process under this section and shall
12270 thereby be deemed to have submitted himself or herself to the
12271 administrative jurisdiction of the office department and to the
12272 jurisdiction of the circuit court.

12273 (10) Any approval by the office department under this
12274 section does not constitute a recommendation by the office
12275 ~~department~~ of the tender offer or exchange offer, or
12276 acquisition, if no tender offer or exchange offer is involved.
12277 It is unlawful for a person to represent that the office's
12278 ~~department's~~ approval constitutes a recommendation. A person who
12279 violates the provisions of this subsection commits a felony of
12280 the third degree, punishable as provided in s. 775.082, s.
12281 775.083, or s. 775.084. The statute-of-limitations period for
12282 the prosecution of an offense committed under this subsection is
12283 5 years.

12284 (11) If the office department determines that any person
12285 or any affiliated person of such person has acquired 10 percent
12286 or more of the outstanding voting securities of a specialty



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12287 insurer or controlling company which is a stock corporation, or
12288 10 percent or more of the ownership interest of a specialty
12289 insurer or controlling company which is not a stock corporation,
12290 without complying with the provisions of this section, the
12291 office ~~department~~ may order that the person and any affiliated
12292 person of such person cease acquisition of the specialty insurer
12293 or controlling company and, if appropriate, divest itself of any
12294 stock or ownership interest acquired in violation of this
12295 section.

12296 (12)(a) The office ~~department~~ shall, if necessary to
12297 protect the public interest, suspend or revoke the certificate
12298 of authority of any specialty insurer or controlling company
12299 acquired in violation of this section.

12300 (b) If any specialty insurer is subject to suspension or
12301 revocation pursuant to paragraph (a), the specialty insurer
12302 shall be deemed to be in such condition, or to be using or to
12303 have been subject to such methods or practices in the conduct of
12304 its business, as to render its further transaction of insurance
12305 presently or prospectively hazardous to its insureds, creditors,
12306 or stockholders or to the public.

12307 (13)(a) For the purpose of this section, the term
12308 "acquisition" includes:

12309 1. A tender offer or exchange offer for securities,
12310 assets, or other ownership interest;

12311 2. An agreement to exchange securities for other
12312 securities, assets, or other ownership interest;



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12313 3. A merger of a person or affiliated person into a
12314 specialty insurer or a merger of any person with a specialty
12315 insurer;

12316 4. A consolidation; or

12317 5. Any other form of change of control

12318

12319 whereby any person or affiliated person acquires or attempts to
12320 acquire, directly or indirectly, 10 percent or more of the
12321 ownership interest or assets of a specialty insurer or of a
12322 controlling company. However, in the case of a health
12323 maintenance organization organized as a for-profit corporation,
12324 the provisions of s. 628.451 shall govern with respect to any
12325 merger or consolidation, and, in the case of a health
12326 maintenance organization organized as a not-for-profit
12327 corporation, the provisions of s. 628.471 shall govern with
12328 respect to any merger or consolidation.

12329 (b) For the purpose of this section, the term "affiliated
12330 person" of another person includes:

12331 1. The spouse of such other natural person;

12332 2. The parents of such other natural person and their
12333 lineal descendants and the parents of such other natural
12334 person's spouse and their lineal descendants;

12335 3. Any person who directly or indirectly owns or controls,
12336 or holds with power to vote, 10 percent or more of the
12337 outstanding voting securities of such other person;

12338 4. Any person who directly or indirectly owns 10 percent
12339 or more of the outstanding voting securities which are directly



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12340 or indirectly owned or controlled, or held with power to vote,
12341 by such other person;

12342 5. Any person or group of persons who directly or
12343 indirectly control, are controlled by, or are under common
12344 control with such other person;

12345 6. Any director, officer, trustee, partner, owner,
12346 manager, joint venturer, or employee, or other person performing
12347 duties similar to those of persons in the aforementioned
12348 positions, of such other person;

12349 7. If such other person is an investment company, any
12350 investment adviser of such company or any member of an advisory
12351 board of such company;

12352 8. If such other person is an unincorporated investment
12353 company not having a board of directors, the depositor of such
12354 company; or

12355 9. Any person who has entered into an agreement, written
12356 or unwritten, to act in concert with such other person in
12357 acquiring, or limiting the disposition of, securities of a
12358 specialty insurer or controlling company which is a stock
12359 corporation or in acquiring, or limiting the disposition of, an
12360 ownership interest of a specialty insurer or controlling company
12361 which is not a stock corporation.

12362 (c) For the purposes of this section, the term
12363 "controlling company" means any corporation, trust, or
12364 association owning, directly or indirectly, 25 percent or more
12365 of the voting securities of one or more specialty insurance
12366 companies which are stock corporations, or 25 percent or more of



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12367 the ownership interest of one or more specialty insurance
12368 companies which are not stock corporations.

12369 (d) For the purpose of this section, the term "natural
12370 person" means an individual.

12371 (e) For the purpose of this section, the term "person"
12372 includes a natural person, corporation, association, trust,
12373 general partnership, limited partnership, joint venture, firm,
12374 proprietorship, or any other entity which may hold a license or
12375 certificate as a specialty insurer.

12376 (14) The commission may ~~department is authorized to~~ adopt,
12377 amend, or repeal rules that are necessary to implement the
12378 provisions of this section, pursuant to chapter 120.

12379 Section 210. Section 628.917, Florida Statutes, is amended
12380 to read:

12381 628.917 Insolvency and liquidation.--In the event that a
12382 captive insurer is insolvent as defined in chapter 631, the
12383 office ~~department~~ shall liquidate the captive insurer pursuant
12384 to the provisions of part I of chapter 631; except that the
12385 office ~~department~~ shall make no attempt to rehabilitate such
12386 insurer.

12387 Section 211. Subsection (5) is added to section 631.021,
12388 Florida Statutes, to read:

12389 631.021 Jurisdiction of delinquency proceeding; venue;
12390 change of venue; exclusiveness of remedy; appeal.--

12391 (5) No service of process against the department in its
12392 capacity as receiver shall be effective unless served upon a
12393 person designated by the receiver and filed with the circuit
12394 court having jurisdiction over the delinquency proceeding. The



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12395 | designated person shall refuse to accept service if acceptance
12396 | would violate a stay against legal proceedings involving an
12397 | insurer that is the subject of delinquency proceedings or would
12398 | violate any orders of the circuit court governing a delinquency
12399 | proceeding. The person denied service may petition the circuit
12400 | court having jurisdiction over the delinquency proceeding for
12401 | relief from the receiver's refusal to accept service. This
12402 | subsection shall be strictly construed and any purported service
12403 | on the receiver or the department that is not in accordance with
12404 | this subsection shall be null and void.

12405 | Section 212. Section 631.025, Florida Statutes, is amended
12406 | to read:

12407 | 631.025 Persons subject to this part.--Delinquency
12408 | proceedings authorized by this part may be initiated against any
12409 | insurer, as defined in s. 631.011(15), if the statutory grounds
12410 | are present as to that insurer, and the court may exercise
12411 | jurisdiction over any person required to cooperate with the
12412 | department and office pursuant to s. 631.391 and over all
12413 | persons made subject to the court's jurisdiction by other
12414 | provisions of law. Such persons include, but are not limited to:

12415 | (1) A person transacting, or that has transacted,
12416 | insurance business in or from this state and against whom claims
12417 | arising from that business may exist now or in the future.

12418 | (2) A person purporting to transact an insurance business
12419 | in this state and any person who acts as an insurer, transacts
12420 | insurance, or otherwise engages in insurance activities in or
12421 | from this state, with or without a certificate of authority or
12422 | proper authority from the department or office, against whom



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12423 claims arising from that business may exist now or in the
12424 future.

12425 (3) An insurer with policyholders resident in this state.

12426 (4) All other persons organized or in the process of
12427 organizing with the intent to transact an insurance business in
12428 this state.

12429 Section 213. Section 631.031, Florida Statutes, is amended
12430 to read:

12431 631.031 Initiation and commencement of delinquency
12432 proceeding.-

12433 (1) Upon a determination by the office that one or more
12434 grounds for the initiation of delinquency proceedings exist
12435 pursuant to this chapter and that delinquency proceedings must
12436 be initiated, the director of the Office of Insurance Regulation
12437 shall notify the department of such determination and shall
12438 provide the department with all necessary documentation and
12439 evidence. The department shall immediately initiate such
12440 delinquency proceedings.

12441 (2) The department may commence any such proceeding by
12442 application to the court for an order directing the insurer to
12443 show cause why the department should not have the relief prayed
12444 for. On the return of such order to show cause, and after a full
12445 hearing, the court shall either deny the application or grant
12446 the application, together with such other relief as the nature
12447 of the case and the interests of the policyholders, creditors,
12448 stockholders, members, subscribers, or public may require. The
12449 office ~~department~~ may also commence any such proceeding by



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12450 application to the court by petition for the entry of a consent
12451 order of conservation, rehabilitation, or liquidation.

12452 Section 214. Section 631.051, Florida Statutes, is amended
12453 to read:

12454 631.051 Grounds for rehabilitation; domestic
12455 insurers.--The department may petition for an order directing it
12456 to rehabilitate a domestic insurer or an alien insurer domiciled
12457 in this state on any one or more of the following grounds, that
12458 the insurer:

12459 (1) Is impaired or insolvent;

12460 (2) Has failed to comply with an order of the office
12461 ~~department~~ to make good an impairment of capital or surplus or
12462 both;

12463 (3) Is found by the office ~~department~~ to be in such
12464 condition or is using or has been subject to such methods or
12465 practices in the conduct of its business, as to render its
12466 further transaction of insurance presently or prospectively
12467 hazardous to its policyholders, creditors, stockholders, or the
12468 public;

12469 (4) Has failed, or its parent corporation, subsidiary, or
12470 affiliated person controlled by either the insurer or the parent
12471 corporation has failed, to submit its books, documents,
12472 accounts, records, and affairs pertaining to the insurer to the
12473 reasonable inspection or examination of the office ~~department~~ or
12474 its authorized representative; or any individual exercising any
12475 executive authority in the affairs of the insurer, or parent
12476 corporation, or subsidiary, or affiliated person has refused to
12477 be examined under oath by the office ~~department~~ or its



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12478 authorized representative, whether within this state or
12479 otherwise, concerning the pertinent affairs of the insurer, or
12480 parent corporation or subsidiary or affiliated person; or if
12481 examined under oath refuses to divulge pertinent information
12482 reasonably known to her or him; or officers, directors, agents,
12483 employees, or other representatives of the insurer or parent
12484 corporation, subsidiary, or affiliated person have failed to
12485 comply promptly with the reasonable requests of the office
12486 ~~department~~ or its authorized representative for the purposes of,
12487 and during the conduct of, any such examination;

12488 (5) Has concealed or removed records or assets or
12489 otherwise violated s. 628.271 or s. 628.281;

12490 (6) Through its board of directors or governing body is
12491 deadlocked in the management of the insurer's affairs and that
12492 the members of a mutual, reciprocal, or any other type of
12493 organization or stockholders are unable to break the deadlock
12494 and that irreparable injury to the insurer, its creditors, its
12495 policyholders, its members or subscribers, or the public is
12496 threatened by reason thereof;

12497 (7) Has transferred or attempted to transfer substantially
12498 its entire property or business, or has entered into any
12499 transaction the effect of which is to merge substantially its
12500 entire property or business into that of any other insurer or
12501 entity without having first obtained the written approval of the
12502 office ~~department~~ under the provisions of s. 628.451, s.
12503 628.461, or s. 628.4615, as the case may be;

12504 (8) Has willfully violated its charter or certificate of
12505 incorporation or any law of this state;



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12506 (9) Is in such a position that control of it, whether by
12507 stock ownership or otherwise, and whether direct or indirect, is
12508 in one or more persons found by the office ~~department~~ after
12509 notice and hearing to be dishonest or untrustworthy; or that the
12510 insurer has failed, upon order of the office ~~department~~ and
12511 expiration of such reasonable time for such removal as the
12512 office ~~department~~ shall specify in the order, to remove any
12513 person who in fact has executive authority, directly or
12514 indirectly, in the insurer, whether as an officer, director,
12515 manager, agent, employee, or otherwise, and if such person has
12516 been found by the office ~~department~~ after notice and hearing, to
12517 be incompetent, dishonest, untrustworthy, or so lacking in
12518 insurance company managerial experience as to be hazardous to
12519 the insurance-buying public;

12520 (10) Has been or is the subject of an application for the
12521 appointment of a receiver, trustee, custodian, or sequestrator
12522 of the insurer or its property otherwise than pursuant to the
12523 provisions of this code, but only if such an appointment has
12524 been made or is imminent;

12525 (11) Has consented to such an order through a majority of
12526 its directors, stockholders, members, or subscribers;

12527 (12) Has failed to pay a final judgment rendered against
12528 it in this state upon any insurance contract issued or assumed
12529 by it, within 60 days after the judgment became final, within 60
12530 days after the time for taking an appeal has expired, or within
12531 30 days after dismissal of an appeal before final determination,
12532 whichever date is the later;



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12533 (13) Has been the victim of embezzlement, wrongful
12534 sequestration, conversion, diversion, or encumbering of its
12535 assets; forgery or fraud affecting it; or other illegal conduct
12536 in, by, or with respect to it, which if established would
12537 threaten its solvency; or that the office ~~department~~ has
12538 reasonable cause to so believe any of the foregoing has occurred
12539 or may occur;

12540 (14) Is engaging in a systematic practice of reaching
12541 settlements with and obtaining releases from policyholders or
12542 third-party claimants and then unreasonably delaying payment of,
12543 or failing to pay, the agreed-upon settlements; or

12544 (15) Within the previous 12 months has systematically
12545 attempted to compromise with creditors on the ground that it is
12546 financially unable to pay its claims in full.

12547 Section 215. Section 631.081, Florida Statutes, is amended
12548 to read:

12549 631.081 Grounds for conservation; alien insurers.--The
12550 department may apply to the court for an order appointing it as
12551 receiver or ancillary receiver, and directing it to conserve the
12552 assets within this state, of any alien insurer upon any of the
12553 following grounds:

12554 (1) Upon any of the grounds specified in s. 631.051 or s.
12555 631.061;

12556 (2) Upon the ground that the insurer has failed to comply,
12557 within the time designated by the office ~~department~~, with an
12558 order made by it to make good an impairment of its trustee
12559 funds; or



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12560 (3) Upon the ground that the property of the insurer has
12561 been sequestered in its domiciliary sovereignty or elsewhere.

12562 Section 216. Subsection (1) of section 631.152, Florida
12563 Statutes, is amended to read:

12564 631.152 Conduct of delinquency proceeding; foreign
12565 insurers.--

12566 (1) Whenever under this chapter an ancillary receiver is
12567 to be appointed in a delinquency proceeding for an insurer not
12568 domiciled in this state, the court shall appoint the department
12569 as ancillary receiver. The department shall file a petition
12570 requesting the appointment on the grounds set forth in s.

12571 631.091:

12572 (a) If it finds that there are sufficient assets of the
12573 insurer located in this state to justify the appointment of an
12574 ancillary receiver, or

12575 (b) If 10 or more persons resident in this state having
12576 claims against such insurer file a petition with the department
12577 or office requesting the appointment of such ancillary receiver.

12578 Section 217. Section 631.221, Florida Statutes, is amended
12579 to read:

12580 631.221 Deposit of moneys collected.--The moneys collected
12581 by the department in a proceeding under this chapter shall be
12582 deposited in a qualified public depository as defined in s.

12583 280.02, which depository with regards to such funds shall
12584 conform to and be bound by all the provisions of chapter 280, or
12585 invested with the Chief Financial Officer ~~State Treasurer~~
12586 pursuant to chapter 18. For the purpose of accounting for the
12587 assets and transactions of the estate, the receiver shall use



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12588 such accounting books, records, and systems as the court directs
12589 after it hears and considers the recommendations of the
12590 receiver.

12591 Section 218. Section 631.231, Florida Statutes, is amended
12592 to read:

12593 631.231 Exemption from fees.--The department or office
12594 shall not be required to pay any fee to any public officer in
12595 this state for filing, recording, issuing a transcript or
12596 certificate, or authenticating any paper or instrument
12597 pertaining to the exercise by the department or office of any of
12598 the powers or duties conferred upon it under this chapter,
12599 whether or not such paper or instrument be executed by the
12600 department or office or their ~~its~~ employees or attorneys of
12601 record and whether or not it is connected with the commencement
12602 of any action or proceeding by or against the department or
12603 office, or with the subsequent conduct of such action or
12604 proceeding.

12605 Section 219. Section 631.361, Florida Statutes, is amended
12606 to read:

12607 631.361 Seizure under court order.--

12608 (1) Upon filing by the office ~~department~~ in the circuit
12609 court in and for Leon County of its verified petition alleging
12610 any ground for a formal delinquency proceeding against an
12611 insurer under this chapter, alleging that the interests of the
12612 insurer's policyholders, claimants, or creditors or the public
12613 will be endangered or jeopardized by delay, and setting forth
12614 the order deemed necessary by the office ~~department~~, the court



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12615 | may, ex parte and without notice or hearing, issue forthwith the
12616 | requested order. The requested order may:

12617 | (a) Direct the department to take possession and control
12618 | of all or part of the property, books, documents, accounts, and
12619 | other records of the insurer and the premises occupied by it for
12620 | transaction of its business and premium funds and other property
12621 | of the insurer held by an affiliate; and

12622 | (b) Until further order of court, enjoin the insurer and
12623 | any affiliate and their officers, directors, managers, agents,
12624 | and employees from removal, concealment, or other disposition of
12625 | the insurer's property, books, records, or accounts and from
12626 | transaction of the insurer's business except with the
12627 | department's written consent.

12628 | (2) The court's order shall be for such duration specified
12629 | in the order as the court deems necessary to enable the office
12630 | and department to ascertain the insurer's condition. Upon motion
12631 | of any party or affected person, or upon its own motion, the
12632 | court may hold such hearings as it deems desirable, after such
12633 | notice as it deems appropriate, and may extend, shorten, or
12634 | modify the terms of the order. The court shall vacate the
12635 | seizure order if the office ~~department~~ fails to commence a
12636 | formal proceeding under this chapter after having had a
12637 | reasonable opportunity to do so, and a seizure order is
12638 | automatically vacated by issuance of the court's order pursuant
12639 | to a formal delinquency proceeding under this chapter.

12640 | (3) Entry of a seizure order under this section shall not
12641 | constitute an anticipatory breach of any contract of the
12642 | insurer.



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12643 Section 220. Section 631.371, Florida Statutes, is amended
12644 to read:

12645 631.371 Seizure under order of the office ~~department~~.--

12646 (1) Upon the office's ~~department~~ filing a verified
12647 petition with any circuit judge of the proper judicial circuit
12648 as required by s. 631.021(2), which states that it believes that
12649 the interest of policyholders, the insurer, claimants,
12650 creditors, or the public will be endangered or jeopardized and
12651 that prima facie grounds exist for rehabilitation, liquidation,
12652 or conservation of an insurer under s. 631.051, s. 631.061, or
12653 s. 631.131, the office ~~department~~ may request a seizure order
12654 and shall be entitled to an ex parte hearing forthwith and an
12655 appropriate seizure order from the judge or court in the
12656 interest of protecting the public and such insurer and its
12657 policyholders, claimants, or creditors. After a diligent effort
12658 is made to be heard by the judges of the circuit and such judges
12659 or the court fails or refuses to hear such petition for any
12660 reason, the office ~~department~~ shall then file a duplicate
12661 original of said petition and exhibits, if any, in the Circuit
12662 Court of Leon County along with an affidavit which shall state
12663 that a diligent effort was made to obtain such initial hearing
12664 in the judicial circuit where such hearing was sought and that
12665 the request to be heard was refused or that a hearing was not
12666 granted and the reasons therefor, if known. Upon compliance with
12667 the above and if said affidavit further states that the office
12668 ~~department~~ believes that irreparable harm will result to the
12669 public and the insurer and its policyholders, creditors, or
12670 claimants as a result of further delay, it may thereafter issue



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12671 a seizure order on any ground that would justify court seizure
12672 under s. 631.361. Such seizure order may contain any or all the
12673 provisions of s. 631.361(1). The office ~~department~~ shall retain
12674 possession and control until the order is vacated or is replaced
12675 by an order of court pursuant to subsection (2) or subsection
12676 (3) or pursuant to a formal delinquency proceeding under this
12677 chapter.

12678 (2) The office ~~department~~ may, at any time after seizure
12679 under its order, report its actions to the proper court; and, in
12680 the event that the insurer, for any reason, fails to avail
12681 itself of the judicial review provided for by law, then the
12682 office ~~department~~ shall forthwith report its actions to the
12683 proper court. The office ~~department~~ may request the court to
12684 substitute its order for the office's ~~department's~~ or it may
12685 seek any other order which it deems appropriate.

12686 (3) Every law enforcement officer of this state authorized
12687 by law shall assist the office ~~department~~ in making and
12688 enforcing any such seizure, and every such officer shall furnish
12689 it with such deputies, patrolmen, patrolwomen, or officers as
12690 are necessary to assist it in execution of its order.

12691 (4) Entry of a seizure order under this section shall not
12692 constitute an anticipatory breach of any contract of the
12693 insurer.

12694 Section 221. Section 631.391, Florida Statutes, is amended
12695 to read:

12696 631.391 Cooperation of officers and employees.--

12697 (1) Any officer, director, manager, trustee, agent,
12698 adjuster, employee, or independent contractor of any insurer or



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12699 affiliate and any other person who possesses any executive
12700 authority over, or who exercises any control over, any segment
12701 of the affairs of the insurer or affiliate shall fully cooperate
12702 with the department and office in any proceeding under this
12703 chapter or any investigation preliminary or incidental to the
12704 proceeding. An order of rehabilitation or liquidation which
12705 results in the discharge or suspension of any of the persons
12706 listed above does not operate to release such person from the
12707 duty to cooperate with the department and office as set out
12708 herein. To "cooperate" includes, but is not limited to, the
12709 following:

12710 (a) To reply promptly in writing to any inquiry from the
12711 department or office requesting such a reply;

12712 (b) Promptly to make available and deliver to the
12713 department or office any books, accounts, documents, other
12714 records, information, data processing software, or property of
12715 or pertaining to the insurer and in her or his possession,
12716 custody, or control; or

12717 (c) Promptly to provide access to all data processing
12718 records in hard copy and in electronic form and to data
12719 processing facilities and services.

12720 (2) No person shall obstruct or interfere with the
12721 department or office in the conduct of any delinquency
12722 proceeding or any investigation preliminary or incidental
12723 thereto.

12724 (3) This section does not prohibit any person from seeking
12725 legal relief from a court when aggrieved by the petition for
12726 liquidation or other delinquency proceeding or by other orders.



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12727 (4) Any person referred to in subsection (1) who fails to
 12728 cooperate with the department or office, or any other person who
 12729 obstructs or interferes with the department or office, in the
 12730 conduct of any delinquency proceeding or any investigation
 12731 preliminary or incidental thereto, is guilty of a misdemeanor of
 12732 the first degree, punishable as provided in s. 775.082 or by
 12733 fine of not more than \$10,000.

12734 (5) Refusal by any person referred to in subsection (1) to
 12735 provide records upon the request of the department or office is
 12736 grounds for revocation of any insurance-related license,
 12737 including, but not limited to, agent and third-party
 12738 administrator licenses.

12739 Section 222. Section 631.392, Florida Statutes, is amended
 12740 to read:

12741 631.392 Immunity.--There shall be no liability on the part
 12742 of, and no cause of action of any nature shall arise against,
 12743 the Chief Financial Officer, ~~Insurance Commissioner~~ or the
 12744 department, the office, or any of their ~~its~~ employees or agents
 12745 for any action taken by them in the performance of their powers
 12746 and duties under this chapter.

12747 Section 223. Section 631.398, Florida Statutes, is amended
 12748 to read:

12749 631.398 Prevention of insolvencies.--To aid in the
 12750 detection and prevention of insurer insolvencies or impairments:

12751 (1) Any member insurer; agent, employee, or member of the
 12752 board of directors; or representative of any insurance guaranty
 12753 association may make reports and recommendations to the
 12754 department or office upon any matter germane to the solvency,



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12755 liquidation, rehabilitation, or conservation of any member
12756 insurer or germane to the solvency of any company seeking to do
12757 an insurance business in this state. Such reports and
12758 recommendations are confidential and exempt from the provisions
12759 of s. 119.07(1) until the termination of a delinquency
12760 proceeding.

12761 (2) The office ~~department~~ shall:

12762 (a) Report to the board of directors of the appropriate
12763 insurance guaranty association when it has reasonable cause to
12764 believe from any examination, whether completed or in process,
12765 of any member insurer that such insurer may be an impaired or
12766 insolvent insurer.

12767 (b) Seek the advice and recommendations of the board of
12768 directors of the appropriate insurance guaranty association
12769 concerning any matter affecting the duties and responsibilities
12770 of the office ~~department~~ in relation to the financial condition
12771 of member companies and companies seeking admission to transact
12772 insurance business in this state.

12773 (3) The office and department jointly shall, no later than
12774 the conclusion of any domestic insurer insolvency proceeding,
12775 prepare a summary report containing such information as is in
12776 their ~~its~~ possession relating to the history and causes of such
12777 insolvency, including a statement of the business practices of
12778 such insurer which led to such insolvency.

12779 Section 224. Section 631.54, Florida Statutes, is amended
12780 to read:

12781 631.54 Definitions.--As used in this part:



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12782 (1) "Account" means any one of the three accounts created
12783 by s. 631.55.

12784 (2) "Association" means the Florida Insurance Guaranty
12785 Association, Incorporated.

12786 (3) "Covered claim" means an unpaid claim, including one
12787 of unearned premiums, which arises out of, and is within the
12788 coverage, and not in excess of, the applicable limits of an
12789 insurance policy to which this part applies, issued by an
12790 insurer, if such insurer becomes an insolvent insurer after
12791 October 1, 1970, and the claimant or insured is a resident of
12792 this state at the time of the insured event or the property from
12793 which the claim arises is permanently located in this state.

12794 "Covered claim" shall not include any amount due any reinsurer,
12795 insurer, insurance pool, or underwriting association, as
12796 subrogation, contribution, indemnification, or otherwise. Member
12797 insurers shall have no right of subrogation against the insured
12798 of any insolvent member.

12799 ~~— (4) "Department" means the Department of Insurance.~~

12800 (4)~~(5)~~ "Expenses in handling claims" means allocated and
12801 unallocated expenses, including, but not limited to, general
12802 administrative expenses and those expenses which relate to the
12803 investigation, adjustment, defense, or settlement of specific
12804 claims under, or arising out of, a specific policy.

12805 (5)~~(6)~~ "Insolvent insurer" means a member insurer
12806 authorized to transact insurance in this state, either at the
12807 time the policy was issued or when the insured event occurred,
12808 and against which an order of liquidation with a finding of
12809 insolvency has been entered by a court of competent jurisdiction



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12810 if such order has become final by the exhaustion of appellate
12811 review.

12812 (6)~~(7)~~ "Member insurer" means any person who writes any
12813 kind of insurance to which this part applies under s. 631.52,
12814 including the exchange of reciprocal or interinsurance
12815 contracts, and is licensed to transact insurance in this state.

12816 (7)~~(8)~~ "Net direct written premiums" means direct gross
12817 premiums written in this state on insurance policies to which
12818 this part applies, less return premiums thereon and dividends
12819 paid or credited to policyholders on such direct business. "Net
12820 direct written premiums" does not include premiums on contracts
12821 between insurers or reinsurers.

12822 (8)~~(9)~~ "Person" means individuals, children, firms,
12823 associations, joint ventures, partnerships, estates, trusts,
12824 business trusts, syndicates, fiduciaries, corporations, and all
12825 other groups or combinations.

12826 Section 225. Subsection (1) of section 631.55, Florida
12827 Statutes, is amended to read:

12828 631.55 Creation of the association.--

12829 (1) There is created a nonprofit corporation to be known
12830 as the "Florida Insurance Guaranty Association, Incorporated."
12831 All insurers defined as member insurers in s. 631.54(6)~~(7)~~ shall
12832 be members of the association as a condition of their authority
12833 to transact insurance in this state, and, further, as a
12834 condition of such authority, an insurer shall agree to reimburse
12835 the association for all claim payments the association makes on
12836 said insurer's behalf if such insurer is subsequently
12837 rehabilitated. The association shall perform its functions under



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12838 a plan of operation established and approved under s. 631.58 and
12839 shall exercise its powers through a board of directors
12840 established under s. 631.56. The corporation shall have all
12841 those powers granted or permitted nonprofit corporations, as
12842 provided in chapter 617.

12843 Section 226. Subsection (1) of section 631.56, Florida
12844 Statutes, is amended to read:

12845 631.56 Board of directors.--

12846 (1) The board of directors of the association shall
12847 consist of not less than five or more than nine persons serving
12848 terms as established in the plan of operation. The department
12849 shall approve and appoint to the board persons recommended by
12850 the member insurers. In the event the department finds that any
12851 recommended person does not meet the qualifications for service
12852 on the board, the department shall request the member insurers
12853 to recommend another person. Each member shall serve for a 4-
12854 year term and may be reappointed. Vacancies on the board shall
12855 be filled for the remaining period of the term in the same
12856 manner as initial appointments. ~~If no members are selected by~~
12857 ~~November 30, 1970, the department may appoint the initial~~
12858 ~~members of the board of directors.~~

12859 Section 227. Paragraph (a) of subsection (1) and
12860 subsection (3) of section 631.57, Florida Statutes, are amended
12861 to read:

12862 631.57 Powers and duties of the association.--

12863 (1) The association shall:

12864 (a)1. Be obligated to the extent of the covered claims
12865 existing:



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12866 a. Prior to adjudication of insolvency and arising within
12867 30 days after the determination of insolvency;

12868 b. Before the policy expiration date if less than 30 days
12869 after the determination; or

12870 c. Before the insured replaces the policy or causes its
12871 cancellation, if she or he does so within 30 days of the
12872 determination.

12873 2. The obligation under subparagraph 1. shall include only
12874 that amount of each covered claim which is in excess of \$100 and
12875 is less than \$300,000, except with respect to policies covering
12876 condominium associations or homeowners' associations, which
12877 associations have a responsibility to provide insurance coverage
12878 on residential units within the association, the obligation
12879 shall include that amount of each covered property insurance
12880 claim which is less than \$100,000 multiplied by the number of
12881 condominium units or other residential units; however, as to
12882 homeowners' associations, this subparagraph applies only to
12883 claims for damage or loss to residential units and structures
12884 attached to residential units.

12885 3. In no event shall the association be obligated to a
12886 policyholder or claimant in an amount in excess of the
12887 obligation of the insolvent insurer under the policy from which
12888 the claim arises.

12889
12890 ~~The foregoing notwithstanding, the association shall have no~~
12891 ~~obligation to pay covered claims to be paid from the proceeds of~~
12892 ~~bonds issued under s. 166.111(2). However, the association shall~~
12893 ~~cause assessments to be made under paragraph (3)(c) for such~~



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12894 ~~covered claims, and such assessments shall be assigned and~~
12895 ~~pledged under paragraph (3)(e) to or on behalf of the issuer of~~
12896 ~~such bonds for the benefit of the holders of such bonds. The~~
12897 ~~association shall administer any such covered claims and present~~
12898 ~~valid covered claims for payment in accordance with the~~
12899 ~~provisions of the assistance program in connection with which~~
12900 ~~such bonds have been issued.~~

12901 (3)(a) To the extent necessary to secure the funds for the
12902 respective accounts for the payment of covered claims and also
12903 to pay the reasonable costs to administer the same, the office
12904 ~~department~~, upon certification of the board of directors, shall
12905 levy assessments in the proportion that each insurer's net
12906 direct written premiums in this state in the classes protected
12907 by the account bears to the total of said net direct written
12908 premiums received in this state by all such insurers for the
12909 preceding calendar year for the kinds of insurance included
12910 within such account. Assessments shall be remitted to and
12911 administered by the board of directors in the manner specified
12912 by the approved plan. Each insurer so assessed shall have at
12913 least 30 days' written notice as to the date the assessment is
12914 due and payable. Every assessment shall be made as a uniform
12915 percentage applicable to the net direct written premiums of each
12916 insurer in the kinds of insurance included within the account in
12917 which the assessment is made. The assessments levied against
12918 any insurer shall not exceed in any one year more than 2 percent
12919 of that insurer's net direct written premiums in this state for
12920 the kinds of insurance included within such account during the
12921 calendar year next preceding the date of such assessments.



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12922 (b) If sufficient funds from such assessments, together
12923 with funds previously raised, are not available in any one year
12924 in the respective account to make all the payments or
12925 reimbursements then owing to insurers, the funds available shall
12926 be prorated and the unpaid portion shall be paid as soon
12927 thereafter as funds become available.

12928 (c) Assessments shall be included as an appropriate factor
12929 in the making of rates.

12930 (d) No state funds of any kind shall be allocated or paid
12931 to said association or any of its accounts.

12932 ~~(e) 1.a. In addition to assessments otherwise authorized in~~
12933 ~~paragraph (a), as a temporary measure related to insolvencies~~
12934 ~~caused by Hurricane Andrew, and to the extent necessary to~~
12935 ~~secure the funds for the account specified in s. 631.55(2)(c),~~
12936 ~~or to retire indebtedness, including, without limitation, the~~
12937 ~~principal, redemption premium, if any, and interest on, and~~
12938 ~~related costs of issuance of, bonds issued under s. 166.111(2),~~
12939 ~~and the funding of any reserves and other payments required~~
12940 ~~under the bond resolution or trust indenture pursuant to which~~
12941 ~~such bonds have been issued, the department, upon certification~~
12942 ~~of the board of directors, shall levy assessments upon insurers~~
12943 ~~holding a certificate of authority as follows:~~

12944 ~~(I) Except as provided in sub-sub-subparagraph (II), the~~
12945 ~~assessments payable under this paragraph by any insurer shall~~
12946 ~~not exceed in any 1 year more than 2 percent of that insurer's~~
12947 ~~direct written premiums, net of refunds, in this state during~~
12948 ~~the preceding calendar year for the kinds of insurance within~~
12949 ~~the account specified in s. 631.55(2)(c).~~



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12950 ~~(II) If the amount levied under sub-sub-subparagraph (I)~~
12951 ~~is less than 2 percent of the insurer's direct written premiums,~~
12952 ~~net of refunds, in this state during calendar year 1991 for the~~
12953 ~~kinds of insurance within the account specified in s.~~
12954 ~~631.55(2)(c), in addition to and separate from such assessment,~~
12955 ~~the assessment shall also include the difference between the~~
12956 ~~amount calculated based on calendar year 1991 and the amount~~
12957 ~~determined under sub-sub-subparagraph (I). If this sub-sub-~~
12958 ~~subparagraph is held invalid, the invalidity shall not affect~~
12959 ~~other provisions of this section, and to this end the provisions~~
12960 ~~of this section are declared severable.~~

12961 ~~(III) In addition to any other insurers subject to this~~
12962 ~~subparagraph, this subparagraph also applies to any insurer that~~
12963 ~~held a certificate of authority on August 24, 1992. If this~~
12964 ~~sub-sub-subparagraph is held invalid, the invalidity shall not~~
12965 ~~affect other provisions of this section, and to this end the~~
12966 ~~provisions of this section are declared severable.~~

12967 ~~b. Any assessments authorized under this paragraph shall~~
12968 ~~be levied by the department upon insurers referred to in sub-~~
12969 ~~subparagraph a., upon certification as to the need therefor by~~
12970 ~~the board of directors, in 1992 and in each year that bonds~~
12971 ~~issued under s. 166.111(2) are outstanding, in such amounts up~~
12972 ~~to such 2 percent limit as required in order to provide for the~~
12973 ~~full and timely payment of the principal of, redemption premium,~~
12974 ~~if any, and interest on, and related costs of, issuance of bonds~~
12975 ~~issued under s. 166.111(2). The assessments provided for in~~
12976 ~~this paragraph are hereby assigned and pledged to a municipality~~
12977 ~~issuing bonds under s. 166.111(2)(b), for the benefit of the~~



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12978 ~~holders of such bonds, in order to enable such municipality to~~
12979 ~~provide for the payment of the principal of, redemption premium,~~
12980 ~~if any, and interest on such bonds, the cost of issuance of such~~
12981 ~~bonds, and the funding of any reserves and other payments~~
12982 ~~required under the bond resolution or trust indenture pursuant~~
12983 ~~to which such bonds have been issued, without the necessity of~~
12984 ~~any further action by the association, the department, or any~~
12985 ~~other party. To the extent that bonds are issued under s.~~
12986 ~~166.111(2), the proceeds of assessments levied under this~~
12987 ~~paragraph shall be remitted directly to and administered by the~~
12988 ~~trustee appointed for such bonds.~~

12989 ~~e. Assessments under this paragraph shall be payable in 12~~
12990 ~~monthly installments with the first installment being due and~~
12991 ~~payable at the end of the month after an assessment is levied,~~
12992 ~~and subsequent installments being due not later than the end of~~
12993 ~~each succeeding month.~~

12994 ~~d. The association shall issue a monthly report on the~~
12995 ~~status of the use of the bond proceeds as related to~~
12996 ~~insolvencies caused by Hurricane Andrew. The report must contain~~
12997 ~~the number of claims paid and the amount of claims paid. The~~
12998 ~~association shall also include an analysis of the revenue~~
12999 ~~generated from the additional assessment levied under this~~
13000 ~~subsection. The report must be sent to the Legislature and the~~
13001 ~~Insurance Commissioner monthly.~~

13002 ~~2. In order to assure that insurers paying assessments~~
13003 ~~levied under this paragraph continue to charge rates that are~~
13004 ~~neither inadequate nor excessive, within 90 days after being~~
13005 ~~notified of such assessments, each insurer that is to be~~



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13006 ~~assessed pursuant to this paragraph shall make a rate filing for~~
13007 ~~coverage included within the account specified in s.~~
13008 ~~631.55(2)(c) and for which rates are required to be filed under~~
13009 ~~s. 627.062. If the filing reflects a rate change that, as a~~
13010 ~~percentage, is equal to the difference between the rate of such~~
13011 ~~assessment and the rate of the previous year's assessment under~~
13012 ~~this paragraph, the filing shall consist of a certification so~~
13013 ~~stating and shall be deemed approved when made, subject to the~~
13014 ~~department's continuing authority to require actuarial~~
13015 ~~justification as to the adequacy of any rate at any time. Any~~
13016 ~~rate change of a different percentage shall be subject to the~~
13017 ~~standards and procedures of s. 627.062.~~

13018 Section 228. Section 631.59, Florida Statutes, is amended
13019 to read:

13020 631.59 Duties and powers of department and office of
13021 ~~Insurance~~.--

13022 (1) The department shall:

13023 ~~(a)~~ notify the association of the existence of an
13024 insolvent insurer not later than 3 days after it receives notice
13025 of the determination of the insolvency; ~~and~~

13026 ~~(b)~~ ~~Upon request of the board of directors, provide the~~
13027 ~~association with a statement of the net direct written premiums~~
13028 ~~of each member insurer.~~

13029 (2) The department may:

13030 ~~(a)~~ require that the association notify the insureds of
13031 the insolvent insurer and any other interested parties of the
13032 determination of insolvency and of their rights under this part.

13033 Such notification shall be by mail at their last known



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13034 addresses, when available, but if sufficient information for
13035 notification by mail is not available, notice by publication in
13036 a newspaper of general circulation shall be sufficient.

13037 (3) The office shall, upon request of the board of
13038 directors, provide the association with a statement of the net
13039 direct written premiums of each member insurer.

13040 (4)(b) The office may:

13041 (a) Suspend or revoke the certificate of authority to
13042 transact insurance in this state of any member insurer which
13043 fails to pay an assessment when due or fails to comply with the
13044 plan of operation. As an alternative, the office ~~department~~ may
13045 levy a fine on any member insurer which fails to pay an
13046 assessment when due. Such fine may not exceed 5 percent of the
13047 unpaid assessment per month, except that no fine shall be less
13048 than \$100 per month.

13049 (b)(e) Revoke the designation of any servicing facility if
13050 it finds claims are being handled unsatisfactorily.

13051 Section 229. Section 631.62, Florida Statutes, is amended
13052 to read:

13053 631.62 Prevention of insolvencies.--To aid in the
13054 detection and prevention of insurer insolvencies:

13055 (1) It shall be the duty of the board of directors, upon
13056 majority vote, to notify the office ~~department~~ of any
13057 information indicating any member insurer may be insolvent or in
13058 a financial condition hazardous to the policyholders or the
13059 public.

13060 (2) The board of directors may, upon majority vote,
13061 request that the office ~~department~~ order an examination of any



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13062 member insurer which the board in good faith believes may be in
13063 a financial condition hazardous to the policyholders or the
13064 public. Within 30 days of the receipt of such request, the
13065 office ~~department~~ shall begin such examination. The examination
13066 may be conducted as a National Association of Insurance
13067 Commissioners examination or may be conducted by such persons as
13068 the office ~~department~~ designates. The cost of such examination
13069 shall be paid by the association and the examination report
13070 shall be treated as are other examination reports pursuant to s.
13071 624.319. In no event shall such examination report be released
13072 to the board of directors prior to its release to the public.
13073 The office ~~department~~ shall notify the board of directors when
13074 the examination is completed. The request for an examination
13075 shall be kept on file by the office ~~department~~; such request is
13076 confidential and exempt from the provisions of s. 119.07(1)
13077 until the examination report is released to the public.

13078 (3) The board of directors may, upon majority vote, make
13079 reports and recommendations to the department or office upon any
13080 matter germane to the solvency, liquidation, rehabilitation, or
13081 conservation of any member insurer. Such reports and
13082 recommendations are confidential and exempt from the provisions
13083 of s. 119.07(1) until the termination of a delinquency
13084 proceeding.

13085 (4) The board of directors may, upon majority vote, make
13086 recommendations to the office ~~department~~ for the detection and
13087 prevention of insurer insolvencies.

13088 Section 230. Section 631.66, Florida Statutes, is amended
13089 to read:



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13090 631.66 Immunity.--There shall be no liability on the part
13091 of, and no cause of action of any nature shall arise against,
13092 any member insurer, the association or its agents or employees,
13093 the board of directors, the Chief Financial Officer, or the
13094 department or office or their ~~its~~ representatives for any action
13095 taken by them in the performance of their powers and duties
13096 under this part. Such immunity shall extend to the participation
13097 in any organization of one or more other state associations of
13098 similar purposes and to any such organization and its agents or
13099 employees.

13100 Section 231. Section 631.714, Florida Statutes, is amended
13101 to read:

13102 631.714 Definitions.--As used in this part, the term:

13103 (1) "Account" means any of the three accounts created in
13104 s. 631.715.

13105 (2) "Association" means the Florida Life and Health
13106 Insurance Guaranty Association created in s. 631.715.

13107 (3) "Contractual obligation" means any obligation under
13108 covered policies.

13109 (4) "Covered policy" means any policy or contract set out
13110 in s. 631.713 and reduced to written, printed, or other tangible
13111 form.

13112 ~~(5) "Department" means the Department of Insurance.~~

13113 (5)~~(6)~~ "Impaired insurer" means a member insurer deemed by
13114 the department to be potentially unable to fulfill its
13115 contractual obligations and not an insolvent insurer.

13116 (6)~~(7)~~ "Insolvent insurer" means a member insurer
13117 authorized to transact insurance in this state, either at the



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13118 time the policy was issued or when the insured event occurred,
 13119 and against which an order of liquidation with a finding of
 13120 insolvency has been entered by a court of competent
 13121 jurisdiction, if such order has become final by the exhaustion
 13122 of appellate review.

13123 (7)~~(8)~~ "Member insurer" means any person licensed to
 13124 transact in this state any kind of insurance as set out in s.
 13125 631.713.

13126 (8)~~(9)~~ "Premium" means any direct gross insurance premium
 13127 and any annuity consideration written on covered policies, less
 13128 return premium and consideration thereon and dividends paid or
 13129 credited to policyholders on such direct business. "Premium"
 13130 does not include premium and consideration on contracts between
 13131 insurers and reinsurers.

13132 (9)~~(10)~~ "Person" means any individual, corporation,
 13133 partnership, association, or voluntary organization.

13134 (10)~~(11)~~ "Resident" means any person who resides in this
 13135 state at the time a member insurer is determined to be an
 13136 impaired or insolvent insurer and to whom contractual
 13137 obligations are owed by such impaired or insolvent member
 13138 insurer.

13139 Section 232. Subsections (2) and (3) of section 631.72,
 13140 Florida Statutes, are amended to read:

13141 631.72 Premium or income tax credits for assessments
 13142 paid.--

13143 (2) If a member insurer ceases doing business in this
 13144 state and surrenders to the office ~~department~~ its certificate of
 13145 authority to transact insurance in this state, all uncredited



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13146 assessments may be credited as provided in this section against
 13147 either its premium or corporate income tax liabilities imposed
 13148 pursuant to ss. 624.509 and 220.11 for the year it ceases doing
 13149 business.

13150 (3) Any sums acquired by refund pursuant to s. 631.718(6)
 13151 from the association which have theretofore been written off by
 13152 contributing insurers and offset against premium or corporate
 13153 income taxes as provided in subsection(1) and which are not
 13154 needed for purposes of this part shall be paid by the insurer to
 13155 the Department of Revenue for deposit with the Chief Financial
 13156 Officer ~~Treasurer~~ to the credit of the General Revenue Fund.

13157 Section 233. Section 631.722, Florida Statutes, is amended
 13158 to read:

13159 631.722 Powers and duties of department and office.--

13160 (1) The office ~~department~~ shall:

13161 (a) Upon request of the board of directors, provide the
 13162 association with a statement of the premiums in each of the
 13163 appropriate states for each member insurer.

13164 (b) When an impairment is declared and the amount of the
 13165 impairment is determined, serve a demand upon the impaired
 13166 insurer to make good the impairment within a reasonable time.
 13167 Notice to the impaired insurer shall constitute notice to its
 13168 shareholders, if any. The failure of the insurer to promptly
 13169 comply with such demand shall not excuse the association from
 13170 the performance of its powers and duties under this part.

13171 (2)(e) The department shall, in any liquidation or
 13172 rehabilitation proceeding involving a domestic insurer, be
 13173 appointed as the liquidator or rehabilitator. If a foreign or



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13174 alien member insurer is subject to a liquidation proceeding in
13175 its domiciliary jurisdiction or state of entry, the department
13176 shall be appointed conservator.

13177 (3)~~(2)~~ The office ~~department~~ may suspend or revoke, after
13178 notice and hearing, the certificate of authority to transact
13179 insurance in this state of any member insurer that fails to pay
13180 an assessment when due or fails to comply with the approved plan
13181 of operation of the association. As an alternative, the office
13182 ~~department~~ may levy a forfeiture on any member insurer that
13183 fails to pay an assessment when due. Such forfeiture shall not
13184 exceed 5 percent of the unpaid assessment per month, but no
13185 forfeiture shall be less than \$100 per month.

13186 (4)~~(3)~~ Any action of the board of directors or of the
13187 association may be appealed to the office ~~department~~ by any
13188 member insurer if such appeal is taken within 30 days of the
13189 action being appealed. If a member company is appealing an
13190 assessment, the amount assessed shall be paid to the association
13191 and available to meet association obligations during the
13192 pendency of the appeal. If the appeal on the assessment is
13193 upheld, the amount paid in error or excess shall be returned to
13194 the member company. Any final action or order of the office
13195 ~~department~~ shall be subject to judicial review in a court of
13196 competent jurisdiction.

13197 (5)~~(4)~~ The liquidator, rehabilitator, or conservator of
13198 any impaired insurer may notify all interested persons of the
13199 effect of this part.

13200 Section 234. Section 631.723, Florida Statutes, is amended
13201 to read:



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13202 631.723 Prevention of insolvencies.--To aid in the
13203 detection and prevention of insurer insolvencies or impairments:
13204 (1) The board of directors may, upon majority vote, make
13205 reports and recommendations to the department or office upon any
13206 matter germane to the solvency, liquidation, rehabilitation, or
13207 conservation of any member insurer or germane to the solvency of
13208 any company seeking to do an insurance business in this state.
13209 Such reports and recommendations are confidential and exempt
13210 from the provisions of s. 119.07(1) until the termination of a
13211 delinquency proceeding.

13212 (2) It is the duty of the board of directors, upon a
13213 majority vote, to notify the office ~~department~~ of any
13214 information indicating that any member insurer may be an
13215 impaired or insolvent insurer.

13216 (3) The board of directors may, upon majority vote,
13217 request that the office ~~department~~ order an examination of any
13218 member insurer which the board in good faith believes may be an
13219 impaired or insolvent insurer. Within 30 days of the receipt of
13220 such a request, the office ~~department~~ shall begin such an
13221 examination. The examination may be conducted as a National
13222 Association of Insurance Commissioners examination or may be
13223 conducted by such persons as the office ~~Insurance Commissioner~~
13224 designates. The cost of such examination shall be paid by the
13225 association, and the examination report shall be treated in a
13226 manner similar to other examination reports pursuant to s.
13227 624.319. In no event may such examination report be released to
13228 the board of directors before its release to the public, but
13229 this does not preclude the office ~~department~~ from complying with



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13230 s. 631.398(2). The office department shall notify the board of
13231 directors when the examination is completed. The request for an
13232 examination shall be kept on file by the office department; such
13233 request is confidential and exempt from the provisions of s.
13234 119.07(1) until the examination report is released to the
13235 public.

13236 (4) The board of directors may, upon majority vote, make
13237 recommendations to the office department for the detection and
13238 prevention of insurer insolvencies.

13239 Section 235. Section 631.727, Florida Statutes, is amended
13240 to read:

13241 631.727 Immunity.--There shall be no liability on the part
13242 of, and no cause of action of any nature shall arise against,
13243 any member insurer or its agents or employees, the association
13244 or its agents or employees, members of the board of directors,
13245 the Chief Financial Officer, or the department or office or
13246 their ~~its~~ representatives for any action taken by them in the
13247 performance of their powers and duties under this part. Such
13248 immunity shall extend to the participation in any organization
13249 of one or more other state associations of similar purposes and
13250 to any such organization and its agents or employees.

13251 Section 236. Section 631.813, Florida Statutes, is amended
13252 to read:

13253 631.813 Application of part.--This part shall apply to HMO
13254 contractual obligations to residents of Florida by HMOs
13255 possessing a valid certificate of authority issued ~~by the~~
13256 ~~Florida Department of Insurance~~ as provided by part I of chapter
13257 641. The provisions of this part shall not apply to persons



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13258 participating in medical assistance programs under the Medicaid
13259 program.

13260 Section 237. Section 631.814, Florida Statutes, is amended
13261 to read:

13262 631.814 Definitions.--As used in this part, the term:

13263 (1) "Plan" means the Florida Health Maintenance
13264 Organization Consumer Assistance Plan created by this part.

13265 (2) "Board" means the board of directors of the plan.

13266 (3) "Contractual obligations" means any obligation under
13267 covered health care policies.

13268 (4) "Covered policy" means any policy or contract issued
13269 by an HMO for health care services.

13270 (5) "Date of insolvency" means the effective date of an
13271 order of liquidation entered by a court of competent
13272 jurisdiction.

13273 ~~(6) "Department" means the Florida Department of~~
13274 ~~Insurance.~~

13275 (6)~~(7)~~ "Health care services" means comprehensive health
13276 care services as defined in s. 641.19.

13277 (7)~~(8)~~ "HMO" means a health maintenance organization
13278 possessing a valid certificate of authority issued by the
13279 department pursuant to part I of chapter 641.

13280 (8)~~(9)~~ "Insolvent HMO" means an HMO against which an order
13281 of rehabilitation or liquidation has been entered by a court of
13282 competent jurisdiction, with the department appointed as
13283 receiver, even if such order has not become final by the
13284 exhaustion of appellate reviews.



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13285 (9)~~(10)~~ "Person" means any individual, corporation,
13286 partnership, association, or voluntary organization.

13287 (10)~~(11)~~ "Subscriber" means any resident of this state who
13288 is enrolled for benefits provided by an HMO and who makes
13289 premium payments or for whom premium payments are made.

13290 Section 238. Section 631.821, Florida Statutes, is amended
13291 to read:

13292 631.821 Powers and duties of the department and office.--

13293 (1) The office ~~department~~ may suspend or revoke, after
13294 notice and hearing, the certificate of authority of a member HMO
13295 that fails to pay an assessment when due, fails to comply with
13296 the approved plan of operation of the plan, or fails either to
13297 timely comply with or to timely appeal pursuant to subsection
13298 (2) its appointment under s. 631.818(2).

13299 (2) Any action of the board of directors of the plan may
13300 be appealed to the department by any member HMO if such appeal
13301 is taken within 21 days of the action being appealed; however,
13302 the HMO must comply with such action pending exhaustion of
13303 appeal ~~under s. 631.818(2)~~. Any appeal shall be promptly
13304 determined by the department, and final action or order of the
13305 department shall be subject to judicial review in a court of
13306 competent jurisdiction.

13307 (3) The department may~~+~~

13308 ~~(a)~~ require that the plan notify the subscriber of the
13309 insolvent HMO and any other interested parties of the
13310 determination of insolvency and of their rights under this part.
13311 Such notification shall be by mail at their last known
13312 addresses, when available, but if sufficient information for



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13313 notification by mail is not available, notice by publication in
13314 a newspaper of general circulation shall be sufficient.

13315 ~~(4)(b)~~ The office may revoke the designation of any
13316 servicing facility or administrator if it finds claims are being
13317 handled unsatisfactorily.

13318 Section 239. Section 631.823, Florida Statutes, is amended
13319 to read:

13320 631.823 Examination of the plan; annual report.--The plan
13321 shall be subject to examination and regulation by the office
13322 ~~department~~. The board of directors shall submit to the
13323 department and office, not later than May 1 of each year, a
13324 financial report for the preceding calendar year in a form
13325 approved by the commission ~~department~~ and a report of its
13326 activities during the preceding calendar year.

13327 Section 240. Section 631.825, Florida Statutes, is amended
13328 to read:

13329 631.825 Immunity.--There shall be no liability on the part
13330 of, and no cause of action of any nature shall arise against,
13331 any member HMO or its agents or employees, the plan or its
13332 agents or employees, members of the board of directors, the
13333 Chief Financial Officer, or the department or office or their
13334 ~~its~~ representatives for any action taken by them in the
13335 performance of their powers and duties under this part.

13336 Section 241. Section 631.904, Florida Statutes, is amended
13337 to read:

13338 631.904 Definitions.--As used in this part, the term:

13339 (1) "Corporation" means the Florida Workers' Compensation
13340 Insurance Guaranty Association, Incorporated.



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13341 (2) "Covered claim" means an unpaid claim, including a
13342 claim for return of unearned premiums, which arises out of, is
13343 within the coverage of, and is not in excess of the applicable
13344 limits of, an insurance policy to which this part applies, which
13345 policy was issued by an insurer and which claim is made on
13346 behalf of a claimant or insured who was a resident of this state
13347 at the time of the injury. The term "covered claim" does not
13348 include any amount sought as a return of premium under any
13349 retrospective rating plan; any amount due any reinsurer,
13350 insurer, insurance pool, or underwriting association, as
13351 subrogation recoveries or otherwise; or any return of premium
13352 resulting from a policy that was not in force on the date of the
13353 final order of liquidation. Member insurers have no right of
13354 subrogation against the insured of any insolvent insurer. This
13355 provision shall be applied retroactively to cover claims of an
13356 insolvent self-insurance fund resulting from accidents or losses
13357 incurred prior to January 1, 1994, regardless of the date the
13358 ~~Department of Insurance filed~~ a petition in circuit court was
13359 filed alleging insolvency and the date the court entered an
13360 order appointing a receiver.

13361 ~~(3) "Department" means the Department of Insurance.~~

13362 (3)~~(4)~~ "Insolvency" means that condition in which all of
13363 the assets of the insurer, if made immediately available, would
13364 not be sufficient to discharge all of its liabilities or that
13365 condition in which the insurer is unable to pay its debts as
13366 they become due in the usual course of business. When the
13367 context of any provision of this part so indicates, insolvency
13368 also includes impairment of surplus or impairment of capital.



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13369 (4)~~(5)~~ "Insolvent insurer" means an insurer that was
13370 authorized to transact insurance in this state, either at the
13371 time the policy was issued or when the insured event occurred,
13372 and against which an order of liquidation with a finding of
13373 insolvency has been entered by a court of competent jurisdiction
13374 if such order has become final by the exhaustion of appellate
13375 review.

13376 (5)~~(6)~~ "Insurer" means an insurance carrier or self-
13377 insurance fund authorized to insure under chapter 440. For
13378 purposes of this act, "insurer" does not include a qualified
13379 local government self-insurance fund, as defined in s. 624.4622,
13380 or an individual self-insurer as defined in s. 440.385.

13381 (6)~~(7)~~ "Self-insurance fund" means a group self-insurance
13382 fund authorized under s. 624.4621, a commercial self-insurance
13383 fund writing workers' compensation insurance authorized under s.
13384 624.462, or an assessable mutual insurer authorized under s.
13385 628.6011. For purposes of this act, "self-insurance fund" does
13386 not include a qualified local government self-insurance fund, as
13387 defined in s. 624.4622, or an individual self-insurer as defined
13388 in s. 440.385.

13389 Section 242. Subsection (1) of section 631.911, Florida
13390 Statutes, is amended to read:

13391 631.911 Creation of the Florida Workers' Compensation
13392 Insurance Guaranty Association, Incorporated; merger; effect of
13393 merger.--

13394 (1)(a) The Florida Self-Insurance Fund Guaranty
13395 Association established in former part V of chapter 631 and the
13396 workers' compensation insurance account, which includes excess



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13397 workers' compensation insurance, established in former s.
13398 631.55(2)(a) shall be merged, ~~effective October 1, 1997, or as~~
13399 ~~provided in paragraph (b)~~, in accordance with the plan of
13400 operation adopted by the interim board of directors. The
13401 successor nonprofit corporation shall be known as the "Florida
13402 Workers' Compensation Insurance Guaranty Association,
13403 Incorporated."

13404 ~~(b) The merger may be effected prior to October 1, 1997,~~
13405 ~~if:~~

13406 1. ~~The interim board of directors of the Workers'~~
13407 ~~Compensation Insurance Guaranty Association provides the~~
13408 ~~Department of Insurance with written notice of its intent to~~
13409 ~~effectuate the merger as of a date certain and its functional~~
13410 ~~readiness to initiate operations, such notice setting forth the~~
13411 ~~plan or summary thereof for effecting the merger; and,~~

13412 2. ~~The department, upon review of the plan or summary~~
13413 ~~thereof, determines the Workers' Compensation Insurance Guaranty~~
13414 ~~Association is functionally ready to initiate operations and so~~
13415 ~~certifies to the interim board of directors.~~

13416 ~~(c) Prior to the effective date of the merger, the Florida~~
13417 ~~Self-Insurance Fund Guaranty Association shall be the entity~~
13418 ~~responsible for the claims of insolvent self-insurance funds~~
13419 ~~resulting from accidents or losses incurred prior to January 1,~~
13420 ~~1994, regardless of the date the Department of Insurance filed a~~
13421 ~~petition in circuit court alleging insolvency and the date the~~
13422 ~~court entered an order appointing a receiver.~~

13423 (b)(d) Upon the effective date of the merger:



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13424 | 1. The Florida Self-Insurance Fund Guaranty Association
13425 | and the workers' compensation insurance account within the
13426 | Florida Insurance Guaranty Association cease to exist and are
13427 | succeeded by the Florida Workers' Compensation Insurance
13428 | Guaranty Association.

13429 | 2. Title to all assets of any description, all real estate
13430 | and other property, or any interest therein, owned by each party
13431 | to the merger is vested in the successor corporation without
13432 | reversion or impairment.

13433 | 3. The successor corporation shall be responsible and
13434 | liable for all the liabilities and obligations of each party to
13435 | the merger.

13436 | 4. Any claim existing or action or proceeding pending by
13437 | or against any party to the merger may be continued as if the
13438 | merger did not occur or the successor corporation may be
13439 | substituted in the proceeding for the corporation or account
13440 | which ceased existence.

13441 | 5. Neither the rights of creditors nor any liens upon the
13442 | property of any party to the merger shall be impaired by such
13443 | merger.

13444 | 6. Outstanding assessments levied by the Florida Self-
13445 | Insurance Guaranty Association or the Florida Insurance Guaranty
13446 | Association on behalf of the workers' compensation insurance
13447 | account remain in full force and effect and shall be paid when
13448 | due.

13449 | Section 243. Subsections (1) and (3) of section 631.912,
13450 | Florida Statutes, are amended to read:

13451 | 631.912 Board of directors.--



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13452 (1) The board of directors of the corporation shall
 13453 consist of 11 persons, 1 of whom is the insurance consumer
 13454 advocate appointed under s. 627.0613 or designee and 1 of whom
 13455 is designated by the Chief Financial Officer Insurance
 13456 ~~Commissioner~~. The department shall appoint to the board 6
 13457 persons selected by private carriers from among the 20 workers'
 13458 compensation insurers with the largest amount of net direct
 13459 written premium as determined by the department, and 3 persons
 13460 selected by the self-insurance funds. At least two of the
 13461 private carriers shall be foreign carriers authorized to do
 13462 business in this state. The board shall elect a chairperson from
 13463 among its members. The Chief Financial Officer ~~commissioner~~ may
 13464 remove any board member for cause. Each board member shall
 13465 serve for a 4-year term and may be reappointed, ~~except that four~~
 13466 ~~members of the initial board shall have 2-year terms so as to~~
 13467 ~~stagger the periods of service.~~ A vacancy on the board shall be
 13468 filled for the remaining period of the term in the same manner
 13469 by which the original appointment was made.

13470 ~~(3) Effective upon this act becoming a law, the persons on~~
 13471 ~~the board of directors created pursuant to s. 627.311(4)(a) who~~
 13472 ~~evidence a willingness to serve in writing, shall serve as an~~
 13473 ~~interim board of directors of the corporation until the initial~~
 13474 ~~board of directors has been appointed for the corporation in~~
 13475 ~~accordance with the provisions of subsection (1). The interim~~
 13476 ~~board of directors shall serve for a period not to exceed 6~~
 13477 ~~months. The initial meeting shall be called by the commissioner~~
 13478 ~~within 30 days after this act becomes a law. The interim board~~
 13479 ~~of directors shall establish a process for the selection of~~



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13480 ~~persons to serve on the board of the Florida Workers'~~
13481 ~~Compensation Insurance Guaranty Association in accordance with~~
13482 ~~the terms of subsection (1). The board of directors shall adopt~~
13483 ~~an interim plan of operation to effect the merger in s. 631.911~~
13484 ~~and avoid any interruption of benefit payments to injured~~
13485 ~~workers. When necessary and upon approval of the chairs of~~
13486 ~~their respective board of directors, the Florida Self-Insurance~~
13487 ~~Fund Guaranty Association and the Florida Insurance Guaranty~~
13488 ~~Association shall provide staff support to the interim board of~~
13489 ~~directors. The board shall submit the interim plan to the~~
13490 ~~commissioner, who shall approve or disapprove the plan within 30~~
13491 ~~days after receipt.~~

13492 Section 244. Section 631.917, Florida Statutes, is amended
13493 to read:

13494 631.917 Prevention of insolvencies.--To aid in the
13495 detection and prevention of insolvencies or impairments:

13496 (1)(a) The board may make reasonable and lawful
13497 investigation into the practices of any third-party
13498 administrator or service company for a self-insurance fund
13499 declared insolvent by the court.

13500 (b) If the results of an investigation reasonably lead to
13501 a finding that certain actions taken or not taken by those
13502 handling, processing, or preparing covered claims for payment or
13503 other benefit pursuant to any workers' compensation insurance
13504 policy contributed to the insolvency of an insurer, such
13505 information may, in the discretion of the board, be provided to
13506 the department or office in an expedited manner.



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13507 (2) The board of directors may make reports and
13508 recommendations to the department or office upon any matter
13509 germane to the solvency, liquidation, rehabilitation, or
13510 conservation of any member insurer or germane to the solvency of
13511 any insurer seeking to do insurance business in this state.

13512 (3) The board of directors, in its discretion, may notify
13513 the office ~~department~~ of any information indicating that any
13514 member insurer may be an impaired or insolvent insurer.

13515 (4) The board of directors, in its discretion, may request
13516 that the office ~~department~~ order an examination of any member
13517 insurer which the board in good faith believes may be an
13518 impaired or insolvent insurer. Within 30 days after receipt of
13519 such a request, the office ~~department~~ shall begin such an
13520 examination. The examination may be conducted as a National
13521 Association of Insurance Commissioners examination or may be
13522 conducted by such persons as the office ~~Insurance Commissioner~~
13523 designates. The cost of such examination shall be paid by the
13524 corporation, and the examination report shall be treated in a
13525 manner similar to other examination reports pursuant to s.
13526 624.319. In no event may such examination report be released to
13527 the board of directors before its release to the public, but
13528 this requirement does not preclude the office ~~department~~ from
13529 complying with s. 631.398(2). The office ~~department~~ shall
13530 notify the board of directors when the examination is completed.
13531 The request for an examination shall be kept on file by the
13532 office ~~department~~.

13533 (5) The board is authorized to assist and aid the
13534 department or office, in any manner consistent with existing



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13535 laws and this chapter, in the department's or office's
13536 investigation or referral for prosecution of those whose action
13537 or inaction may have contributed to the impairment or insolvency
13538 of the insurer.

13539 (6) The board may make recommendations to the office
13540 ~~department~~ for the detection and prevention of insurer
13541 insolvencies.

13542 Section 245. Section 631.918, Florida Statutes, is amended
13543 to read:

13544 631.918 Immunity.--There is no liability on the part of,
13545 and a cause of action may not arise against, the corporation,
13546 its agents or employees, or members of its board of directors,
13547 the Chief Financial Officer, or the department or office or
13548 their ~~its~~ agents or employees, for any action taken by them in
13549 the performance of their powers and duties under this section,
13550 unless such action is found to be a violation of antitrust laws,
13551 was in bad faith, or was undertaken with malicious purpose or in
13552 a manner exhibiting wanton and willful disregard of human
13553 rights, safety, or property.

13554 Section 246. Section 631.931, Florida Statutes, is amended
13555 to read:

13556 631.931 Reports and recommendations by board; public
13557 records exemption.--Reports and recommendations made by the
13558 Board of Directors of the Florida Workers' Compensation
13559 Insurance Guaranty Association ~~to the Department of Insurance~~
13560 under s. 631.917 upon any matter germane to the solvency,
13561 liquidation, rehabilitation, or conservation of any member
13562 insurer are confidential and exempt from the provisions of s.



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13563 119.07(1) and s. 24(a), Art. I of the State Constitution until
13564 the termination of a delinquency proceeding.

13565 Section 247. Subsection (4) of section 634.3284, Florida
13566 Statutes, is amended to read:

13567 634.3284 Civil remedy.--

13568 (4) This section shall not be construed to authorize a
13569 class action suit against a home warranty association or a civil
13570 action against the department or office or their, ~~its~~ employees,
13571 or the Chief Financial Officer ~~Insurance Commissioner~~.

13572 Section 248. Subsection (2) of section 634.430, Florida
13573 Statutes, is amended to read:

13574 634.430 Dissolution or liquidation.--

13575 (2) The department and office shall be notified of the
13576 commencement of voluntary dissolution proceedings of a
13577 manufacturer licensed under this part. As to the warranty
13578 operations of a manufacturer in this state, the department shall
13579 supervise the voluntary dissolution and shall require protection
13580 of the interests of the department, office, and consumers who
13581 have been issued service warranties by the manufacturer by the
13582 continuation of deposits or bonds as required by this part until
13583 that time as all warranties issued by the manufacturer are no
13584 longer in effect or all outstanding warranties have been
13585 assigned to another association approved by the department and
13586 office. The notification as provided herein shall be made by the
13587 manufacturer within 30 days of the commencement of any legal
13588 action for dissolution.

13589 Section 249. Subsection (4) of section 634.433, Florida
13590 Statutes, is amended to read:



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13591 | 634.433 Civil remedy.--

13592 | (4) This section shall not be construed to authorize a
13593 | class action suit against a service warranty association or a
13594 | civil action against the department, the office, their ~~its~~
13595 | employees, or the Chief Financial Officer Insurance
13596 | ~~Commissioner~~.

13597 | Section 250. Section 636.067, Florida Statutes, is amended
13598 | to read:

13599 | 636.067 Rules.--The commission may ~~department has~~
13600 | ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54
13601 | to implement the provisions of this act. A violation of any
13602 | such rule subjects the violator to the provisions of s. 636.048.

13603 | Section 251. Section 641.183, Florida Statutes, is amended
13604 | to read:

13605 | 641.183 Statutory accounting procedures; transition
13606 | provisions.--All health maintenance organizations, authorized to
13607 | do business under this chapter on January 1, 2001, shall elect a
13608 | transition method for compliance with statutory accounting
13609 | principles as follows:

13610 | (1) Report assets acquired prior to June 30, 2001, in
13611 | accordance with s. 641.35, Florida Statutes (2000), through
13612 | December 31, 2005. Assets acquired on or after June 30, 2001,
13613 | shall be accounted for in accordance with the National
13614 | Association of Insurance Commissioners Accounting Practices and
13615 | Procedures Manual as of 2002 ~~effective January 1, 2001~~. A health
13616 | maintenance organization electing to report assets pursuant to
13617 | this subsection shall maintain complete and detailed records
13618 | reflecting such accounting treatment; or



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13619 (2) Report all assets in accordance with the NAIC
13620 Accounting Practices and Procedures Manual as of 2002 effective
13621 ~~January 1, 2001~~.

13622 Section 252. Section 641.185, Florida Statutes, is amended
13623 to read:

13624 641.185 Health maintenance organization subscriber
13625 protections.--

13626 (1) With respect to the provisions of this part and part
13627 III, the principles expressed in the following statements shall
13628 serve as standards to be followed by the commission, the office,
13629 the department, of Insurance and the Agency for Health Care
13630 Administration in exercising their powers and duties, in
13631 exercising administrative discretion, in administrative
13632 interpretations of the law, in enforcing its provisions, and in
13633 adopting rules:

13634 (a) A health maintenance organization shall ensure that
13635 the health care services provided to its subscribers shall be
13636 rendered under reasonable standards of quality of care which are
13637 at a minimum consistent with the prevailing standards of medical
13638 practice in the community pursuant to ss. 641.495(1) and 641.51.

13639 (b) A health maintenance organization subscriber should
13640 receive quality health care from a broad panel of providers,
13641 including referrals, preventive care pursuant to s. 641.402(1),
13642 emergency screening and services pursuant to ss. 641.31(12) and
13643 641.513, and second opinions pursuant to s. 641.51.

13644 (c) A health maintenance organization subscriber should
13645 receive assurance that the health maintenance organization has
13646 been independently accredited by a national review organization



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13647 | pursuant to s. 641.512, and is financially secure as determined
13648 | by the state pursuant to ss. 641.221, 641.225, and 641.228.

13649 | (d) A health maintenance organization subscriber should
13650 | receive continuity of health care, even after the provider is no
13651 | longer with the health maintenance organization pursuant to s.
13652 | 641.51(8).

13653 | (e) A health maintenance organization subscriber should
13654 | receive timely, concise information regarding the health
13655 | maintenance organization's reimbursement to providers and
13656 | services pursuant to ss. 641.31 and 641.31015 and should receive
13657 | prompt payment from the organization pursuant to s. 641.3155.

13658 | (f) A health maintenance organization subscriber should
13659 | receive the flexibility to transfer to another Florida health
13660 | maintenance organization, regardless of health status, pursuant
13661 | to ss. 641.228, 641.3104, 641.3107, 641.3111, 641.3921, and
13662 | 641.3922.

13663 | (g) A health maintenance organization subscriber should be
13664 | eligible for coverage without discrimination against individual
13665 | participants and beneficiaries of group plans based on health
13666 | status pursuant to s. 641.31073.

13667 | (h) A health maintenance organization that issues a group
13668 | health contract must: provide coverage for preexisting
13669 | conditions pursuant to s. 641.31071; guarantee renewability of
13670 | coverage pursuant to s. 641.31074; provide notice of
13671 | cancellation pursuant to s. 641.3108; provide extension of
13672 | benefits pursuant to s. 641.3111; provide for conversion on
13673 | termination of eligibility pursuant to s. 641.3921; and provide
13674 | for conversion contracts and conditions pursuant to s. 641.3922.



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13675 (i) A health maintenance organization subscriber should
13676 receive timely and, if necessary, urgent grievances and appeals
13677 within the health maintenance organization pursuant to ss.
13678 641.228, 641.31(5), 641.47, and 641.511.

13679 (j) A health maintenance organization should receive
13680 timely and, if necessary, urgent review by an independent state
13681 external review organization for unresolved grievances and
13682 appeals pursuant to s. 408.7056.

13683 (k) A health maintenance organization subscriber shall be
13684 given written notice at least 30 days in advance of a rate
13685 change pursuant to s. 641.31(3)(b). In the case of a group
13686 member, there may be a contractual agreement with the health
13687 maintenance organization to have the employer provide the
13688 required notice to the individual members of the group pursuant
13689 to s. 641.31(3)(b).

13690 (l) A health maintenance organization subscriber shall be
13691 given a copy of the applicable health maintenance contract,
13692 certificate, or member handbook specifying: all the provisions,
13693 disclosure, and limitations required pursuant to s. 641.31(1)
13694 and (4); the covered services, including those services, medical
13695 conditions, and provider types specified in ss. 641.31,
13696 641.31094, 641.31095, 641.31096, 641.51(11), and 641.513; and
13697 where and in what manner services may be obtained pursuant to s.
13698 641.31(4).

13699 (2) This section shall not be construed as creating a
13700 civil cause of action by any subscriber or provider against any
13701 health maintenance organization.



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13702 Section 253. Section 641.19, Florida Statutes, is amended
13703 to read:

13704 641.19 Definitions.--As used in this part, the term:

13705 (1) "Affiliate" means any entity that ~~which~~ exercises
13706 control over or is controlled by the health maintenance
13707 organization, directly or indirectly, through:

13708 (a) Equity ownership of voting securities;

13709 (b) Common managerial control; or

13710 (c) Collusive participation by the management of the
13711 health maintenance organization and affiliate in the management
13712 of the health maintenance organization or the affiliate.

13713 (2) "Agency" means the Agency for Health Care
13714 Administration.

13715 (3) "Capitation" means the fixed amount paid by an HMO to
13716 a health care provider under contract with the health
13717 maintenance organization in exchange for the rendering of
13718 covered medical services.

13719 (4) "Comprehensive health care services" means services,
13720 medical equipment, and supplies furnished by a provider, which
13721 may include, but which are not limited to, medical, surgical,
13722 and dental care; psychological, optometric, optic, chiropractic,
13723 podiatric, nursing, physical therapy, and pharmaceutical
13724 services; health education, preventive medical, rehabilitative,
13725 and home health services; inpatient and outpatient hospital
13726 services; extended care; nursing home care; convalescent
13727 institutional care; technical and professional clinical
13728 pathology laboratory services; laboratory and ambulance
13729 services; appliances, drugs, medicines, and supplies; and any



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13730 other care, service, or treatment of disease, or correction of
13731 defects for human beings.

13732 (5) "Copayment" means a specific dollar amount, except as
13733 otherwise provided for by statute, that the subscriber must pay
13734 upon receipt of covered health care services. Copayments may
13735 not be established in an amount that will prevent a person from
13736 receiving a covered service or benefit as specified in the
13737 subscriber contract approved by the office ~~department~~.

13738 ~~(6) "Department" means the Department of Insurance.~~

13739 (6)~~(7)~~ "Emergency medical condition" means:

13740 (a) A medical condition manifesting itself by acute
13741 symptoms of sufficient severity, which may include severe pain
13742 or other acute symptoms, such that the absence of immediate
13743 medical attention could reasonably be expected to result in any
13744 of the following:

13745 1. Serious jeopardy to the health of a patient, including
13746 a pregnant woman or a fetus.

13747 2. Serious impairment to bodily functions.

13748 3. Serious dysfunction of any bodily organ or part.

13749 (b) With respect to a pregnant woman:

13750 1. That there is inadequate time to effect safe transfer
13751 to another hospital prior to delivery;

13752 2. That a transfer may pose a threat to the health and
13753 safety of the patient or fetus; or

13754 3. That there is evidence of the onset and persistence of
13755 uterine contractions or rupture of the membranes.

13756 (7)~~(8)~~ "Emergency services and care" means medical
13757 screening, examination, and evaluation by a physician, or, to



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13758 | the extent permitted by applicable law, by other appropriate
13759 | personnel under the supervision of a physician, to determine if
13760 | an emergency medical condition exists and, if it does, the care,
13761 | treatment, or surgery for a covered service by a physician
13762 | necessary to relieve or eliminate the emergency medical
13763 | condition, within the service capability of a hospital.

13764 | ~~(8)(9)~~ "Entity" means any legal entity with continuing
13765 | existence, including, but not limited to, a corporation,
13766 | association, trust, or partnership.

13767 | ~~(9)(10)~~ "Geographic area" means the county or counties, or
13768 | any portion of a county or counties, within which the health
13769 | maintenance organization provides or arranges for comprehensive
13770 | health care services to be available to its subscribers.

13771 | ~~(10)(11)~~ "Guaranteeing organization" is an organization
13772 | that ~~which~~ is domiciled in the United States; that ~~which~~ has
13773 | authorized service of process against it; and that ~~which~~ has
13774 | appointed the Chief Financial Officer ~~Insurance Commissioner and~~
13775 | ~~Treasurer~~ as its agent for service of process issuing upon any
13776 | cause of action arising in this state, based upon any guarantee
13777 | entered into under this part.

13778 | ~~(11)(12)~~ "Health maintenance contract" means any contract
13779 | entered into by a health maintenance organization with a
13780 | subscriber or group of subscribers to provide comprehensive
13781 | health care services in exchange for a prepaid per capita or
13782 | prepaid aggregate fixed sum.

13783 | ~~(12)(13)~~ "Health maintenance organization" means any
13784 | organization authorized under this part which:



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13785 (a) Provides emergency care, inpatient hospital services,
13786 physician care including care provided by physicians licensed
13787 under chapters 458, 459, 460, and 461, ambulatory diagnostic
13788 treatment, and preventive health care services;

13789 (b) Provides, either directly or through arrangements with
13790 other persons, health care services to persons enrolled with
13791 such organization, on a prepaid per capita or prepaid aggregate
13792 fixed-sum basis;

13793 (c) Provides, either directly or through arrangements with
13794 other persons, comprehensive health care services which
13795 subscribers are entitled to receive pursuant to a contract;

13796 (d) Provides physician services, by physicians licensed
13797 under chapters 458, 459, 460, and 461, directly through
13798 physicians who are either employees or partners of such
13799 organization or under arrangements with a physician or any group
13800 of physicians; and

13801 (e) If offering services through a managed care system,
13802 then the managed care system must be a system in which a primary
13803 physician licensed under chapter 458 or chapter 459 and chapters
13804 460 and 461 is designated for each subscriber upon request of a
13805 subscriber requesting service by a physician licensed under any
13806 of those chapters, and is responsible for coordinating the
13807 health care of the subscriber of the respectively requested
13808 service and for referring the subscriber to other providers of
13809 the same discipline when necessary. Each female subscriber may
13810 select as her primary physician an obstetrician/gynecologist who
13811 has agreed to serve as a primary physician and is in the health
13812 maintenance organization's provider network.



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13813 (13)~~(14)~~ "Insolvent" or "insolvency" means that all the
13814 statutory assets of the health maintenance organization, if made
13815 immediately available, would not be sufficient to discharge all
13816 of its liabilities or that the health maintenance organization
13817 is unable to pay its debts as they become due in the usual
13818 course of business. In the event that all the assets of the
13819 health maintenance organization, if made immediately available,
13820 would not be sufficient to discharge all of its liabilities, but
13821 the organization has a written guarantee of the type and subject
13822 to the same provisions as outlined in s. 641.225, the
13823 organization shall not be considered insolvent unless it is
13824 unable to pay its debts as they become due in the usual course
13825 of business.

13826 (14)~~(15)~~ "Provider" means any physician, hospital, or
13827 other institution, organization, or person that furnishes health
13828 care services and is licensed or otherwise authorized to
13829 practice in the state.

13830 (15)~~(16)~~ "Reporting period" means the annual calendar year
13831 accounting period or any part thereof.

13832 (16)~~(17)~~ "Statutory accounting principles" means
13833 accounting principles as defined in the National Association of
13834 Insurance Commissioners Accounting Practices and Procedures
13835 Manual as of 2002 ~~effective January 1, 2001~~.

13836 (17)~~(18)~~ "Subscriber" means an entity or individual who
13837 has contracted, or on whose behalf a contract has been entered
13838 into, with a health maintenance organization for health care
13839 services or other persons who also receive health care services
13840 as a result of the contract.



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13841 (18)~~(19)~~ "Surplus" means total statutory assets in excess
13842 of total liabilities, except that assets pledged to secure debts
13843 not reflected on the books of the health maintenance
13844 organization shall not be included in surplus. Surplus includes
13845 capital stock, capital in excess of par, other contributed
13846 capital, retained earnings, and surplus notes.

13847 (19)~~(20)~~ "Uncovered expenditures" means the cost of health
13848 care services that are covered by a health maintenance
13849 organization, for which a subscriber would also be liable in the
13850 event of the insolvency of the organization.

13851 (20)~~(21)~~ "Health care risk contract" means a contract
13852 under which an individual or entity receives consideration or
13853 other compensation in an amount greater than 1 percent of the
13854 health maintenance organization's annual gross written premium
13855 in exchange for providing to the health maintenance organization
13856 a provider network or other services, which may include
13857 administrative services. The 1-percent threshold shall be
13858 calculated on a contract-by-contract basis for each such
13859 individual or entity and not in the aggregate for all health
13860 care risk contracts.

13861 Section 254. Section 641.2017, Florida Statutes, is
13862 amended to read:

13863 641.2017 Insurance business not authorized.--Nothing in
13864 the Florida Insurance Code or this part shall be deemed to
13865 authorize any health maintenance organization to transact any
13866 insurance business other than that of health maintenance
13867 organization type insurance or otherwise to engage in any other
13868 type of insurance unless it is authorized under a certificate of



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13869 authority issued by the office ~~department~~ under the provisions
13870 of the Florida Insurance Code. However, a health maintenance
13871 organization may by contract:

13872 (1) Enter into arrangements whereby the expected cost of
13873 health care services provided directly or through arrangements
13874 with other persons by the health maintenance organization is
13875 self-funded by the person contracting with the health
13876 maintenance organization, but the health maintenance
13877 organization assumes the risks that costs will exceed that
13878 amount on a prepaid per capita or prepaid aggregate fixed-sum
13879 basis; or

13880 (2) Enter into arrangements whereby the cost of health
13881 care services provided directly or through arrangements with
13882 other persons by the health maintenance organization is self-
13883 funded by the person contracting with the health maintenance
13884 organization.

13885 Section 255. Subsections (1) and (2) of section 641.2018,
13886 Florida Statutes, are amended to read:

13887 641.2018 Limited coverage for home health care
13888 authorized.--

13889 (1) Notwithstanding other provisions of this chapter, a
13890 health maintenance organization may issue a contract that limits
13891 coverage to home health care services only. The organization and
13892 the contract shall be subject to all of the requirements of this
13893 part that do not require or otherwise apply to specific benefits
13894 other than home care services. To this extent, all of the
13895 requirements of this part apply to any organization or contract
13896 that limits coverage to home care services, except the



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13897 requirements for providing comprehensive health care services as
13898 provided in ss. 641.19(4), (11), and (12), ~~and (13)~~, and
13899 641.31(1), except ss. 641.31(9), (12), (17), (18), (19), (20),
13900 (21), and (24) and 641.31095.

13901 (2) Notwithstanding the other provisions of this chapter,
13902 a health maintenance organization may apply for and obtain a
13903 certificate of authority from the office ~~department~~ pursuant to
13904 this part and a health care provider certificate pursuant to
13905 part III, which certificate limits the authority of the
13906 organization to the issuance of contracts that limit coverage to
13907 home health care services pursuant to subsection (1). In
13908 addition to all applicable requirements of this part, as
13909 specified in subsection (1), all of the requirements of part III
13910 apply to an organization applying for such a limited
13911 certificate, except to the extent that such requirements
13912 directly conflict with the limited nature of the coverage
13913 provided.

13914 Section 256. Subsections (1) and (2) of section 641.21,
13915 Florida Statutes, are amended to read:

13916 641.21 Application for certificate.--

13917 (1) Before any entity may operate a health maintenance
13918 organization, it shall obtain a certificate of authority from
13919 the office ~~department~~. The office ~~department~~ shall accept and
13920 shall begin its review of an application for a certificate of
13921 authority anytime after an organization has filed an application
13922 for a health care provider certificate pursuant to part III of
13923 this chapter. However, the office may ~~department shall~~ not
13924 issue a certificate of authority to any applicant which does not



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13925 | possess a valid health care provider certificate issued by the
 13926 | agency. Each application for a certificate shall be on such form
 13927 | as the commission ~~department~~ shall prescribe, shall be verified
 13928 | by the oath of two officers of the corporation and properly
 13929 | notarized, and shall be accompanied by the following:

13930 | (a) A copy of the articles of incorporation and all
 13931 | amendments thereto;

13932 | (b) A copy of the bylaws, rules and regulations, or
 13933 | similar form of document, if any, regulating the conduct of the
 13934 | affairs of the applicant;

13935 | (c) A list of the names, addresses, and official
 13936 | capacities with the organization of the persons who are to be
 13937 | responsible for the conduct of the affairs of the health
 13938 | maintenance organization, including all officers, directors, and
 13939 | owners of in excess of 5 percent of the common stock of the
 13940 | corporation. Such persons shall fully disclose to the office
 13941 | ~~department~~ and the directors of the health maintenance
 13942 | organization the extent and nature of any contracts or
 13943 | arrangements between them and the health maintenance
 13944 | organization, including any possible conflicts of interest;

13945 | (d) A complete biographical statement on forms prescribed
 13946 | by the commission ~~department~~, and an independent investigation
 13947 | report and fingerprints obtained pursuant to chapter 624, of all
 13948 | of the individuals referred to in paragraph (c);

13949 | (e) A statement generally describing the health
 13950 | maintenance organization, its operations, and its grievance
 13951 | procedures;



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13952 (f) Forms of all health maintenance contracts,
13953 certificates, and member handbooks the applicant proposes to
13954 offer the subscribers, showing the benefits to which they are
13955 entitled, together with a table of the rates charged, or
13956 proposed to be charged, for each form of such contract. A
13957 certified actuary shall:

13958 1. Certify that the rates are neither inadequate nor
13959 excessive nor unfairly discriminatory;

13960 2. Certify that the rates are appropriate for the classes
13961 of risks for which they have been computed; and

13962 3. File an adequate description of the rating methodology
13963 showing that such methodology follows consistent and equitable
13964 actuarial principles;

13965 (g) A statement describing with reasonable certainty the
13966 geographic area or areas to be served by the health maintenance
13967 organization;

13968 (h) As to any applicant whose business plan indicates that
13969 it will receive Medicaid funds, a list of all contracts and
13970 agreements and any information relative to any payment or
13971 agreement to pay, directly or indirectly, a consultant fee, a
13972 broker fee, a commission, or other fee or charge related in any
13973 way to the application for a certificate of authority or the
13974 issuance of a certificate of authority, including, but not
13975 limited to, the name of the person or entity paying the fee; the
13976 name of the person or entity receiving the fee; the date of
13977 payment; and a brief description of the work performed. The
13978 contract, agreement, and related information shall, if
13979 requested, be provided to the office ~~department~~.



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13980 (i) An audited financial statement prepared on the basis
13981 of statutory accounting principles and certified by an
13982 independent certified public accountant, except that surplus
13983 notes acceptable to the office ~~department~~ and meeting the
13984 requirements of this act shall be included in the calculation of
13985 surplus; and

13986 (j) Such additional reasonable data, financial statements,
13987 and other pertinent information as the commissioner or office
13988 requires ~~department may require~~ with respect to the
13989 determination that the applicant can provide the services to be
13990 offered.

13991 (2) After submission of the application for a certificate
13992 of authority, the entity may engage in initial group marketing
13993 activities solely with respect to employers, representatives of
13994 labor unions, professional associations, and trade associations,
13995 so long as it does not enter into, issue, deliver, or otherwise
13996 effectuate health maintenance contracts, effectuate or bind
13997 coverage or benefits, provide health care services, or collect
13998 premiums or charges until it has been issued a certificate of
13999 authority by the office ~~department~~. Any such activities, oral
14000 or written, shall include a statement that the entity does not
14001 possess a valid certificate of authority and cannot enter into
14002 health maintenance contracts until such time as it has been
14003 issued a certificate of authority by the office ~~department~~.

14004 Section 257. Section 641.215, Florida Statutes, is amended
14005 to read:

14006 641.215 Conditions precedent to issuance or maintenance of
14007 certificate of authority; effect of bankruptcy proceedings.--



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14008 (1) As a condition precedent to the issuance or
14009 maintenance of a certificate of authority, a health maintenance
14010 organization insurer must file or have on file with the office
14011 ~~department~~:

14012 (a) An acknowledgment that a delinquency proceeding
14013 pursuant to part I of chapter 631, or supervision by the
14014 department pursuant to ss. 624.80-624.87, constitutes the sole
14015 and exclusive method for the liquidation, rehabilitation,
14016 reorganization, or conservation of a health maintenance
14017 organization.

14018 (b) A waiver of any right to file or be subject to a
14019 bankruptcy proceeding.

14020 (2) The commencement of a bankruptcy proceeding either by
14021 or against a health maintenance organization shall, by operation
14022 of law:

14023 (a) Terminate the health maintenance organization's
14024 certificate of authority.

14025 (b) Vest in the office ~~department~~ for the use and benefit
14026 of the subscribers of the health maintenance organization the
14027 title to any deposits of the insurer held by the department.

14028
14029 If the proceeding is initiated by a party other than the health
14030 maintenance organization, the operation of subsection (2) shall
14031 be stayed for a period of 60 days following the date of
14032 commencement of the proceeding.

14033 Section 258. Section 641.22, Florida Statutes, is amended
14034 to read:



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14035 641.22 Issuance of certificate of authority.--The office
14036 ~~department~~ shall issue a certificate of authority to any entity
14037 filing a completed application in conformity with s. 641.21,
14038 upon payment of the prescribed fees and upon the office's
14039 ~~department's~~ being satisfied that:

14040 (1) As a condition precedent to the issuance of any
14041 certificate, the entity has obtained a health care provider
14042 certificate from the Agency for Health Care Administration
14043 pursuant to part III of this chapter.

14044 (2) The health maintenance organization is actuarially
14045 sound.

14046 (3) The entity has met the applicable requirements
14047 specified in s. 641.225.

14048 (4) The procedures for offering comprehensive health care
14049 services and offering and terminating contracts to subscribers
14050 will not unfairly discriminate on the basis of age, sex, race,
14051 health, or economic status. However, this section does not
14052 prohibit reasonable underwriting classifications for the
14053 purposes of establishing contract rates, nor does it prohibit
14054 experience rating.

14055 (5) The entity furnishes evidence of adequate insurance
14056 coverage or an adequate plan for self-insurance to respond to
14057 claims for injuries arising out of the furnishing of
14058 comprehensive health care.

14059 (6) The ownership, control, and management of the entity
14060 is competent and trustworthy and possesses managerial experience
14061 that would make the proposed health maintenance organization
14062 operation beneficial to the subscribers. The office ~~department~~



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14063 shall not grant or continue authority to transact the business
 14064 of a health maintenance organization in this state at any time
 14065 during which the office ~~department~~ has good reason to believe
 14066 that:

14067 (a) The ownership, control, or management of the
 14068 organization includes any person:

14069 1. Who is incompetent or untrustworthy;

14070 2. Who is so lacking in health maintenance organization
 14071 expertise as to make the operation of the health maintenance
 14072 organization hazardous to potential and existing subscribers;

14073 3. Who is so lacking in health maintenance organization
 14074 experience, ability, and standing as to jeopardize the
 14075 reasonable promise of successful operation;

14076 4. Who is affiliated, directly or indirectly, through
 14077 ownership, control, reinsurance transactions, or other business
 14078 relations, with any person whose business operations are or have
 14079 been marked by business practices or conduct that is to the
 14080 detriment of the public, stockholders, investors, or creditors;
 14081 or

14082 5. Whose business operations are or have been marked by
 14083 business practices or conduct that is to the detriment of the
 14084 public, stockholders, investors, or creditors;

14085 (b) Any person, including any stock subscriber,
 14086 stockholder, or incorporator, who exercises or has the ability
 14087 to exercise effective control of the organization, or who
 14088 influences or has the ability to influence the transaction of
 14089 the business of the health maintenance organization, does not



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14090 possess the financial standing and business experience for the
14091 successful operation of the health maintenance organization;

14092 (c) Any person, including any stock subscriber,
14093 stockholder, or incorporator, who exercises or has the ability
14094 to exercise effective control of the organization, or who
14095 influences or has the ability to influence the transaction of
14096 the business of the health maintenance organization, has been
14097 found guilty of, or has pled guilty or no contest to, any felony
14098 or crime punishable by imprisonment of 1 year or more under the
14099 laws of the United States or any state thereof or under the laws
14100 of any other country, which involves moral turpitude, without
14101 regard to whether a judgment or conviction has been entered by
14102 the court having jurisdiction in such case. However, in the case
14103 of a health maintenance organization operating under a
14104 subsisting certificate of authority, the health maintenance
14105 organization shall remove any such person immediately upon
14106 discovery of the conditions set forth in this paragraph when
14107 applicable to such person or under the order of the office
14108 ~~department~~, and the failure to so act by the organization is
14109 grounds for revocation or suspension of the health maintenance
14110 organization's certificate of authority; or

14111 (d) Any person, including any stock subscriber,
14112 stockholder, or incorporator, who exercises or has the ability
14113 to exercise effective control of the organization, or who
14114 influences or has the ability to influence the transaction of
14115 the business of the health maintenance organization, is now or
14116 was in the past affiliated, directly or indirectly, through
14117 ownership interest of 10 percent or more, control, or



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14118 reinsurance transactions, with any business, corporation, or
14119 other entity that has been found guilty of or has pleaded guilty
14120 or nolo contendere to any felony or crime punishable by
14121 imprisonment for 1 year or more under the laws of the United
14122 States, any state, or any other country, regardless of
14123 adjudication. In the case of a health maintenance organization
14124 operating under a subsisting certificate of authority, the
14125 health maintenance organization shall immediately remove such
14126 person or immediately notify the office ~~department~~ of such
14127 person upon discovery of the conditions set forth in this
14128 paragraph, either when applicable to such person or upon order
14129 of the office ~~department~~. The failure to remove such person,
14130 provide such notice, or comply with such order constitutes
14131 grounds for suspension or revocation of the health maintenance
14132 organization's certificate of authority.

14133 (7) The entity has a blanket fidelity bond in the amount
14134 of \$100,000, issued by a licensed insurance carrier in this
14135 state, that will reimburse the entity in the event that anyone
14136 handling the funds of the entity either misappropriates or
14137 absconds with the funds. All employees handling the funds shall
14138 be covered by the blanket fidelity bond. An agent licensed
14139 under the provisions of the Florida Insurance Code may either
14140 directly or indirectly represent the health maintenance
14141 organization in the solicitation, negotiation, effectuation,
14142 procurement, receipt, delivery, or forwarding of any health
14143 maintenance organization subscriber's contract or collect or
14144 forward any consideration paid by the subscriber to the health



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14145 maintenance organization; and the licensed agent shall not be
14146 required to post the bond required by this subsection.

14147 (8) The entity has filed with the office ~~department~~, and
14148 obtained approval from the office ~~department~~ of, all reinsurance
14149 contracts as provided in s. 641.285.

14150 (9) The health maintenance organization has a grievance
14151 procedure that will facilitate the resolution of subscriber
14152 grievances and that includes both formal and informal steps
14153 available within the organization.

14154 Section 259. Subsections (2) and (4), and paragraphs (b)
14155 and (d) of subsection (6) of section 641.225, Florida Statutes,
14156 are amended to read:

14157 641.225 Surplus requirements.--

14158 (2) The office ~~department~~ shall not issue a certificate of
14159 authority, except as provided in subsection (3), unless the
14160 health maintenance organization has a minimum surplus in an
14161 amount which is the greater of:

14162 (a) Ten percent of their total liabilities based on their
14163 startup projection as set forth in this part;

14164 (b) Two percent of their total projected premiums based on
14165 their startup projection as set forth in this part; or

14166 (c) \$1,500,000, plus all startup losses, excluding
14167 profits, projected to be incurred on their startup projection
14168 until the projection reflects statutory net profits for 12
14169 consecutive months.

14170 (4) The commission ~~department~~ may adopt rules to set
14171 uniform standards and criteria for the early warning that the
14172 continued operation of any health maintenance organization might



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14173 be hazardous to its subscribers, creditors, or the general
14174 public, and to set standards for evaluating the financial
14175 condition of any health maintenance organization.

14176 (6) In lieu of having any minimum surplus, the health
14177 maintenance organization may provide a written guarantee to
14178 assure payment of covered subscriber claims and all other
14179 liabilities of the health maintenance organization, provided
14180 that the written guarantee is made by a guaranteeing
14181 organization which:

14182 (b) Submits a guarantee that is approved by the office
14183 ~~department~~ as meeting the requirements of this part, provided
14184 that the written guarantee contains a provision which requires
14185 that the guarantee be irrevocable unless the guaranteeing
14186 organization can demonstrate to the office ~~department~~ that the
14187 cancellation of the guarantee will not result in the insolvency
14188 of the health maintenance organization and the office ~~department~~
14189 approves cancellation of the guarantee.

14190 (d) Submits annually, within 3 months after the end of its
14191 fiscal year, an audited financial statement certified by an
14192 independent certified public accountant, prepared in accordance
14193 with generally accepted accounting principles. The office
14194 ~~department~~ may, as it deems necessary, require quarterly
14195 financial statements from the guaranteeing organization.

14196 Section 260. Subsection (1) of section 641.227, Florida
14197 Statutes, is amended to read:

14198 641.227 Rehabilitation Administrative Expense Fund.--

14199 (1) The office ~~department~~ shall not issue or permit to
14200 exist a certificate of authority to operate a health maintenance



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14201 organization in this state unless the organization has deposited
14202 with the department \$10,000 in cash for use in the
14203 Rehabilitation Administrative Expense Fund as established in
14204 subsection (2).

14205 Section 261. Subsections (1) and (3) of section 641.228,
14206 Florida Statutes, are amended to read:

14207 641.228 Florida Health Maintenance Organization Consumer
14208 Assistance Plan.--

14209 (1) The office ~~department~~ shall not issue a certificate to
14210 any health maintenance organization after July 1, 1989, until
14211 the applicant health maintenance organization has paid in full
14212 its special assessment as set forth in s. 631.819(2)(a).

14213 (3) The office ~~department~~ may suspend or revoke the
14214 certificate of authority of any health maintenance organization
14215 which does not timely pay its assessment to the Florida Health
14216 Maintenance Organization Consumer Assistance Plan.

14217 Section 262. Section 641.23, Florida Statutes, is amended
14218 to read:

14219 641.23 Revocation or cancellation of certificate of
14220 authority; suspension of enrollment of new subscribers; terms of
14221 suspension.--

14222 (1) The maintenance of a valid and current health care
14223 provider certificate issued pursuant to part III of this chapter
14224 is a condition of the maintenance of a valid and current
14225 certificate of authority issued by the office ~~department~~ to
14226 operate a health maintenance organization. Denial or revocation
14227 of a health care provider certificate shall be deemed to be an
14228 automatic and immediate cancellation of a health maintenance



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14229 organization's certificate of authority. At the discretion of
 14230 the office ~~Department of Insurance~~, nonrenewal of a health care
 14231 provider certificate may be deemed to be an automatic and
 14232 immediate cancellation of a health maintenance organization's
 14233 certificate of authority if the Agency for Health Care
 14234 Administration notifies the office ~~Department of Insurance~~, in
 14235 writing, that the health care provider certificate will not be
 14236 renewed.

14237 (2) The office ~~department~~ may suspend the authority of a
 14238 health maintenance organization to enroll new subscribers or
 14239 revoke any certificate issued to a health maintenance
 14240 organization, or order compliance within 30 days, if it finds
 14241 that any of the following conditions exists:

14242 (a) The organization is not operating in compliance with
 14243 this part;

14244 (b) The plan is no longer actuarially sound or the
 14245 organization does not have the minimum surplus as required by
 14246 this part;

14247 (c) The existing contract rates are excessive, inadequate,
 14248 or unfairly discriminatory;

14249 (d) The organization has advertised, merchandised, or
 14250 attempted to merchandise its services in such a manner as to
 14251 misrepresent its services or capacity for service or has engaged
 14252 in deceptive, misleading, or unfair practices with respect to
 14253 advertising or merchandising; or

14254 (e) The organization is insolvent.

14255 (3) Whenever the financial condition of the health
 14256 maintenance organization is such that, if not modified or



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14257 corrected, its continued operation would result in impairment or
 14258 insolvency, the office ~~department~~ may order the health
 14259 maintenance organization to file with the office ~~department~~ and
 14260 implement a corrective action plan designed to do one or more of
 14261 the following:

14262 (a) Reduce the total amount of present potential liability
 14263 for benefits by reinsurance or other means.

14264 (b) Reduce the volume of new business being accepted.

14265 (c) Reduce the expenses of the health maintenance
 14266 organization by specified methods.

14267 (d) Suspend or limit the writing of new business for a
 14268 period of time.

14269 (e) Require an increase in the health maintenance
 14270 organization's net worth.

14271
 14272 If the health maintenance organization fails to submit a plan
 14273 within 30 days of the office's ~~department's~~ order or submits a
 14274 plan which is insufficient to correct the health maintenance
 14275 organization's financial condition, the office ~~department~~ may
 14276 order the health maintenance organization to implement one or
 14277 more of the corrective actions listed in this subsection.

14278 (4) The office ~~department~~ shall, in its order suspending
 14279 the authority of a health maintenance organization to enroll new
 14280 subscribers, specify the period during which the suspension is
 14281 to be in effect and the conditions, if any, which must be met by
 14282 the health maintenance organization prior to reinstatement of
 14283 its authority to enroll new subscribers. The order of
 14284 suspension is subject to rescission or modification by further



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14285 order of the office ~~department~~ prior to the expiration of the
14286 suspension period. Reinstatement shall not be made unless
14287 requested by the health maintenance organization; however, the
14288 office ~~department~~ shall not grant reinstatement if it finds that
14289 the circumstances for which the suspension occurred still exist
14290 or are likely to recur.

14291 (5) The commission ~~department~~ shall adopt ~~promulgate~~ rules
14292 establishing an actuarially sound medical loss ratio for
14293 Medicaid. In determining the appropriate medical loss ratio,
14294 the commission ~~department~~ shall consider factors, including but
14295 not limited to, plan age, plan structure, geographic service
14296 area, product mix, provider network, medical inflation, provider
14297 services, other professional services, out of network referrals
14298 and expenditures, in and out of network emergency room
14299 expenditures, inpatient expenditures, other medical
14300 expenditures, incentive pool adjustments, copayments,
14301 coordination of benefits, subrogation, and any other expenses
14302 associated with the delivery of medical benefits. The
14303 commission ~~department~~ shall utilize assistance from the Agency
14304 for Health Care Administration, the State University System, an
14305 independent actuary, and representatives from health maintenance
14306 organizations in developing the rule for appropriate medical
14307 loss ratios.

14308 (6) The office ~~department~~ shall calculate and publish at
14309 least annually the medical loss ratios of all licensed health
14310 maintenance organizations. The publication shall include an
14311 explanation of what the medical loss ratio means and shall
14312 disclose that the medical loss ratio is not a direct reflection



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14313 of quality, but must be looked at along with patient
14314 satisfaction and other standards that define quality.

14315 Section 263. Subsections (1), (2), and (3) of section
14316 641.234, Florida Statutes, are amended to read:

14317 641.234 Administrative, provider, and management
14318 contracts.--

14319 (1) The office ~~department~~ may require a health maintenance
14320 organization to submit any contract for administrative services,
14321 contract with a provider other than an individual physician,
14322 contract for management services, and contract with an
14323 affiliated entity to the office ~~department~~.

14324 (2) After review of a contract the office ~~department~~ may
14325 order the health maintenance organization to cancel the contract
14326 in accordance with the terms of the contract and applicable law
14327 if it determines:

14328 (a) That the fees to be paid by the health maintenance
14329 organization under the contract are so unreasonably high as
14330 compared with similar contracts entered into by the health
14331 maintenance organization or as compared with similar contracts
14332 entered into by other health maintenance organizations in
14333 similar circumstances that the contract is detrimental to the
14334 subscribers, stockholders, investors, or creditors of the health
14335 maintenance organization; or

14336 (b) That the contract is with an entity that is not
14337 licensed under state statutes, if such license is required, or
14338 is not in good standing with the applicable regulatory agency.

14339 (3) All contracts for administrative services, management
14340 services, provider services other than individual physician



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14341 contracts, and with affiliated entities entered into or renewed
14342 by a health maintenance organization on or after October 1,
14343 1988, shall contain a provision that the contract shall be
14344 canceled upon issuance of an order by the office ~~department~~
14345 pursuant to this section.

14346 Section 264. Section 641.2342, Florida Statutes, is
14347 amended to read:

14348 641.2342 Contract providers.--Each health maintenance
14349 organization shall file, upon the request of the office
14350 ~~department~~, financial statements for all contract providers of
14351 comprehensive health care services who have assumed, through
14352 capitation or other means, more than 10 percent of the health
14353 care risks of the health maintenance organization. However,
14354 this provision shall not apply to any individual physician.

14355 Section 265. Section 641.25, Florida Statutes, is amended
14356 to read:

14357 641.25 Administrative penalty in lieu of suspension or
14358 revocation.--If the office ~~department~~ finds that one or more
14359 grounds exist for the revocation or suspension of a certificate
14360 issued under this part, the office ~~department~~ may, in lieu of
14361 revocation or suspension, impose a fine upon the health
14362 maintenance organization. With respect to any nonwillful
14363 violation, the fine must not exceed \$2,500 per violation. Such
14364 fines may not exceed an aggregate amount of \$25,000 for all
14365 nonwillful violations arising out of the same action. With
14366 respect to any knowing and willful violation of a lawful order
14367 or rule of the office or commission ~~department~~ or a provision of
14368 this part, the office ~~department~~ may impose upon the



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14369 organization a fine in an amount not to exceed \$20,000 for each
14370 such violation. Such fines may not exceed an aggregate amount
14371 of \$250,000 for all knowing and willful violations arising out
14372 of the same action. The commission ~~department~~ must adopt by
14373 rule ~~by January 1, 1997,~~ penalty categories that specify varying
14374 ranges of monetary fines for willful violations and for
14375 nonwillful violations.

14376 Section 266. Subsection (2) of section 641.255, Florida
14377 Statutes, is amended to read:

14378 641.255 Acquisition, merger, or consolidation.--

14379 (2) In addition to the requirements set forth in ss.
14380 628.451, 628.4615, and 628.471, each party to any transaction
14381 involving any licensee which, as indicated in its most recent
14382 quarterly or annual statement, derives income from Medicaid
14383 funds shall in the filing made with the office ~~department~~
14384 identify:

14385 (a) Any person who has received any payment from either
14386 party or any person on that party's behalf; or

14387 (b) The existence of any agreement entered into by either
14388 party or by any person on that party's behalf to pay a
14389 consultant fee, a broker fee, a commission, or other fee or
14390 charge,

14391
14392 which in any way relates to the acquisition, merger, or
14393 consolidation. The commission ~~department~~ may adopt a form to be
14394 made part of the application which is to be sworn to by an
14395 officer of the entity which made or will make the payment. The
14396 form shall include the name of the person or entity paying the



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14397 fee; the name of the person or entity receiving the fee; the
14398 date of payment; and a brief description of the work performed.

14399 Section 267. Section 641.26, Florida Statutes, is amended
14400 to read:

14401 641.26 Annual and quarterly reports.--

14402 (1) Every health maintenance organization shall, annually
14403 within 3 months after the end of its fiscal year, or within an
14404 extension of time therefor as the office department, for good
14405 cause, may grant, in a form prescribed by the commission
14406 ~~department~~, file a report with the office department, verified
14407 by the oath of two officers of the organization or, if not a
14408 corporation, of two persons who are principal managing directors
14409 of the affairs of the organization, properly notarized, showing
14410 its condition on the last day of the immediately preceding
14411 reporting period. Such report shall include:

14412 (a) A financial statement of the health maintenance
14413 organization filed by electronic means in a computer-readable
14414 form ~~on a computer diskette~~ using a format acceptable to the
14415 office department.

14416 (b) A financial statement of the health maintenance
14417 organization filed on forms acceptable to the office department.

14418 (c) An audited financial statement of the health
14419 maintenance organization, including its balance sheet and a
14420 statement of operations for the preceding year certified by an
14421 independent certified public accountant, prepared in accordance
14422 with statutory accounting principles.



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14423 (d) The number of health maintenance contracts issued and
14424 outstanding and the number of health maintenance contracts
14425 terminated.

14426 (e) The number and amount of damage claims for medical
14427 injury initiated against the health maintenance organization and
14428 any of the providers engaged by it during the reporting year,
14429 broken down into claims with and without formal legal process,
14430 and the disposition, if any, of each such claim.

14431 (f) An actuarial certification that:

14432 1. The health maintenance organization is actuarially
14433 sound, which certification shall consider the rates, benefits,
14434 and expenses of, and any other funds available for the payment
14435 of obligations of, the organization.

14436 2. The rates being charged or to be charged are
14437 actuarially adequate to the end of the period for which rates
14438 have been guaranteed.

14439 3. Incurred but not reported claims and claims reported
14440 but not fully paid have been adequately provided for.

14441 4. The health maintenance organization has adequately
14442 provided for all obligations required by s. 641.35(3)(a).

14443 (g) A report prepared by the certified public accountant
14444 and filed with the office ~~department~~ describing material
14445 weaknesses in the health maintenance organization's internal
14446 control structure as noted by the certified public accountant
14447 during the audit. The report must be filed with the annual
14448 audited financial report as required in paragraph (c). The
14449 health maintenance organization shall provide a description of
14450 remedial actions taken or proposed to correct material



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14451 weaknesses, if the actions are not described in the independent
14452 certified public accountant's report.

14453 (h) Such other information relating to the performance of
14454 health maintenance organizations as is required by the
14455 commission or office ~~department~~.

14456 (2) The office ~~department~~ may require updates of the
14457 actuarial certification as to a particular health maintenance
14458 organization if the office ~~department~~ has reasonable cause to
14459 believe that such reserves are understated to the extent of
14460 materially misstating the financial position of the health
14461 maintenance organization. Workpapers in support of the
14462 statement of the updated actuarial certification must be
14463 provided to the office ~~department~~ upon request.

14464 (3) Every health maintenance organization shall file
14465 quarterly, for the first three calendar quarters of each year,
14466 an unaudited financial statement of the organization as
14467 described in paragraphs (1)(a) and (b). The statement for the
14468 quarter ending March 31 shall be filed on or before May 15, the
14469 statement for the quarter ending June 30 shall be filed on or
14470 before August 15, and the statement for the quarter ending
14471 September 30 shall be filed on or before November 15. The
14472 quarterly report shall be verified by the oath of two officers
14473 of the organization, properly notarized.

14474 (4) Any health maintenance organization that neglects to
14475 file an annual report or quarterly report in the form and within
14476 the time required by this section shall forfeit up to \$1,000 for
14477 each day for the first 10 days during which the neglect
14478 continues and shall forfeit up to \$2,000 for each day after the



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14479 first 10 days during which the neglect continues; and, upon
14480 notice by the office ~~department~~ to that effect, the
14481 organization's authority to enroll new subscribers or to do
14482 business in this state shall cease while such default continues.
14483 The office ~~department~~ shall deposit all sums collected by it
14484 under this section to the credit of the Insurance ~~Commissioner's~~
14485 Regulatory Trust Fund. The office ~~department~~ shall not collect
14486 more than \$100,000 for each report.

14487 (5) Each authorized health maintenance organization shall
14488 retain an independent certified public accountant, referred to
14489 in this section as "CPA," who agrees by written contract with
14490 the health maintenance organization to comply with the
14491 provisions of this part.

14492 (a) The CPA shall provide to the HMO audited financial
14493 statements consistent with this part.

14494 (b) Any determination by the CPA that the health
14495 maintenance organization does not meet minimum surplus
14496 requirements as set forth in this part shall be stated by the
14497 CPA, in writing, in the audited financial statement.

14498 (c) The completed work papers and any written
14499 communications between the CPA firm and the health maintenance
14500 organization relating to the audit of the health maintenance
14501 organization shall be made available for review on a visual-
14502 inspection-only basis by the office ~~department~~ at the offices of
14503 the health maintenance organization, at the office ~~department~~,
14504 or at any other reasonable place as mutually agreed between the
14505 office ~~department~~ and the health maintenance organization. The



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14506 CPA must retain for review the work papers and written
14507 communications for a period of not less than 6 years.

14508 (d) The CPA shall provide to the office ~~department~~ a
14509 written report describing material weaknesses in the health
14510 maintenance organization's internal control structure as noted
14511 during the audit.

14512 (6) To facilitate uniformity in financial statements and
14513 to facilitate office ~~department~~ analysis, the commission
14514 ~~department~~ may by rule adopt the form for financial statements
14515 of a health maintenance organization, including supplements as
14516 approved by the National Association of Insurance Commissioners
14517 in 1995, and may adopt subsequent amendments thereto if the
14518 methodology remains substantially consistent, and may by rule
14519 require each health maintenance organization to submit to the
14520 office ~~department~~ all or part of the information contained in
14521 the annual statement in a computer-readable form compatible with
14522 the electronic data processing system specified by the office
14523 ~~department~~.

14524 (7) In addition to information called for and furnished in
14525 connection with its annual or quarterly statements, the health
14526 maintenance organization shall furnish to the office ~~department~~
14527 as soon as reasonably possible such information as to its
14528 material transactions which, in the office's ~~department's~~
14529 opinion, may have a material adverse effect on the health
14530 maintenance organization's financial condition, as the office
14531 requests ~~department may request~~ in writing. All such information
14532 furnished pursuant to the office's ~~department's~~ request must be



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14533 | verified by the oath of two executive officers of the health
14534 | maintenance organization.

14535 | (8) Each health maintenance organization shall file one
14536 | copy of its annual statement convention blank in electronic
14537 | form, along with such additional filings as prescribed by the
14538 | commission ~~department~~ for the preceding calendar year or
14539 | quarter, with the National Association of Insurance
14540 | Commissioners. Each health maintenance organization shall pay
14541 | fees assessed by the National Association of Insurance
14542 | Commissioners to cover costs associated with the filing and
14543 | analysis of the documents by the National Association of
14544 | Insurance Commissioners.

14545 | Section 268. Section 641.27, Florida Statutes, is amended
14546 | to read:

14547 | 641.27 Examination by the department.--

14548 | (1) The office ~~department~~ shall examine the affairs,
14549 | transactions, accounts, business records, and assets of any
14550 | health maintenance organization as often as it deems it
14551 | expedient for the protection of the people of this state, but
14552 | not less frequently than once every 3 years. In lieu of making
14553 | its own financial examination, the office ~~department~~ may accept
14554 | an independent certified public accountant's audit report
14555 | prepared on a statutory accounting basis consistent with this
14556 | part. However, except when the medical records are requested
14557 | and copies furnished pursuant to s. 456.057, medical records of
14558 | individuals and records of physicians providing service under
14559 | contract to the health maintenance organization shall not be
14560 | subject to audit, although they may be subject to subpoena by



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14561 court order upon a showing of good cause. For the purpose of
14562 examinations, the office ~~department~~ may administer oaths to and
14563 examine the officers and agents of a health maintenance
14564 organization concerning its business and affairs. The
14565 examination of each health maintenance organization by the
14566 office ~~department~~ shall be subject to the same terms and
14567 conditions as apply to insurers under chapter 624. In no event
14568 shall expenses of all examinations exceed a maximum of \$20,000
14569 for any 1-year period. Any rehabilitation, liquidation,
14570 conservation, or dissolution of a health maintenance
14571 organization shall be conducted under the supervision of the
14572 department, which shall have all power with respect thereto
14573 granted to it under the laws governing the rehabilitation,
14574 liquidation, reorganization, conservation, or dissolution of
14575 life insurance companies.

14576 (2) The office ~~department~~ may contract, at reasonable fees
14577 for work performed, with qualified, impartial outside sources to
14578 perform audits or examinations or portions thereof pertaining to
14579 the qualification of an entity for issuance of a certificate of
14580 authority or to determine continued compliance with the
14581 requirements of this part, in which case the payment must be
14582 made directly to the contracted examiner by the health
14583 maintenance organization examined, in accordance with the rates
14584 and terms agreed to by the office ~~department~~ and the examiner.
14585 Any contracted assistance shall be under the direct supervision
14586 of the office ~~department~~. The results of any contracted
14587 assistance shall be subject to the review of, and approval,
14588 disapproval, or modification by, the office ~~department~~.



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14589 Section 269. Section 641.28, Florida Statutes, is amended
14590 to read:

14591 641.28 Civil remedy.--In any civil action brought to
14592 enforce the terms and conditions of a health maintenance
14593 organization contract, the prevailing party is entitled to
14594 recover reasonable attorney's fees and court costs. This section
14595 shall not be construed to authorize a civil action against the
14596 commission, office, or department, their ~~its~~ employees, or the
14597 Chief Financial Officer ~~Insurance Commissioner~~ or against the
14598 Agency for Health Care Administration, its employees, or the
14599 director of the agency.

14600 Section 270. Section 641.281, Florida Statutes, is amended
14601 to read:

14602 641.281 Injunction.--In addition to the penalties and
14603 other enforcement provisions of this part, the office and
14604 department, within the scope of their regulatory jurisdictions,
14605 are ~~is~~ vested with the power to seek both temporary and
14606 permanent injunctive relief when:

14607 (1) A health maintenance organization is being operated by
14608 any person or entity without a subsisting certificate of
14609 authority.

14610 (2) Any person, entity, or health maintenance organization
14611 has engaged in any activity prohibited by this part or any rule
14612 adopted pursuant thereto.

14613 (3) Any health maintenance organization, person, or entity
14614 is renewing, issuing, or delivering a health maintenance
14615 contract or contracts without a subsisting certificate of
14616 authority.



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The office's and department's authority to seek injunctive relief shall not be conditioned on having conducted any proceeding pursuant to chapter 120.

Section 271. Section 641.284, Florida Statutes, is amended to read:

641.284 Liquidation, rehabilitation, reorganization, and conservation; exclusive methods of remedy.--A delinquency proceeding under part I of chapter 631, or supervision by the office ~~department~~ under ss. 624.80-624.87, constitute the sole and exclusive means of liquidating, reorganizing, rehabilitating, or conserving a health maintenance organization.

Section 272. Subsections (1), (2), and (3) of section 641.285, Florida Statutes, are amended to read:

641.285 Insolvency protection.--

(1) Each health maintenance organization shall deposit with the department cash or securities of the type eligible under s. 625.52, which shall have at all times a market value in the amount set forth in this subsection. The amount of the deposit shall be reviewed annually, or more often, as the office ~~department~~ deems necessary. The market value of the deposit shall be a minimum of \$300,000.

(2) If securities or assets deposited by a health maintenance organization under this part are subject to material fluctuations in market value, the office ~~department~~ may, in its discretion, require the organization to deposit and maintain on deposit additional securities or assets in an amount as may be reasonably necessary to assure that the deposit will at all



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14645 times have a market value of not less than the amount specified
14646 under this section. If for any reason the market value of assets
14647 and securities of a health maintenance organization held on
14648 deposit in this state under this code falls below the amount
14649 required, the organization shall promptly deposit other or
14650 additional assets or securities eligible for deposit sufficient
14651 to cure the deficiency. If the health maintenance organization
14652 has failed to cure the deficiency within 30 days after receipt
14653 of notice thereof by registered or certified mail from the
14654 office department, the office department may revoke the
14655 certificate of authority of the health maintenance organization.

14656 (3) Whenever the office department determines that the
14657 financial condition of a health maintenance organization has
14658 deteriorated to the point that the policyholders' or
14659 subscribers' best interests are not being preserved by the
14660 activities of a health maintenance organization, the office
14661 ~~department~~ may require such health maintenance organization to
14662 deposit and maintain deposited in trust with the department for
14663 the protection of the health maintenance organization's
14664 policyholders, subscribers, and creditors, for such time as the
14665 office department deems necessary, securities eligible for such
14666 deposit under s. 625.52 having a market value of not less than
14667 the amount that the office department determines is necessary,
14668 which amount must not be less than \$100,000 or greater than \$2
14669 million. The deposit required under this subsection is in
14670 addition to any other deposits required of a health maintenance
14671 organization pursuant to subsections (1) and (2).



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14672 Section 273. Section 641.29, Florida Statutes, is amended
14673 to read:

14674 641.29 Fees.--Every health maintenance organization shall
14675 pay to the office ~~department~~ the following fees:

14676 (1) For filing a copy of its application for a certificate
14677 of authority or amendment thereto, a nonrefundable fee in the
14678 amount of \$1,000.

14679 (2) For filing each annual report, which must be filed by
14680 electronic means in a computer-readable form ~~on computer~~
14681 ~~diskettes~~, \$150.

14682 Section 274. Paragraph (b) of subsection (4) of section
14683 641.3007, Florida Statutes, is amended to read:

14684 641.3007 HIV infection and AIDS for contract

14685 (4) UTILIZATION OF MEDICAL TESTS.--

14686 (b) Prior to testing, the health maintenance organization
14687 must disclose its intent to test the person for the HIV
14688 infection or for a specific sickness or medical condition
14689 derived therefrom and must obtain the person's written informed
14690 consent to administer the test. Written informed consent shall
14691 include a fair explanation of the test, including its purpose,
14692 potential uses, and limitations, and the meaning of its results
14693 and the right to confidential treatment of information. Use of
14694 a form approved by the office ~~department~~ shall raise a
14695 conclusive presumption of informed consent.

14696 Section 275. Section 641.305, Florida Statutes, is amended
14697 to read:

14698 641.305 Language used in contracts and advertisements;
14699 translations.--



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14700 (1)(a) All health maintenance contracts or forms shall be
14701 printed in English.

14702 (b) If the negotiations by a health maintenance
14703 organization with a member leading up to the effectuation of a
14704 health maintenance contract are conducted in a language other
14705 than English, the health maintenance organization shall supply
14706 to the member a written translation of the contract, which
14707 translation accurately reflects the substance of the contract
14708 and is in the language used to negotiate the contract. The
14709 written translation shall be affixed to and shall become a part
14710 of the contract or form. Any such translation shall be
14711 furnished to the office ~~department~~ as part of the filing of the
14712 health maintenance contract form. No translation of a health
14713 maintenance contract form shall be approved by the department
14714 unless the translation accurately reflects the substance of the
14715 health maintenance contract form in translation.

14716 (2) The text of all advertisements by a health maintenance
14717 organization, if printed or broadcast in a language other than
14718 English, also shall be available in English and shall be
14719 furnished to the office ~~department~~ upon request. As used in
14720 this subsection, the term "advertisement" means any
14721 advertisement, circular, pamphlet, brochure, or other printed
14722 material disclosing or disseminating advertising material or
14723 information by a health maintenance organization to prospective
14724 or existing subscribers and includes any radio or television
14725 transmittal of an advertisement or information.



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14726 Section 276. Subsections (2), (3), (5), and (12) and
14727 paragraphs (c) and (e) of subsection (38) of section 641.31,
14728 Florida Statutes, are amended to read:

14729 641.31 Health maintenance contracts.--

14730 (2) The rates charged by any health maintenance
14731 organization to its subscribers shall not be excessive,
14732 inadequate, or unfairly discriminatory or follow a rating
14733 methodology that is inconsistent, indeterminate, or ambiguous or
14734 encourages misrepresentation or misunderstanding. The
14735 commission ~~department~~, in accordance with generally accepted
14736 actuarial practice as applied to health maintenance
14737 organizations, may define by rule what constitutes excessive,
14738 inadequate, or unfairly discriminatory rates and may require
14739 whatever information it deems necessary to determine that a rate
14740 or proposed rate meets the requirements of this subsection.

14741 (3)(a) If a health maintenance organization desires to
14742 amend any contract with its subscribers or any certificate or
14743 member handbook, or desires to change any basic health
14744 maintenance contract, certificate, grievance procedure, or
14745 member handbook form, or application form where written
14746 application is required and is to be made a part of the
14747 contract, or printed amendment, addendum, rider, or endorsement
14748 form or form of renewal certificate, it may do so, upon filing
14749 with the office ~~department~~ the proposed change or amendment.
14750 Any proposed change shall be effective immediately, subject to
14751 disapproval by the office ~~department~~. Following receipt of
14752 notice of such disapproval or withdrawal of approval, no health
14753 maintenance organization shall issue or use any form disapproved



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14754 by the office department or as to which the office department
14755 has withdrawn approval.

14756 (b) Any change in the rate is subject to paragraph (d) and
14757 requires at least 30 days' advance written notice to the
14758 subscriber. In the case of a group member, there may be a
14759 contractual agreement with the health maintenance organization
14760 to have the employer provide the required notice to the
14761 individual members of the group.

14762 (c) The office department shall disapprove any form filed
14763 under this subsection, or withdraw any previous approval
14764 thereof, if the form:

14765 1. Is in any respect in violation of, or does not comply
14766 with, any provision of this part or rule adopted thereunder.

14767 2. Contains or incorporates by reference, where such
14768 incorporation is otherwise permissible, any inconsistent,
14769 ambiguous, or misleading clauses or exceptions and conditions
14770 which deceptively affect the risk purported to be assumed in the
14771 general coverage of the contract.

14772 3. Has any title, heading, or other indication of its
14773 provisions which is misleading.

14774 4. Is printed or otherwise reproduced in such a manner as
14775 to render any material provision of the form substantially
14776 illegible.

14777 5. Contains provisions which are unfair, inequitable, or
14778 contrary to the public policy of this state or which encourage
14779 misrepresentation.

14780 6. Excludes coverage for human immunodeficiency virus
14781 infection or acquired immune deficiency syndrome or contains



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14782 limitations in the benefits payable, or in the terms or
14783 conditions of such contract, for human immunodeficiency virus
14784 infection or acquired immune deficiency syndrome which are
14785 different than those which apply to any other sickness or
14786 medical condition.

14787 (d) Any change in rates charged for the contract must be
14788 filed with the office ~~department~~ not less than 30 days in
14789 advance of the effective date. At the expiration of such 30
14790 days, the rate filing shall be deemed approved unless prior to
14791 such time the filing has been affirmatively approved or
14792 disapproved by order of the office ~~department~~. The approval of
14793 the filing by the office ~~department~~ constitutes a waiver of any
14794 unexpired portion of such waiting period. The office ~~department~~
14795 may extend by not more than an additional 15 days the period
14796 within which it may so affirmatively approve or disapprove any
14797 such filing, by giving notice of such extension before
14798 expiration of the initial 30-day period. At the expiration of
14799 any such period as so extended, and in the absence of such prior
14800 affirmative approval or disapproval, any such filing shall be
14801 deemed approved.

14802 (e) It is not the intent of this subsection to restrict
14803 unduly the right to modify rates in the exercise of reasonable
14804 business judgment.

14805 (5) Every subscriber shall receive a clear and
14806 understandable description of the method of the health
14807 maintenance organization for resolving subscriber grievances,
14808 and the method shall be set forth in the contract, certificate,
14809 and member handbook. The organization shall also furnish, at



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14810 the time of initial enrollment and when necessary due to
14811 substantial changes to the grievance process a separate and
14812 additional communication prepared or approved by the office
14813 ~~department~~ notifying the contract holder of a group contract or
14814 subscriber of an individual contract of their rights and
14815 responsibilities under the grievance process.

14816 (12) Each health maintenance contract, certificate, or
14817 member handbook shall state that emergency services and care
14818 shall be provided to subscribers in emergency situations not
14819 permitting treatment through the health maintenance
14820 organization's providers, without prior notification to and
14821 approval of the organization. Not less than 75 percent of the
14822 reasonable charges for covered services and supplies shall be
14823 paid by the organization, up to the subscriber contract benefit
14824 limits. Payment also may be subject to additional applicable
14825 copayment provisions, not to exceed \$100 per claim. The health
14826 maintenance contract, certificate, or member handbook shall
14827 contain the definitions of "emergency services and care" and
14828 "emergency medical condition" as specified in s. 641.19 (6) ~~(7)~~
14829 and (7) ~~(8)~~, shall describe procedures for determination by the
14830 health maintenance organization of whether the services qualify
14831 for reimbursement as emergency services and care, and shall
14832 contain specific examples of what does constitute an emergency.
14833 In providing for emergency services and care as a covered
14834 service, a health maintenance organization shall be governed by
14835 s. 641.513.

14836 (38)



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14837 (c) Premiums paid in for the point-of-service riders may
14838 not exceed 15 percent of total premiums for all health plan
14839 products sold by the health maintenance organization offering
14840 the rider. If the premiums paid for point-of-service riders
14841 exceed 15 percent, the health maintenance organization must
14842 notify the office ~~department~~ and, once this fact is known, must
14843 immediately cease offering such a rider until it is in
14844 compliance with the rider premium cap.

14845 (e) The term "point of service" may not be used by a
14846 health maintenance organization except with riders permitted
14847 under this section or with forms approved by the office
14848 ~~department~~ in which a point-of-service product is offered with
14849 an indemnity carrier.

14850 Section 277. Subsection (2) of section 641.3105, Florida
14851 Statutes, is amended to read:

14852 641.3105 Validity of noncomplying contracts.--

14853 (2) Any health maintenance contract delivered or issued
14854 for delivery in this state covering a subscriber, which
14855 subscriber, pursuant to the provisions of this part, the
14856 organization may not lawfully cover under the contract, shall be
14857 cancelable at any time by the organization, any provision of the
14858 contract to the contrary notwithstanding; and the organization
14859 shall promptly cancel the contract in accordance with the
14860 request of the office ~~department~~ therefor. No such illegality
14861 or cancellation shall be deemed to relieve the organization of
14862 any liability incurred by it under the contract while in force
14863 or to prohibit the organization from retaining the pro rata
14864 earned premium or rate thereon. This provision does not relieve



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14865 the organization from any penalty otherwise incurred by the
14866 organization under this part on account of any such violation.

14867 Section 278. Subsection (5), paragraph (b) of subsection
14868 (7), paragraphs (a) and (e) of subsection (8), paragraph (c) of
14869 subsection (9), and paragraph (b) of subsection (10) of section
14870 641.31071, Florida Statutes, are amended to read:

14871 641.31071 Preexisting conditions.--

14872 (5)(a) The term "creditable coverage" means, with respect
14873 to an individual, coverage of the individual under any of the
14874 following:

14875 1. A group health plan, as defined in s. 2791 of the
14876 Public Health Service Act.

14877 2. Health insurance coverage consisting of medical care,
14878 provided directly, through insurance or reimbursement or
14879 otherwise, and including terms and services paid for as medical
14880 care, under any hospital or medical service policy or
14881 certificate, hospital or medical service plan contract, or
14882 health maintenance contract offered by a health insurance
14883 issuer.

14884 3. Part A or part B of Title XVIII of the Social Security
14885 Act.

14886 4. Title XIX of the Social Security Act, other than
14887 coverage consisting solely of benefits under s. 1928.

14888 5. Chapter 55 of Title 10, United States Code.

14889 6. A medical care program of the Indian Health Service or
14890 of a tribal organization.

14891 7. The Florida Comprehensive Health Association or another
14892 state health benefit risk pool.



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14893 | 8. A health plan offered under chapter 89 of Title 5,
14894 | United States Code.

14895 | 9. A public health plan as defined by rule of the
14896 | commission ~~department~~. To the greatest extent possible, such
14897 | rules must be consistent with regulations adopted by the United
14898 | States Department of Health and Human Services.

14899 | 10. A health benefit plan under s. 5(e) of the Peace Corps
14900 | Act (22 U.S.C. s. 2504(e)).

14901 | (b) Creditable coverage does not include coverage that
14902 | consists solely of one or more or any combination thereof of the
14903 | following excepted benefits:

14904 | 1. Coverage only for accident, or disability income
14905 | insurance, or any combination thereof.

14906 | 2. Coverage issued as a supplement to liability insurance.

14907 | 3. Liability insurance, including general liability
14908 | insurance and automobile liability insurance.

14909 | 4. Workers' compensation or similar insurance.

14910 | 5. Automobile medical payment insurance.

14911 | 6. Credit-only insurance.

14912 | 7. Coverage for onsite medical clinics.

14913 | 8. Other similar insurance coverage, specified in rules
14914 | adopted by the commission ~~department~~, under which benefits for
14915 | medical care are secondary or incidental to other insurance
14916 | benefits. To the greatest extent possible, such rules must be
14917 | consistent with regulations adopted by the United States
14918 | Department of Health and Human Services.

14919 | (c) The following benefits are not subject to the
14920 | creditable coverage requirements, if offered separately;



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- 14921 1. Limited scope dental or vision benefits.
- 14922 2. Benefits or long-term care, nursing home care, home
14923 health care, community-based care, or any combination of these.
- 14924 3. Such other similar, limited benefits as are specified
14925 in rules adopted by the commission ~~department~~. To the greatest
14926 extent possible, such rules must be consistent with regulations
14927 adopted by the United States Department of Health and Human
14928 Services.
- 14929 (d) The following benefits are not subject to creditable
14930 coverage requirements if offered as independent, noncoordinated
14931 benefits:
- 14932 1. Coverage only for a specified disease or illness.
- 14933 2. Hospital indemnity or other fixed indemnity insurance.
- 14934 (e) Benefits provided through Medicare supplemental health
14935 insurance, as defined under s. 1882(g)(1) of the Social Security
14936 Act, coverage supplemental to the coverage provided under
14937 chapter 55 of Title 10, United States Code, and similar
14938 supplemental coverage provided to coverage under a group health
14939 plan are not considered creditable coverage if offered as a
14940 separate insurance policy.
- 14941 (7)
- 14942 (b) A health maintenance organization may elect to count
14943 as creditable coverage, coverage of benefits within each of
14944 several classes or categories of benefits specified in rules
14945 adopted by the commission ~~department~~ rather than as provided
14946 under paragraph (a). Such election shall be made on a uniform
14947 basis for all participants and beneficiaries. Under such
14948 election, a health maintenance organization shall count a period



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14949 of creditable coverage with respect to any class or category of
14950 benefits if any level of benefits is covered within such class
14951 or category.

14952 (8)(a) Periods of creditable coverage with respect to an
14953 individual shall be established through presentation of
14954 certifications described in this subsection or in such other
14955 manner as may be specified in rules adopted by the commission
14956 ~~department~~.

14957 (e) The commission ~~department~~ shall adopt rules to prevent
14958 an insurer's or health maintenance organization's failure to
14959 provide information under this subsection with respect to
14960 previous coverage of an individual from adversely affecting any
14961 subsequent coverage of the individual under another group health
14962 plan or health maintenance organization coverage.

14963 (9)

14964 (c) As an alternative to the method authorized by
14965 paragraph (a), a health maintenance organization may address
14966 adverse selection in a method approved by the office ~~department~~.

14967 (10)

14968 (b) The commission ~~department~~ shall adopt rules that
14969 provide a process whereby individuals who need to establish
14970 creditable coverage for periods before July 1, 1996, and who
14971 would have such coverage credited but for paragraph (a), may be
14972 given credit for creditable coverage for such periods through
14973 the presentation of documents or other means.

14974 Section 279. Paragraph (b) of subsection (3) of section
14975 641.31074, Florida Statutes, is amended to read:

14976 641.31074 Guaranteed renewability of coverage.--



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14977 (3)

14978 (b)1. In any case in which a health maintenance

14979 organization elects to discontinue offering all coverage in the

14980 small group market or the large group market, or both, in this

14981 state, coverage may be discontinued by the insurer only if:

14982 a. The health maintenance organization provides notice to

14983 the office ~~department~~ and to each contract holder, and

14984 participants and beneficiaries covered under such coverage, of

14985 such discontinuation at least 180 days prior to the date of the

14986 nonrenewal of such coverage; and

14987 b. All health insurance issued or delivered for issuance

14988 in this state in such market is discontinued and coverage under

14989 such health insurance coverage in such market is not renewed.

14990 2. In the case of a discontinuation under subparagraph 1.

14991 in a market, the health maintenance organization may not provide

14992 for the issuance of any health maintenance organization contract

14993 coverage in the market in this state during the 5-year period

14994 beginning on the date of the discontinuation of the last

14995 insurance contract not renewed.

14996 Section 280. Subsection (2) of section 641.315, Florida

14997 Statutes, is amended to read:

14998 641.315 Provider contracts.--

14999 (2)(a) For all provider contracts executed after October

15000 1, 1991, and within 180 days after October 1, 1991, for

15001 contracts in existence as of October 1, 1991:

15002 1. The contracts must require the provider to give 60

15003 days' advance written notice to the health maintenance

15004 organization and the office ~~department~~ before canceling the



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15005 contract with the health maintenance organization for any
15006 reason; and

15007 2. The contract must also provide that nonpayment for
15008 goods or services rendered by the provider to the health
15009 maintenance organization is not a valid reason for avoiding the
15010 60-day advance notice of cancellation.

15011 (b) All provider contracts must provide that the health
15012 maintenance organization will provide 60 days' advance written
15013 notice to the provider and the office ~~department~~ before
15014 canceling, without cause, the contract with the provider, except
15015 in a case in which a patient's health is subject to imminent
15016 danger or a physician's ability to practice medicine is
15017 effectively impaired by an action by the Board of Medicine or
15018 other governmental agency.

15019 Section 281. Subsections (4) and (5) of section 641.3154,
15020 Florida Statutes, are amended to read:

15021 641.3154 Organization liability; provider billing
15022 prohibited.--

15023 (4) A provider or any representative of a provider,
15024 regardless of whether the provider is under contract with the
15025 health maintenance organization, may not collect or attempt to
15026 collect money from, maintain any action at law against, or
15027 report to a credit agency a subscriber of an organization for
15028 payment of services for which the organization is liable, if the
15029 provider in good faith knows or should know that the
15030 organization is liable. This prohibition applies during the
15031 pendency of any claim for payment made by the provider to the
15032 organization for payment of the services and any legal



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15033 proceedings or dispute resolution process to determine whether
15034 the organization is liable for the services if the provider is
15035 informed that such proceedings are taking place. It is presumed
15036 that a provider does not know and should not know that an
15037 organization is liable unless:

15038 (a) The provider is informed by the organization that it
15039 accepts liability;

15040 (b) A court of competent jurisdiction determines that the
15041 organization is liable;

15042 (c) The office ~~department~~ or agency makes a final
15043 determination that the organization is required to pay for such
15044 services subsequent to a recommendation made by the Statewide
15045 Provider and Subscriber Assistance Panel pursuant to s.
15046 408.7056; or

15047 (d) The agency issues a final order that the organization
15048 is required to pay for such services subsequent to a
15049 recommendation made by a resolution organization pursuant to s.
15050 408.7057.

15051 (5) An organization, the office, and the department shall
15052 report any suspected violation of this section by a health care
15053 practitioner to the Department of Health and by a facility to
15054 the agency, which shall take such action as authorized by law.

15055 Section 282. Subsection (12) of section 641.3155, Florida
15056 Statutes, is amended to read:

15057 641.3155 Prompt payment of claims.--

15058 (12) A permissible error ratio of 5 percent is established
15059 for health maintenance organizations' claims payment violations
15060 of paragraphs (3)(a),(b), (c), and (e) and (4)(a), (b), (c), and



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15061 (e). If the error ratio of a particular insurer does not exceed
15062 the permissible error ratio of 5 percent for an audit period, no
15063 fine shall be assessed for the noted claims violations for the
15064 audit period. The error ratio shall be determined by dividing
15065 the number of claims with violations found on a statistically
15066 valid sample of claims for the audit period by the total number
15067 of claims in the sample. If the error ratio exceeds the
15068 permissible error ratio of 5 percent, a fine may be assessed
15069 according to s. 624.4211 for those claims payment violations
15070 which exceed the error ratio. Notwithstanding the provisions of
15071 this section, the office ~~department~~ may fine a health
15072 maintenance organization for claims payment violations of
15073 paragraphs (3)(e) and (4)(e) which create an uncontestable
15074 obligation to pay the claim. The office ~~department~~ shall not
15075 fine organizations for violations which the office ~~department~~
15076 determines were due to circumstances beyond the organization's
15077 control.

15078 Section 283. Subsection (4), (6), and (7) of section
15079 641.316, Florida Statutes, are amended to read:

15080 641.316 Fiscal intermediary services.--

15081 (4) A fiscal intermediary services organization, as
15082 described in subsection (3), shall secure and maintain a surety
15083 bond on file with the office ~~department~~, naming the intermediary
15084 as principal. The bond must be obtained from a company
15085 authorized to write surety insurance in the state, and the
15086 office ~~department~~ shall be obligee on behalf of itself and third
15087 parties. The penal sum of the bond may not be less than 5
15088 percent of the funds handled by the intermediary in connection



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15089 with its fiscal and fiduciary services during the prior year or
15090 \$250,000, whichever is less. The minimum bond amount must be
15091 \$10,000. The condition of the bond must be that the intermediary
15092 shall register with the office ~~department~~ and shall not
15093 misappropriate funds within its control or custody as a fiscal
15094 intermediary or fiduciary. The aggregate liability of the surety
15095 for any and all breaches of the conditions of the bond may not
15096 exceed the penal sum of the bond. The bond must be continuous in
15097 form, must be renewed annually by a continuation certificate,
15098 and may be terminated by the surety upon its giving 30 days'
15099 written notice of termination to the office ~~department~~.

15100 (6) Any fiscal intermediary services organization, other
15101 than a fiscal intermediary services organization owned,
15102 operated, or controlled by a hospital licensed under chapter
15103 395, an insurer licensed under chapter 624, a third-party
15104 administrator licensed under chapter 626, a prepaid limited
15105 health service organization licensed under chapter 636, a health
15106 maintenance organization licensed under this chapter, or
15107 physician group practices as defined in s. 456.053(3)(h), must
15108 register with the office ~~department~~ and meet the requirements of
15109 this section. In order to register as a fiscal intermediary
15110 services organization, the organization must comply with ss.
15111 641.21(1)(c) and (d) and 641.22(6). Should the office ~~department~~
15112 determine that the fiscal intermediary services organization
15113 does not meet the requirements of this section, the registration
15114 shall be denied. In the event that the registrant fails to
15115 maintain compliance with the provisions of this section, the
15116 office ~~department~~ may revoke or suspend the registration. In



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15117 lieu of revocation or suspension of the registration, the office
15118 ~~department~~ may levy an administrative penalty in accordance with
15119 s. 641.25.

15120 (7) The commission ~~department~~ shall adopt rules necessary
15121 to administer this section.

15122 Section 284. Subsections (1), (2), (3), and (4), paragraph
15123 (b) of subsection (6), subsection (8), paragraph (c) of
15124 subsection (10), subsections (11) and (12), paragraph (a) of
15125 subsection (14), and subsections (15), (16), and (17) of section
15126 641.35, Florida Statutes, are amended to read:

15127 641.35 Assets, liabilities, and investments.--

15128 (1) ASSETS.--In any determination of the financial
15129 condition of a health maintenance organization, there shall be
15130 allowed as "assets" only those assets that are owned by the
15131 health maintenance organization and that consist of:

15132 (a) Cash or cash equivalents in the possession of the
15133 health maintenance organization, or in transit under its
15134 control, including the true balance of any deposit in a solvent
15135 bank, savings and loan association, or trust company which is
15136 domiciled in the United States. Cash equivalents are short-term,
15137 highly liquid investments, with original maturities of 3 months
15138 or less, which are both readily convertible to known amounts of
15139 cash and so near their maturity that they present insignificant
15140 risk of changes in value because of changes in interest rates.

15141 (b) Investments, securities, properties, and loans
15142 acquired or held in accordance with this part, and in connection
15143 therewith the following items:



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- 15144 1. Interest due or accrued on any bond or evidence of
15145 indebtedness which is not in default and which is not valued on
15146 a basis including accrued interest.
- 15147 2. Declared and unpaid dividends on stock and shares,
15148 unless the amount of the dividends has otherwise been allowed as
15149 an asset.
- 15150 3. Interest due or accrued upon a collateral loan which is
15151 not in default in an amount not to exceed 1 year's interest
15152 thereon.
- 15153 4. Interest due or accrued on deposits or certificates of
15154 deposit in solvent banks, savings and loan associations, and
15155 trust companies domiciled in the United States, and interest due
15156 or accrued on other assets, if such interest is in the judgment
15157 of the office ~~department~~ a collectible asset.
- 15158 5. Interest due or accrued on current mortgage loans, in
15159 an amount not exceeding in any event the amount, if any, of the
15160 excess of the value of the property less delinquent taxes
15161 thereon over the unpaid principal; but in no event shall
15162 interest accrued for a period in excess of 90 days be allowed as
15163 an asset.
- 15164 (c) Premiums in the course of collection, not more than 3
15165 months past due, less commissions payable thereon. The
15166 foregoing limitation shall not apply to premiums payable
15167 directly or indirectly by any governmental body in the United
15168 States or by any of their instrumentalities.
- 15169 (d) The full amount of reinsurance recoverable from a
15170 solvent reinsurer, which reinsurance is authorized under s.
15171 624.610.



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15172 (e) Pharmaceutical and medical supply inventories.
 15173 (f) Goodwill created by acquisitions and mergers occurring
 15174 on or after January 1, 2001.

15175 (g) Loans or advances by a health maintenance organization
 15176 to its parent or principal owner if approved by the office
 15177 ~~department~~.

15178 (h) Other assets, not inconsistent with the provisions of
 15179 this section, deemed by the office ~~department~~ to be available
 15180 for the payment of losses and claims, at values to be determined
 15181 by it.

15182
 15183 The office ~~department~~, upon determining that a health
 15184 maintenance organization's asset has not been evaluated
 15185 according to applicable law or that it does not qualify as an
 15186 asset, shall require the health maintenance organization to
 15187 properly reevaluate the asset or replace the asset with an asset
 15188 suitable to the office ~~department~~ within 30 days of receipt of
 15189 written notification by the office ~~department~~ of this
 15190 determination, if the removal of the asset from the
 15191 organization's assets would impair the organization's solvency.

15192 (2) ASSETS NOT ALLOWED.--In addition to assets impliedly
 15193 excluded by the provisions of subsection (1), the following
 15194 assets expressly shall not be allowed as assets in any
 15195 determination of the financial condition of a health maintenance
 15196 organization:

15197 (a) Subscriber lists, patents, trade names, agreements not
 15198 to compete, and other like intangible assets.



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15199 (b) Any note or account receivable from or advances to
 15200 officers, directors, or controlling stockholders, whether
 15201 secured or not, and advances to employees, agents, or other
 15202 persons on personal security only, other than those transactions
 15203 authorized under paragraph (1)(g).

15204 (c) Stock of the health maintenance organization owned by
 15205 it directly or owned by it through any entity in which the
 15206 organization owns or controls, directly or indirectly, more than
 15207 25 percent of the ownership interest.

15208 (d) Leasehold improvements, nonmedical libraries,
 15209 stationery, literature, and nonmedical supply inventories,
 15210 except that leasehold improvements made prior to October 1,
 15211 1985, shall be allowed as an asset and shall be amortized over
 15212 the shortest of the following periods:

- 15213 1. The life of the lease.
- 15214 2. The useful life of the improvements.
- 15215 3. The 3-year period following October 1, 1985.

15216 (e) Furniture, fixtures, furnishings, vehicles, medical
 15217 libraries, and equipment.

15218 (f) Notes or other evidences of indebtedness which are
 15219 secured by mortgages or deeds of trust which are in default and
 15220 beyond the express period specified in the instrument for curing
 15221 the default.

15222 (g) Bonds in default for more than 60 days.

15223 (h) Prepaid and deferred expenses.

15224 (i) Any note, account receivable, advance, or other
 15225 evidence of indebtedness, or investment in:

- 15226 1. The parent of the health maintenance organization;



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15227 | 2. Any entity directly or indirectly controlled by the
15228 | health maintenance organization parent; or

15229 | 3. An affiliate of the parent or the health maintenance
15230 | organization,

15231 |
15232 | except as allowed in subsections (1), (11), and (12). The
15233 | office department may, however, allow all or a portion of such
15234 | asset, at values to be determined by the office department, if
15235 | deemed by the office department to be available for the payment
15236 | of losses and claims.

15237 | (3) LIABILITIES.--In any determination of the financial
15238 | condition of a health maintenance organization, liabilities to
15239 | be charged against its assets shall include:

15240 | (a) The amount, estimated consistently with the provisions
15241 | of this part, necessary to pay all of its unpaid losses and
15242 | claims incurred for or on behalf of a subscriber, on or prior to
15243 | the end of the reporting period, whether reported or unreported,
15244 | including contract and premium deficiency reserves. If a health
15245 | maintenance organization, through a health care risk contract,
15246 | transfers to any entity the obligation to pay any provider for
15247 | any claim arising from services provided to or for the benefit
15248 | of any subscriber, the liabilities of the health maintenance
15249 | organization under this section shall include the amount of
15250 | those losses and claims to the extent that the provider has not
15251 | received payment. No liability need be established if the entity
15252 | has provided to the health maintenance organization a financial
15253 | instrument acceptable to the office department securing the
15254 | obligations under the contract or if the health maintenance



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15255 organization has in place an escrow or withhold agreement
15256 approved by the office ~~department~~ which assures full payment of
15257 those claims. Financial instruments may include irrevocable,
15258 clean, and evergreen letters of credit. As used in this
15259 paragraph, the term "entity" does not include this state, the
15260 United States, or an agency thereof or an insurer or health
15261 maintenance organization authorized in this state.

15262 (b) The amount equal to the unearned portions of the gross
15263 premiums charged on health maintenance contracts in force.

15264 (c) Taxes, expenses, and other obligations due or accrued
15265 at the date of the statement.

15266

15267 The office ~~department~~, upon determining that a health
15268 maintenance organization has failed to report liabilities that
15269 should have been reported, shall require a corrected report
15270 which reflects the proper liabilities to be submitted by the
15271 organization to the office ~~department~~ within 10 working days of
15272 receipt of written notification.

15273 (4) INVESTMENTS GENERALLY.--Health maintenance
15274 organizations may invest their funds only in accordance with the
15275 provisions of this part. Notwithstanding the provisions of this
15276 part, however, the office ~~department~~ may, after notice and
15277 hearing, order a health maintenance organization to limit or
15278 withdraw from certain investments or to discontinue certain
15279 investment practices, to the extent that the office ~~department~~
15280 finds the investment practices hazardous to the financial
15281 condition of the organization. At any such hearing, the office
15282 ~~department~~ shall have the burden of presenting a prima facie



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15283 case that the investment or investment practices are hazardous
15284 to the financial condition of the organization. If the office
15285 ~~department~~ presents such a prima facie case, then it shall be
15286 the organization's burden to demonstrate that the investment or
15287 investment practices are not hazardous to the financial
15288 condition of the organization.

15289 (6) GENERAL QUALIFICATIONS.--

15290 (b) No security or investment shall be eligible for
15291 purchase at a price above its market value unless it is approved
15292 by the office ~~department~~.

15293 (8) EXCESSIVE COMMISSIONS AND CERTAIN INTERESTS
15294 PROHIBITED.--

15295 (a) No health maintenance organization shall pay any
15296 commission or brokerage for the purchase or sale of property,
15297 whether real or personal, in excess of that usual and customary
15298 at the time and in the locality where the purchases or sales are
15299 made. Information regarding payments of commissions and
15300 brokerage shall be maintained from the date of the most recent
15301 examination by the office ~~department~~ pursuant to s. 641.27 until
15302 the date of completion of the following examination.

15303 (b) No health maintenance organization shall knowingly
15304 invest in or loan upon any property, directly or indirectly,
15305 whether real or personal, in which any officer or director of
15306 the organization has a financial interest, nor shall any
15307 organization make a loan of any kind to any officer or director
15308 of the organization, except that:

15309 1. This paragraph shall not apply to loans in
15310 circumstances in which the financial interest of the officer or



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15311 director is only nominal, trifling, or so remote as not to give
15312 rise to a conflict of interest; and

15313 2. In any case, the office ~~department~~ may approve a
15314 transaction between an organization and its officers or
15315 directors under this paragraph if it is satisfied that:

15316 a. The transaction is entered into in good faith for the
15317 advantage and benefit of the organization,

15318 b. The amount of the proposed investment or loan does not
15319 violate any other provision of this part or exceed the
15320 reasonable, normal value of the property or the interest which
15321 the company proposed to acquire,

15322 c. The transaction is otherwise fair and reasonable, and

15323 d. The transaction will not adversely affect, to any
15324 substantial degree, the liquidity of the organization's
15325 investments or its ability thereafter to comply with
15326 requirements of this part or the payment of its claims and
15327 obligations.

15328 (10) PROPERTY USED IN THE HEALTH MAINTENANCE

15329 ORGANIZATION'S BUSINESS.--Real estate, including leasehold
15330 estates, for the convenient accommodation of the organization's
15331 business operations, including home office, branch
15332 administrative offices, hospitals, medical clinics, medical
15333 professional buildings, and any other facility to be used in the
15334 provision of health care services, or real estate for rental to
15335 any health care provider under contract with the organization to
15336 provide health care services which shall be used in the
15337 provision of health care services to members of the organization



15338 by that provider, is acceptable as an investment on the
15339 following conditions:

15340 (c) The greater of the admitted value of the asset, as
15341 determined by statutory accounting principles, or, if approved
15342 by the office ~~department~~, the health maintenance organization's
15343 equity in the real estate plus all encumbrances on the real
15344 estate owned by the organization under this subsection, when
15345 added to the value of all personal and mixed property used in
15346 the organization's business, shall not exceed 75 percent of its
15347 admitted assets unless, with the permission of the office
15348 ~~department~~, it finds that the percentage of its admitted assets
15349 is insufficient to provide convenient accommodation for the
15350 organization's business and the operations of the organization
15351 would not otherwise be impaired.

15352 (11) INVESTMENTS IN ADMINISTRATIVE AND MANAGEMENT SERVICE
15353 ENTITIES AND OTHER HEALTH CARE PROVIDERS.--A health maintenance
15354 organization may invest directly or indirectly in real estate,
15355 common and preferred stocks, bonds or debentures, including
15356 convertible debentures, or other evidences of debts of or equity
15357 in an entity if the entity is owned by or, with the approval of
15358 the office ~~department~~, under contract to the organization to
15359 provide management services, administrative services, or health
15360 care services for the organization, on the following conditions:

15361 (a) Investments authorized under this subsection shall not
15362 exceed 50 percent of admitted assets, and these investments
15363 shall be included in the calculation of the overall limitation
15364 in paragraph (10)(c) relating to all real and personal property.



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15365 (b) Investments may qualify under this section only
 15366 insofar as a provider of management, administrative, or health
 15367 care service relationship as defined herein exists. Upon
 15368 cessation of such relationship, each investment shall be subject
 15369 to the rules applicable to an investment of that type and must
 15370 qualify under the appropriate limitation or, failing that,
 15371 become ineligible and subject to disposal under subsection (17).

15372 (12) EXCHANGES OF FACILITIES OR ASSETS.--Health care or
 15373 administrative service entities, if subsidiaries of or under
 15374 contract to the health maintenance organization to provide
 15375 administrative or health care services to the organization's
 15376 members, may exchange facilities or similar assets to be used in
 15377 the organization's business for stock of the organization.
 15378 However, any exchange involving an entity under contract with
 15379 the health maintenance organization must have the approval of
 15380 the office ~~department~~ prior to the exchange. These facilities
 15381 or assets shall be valued in accordance with statutory
 15382 accounting principles.

15383 (14) SPECIAL LIMITATION INVESTMENTS.--

15384 (a) After satisfying the requirements of this part, any
 15385 funds of the health maintenance organization may be invested in
 15386 the following investments, subject to a cost limitation of 10
 15387 percent of its admitted assets in each category of investment:

15388 1. Anticipation obligations of political subdivisions of a
 15389 state.--Anticipation obligations of any political subdivision of
 15390 any state of the United States, including, but not limited to,
 15391 bond anticipation notes, tax anticipation notes, preliminary
 15392 loan anticipation notes, revenue anticipation notes, and



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15393 construction anticipation notes, for the payment of money within
15394 12 months from the issuance of the obligation, on the following
15395 conditions:

15396 a. The anticipation notes are a direct obligation of the
15397 issuer under conditions set forth in subsection (9).

15398 b. The political subdivision is not in default in the
15399 payment of the principal or interest on any of its direct
15400 general obligations or any obligation guaranteed by such
15401 political subdivision.

15402 c. The anticipated funds are specifically pledged to
15403 secure the obligations.

15404 2. Revenue obligations of state or municipal public
15405 utilities.--Obligations of any state of the United States, a
15406 political subdivision thereof, or a public instrumentality of
15407 any one or more of the foregoing for the payment of money, on
15408 the following conditions:

15409 a. The obligations are payable from revenues or earnings
15410 of a public utility of such state, political subdivision, or
15411 public instrumentality which are specifically pledged therefor.

15412 b. The law under which the obligations are issued requires
15413 that such rates for service shall be charged and collected at
15414 all times so as to produce sufficient revenue or earning,
15415 together with any other revenues or moneys pledged, to pay all
15416 operating and maintenance charges of the public utility and all
15417 principal and interest on such charges.

15418 c. No prior or parity obligations payable from the
15419 revenues or earnings of that public utility are in default at
15420 the date of such investment.



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15421 3. Other revenue obligations.--Obligations of any state of
15422 the United States, a political subdivision thereof, or a public
15423 instrumentality of any of the foregoing for the payment of
15424 money, on the following conditions:

15425 a. The obligations are payable from revenues or earnings,
15426 excluding revenues or earnings from public utilities,
15427 specifically pledged therefor by such state, political
15428 subdivision, or public instrumentality.

15429 b. No prior or parity obligation of the same issuer
15430 payable from revenues or earnings from the same source has been
15431 in default as to principal or interest during the 5 years next
15432 preceding the date of the investment, but the issuer need not
15433 have been in existence for that period, and obligations acquired
15434 under this paragraph may be newly issued.

15435 4. Corporate stocks.--Stocks, common or preferred, of any
15436 corporation created or existing under the laws of the United
15437 States or any state thereof. The organization may invest in
15438 stocks, common or preferred, of any corporation created or
15439 existing under the laws of any foreign country if such stocks
15440 are listed and traded on a national securities exchange in the
15441 United States or, in the alternative, if such investment in
15442 stocks of any corporation created or existing under the laws of
15443 any foreign country are first approved by the office ~~department~~.
15444 Investment in common stock of any one corporation shall not
15445 exceed 3 percent of the health maintenance organization's
15446 admitted assets.

15447 (15) INVESTMENT OF EXCESS FUNDS.--



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15448 (a) After satisfying the requirements of this part, any
 15449 funds of a health maintenance organization in excess of its
 15450 statutorily required reserves and surplus may be invested:

15451 1. Without limitation in any investments otherwise
 15452 authorized by this part; or

15453 2. In such other investments not specifically authorized
 15454 by this part, provided such investments do not exceed the lesser
 15455 of 5 percent of the health maintenance organization's admitted
 15456 assets or 25 percent of the amount by which a health maintenance
 15457 organization's surplus exceeds its statutorily required minimum
 15458 surplus. A health maintenance organization may exceed the
 15459 limitations of this subparagraph only with the prior written
 15460 approval of the office ~~department~~.

15461 (b) Nothing in this section authorizes a health
 15462 maintenance organization to:

15463 1. Invest any funds in excess of the amount by which its
 15464 actual surplus exceeds its statutorily required minimum surplus;
 15465 or

15466 2. Make any investment prohibited by this code.

15467 (16) PROHIBITED INVESTMENTS AND INVESTMENT UNDERWRITING.--

15468 (a) In addition to investments excluded pursuant to other
 15469 provisions of this act, a health maintenance organization shall
 15470 not directly or indirectly invest in or lend its funds upon the
 15471 security of:

15472 1. Issued shares of its own capital stock, except in
 15473 connection with a plan approved by the office ~~department~~ for
 15474 purchase of the shares by the organization's officers,
 15475 employees, or agents. However, no such stock shall constitute an



15476 | asset of the organization in any determination of its financial
15477 | condition.

15478 | 2. Except with the consent of the office ~~department~~,
15479 | securities issued by any corporation or enterprise the
15480 | controlling interest of which is, or will after such acquisition
15481 | by the organization be, held directly or indirectly by the
15482 | organization or any combination of the organization and its
15483 | directors, officers, parent corporation, subsidiaries, or
15484 | controlling stockholders. Investments in health care providers
15485 | under subsections (11) and(12) shall not be subject to this
15486 | provision.

15487 | 3. Any note or other evidence of indebtedness of any
15488 | director, officer, or controlling stockholder of the health
15489 | maintenance organization.

15490 | (b) No health maintenance organization shall underwrite or
15491 | participate in the underwriting of an offering of securities or
15492 | property by any other person.

15493 | (17) TIME LIMIT FOR DISPOSAL OF INELIGIBLE PROPERTY AND
15494 | SECURITIES; EFFECT OF FAILURE TO DISPOSE.--

15495 | (a) Any property or securities lawfully acquired by a
15496 | health maintenance organization which it could not otherwise
15497 | have invested in or loaned its funds upon at the time of such
15498 | acquisition shall be disposed of within 6 months from the date
15499 | of acquisition, unless within such period the security has
15500 | attained to the standard of eligibility; except that any
15501 | security or property acquired under any agreement of merger or
15502 | consolidation may be retained for a longer period if so provided
15503 | in the plan for such merger or consolidation, as approved by the



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15504 office ~~department~~. Upon application by the organization and
15505 proof to the office ~~department~~ that forced sale of any such
15506 property or security would materially injure the interests of
15507 the health maintenance organization, the office ~~department~~ shall
15508 extend the disposal period for an additional reasonable time.

15509 (b) Notwithstanding the provisions of paragraph (a), any
15510 ineligible property or securities shall not be allowed as an
15511 asset of the organization.

15512 Section 285. Section 641.36, Florida Statutes, is amended
15513 to read:

15514 641.36 Adoption of rules; penalty for violation.--The
15515 commission ~~department~~ shall adopt rules necessary to carry out
15516 the provisions of this part. The office ~~department~~ shall
15517 collect and make available all health maintenance organization
15518 rules adopted by the commission ~~department~~. Any violation of a
15519 rule adopted under this section shall subject the violating
15520 entity to the provisions of s. 641.23.

15521 Section 286. Subsections (1), (2), and (5) of section
15522 641.365, Florida Statutes, are amended to read:

15523 641.365 Dividends.--

15524 (1)(a) A health maintenance organization shall not pay any
15525 dividend or distribute cash or other property to stockholders
15526 except out of that part of its available and accumulated surplus
15527 funds which is derived from realized net operating profits on
15528 its business and net realized capital gains.

15529 (b) Unless prior written approval is obtained from the
15530 office ~~department~~, a health maintenance organization may not pay
15531 or declare any dividend or distribute cash or other property to



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15532 or on behalf of any stockholder if, immediately before or after
15533 such distribution, the health maintenance organization's
15534 available and accumulated surplus funds, which are derived from
15535 realized net operating profits on its business and net realized
15536 gains, are or would be less than zero.

15537 (c) A health maintenance organization may make dividend
15538 payments or distributions to stockholders without the prior
15539 written approval of the office ~~department~~ when:

15540 1. The dividend is equal to or less than the greater of:

15541 a. Ten percent of the health maintenance organization's
15542 accumulated surplus funds which are derived from realized net
15543 operating profits on its business and net realized capital gains
15544 as of the immediate preceding calendar year; or

15545 b. The health maintenance organization's entire net
15546 operating profit and realized net capital gains derived during
15547 the immediately preceding calendar year.

15548 2. The health maintenance organization will have surplus
15549 equal to or exceeding 115 percent of the minimum required
15550 statutory surplus after the dividend or distribution is made.

15551 3. The health maintenance organization has filed a notice
15552 with the office ~~department~~ at least 30 days prior to the
15553 dividend payment or distribution, or such shorter period of time
15554 as approved by the office ~~department~~ on a case-by-case basis.

15555 4. The notice includes a certification by an officer of
15556 the health maintenance organization attesting that after payment
15557 of the dividend or distribution the health maintenance
15558 organization will have at least 115 percent of required
15559 statutory surplus.



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15560 5. The health maintenance organization has negative
15561 retained earnings, statutory surplus in excess of \$50 million,
15562 and statutory surplus greater than or equal to 150 percent of
15563 its required statutory surplus before and after the dividend
15564 distribution is made based upon the health maintenance
15565 organization's most recently filed annual financial statement.

15566 (2) The office ~~department~~ shall not approve a dividend or
15567 distribution in excess of the maximum amount allowed in
15568 subsection(1) unless it determines that the distribution or
15569 dividend would not jeopardize the financial condition of the
15570 health maintenance organization, considering:

15571 (a) The liquidity, quality, and diversification of the
15572 health maintenance organization's assets and the effect on its
15573 ability to meet its obligations.

15574 (b) Any reduction of investment portfolio and investment
15575 income.

15576 (c) History of capital contributions.

15577 (d) Prior dividend distributions of the health maintenance
15578 organization.

15579 (e) Whether the dividend is only a pass-through dividend
15580 from a subsidiary of the health maintenance organization.

15581 (5) The office ~~department~~ may revoke or suspend the
15582 certificate of authority of a health maintenance organization
15583 which has declared or paid such an illegal dividend.

15584 Section 287. Section 641.385, Florida Statutes, is amended
15585 to read:

15586 641.385 Order to discontinue certain advertising.--If in
15587 the opinion of the office ~~department~~ any advertisement by a



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15588 health maintenance organization violates any of the provisions
15589 of this part, the department may enter an immediate order
15590 requiring that the use of the advertisement be discontinued. If
15591 requested by the health maintenance organization, the office
15592 ~~department~~ shall conduct a hearing within 10 days of the entry
15593 of such order. If, after the hearing or by agreement with the
15594 health maintenance organization, a final determination is made
15595 that the advertising was in fact violative of any provision of
15596 this part, the office ~~department~~ may, in lieu of revocation of
15597 the certificate of authority, require the publication of a
15598 corrective advertisement; impose an administrative penalty of up
15599 to \$10,000; and, in the case of an initial solicitation, require
15600 that the health maintenance organization, prior to accepting any
15601 application received in response to the advertisement, provide
15602 an acceptable clarification of the advertisement to each
15603 individual applicant.

15604 Section 288. Subsection (1) of section 641.39001, Florida
15605 Statutes, is amended to read:

15606 641.39001 Soliciting or accepting new or renewal health
15607 maintenance contracts by insolvent or impaired health
15608 maintenance organization prohibited; penalty.--

15609 (1) Whether or not delinquency proceedings as to a health
15610 maintenance organization have been or are to be initiated, a
15611 director or officer of a health maintenance organization, except
15612 with the written permission of the office ~~Department of~~
15613 ~~Insurance~~, may not authorize or permit the health maintenance
15614 organization to solicit or accept new or renewal health
15615 maintenance contracts or provider contracts in this state after



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15616 the director or officer knew, or reasonably should have known,
15617 that the health maintenance organization was insolvent or
15618 impaired. As used in this section, the term "impaired" means
15619 that the health maintenance organization does not meet the
15620 requirements of s. 641.225.

15621 Section 289. Subsections (6) and (10) of section 641.3903,
15622 Florida Statutes, are amended to read:

15623 641.3903 Unfair methods of competition and unfair or
15624 deceptive acts or practices defined.--The following are defined
15625 as unfair methods of competition and unfair or deceptive acts or
15626 practices:

15627 (6) FAILURE TO MAINTAIN COMPLAINT-HANDLING
15628 PROCEDURES.--Failure of any person to maintain a complete record
15629 of all the complaints received since the date of the most recent
15630 examination of the health maintenance organization by the office
15631 ~~department~~. For the purposes of this subsection, the term
15632 "complaint" means any written communication primarily expressing
15633 a grievance and requesting a remedy to the grievance.

15634 (10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED
15635 CHARGES FOR HEALTH MAINTENANCE COVERAGE.--

15636 (a) Knowingly collecting any sum as a premium or charge
15637 for health maintenance coverage which is not then provided or is
15638 not in due course to be provided, subject to acceptance of the
15639 risk by the health maintenance organization, by a health
15640 maintenance contract issued by a health maintenance organization
15641 as permitted by this part.

15642 (b) Knowingly collecting as a premium or charge for health
15643 maintenance coverage any sum in excess of or less than the



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15644 premium or charge applicable to health maintenance coverage, in
15645 accordance with the applicable classifications and rates as
15646 filed with the office ~~department~~, and as specified in the health
15647 maintenance contract.

15648 Section 290. Section 641.3905, Florida Statutes, is
15649 amended to read:

15650 641.3905 General powers and duties of the department and
15651 office.--In addition to the powers and duties set forth in s.
15652 624.307, the department and office shall each have the power
15653 within its respective regulatory jurisdiction to examine and
15654 investigate the affairs of every person, entity, or health
15655 maintenance organization in order to determine whether the
15656 person, entity, or health maintenance organization is operating
15657 in accordance with the provisions of this part or has been or is
15658 engaged in any unfair method of competition or in any unfair or
15659 deceptive act or practice prohibited by s. 641.3901, and each
15660 shall have the powers and duties specified in ss. 641.3907-
15661 641.3913 in connection therewith.

15662 Section 291. Section 641.3907, Florida Statutes, is
15663 amended to read:

15664 641.3907 Defined unfair practices; hearings, witnesses,
15665 appearances, production of books, and service of process.--

15666 (1) Whenever the department or office has reason to
15667 believe that any person, entity, or health maintenance
15668 organization has engaged, or is engaging, in this state in any
15669 unfair method of competition or any unfair or deceptive act or
15670 practice as defined in s. 641.3903 or is operating a health
15671 maintenance organization without a certificate of authority as



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15672 required by this part and that a proceeding by it in respect
15673 thereto would be to the interest of the public, the department
15674 or office shall conduct or cause to have conducted a hearing in
15675 accordance with chapter 120.

15676 (2) The department or office, a duly empowered hearing
15677 officer, or an administrative law judge shall, during the
15678 conduct of such hearing, have those powers enumerated in s.
15679 120.569; however, the penalties for failure to comply with a
15680 subpoena or with an order directing discovery shall be limited
15681 to a fine not to exceed \$1,000 per violation.

15682 (3) Statements of charges, notices, and orders under this
15683 part may be served by anyone duly authorized by the department
15684 or office, either in the manner provided by law for service of
15685 process in civil actions or by certifying and mailing a copy
15686 thereof to the person, entity, or health maintenance
15687 organization affected by the statement, notice, order, or other
15688 process at her or his or its residence or principal office or
15689 place of business. The verified return by the person so serving
15690 such statement, notice, order, or other process, setting forth
15691 the manner of the service, shall be proof of the same, and the
15692 return postcard receipt for such statement, notice, order, or
15693 other process, certified and mailed as aforesaid, shall be proof
15694 of service of the same.

15695 Section 292. Section 641.3909, Florida Statutes, is
15696 amended to read:

15697 641.3909 Cease and desist and penalty orders.--After the
15698 hearing provided in s. 641.3907, the department or office shall
15699 enter a final order in accordance with s. 120.569. If it is



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15700 determined that the person, entity, or health maintenance
15701 organization charged has engaged in an unfair or deceptive act
15702 or practice or the unlawful operation of a health maintenance
15703 organization without a subsisting certificate of authority, the
15704 department or office shall also issue an order requiring the
15705 violator to cease and desist from engaging in such method of
15706 competition, act, or practice or unlawful operation of a health
15707 maintenance organization. Further, if the act or practice
15708 constitutes a violation of s. 641.3155, s. 641.3901, or s.
15709 641.3903, the department or office may, at its discretion, order
15710 any one or more of the following:

15711 (1) Suspension or revocation of the health maintenance
15712 organization's certificate of authority if it knew, or
15713 reasonably should have known, it was in violation of this part.

15714 (2) If it is determined that the person or entity charged
15715 has engaged in the business of operating a health maintenance
15716 organization without a certificate of authority, an
15717 administrative penalty not to exceed \$1,000 for each health
15718 maintenance contract offered or effectuated.

15719 Section 293. Section 641.3911, Florida Statutes, is
15720 amended to read:

15721 641.3911 Appeals from the department or office.--Any
15722 person, entity, or health maintenance organization subject to an
15723 order of the department or office under s. 641.3909 or s.
15724 641.3913 may obtain a review of the order by filing an appeal
15725 therefrom in accordance with the provisions and procedures for
15726 appeal under s. 120.68.



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15727 Section 294. Section 641.3913, Florida Statutes, is
15728 amended to read:

15729 641.3913 Penalty for violation of cease and desist
15730 orders.--Any person, entity, or health maintenance organization
15731 which violates a cease and desist order of the department or
15732 office under s. 641.3909 while such order is in effect, after
15733 notice and hearing as provided in s. 641.3907, shall be subject,
15734 at the discretion of the department or office, to any one or
15735 more of the following:

15736 (1) A monetary penalty of not more than \$200,000 as to all
15737 matters determined in such hearing.

15738 (2) Suspension or revocation of the health maintenance
15739 organization's certificate of authority.

15740 Section 295. Section 641.3917, Florida Statutes, is
15741 amended to read:

15742 641.3917 Civil liability.--The provisions of this part are
15743 cumulative to rights under the general civil and common law, and
15744 no action of the department or office shall abrogate such rights
15745 to damage or other relief in any court.

15746 Section 296. Subsections (3), (10), and (14) of section
15747 641.3922, Florida Statutes, are amended to read:

15748 641.3922 Conversion contracts; conditions.--Issuance of a
15749 converted contract shall be subject to the following conditions:

15750 (3) CONVERSION PREMIUM.--The premium for the converted
15751 contract shall be determined in accordance with premium rates
15752 applicable to the age and class of risk of each person to be
15753 covered under the converted contract and to the type and amount
15754 of coverage provided. However, the premium for the converted



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15755 contract may not exceed 200 percent of the standard risk rate,
15756 as established by the office ~~department~~ under s. 627.6675(3).
15757 The mode of payment for the converted contract shall be
15758 quarterly or more frequently at the option of the organization,
15759 unless otherwise mutually agreed upon between the subscriber and
15760 the organization.

15761 (10) ALTERNATE PLANS.--The health maintenance organization
15762 shall offer a standard health benefit plan as established
15763 pursuant to s. 627.6699(12). The health maintenance organization
15764 may, at its option, also offer alternative plans for group
15765 health conversion in addition to those required by this section,
15766 provided any alternative plan is approved by the office
15767 ~~department~~ or is a converted policy, approved under s. 627.6675
15768 and issued by an insurance company authorized to transact
15769 insurance in this state. Approval by the office ~~department~~ of an
15770 alternative plan shall be based on compliance by the alternative
15771 plan with the provisions of this part and the rules promulgated
15772 thereunder, applicable provisions of the Florida Insurance Code
15773 and rules promulgated thereunder, and any other applicable law.

15774 (14) NOTIFICATION.--A notification of the conversion
15775 privilege shall be included in each health maintenance contract
15776 and in any certificate or member's handbook. The organization
15777 shall mail an election and premium notice form, including an
15778 outline of coverage, on a form approved by the office
15779 ~~department~~, within 14 days after any individual who is eligible
15780 for a converted health maintenance contract gives notice to the
15781 organization that the individual is considering applying for the
15782 converted contract or otherwise requests such information. The



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15783 outline of coverage must contain a description of the principal
15784 benefits and coverage provided by the contract and its principal
15785 exclusions and limitations, including, but not limited to,
15786 deductibles and coinsurance.

15787 Section 297. Section 641.402, Florida Statutes, is amended
15788 to read:

15789 641.402 Definitions.--As used in this part, the term:

15790 (1) "Basic services" includes any of the following:
15791 emergency care, physician care other than hospital inpatient
15792 physician services, ambulatory diagnostic treatment, and
15793 preventive health care services.

15794 ~~(2) "Department" means the Department of Insurance.~~

15795 (2)~~(3)~~ "Guaranteeing organization" means an organization
15796 that ~~which~~ is domiciled in the United States; that ~~which~~ has
15797 authorized service of process against it; and that ~~which~~ has
15798 appointed the Chief Financial Officer ~~Insurance Commissioner and~~
15799 ~~Treasurer~~ as its agent for service of process in connection with
15800 any cause of action arising in this state, based upon any
15801 guarantee entered into under this part.

15802 (3)~~(4)~~ "Insolvent" or "insolvency" means the inability of
15803 a prepaid health clinic to discharge its liabilities as they
15804 become due in the normal course of business.

15805 (4)~~(5)~~ "Prepaid health clinic" means any organization
15806 authorized under this part which provides, either directly or
15807 through arrangements with other persons, basic services to
15808 persons enrolled with such organization, on a prepaid per capita
15809 or prepaid aggregate fixed-sum basis, including those basic
15810 services which subscribers might reasonably require to maintain



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15811 | good health. However, no clinic that ~~which~~ provides or contracts
15812 | for, either directly or indirectly, inpatient hospital services,
15813 | hospital inpatient physician services, or indemnity against the
15814 | cost of such services shall be a prepaid health clinic.

15815 | (5)~~(6)~~ "Prepaid health clinic contract" means any contract
15816 | entered into by a prepaid health clinic with a subscriber or
15817 | group of subscribers to provide any of the basic services in
15818 | exchange for a prepaid per capita or prepaid aggregate fixed
15819 | sum.

15820 | (6)~~(7)~~ "Provider" means any physician or person other than
15821 | a hospital that furnishes health care services and is licensed
15822 | or authorized to practice in this state.

15823 | (7)~~(8)~~ "Reporting period" means the particular span of
15824 | time by or for which accounts are redeemed on an annualized
15825 | basis.

15826 | (8)~~(9)~~ "Subscriber" means an individual who has
15827 | contracted, or on whose behalf a contract has been entered into,
15828 | with a prepaid health clinic for health care services.

15829 | (9)~~(10)~~ "Surplus" means total unencumbered assets in
15830 | excess of total liabilities. Surplus includes capital stock,
15831 | capital in excess of par, and retained earnings and may include
15832 | surplus notes.

15833 | (10)~~(11)~~ "Surplus notes" means debt that ~~which~~ has been
15834 | guaranteed by the United States Government or its agencies or
15835 | debt that ~~which~~ has been subordinated to all claims of
15836 | subscribers and general creditors of the prepaid health clinic.

15837 | Section 298. Section 641.403, Florida Statutes, is amended
15838 | to read:



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15839 641.403 Rulemaking authority.--The commission may
15840 ~~Department of Insurance has authority to~~ adopt rules pursuant to
15841 ss. 120.536(1) and 120.54 to implement the provisions of this
15842 part.

15843 Section 299. Section 641.405, Florida Statutes, is amended
15844 to read:

15845 641.405 Application for certificate of authority to
15846 operate prepaid health clinic.--

15847 (1) No person may operate a prepaid health clinic without
15848 first obtaining a certificate of authority from the office
15849 ~~department~~. The office ~~department~~ shall not issue a certificate
15850 of authority to any applicant which does not possess a valid
15851 Health Care Provider Certificate issued by the Agency for Health
15852 Care Administration.

15853 (2) Each application for a certificate of authority shall
15854 be on such form as the commission ~~department~~ prescribes, and
15855 such application shall be accompanied by:

15856 (a) A copy of the basic organizational document of the
15857 applicant, if any, such as the articles of incorporation,
15858 articles of association, partnership agreement, trust agreement,
15859 or other applicable document, and all amendments to such
15860 document.

15861 (b) A copy of the constitution, bylaws, rules and
15862 regulations, or similar form of document, if any, regulating the
15863 conduct of the affairs of the applicant.

15864 (c) A list of the names, addresses, and official
15865 capacities with the applicant of the persons who are to be
15866 responsible for the conduct of the affairs of the clinic,



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15867 including all members of the governing body, the officers and
15868 directors in the case of a corporation, and the partners or
15869 associates in the case of a partnership or association. Such
15870 persons shall fully disclose to the office ~~department~~ and the
15871 governing body of the clinic the extent and nature of any
15872 contracts or arrangements between them and the clinic, including
15873 any possible conflicts of interest.

15874 (d) A statement generally describing the clinic and its
15875 operations.

15876 (e) Each form of prepaid health clinic contract that the
15877 applicant proposes to offer the subscribers, showing for each
15878 form of contract the benefits to which the subscribers are
15879 entitled, together with a table of the rates charged, or
15880 proposed to be charged.

15881 (f) A copy of the applicant's Health Care Provider
15882 Certificate from the Agency for Health Care Administration,
15883 issued pursuant to part III of this chapter.

15884 (g) A financial statement prepared on the basis of
15885 generally accepted accounting principles, except that surplus
15886 notes acceptable to the office ~~department~~ may be included in the
15887 calculation of surplus.

15888 Section 300. Section 641.406, Florida Statutes, is amended
15889 to read:

15890 641.406 Issuance of certificate of authority.--The office
15891 ~~department~~ shall issue a certificate of authority for a prepaid
15892 health clinic to any applicant filing a properly completed
15893 application in conformity with s. 641.405, upon payment of the



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15894 prescribed fees and upon the office's ~~department's~~ being
15895 satisfied that:

15896 (1) As a condition precedent to the issuance of any
15897 certificate, the applicant has obtained a Health Care Provider
15898 Certificate from the Agency for Health Care Administration
15899 pursuant to part III of this chapter.

15900 (2) The proposed rates are actuarially sound for the
15901 benefits provided, including administrative costs.

15902 (3) The applicant has met the minimum surplus requirements
15903 of s. 641.407.

15904 (4) The procedures for offering basic services and
15905 offering and terminating contracts to subscribers will not
15906 unfairly discriminate on the basis of age, health, or economic
15907 status. However, this subsection does not prohibit reasonable
15908 underwriting classifications for the purposes of establishing
15909 contract rates, nor does it prohibit experience rating.

15910 (5) The procedures for offering basic services and
15911 offering and terminating contracts to subscribers will not
15912 discriminate on the basis of sex, race, or national origin.

15913 (6) The applicant furnishes evidence of adequate insurance
15914 coverage or an adequate plan for self-insurance to respond to
15915 claims for injuries arising out of the furnishing of basic
15916 services.

15917 (7) The ownership, control, or management of the applicant
15918 is competent and trustworthy and possesses managerial experience
15919 that would make the proposed clinic operation beneficial to the
15920 subscribers. The office ~~department~~ shall not grant or continue
15921 authority to transact the business of a prepaid health clinic in



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15922 | this state at any time during which the office department has
15923 | good reason to believe that the ownership, control, or
15924 | management of the clinic is under the control of any person
15925 | whose business operations are or have been marked by business
15926 | practices or conduct that is to the detriment of the public,
15927 | stockholders, investors, or creditors; by the improper
15928 | manipulation of assets or of accounts; or by bad faith.

15929 | (8) The application and the applicant are in conformity
15930 | with all requirements of this part.

15931 | Section 301. Section 641.4065, Florida Statutes, is
15932 | amended to read:

15933 | 641.4065 Insurance business not authorized.--Nothing in
15934 | the Florida Insurance Code or this part shall be deemed to
15935 | authorize any prepaid health clinic to transact any insurance
15936 | business other than that issuing prepaid health clinic contracts
15937 | or otherwise to engage in any other type of insurance unless it
15938 | is authorized under a certificate of authority issued by the
15939 | office department under the provisions of the Florida Insurance
15940 | Code.

15941 | Section 302. Subsection (2) of section 641.407, Florida
15942 | Statutes, is amended to read:

15943 | 641.407 Minimum surplus.--

15944 | (2) In lieu of having any minimum surplus, the prepaid
15945 | health clinic may provide a written guaranty to assure payment
15946 | of covered subscriber claims if the guaranteeing organization
15947 | has been in operation for at least 3 years and has a surplus,
15948 | not including land, buildings, and equipment, equal to the
15949 | product of 2 times the amount of the required statutory surplus.



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15950 Such guaranteeing organization and such written guaranty must be
 15951 acceptable to, and approved by, the office ~~department~~. The
 15952 office ~~department~~ shall consider the likelihood of the payment
 15953 of subscriber claims in granting or withholding such approval.

15954 Section 303. Section 641.409, Florida Statutes, is amended
 15955 to read:

15956 641.409 Insolvency protection.--

15957 (1) Every prepaid health clinic shall comply with one of
 15958 the following paragraphs:

15959 (a) The prepaid health clinic shall secure insurance to
 15960 the satisfaction of the office ~~department~~ to protect subscribers
 15961 in the event the prepaid health clinic is unable to meet its
 15962 obligations to subscribers under the terms of any prepaid health
 15963 clinic contract issued to a subscriber.

15964 (b) The prepaid health clinic shall file with the office
 15965 ~~department~~ a surety bond issued by an authorized surety insurer.
 15966 The bond shall be for the same purpose as the insurance in lieu
 15967 of which the bond is filed. The office ~~department~~ shall not
 15968 approve any bond under the terms of which the protection
 15969 afforded against insolvency is not equivalent to the protection
 15970 afforded by such insurance. The bond shall guarantee that the
 15971 prepaid health clinic will faithfully and truly perform all the
 15972 conditions of any prepaid health clinic contract. No such bond
 15973 shall be canceled or subject to cancellation unless at least 60
 15974 days' notice of the cancellation, in writing, is filed with the
 15975 office ~~department~~. In the event that the notice of termination
 15976 of the bond is filed with the office ~~department~~, the prepaid
 15977 health clinic insured under the bond shall, within 30 days of



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15978 | the filing of the notice of termination, provide the office
15979 | ~~department~~ with a replacement bond meeting the requirements of
15980 | this part or secure insurance as required by paragraph (a). The
15981 | cancellation of a bond does not relieve the obligation of the
15982 | issuer of the bond for claims arising out of contracts issued
15983 | prior to the cancellation of the bond unless a replacement bond
15984 | or insurance is secured. In no event shall the issuer's
15985 | aggregate liability under the bond exceed the face amount of the
15986 | bond. If, within 30 days of filing the notice of termination, a
15987 | replacement bond or insurance has not been secured and filed
15988 | with the office ~~department~~, the office ~~department~~ shall suspend
15989 | the certificate of the prepaid health clinic until the deposit
15990 | requirements are satisfied. Whenever the prepaid health clinic
15991 | ceases to do business in this state and furnishes to the office
15992 | ~~department~~ satisfactory proof that it has discharged or
15993 | otherwise adequately provided for all of its obligations to its
15994 | subscribers, the office ~~department~~ shall release any bond filed
15995 | by the prepaid health clinic.

15996 | (2) In determining the sufficiency of the insurance
15997 | required under paragraph (1)(a) or the surety bond required
15998 | under paragraph (1)(b), the office ~~department~~ may consider the
15999 | number of subscribers, the basic services included in subscriber
16000 | contracts, and the cost of providing such basic services to
16001 | subscribers in the geographic area served.

16002 | (3) Every prepaid health clinic shall deposit with the
16003 | department a cash deposit in the amount of \$30,000 to guarantee
16004 | that the obligations to the subscribers will be performed.



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16005 Section 304. Section 641.41, Florida Statutes, is amended
16006 to read:

16007 641.41 Annual report of prepaid health clinic;
16008 administrative penalty.--

16009 (1) Each prepaid health clinic shall file a report with
16010 the office ~~department~~, annually on or before March 1, or within
16011 3 months of the end of the reporting period of the clinic, or
16012 within such extension of time for the filing of the report as
16013 the office ~~department~~, for good cause, may grant. The report of
16014 the prepaid health clinic must be filed on forms prescribed by
16015 the commission ~~department~~ and must be verified under oath by two
16016 executive officers of the clinic or, if the clinic is not a
16017 corporation, verified under oath by two persons who are
16018 principal managing directors of the affairs of the clinic. The
16019 report of the clinic shall show the condition of the clinic on
16020 the last day of the immediately preceding reporting period.

16021 Such report shall include:

16022 (a) A financial statement of the clinic, including its
16023 balance sheet and a statement of operations for the preceding
16024 year;

16025 (b) A list of the name and residence address of every
16026 person responsible for the conduct of the affairs of the clinic,
16027 together with a disclosure of the extent and nature of any
16028 contract or arrangement between such person and the clinic,
16029 including any possible conflicts of interest;

16030 (c) The number of prepaid health clinic contracts issued
16031 and outstanding, and the number of prepaid health clinic



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16032 contracts terminated and a compilation of the reasons for such
16033 terminations;

16034 (d) Such statistical information as is requested by the
16035 commission or office ~~department~~, which information shows the
16036 rates of the clinic for all basic services provided under
16037 prepaid health clinic contracts;

16038 (e) The number and amount of damage claims for medical
16039 injury initiated against the clinic and any of the providers
16040 engaged by it during the reporting year, broken down into claims
16041 with and without formal legal process, and the disposition, if
16042 any, of each such claim; and

16043 (f) Such other information relating to the performance of
16044 the clinic as is required by the commission or office
16045 ~~department~~.

16046 (2) Any clinic which neglects to file the annual report in
16047 the form and within the time required by this section is subject
16048 to an administrative penalty, not to exceed \$100 for each day
16049 during which the neglect continues; and, upon notice by the
16050 office ~~department~~ to that effect, the authority of the clinic to
16051 do business in this state shall cease while such default
16052 continues.

16053 Section 305. Section 641.412, Florida Statutes, is amended
16054 to read:

16055 641.412 Fees.--

16056 (1) Every prepaid health clinic shall pay to the office
16057 ~~department~~ the following fees:



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16058 (a) For filing a copy of its application for a certificate
16059 of authority or an amendment to such certificate, a
16060 nonrefundable fee in the amount of \$150.

16061 (b) For filing each annual report, a fee in the amount of
16062 \$150.

16063 (2) The fees charged under this section shall be
16064 distributed as follows:

16065 (a) One-third of the total amount of fees shall be
16066 distributed to the Agency for Health Care Administration; and

16067 (b) Two-thirds of the total amount of fees shall be
16068 distributed to the office ~~Department of Insurance~~.

16069 Section 306. Section 641.418, Florida Statutes, is amended
16070 to read:

16071 641.418 Examination of prepaid health clinic by the office
16072 ~~department~~.--The office ~~department~~ shall examine the affairs,
16073 transactions, accounts, business records, and assets of any
16074 prepaid health clinic as often as the office ~~department~~ deems it
16075 expedient for the protection of the people of this state. Every
16076 clinic shall submit its books and records and take other
16077 appropriate action as may be necessary to facilitate an
16078 examination. However, medical records of individuals and
16079 records of physicians providing services under contracts to the
16080 clinic are not subject to audit, although such records may be
16081 subject to subpoena by court order upon a showing of good cause.
16082 For the purpose of examinations, the office ~~department~~ may
16083 administer oaths to and examine the officers and agents of a
16084 clinic concerning its business and affairs. The expenses for
16085 the examination of each clinic by the office ~~department~~ are



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16086 subject to the same terms and conditions that apply to insurers
16087 under part II of chapter 624. In no event shall the expenses of
16088 all examinations exceed the maximum amount of \$15,000 per year.

16089 Section 307. Subsections (2), (3), (5), and (7) of section
16090 641.42, Florida Statutes, is amended to read:

16091 641.42 Prepaid health clinic contracts.--

16092 (2) The rates charged by any clinic to its subscribers
16093 shall not be excessive, inadequate, or unfairly discriminatory.
16094 The commission ~~department~~, in accordance with generally accepted
16095 actuarial practice, may define by rule what constitutes
16096 excessive, inadequate, or unfairly discriminatory rates and may
16097 require whatever information the commission ~~department~~ deems
16098 necessary to determine that a rate or proposed rate meets the
16099 requirements of this subsection.

16100 (3) No clinic shall issue or agree to issue any prepaid
16101 health clinic contract to a subscriber unless the contract has
16102 first been filed with, and approved by, the office ~~department~~.

16103 (5) Every subscriber shall receive a clear and
16104 understandable description of the method of the clinic for
16105 resolving subscriber grievances; such method shall be set forth
16106 in the contract and shall be approved by the office ~~department~~
16107 on the basis of its underlying fairness.

16108 (7)(a) If a clinic desires to amend any contract with any
16109 of its subscribers or desires to change any rate charged for the
16110 contract, the clinic may do so, upon filing with the office
16111 ~~department~~ the proposed amendment or change in rates.

16112 (b) No prepaid health clinic contract form or application
16113 form when written application is required and is to be made a



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16114 part of the policy or contract, or no printed amendment,
16115 addendum, rider, or endorsement form or form of renewal
16116 certificate, shall be delivered or issued for delivery in this
16117 state, unless the form has been filed with the office ~~department~~
16118 ~~at its offices in Tallahassee~~ by or in behalf of the clinic
16119 which proposes to use such form and has been approved by the
16120 office ~~department~~. Every such filing shall be made not less than
16121 30 days in advance of any such use or delivery. At the
16122 expiration of such 30 days, the form so filed shall be deemed
16123 approved unless prior to the end of the 30 days the form has
16124 been affirmatively approved or disapproved by the office
16125 ~~department~~. The approval of any such form by the office
16126 ~~department~~ constitutes a waiver of any unexpired portion of such
16127 waiting period. The office ~~department~~ may extend by not more
16128 than an additional 15 days the period within which the office
16129 ~~department~~ may so affirmatively approve or disapprove any such
16130 form, by giving notice of such extension before the expiration
16131 of the initial 30-day period. At the expiration of any such
16132 period as so extended, and in the absence of such prior
16133 affirmative approval or disapproval, such form shall be deemed
16134 approved. The office ~~department~~ may, for cause, withdraw a
16135 previous approval. No clinic shall issue or use any form which
16136 has been disapproved by the office ~~department~~ or any form for
16137 which the office ~~department~~ has withdrawn approval.

16138 (c) The office ~~department~~ shall disapprove any form filed
16139 under this subsection, or withdraw any previous approval of the
16140 form, only if the form:



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16141 | 1. Is in any respect in violation of, or does not comply
16142 | with, any provision of this part or rule adopted under this
16143 | part.

16144 | 2. Contains or incorporates by reference, where such
16145 | incorporation is otherwise permissible, any inconsistent,
16146 | ambiguous, or misleading clauses, or exceptions and conditions
16147 | which deceptively affect the risk purported to be assumed in the
16148 | general coverage of the contract.

16149 | 3. Has a misleading title, misleading heading, or other
16150 | indication of the provisions of the form which is misleading.

16151 | 4. Is printed or otherwise reproduced in such manner as to
16152 | render any material provision of the form substantially
16153 | illegible.

16154 | 5. Provides benefits which are unreasonable in relation to
16155 | the rate charged or contains provisions which are unfair,
16156 | inequitable, or contrary to the public policy of this state or
16157 | encourage misrepresentation.

16158 | (d) In determining whether the benefits are reasonable in
16159 | relation to the rate charged, the office ~~department~~, in
16160 | accordance with reasonable actuarial techniques, shall consider:

16161 | 1. Past loss experience and prospective loss experience.

16162 | 2. Allocation of expenses.

16163 | 3. Risk and contingency margins, along with justification
16164 | of such margins.

16165 | 4. Acquisition costs.

16166 | 5. Other factors deemed appropriate by the office
16167 | ~~department~~, based on sound actuarial techniques.



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16168 Section 308. Section 641.421, Florida Statutes, is amended
16169 to read:

16170 641.421 Language used in contracts and advertisements;
16171 translations.--

16172 (1)(a) All prepaid health clinic contracts or forms shall
16173 be printed in English.

16174 (b) If the negotiations by a prepaid health clinic with a
16175 subscriber leading up to the effectuation of a prepaid health
16176 clinic contract are conducted in a language other than English,
16177 the prepaid health clinic shall supply to the subscriber a
16178 written translation of the contract, which translation
16179 accurately reflects the substance of the contract and is in the
16180 language used to negotiate the contract. Any such translation
16181 shall be furnished to the office ~~department~~ as part of the
16182 filing of the prepaid health clinic contract form and shall be
16183 approved by the office ~~department~~ prior to use. No translation
16184 of a prepaid health clinic contract form shall be approved by
16185 the office ~~department~~ unless the translation accurately reflects
16186 the substance of the prepaid health clinic contract form in
16187 translation. When a translation of a prepaid health clinic
16188 contract is used, the translation shall clearly and
16189 conspicuously state on its face and in the language of the
16190 translation:

16191 READ THIS FIRST

16192 This is a translation of the document that you are about to
16193 sign.

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16195 (2) All advertisements by a prepaid health clinic, if
16196 printed or broadcast in a language other than English, also
16197 shall be available in English and shall be furnished to the
16198 office ~~department~~ upon request. As used in this subsection, the
16199 term "advertisement" means any advertisement, circular,
16200 pamphlet, brochure, or other printed material disclosing or
16201 disseminating advertising material or information by a clinic to
16202 prospective or existing subscribers and includes any radio or
16203 television transmittal of an advertisement or information.

16204 Section 309. Subsection (2) of section 641.424, Florida
16205 Statutes, is amended to read:

16206 641.424 Validity of noncomplying contracts.--

16207 (2) Any contract delivered or issued for delivery in this
16208 state covering a subscriber resident, located, or to be
16209 performed in this state, which subscriber, pursuant to the
16210 provisions of this part, the clinic may not lawfully provide
16211 under such a contract, is cancelable at any time by the clinic,
16212 any provision of the contract to the contrary notwithstanding;
16213 and the clinic shall promptly cancel the contract in accordance
16214 with the request of the office ~~department~~ for such cancellation.
16215 No such illegality or cancellation shall be deemed to relieve
16216 the clinic of any liability incurred by the clinic under the
16217 contract while the contract was in force or to prohibit the
16218 clinic from retaining the pro rata earned premium on the
16219 contract. This provision does not relieve the clinic from any
16220 penalty otherwise incurred by the clinic under this part on
16221 account of any such violation.



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16222 Section 310. Section 641.437, Florida Statutes, is amended
16223 to read:

16224 641.437 Investigatory power of office ~~department~~.--The
16225 office ~~department~~ has the power to examine and investigate the
16226 affairs of every person, entity, or prepaid health clinic in
16227 order to determine whether the person, entity, or prepaid health
16228 clinic is operating in accordance with the provisions of this
16229 part or has been or is engaged in any unfair method of
16230 competition or any unfair or deceptive act or practice
16231 prohibited by s. 641.44.

16232 Section 311. Section 641.443, Florida Statutes, is amended
16233 to read:

16234 641.443 Temporary restraining orders.--

16235 (1) The office ~~department~~ is vested with the power to seek
16236 a temporary restraining order:

16237 (a) On behalf of the office ~~department~~ or on behalf of a
16238 subscriber or subscribers of a prepaid health clinic that is
16239 being operated by a person or entity without a subsisting
16240 certificate of authority; or

16241 (b) On behalf of the office ~~department~~ or on behalf of a
16242 subscriber or subscribers to whom a prepaid health clinic,
16243 person, or entity is issuing, delivering, or renewing prepaid
16244 health clinic contracts without an existing certificate of
16245 authority.

16246 (2) The office ~~department~~ and the Agency for Health Care
16247 Administration are each vested with the power to seek a
16248 temporary restraining order on their behalf or on behalf of a
16249 subscriber or subscribers of a prepaid health clinic that is



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16250 being operated in violation of any provision of this part or any
16251 rule promulgated under this part, or any other applicable law or
16252 rule.

16253 Section 312. Section 641.444, Florida Statutes, is amended
16254 to read:

16255 641.444 Injunction.--In addition to the penalties and
16256 other enforcement provisions of this part, if a person, entity,
16257 or prepaid health clinic has engaged in any activity prohibited
16258 by this part or any rule adopted pursuant to this part, the
16259 office department may resort to a proceeding for injunction in
16260 the circuit court of the county where such person, entity, or
16261 prepaid health clinic is located or has her or his or its
16262 principal place of business; and the office department may apply
16263 in such court for such temporary and permanent orders as the
16264 office department may deem necessary to restrain the person,
16265 entity, or prepaid health clinic from engaging in any such
16266 activity, until the person, entity, or prepaid health clinic
16267 complies with the provisions and rules.

16268 Section 313. Section 641.445, Florida Statutes, is amended
16269 to read:

16270 641.445 Defined practices; hearings, witnesses,
16271 appearances, production of books, and service of process.--

16272 (1) Whenever the office department has reason to believe
16273 that a person, entity, or prepaid health clinic has engaged, or
16274 is engaging, in this state in any unfair method of competition
16275 or any unfair or deceptive act or practice as defined in s.
16276 641.441, or is operating a prepaid health clinic without a
16277 certificate of authority as required by this part or otherwise



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16278 | operating in violation of any provision of this part or rule
16279 | adopted pursuant to this part, and that a proceeding by the
16280 | office ~~department~~ in respect thereto would be in the interest of
16281 | the public, the office ~~department~~ shall conduct, or cause to
16282 | have conducted, a hearing in accordance with chapter 120.

16283 | (2) The office ~~department~~, a duly empowered hearing
16284 | officer, or an administrative law judge shall, during the
16285 | conduct of such hearing, have those powers enumerated in s.
16286 | 120.569; however, the penalty for the failure to comply with a
16287 | subpoena or with an order directing discovery is limited to a
16288 | fine not to exceed \$1,000 per violation.

16289 | (3) A statement of charges, notice, or order under this
16290 | part may be served by anyone duly authorized by the office
16291 | ~~department~~, either in the manner provided by law for service of
16292 | process in civil actions or by certifying and mailing a copy of
16293 | the statement of charges, notice, or order to the person,
16294 | entity, or prepaid health clinic affected by the statement,
16295 | notice, or order or other process at his or her or its residence
16296 | or principal office or place of business. The verified return
16297 | by the person so serving such statement, notice, or order or
16298 | other process, setting forth the manner of the service, is proof
16299 | of such service; and the return postcard receipt for such
16300 | statement, notice, or order or other process, certified and
16301 | mailed as provided in this subsection, is proof of the service
16302 | of the statement, notice, or order or other process.

16303 | Section 314. Section 641.446, Florida Statutes, is amended
16304 | to read:



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16305 641.446 Cease and desist and penalty orders.--After the
16306 hearing provided in s. 641.445, the office ~~department~~ shall
16307 enter a final order in accordance with s. 120.569. If it is
16308 determined that the person, entity, or prepaid health clinic
16309 charged has engaged in an unfair or deceptive act or practice or
16310 the unlawful operation of a prepaid health clinic, the office
16311 ~~department~~ also shall issue an order requiring the violator to
16312 cease and desist from engaging in such method of competition,
16313 act, or practice or unlawful operation of a prepaid health
16314 clinic. Furthermore, the office ~~department~~ may, at its
16315 discretion, order any one or more of the following:

16316 (1) The suspension or revocation of the certificate of
16317 authority of the prepaid health clinic if it knew, or reasonably
16318 should have known, that it was in violation of this part.

16319 (2) If it is determined that the person or entity charged
16320 has engaged in the business of operating a prepaid health clinic
16321 without a certificate of authority, an administrative penalty
16322 not to exceed \$1,000 for each prepaid health clinic contract
16323 offered or effectuated.

16324 Section 315. Section 641.447, Florida Statutes, is amended
16325 to read:

16326 641.447 Appeal from ~~departmental~~ order.--Any person,
16327 entity, or prepaid health clinic that is subject to an order of
16328 the office ~~department~~ under s. 641.446 may obtain a review of
16329 the order by filing an appeal from the order in accordance with
16330 the provisions and procedures for appeal under s. 120.68.

16331 Section 316. Section 641.448, Florida Statutes, is amended
16332 to read:



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16333 641.448 Penalty for violation of cease and desist
16334 order.--Any person, entity, or prepaid health clinic that
16335 violates a cease and desist order of the office ~~department~~ under
16336 s. 641.446 while such order is in effect, after notice and
16337 hearing as provided in s. 641.445, is subject, at the discretion
16338 of the office ~~department~~, to any one or more of the following:

16339 (1) A monetary penalty of not more than \$50,000 as to all
16340 matters determined in such hearing.

16341 (2) The suspension or revocation of the certificate of
16342 authority of the prepaid health clinic.

16343 Section 317. Section 641.45, Florida Statutes, is amended
16344 to read:

16345 641.45 Revocation or cancellation of certificate of
16346 authority; suspension of authority to enroll new subscribers;
16347 terms of suspension.--

16348 (1) The maintenance of a valid and current Health Care
16349 Provider Certificate issued pursuant to part III of this chapter
16350 is a condition of the maintenance of a valid and current
16351 certificate of authority issued by the office ~~department~~ to
16352 operate a prepaid health clinic. Revocation or nonrenewal of a
16353 Health Care Provider Certificate shall be deemed to be an
16354 automatic and immediate cancellation of a prepaid health
16355 clinic's certificate of authority.

16356 (2) The office ~~department~~ may suspend the authority of a
16357 clinic to enroll new subscribers or revoke any certificate of
16358 authority issued to a prepaid health clinic, or order compliance
16359 within 60 days, if the office ~~department~~ finds that any of the
16360 following conditions exist:



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16361 (a) The clinic is not operating in compliance with this
16362 part or any rule promulgated under this part.

16363 (b) The plan is no longer actuarially sound or the clinic
16364 does not have the minimum surplus as required by this part.

16365 (c) The existing contract rates are excessive, inadequate,
16366 or unfairly discriminatory.

16367 (d) The clinic has advertised, merchandised, or attempted
16368 to merchandise its services in such a manner as to misrepresent
16369 its services or capacity for services or has engaged in
16370 deceptive, misleading, or unfair practices with respect to
16371 advertising or merchandising.

16372 (e) The organization is insolvent.

16373 (f) The clinic has not complied with the grievance
16374 procedures for subscribers that are set forth in any prepaid
16375 health clinic contract.

16376 (g) The clinic has not fully satisfied a judgment against
16377 the clinic within 10 days of the entry of the judgment by any
16378 court in the state or, in the case of an appeal from such
16379 judgment, has not fully satisfied the judgment within 60 days
16380 after affirmance of the judgment by the appellate court.

16381 (3) The office ~~department~~ shall, in its order suspending
16382 the authority of a clinic to enroll new subscribers, specify the
16383 period during which the suspension is to be in effect and the
16384 conditions, if any, which must be met by the clinic prior to
16385 reinstatement of its authority to enroll new subscribers. The
16386 order of suspension is subject to rescission or modification by
16387 further order of the office ~~department~~ prior to the expiration
16388 of the suspension period. Reinstatement shall not be made unless



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16389 requested by the clinic; however, the office ~~department~~ shall
 16390 not grant reinstatement if it finds that the circumstances for
 16391 which the suspension occurred still exist or are likely to
 16392 recur.

16393 Section 318. Section 641.452, Florida Statutes, is amended
 16394 to read:

16395 641.452 Administrative penalty in lieu of suspension or
 16396 revocation of certificate of authority.--The office ~~department~~
 16397 may, in lieu of suspension or revocation of a certificate of
 16398 authority, levy an administrative penalty in an amount not more
 16399 than \$10,000 for each violation by a prepaid health clinic. In
 16400 levying such fine, the office ~~department~~ shall consider the
 16401 number of members and total revenues of the clinic and whether
 16402 the violation was committed knowingly and willfully.

16403 Section 319. Section 641.453, Florida Statutes, is amended
 16404 to read:

16405 641.453 Civil liability.--The provisions of this part are
 16406 cumulative to the rights under the general civil law and common
 16407 law, and no action of the office ~~department~~ shall abrogate such
 16408 rights to damages or other relief in any court.

16409 Section 320. Section 641.454, Florida Statutes, is amended
 16410 to read:

16411 641.454 Civil action to enforce prepaid health clinic
 16412 contract; attorney's fees; court costs.--In any civil action
 16413 brought to enforce the terms and conditions of a prepaid health
 16414 clinic contract, the prevailing party is entitled to recover
 16415 reasonable attorney's fees and court costs. This section shall
 16416 not be construed to authorize a civil action against the



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16417 | commission or office department, or their ~~its~~ employees, ~~or the~~
16418 | ~~Insurance Commissioner and Treasurer~~ or against the Agency for
16419 | Health Care Administration, the employees of the Agency for
16420 | Health Care Administration, or the Secretary of Health Care
16421 | Administration.

16422 | Section 321. Section 641.455, Florida Statutes, is amended
16423 | to read:

16424 | 641.455 Disposition of moneys collected under this
16425 | part.--Fees, administrative penalties, examination expenses, and
16426 | other sums collected by the office department ~~under this part~~
16427 | shall be deposited to the credit of the Insurance ~~Commissioner's~~
16428 | Regulatory Trust Fund; however, fees, examination expenses, and
16429 | other sums collected by, or allocated to, the Agency for Health
16430 | Care Administration under this part shall be deposited to the
16431 | credit of the General Revenue Fund.

16432 | Section 322. Section 641.457, Florida Statutes, is amended
16433 | to read:

16434 | 641.457 Exemption for certain operational prepaid health
16435 | clinics.--The provisions of this part do not apply to those
16436 | prepaid health clinics providing the services defined in ss.
16437 | 641.40 through 641.459, which clinics have been continuously
16438 | engaged in providing such services since January 1, 1947,
16439 | provided that any prepaid health clinic claiming an exemption
16440 | under this section notified ~~notifies~~ the former Department of
16441 | Insurance of its claim on or before January 1, 1985. This
16442 | exemption will terminate upon a change in controlling ownership
16443 | of the organization.



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16444 Section 323. Section 641.48, Florida Statutes, is amended
16445 to read:

16446 641.48 Purpose and application of part.--The purpose of
16447 this part is to ensure that health maintenance organizations and
16448 prepaid health clinics deliver high-quality health care to their
16449 subscribers. To achieve this purpose, this part requires all
16450 such organizations to obtain a health care provider certificate
16451 from the agency as a condition precedent to obtaining a
16452 certificate of authority to do business in Florida from the
16453 office ~~Department of Insurance~~, under part I or part II of this
16454 chapter.

16455 Section 324. Subsection (2) of section 641.49, Florida
16456 Statutes, is amended to read:

16457 641.49 Certification of health maintenance organization
16458 and prepaid health clinic as health care providers; application
16459 procedure.--

16460 (2) The office ~~Department of Insurance~~ shall not issue a
16461 certificate of authority under part I or part II of this chapter
16462 to any applicant which does not possess a valid health care
16463 provider certificate issued by the agency under this part.

16464 Section 325. Subsection (4) of section 641.495, Florida
16465 Statutes, is amended to read:

16466 641.495 Requirements for issuance and maintenance of
16467 certificate.--

16468 (4) The organization shall ensure that the health care
16469 services it provides to subscribers, including physician
16470 services as required by s. 641.19(12)(13)(d) and (e), are
16471 accessible to the subscribers, with reasonable promptness, with



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16472 respect to geographic location, hours of operation, provision of
16473 after-hours service, and staffing patterns within generally
16474 accepted industry norms for meeting the projected subscriber
16475 needs. The health maintenance organization must provide
16476 treatment authorization 24 hours a day, 7 days a week. Requests
16477 for treatment authorization may not be held pending unless the
16478 requesting provider contractually agrees to take a pending or
16479 tracking number.

16480 Section 326. Subsections (7), (8), and (11) of section
16481 641.511, Florida Statutes, are amended to read:

16482 641.511 Subscriber grievance reporting and resolution
16483 requirements.--

16484 (7) Each organization shall send to the agency a copy of
16485 its quarterly grievance reports submitted to the office
16486 ~~Department of Insurance~~ pursuant to s. 408.7056(12).

16487 (8) The agency shall investigate all reports of unresolved
16488 quality of care grievances received from:

16489 (a) Annual and quarterly grievance reports submitted by
16490 the organization to the office ~~Department of Insurance~~.

16491 (b) Review requests of subscribers whose grievances remain
16492 unresolved after the subscriber has followed the full grievance
16493 procedure of the organization.

16494 (11) Each organization, as part of its contract with any
16495 provider, must require the provider to post a consumer
16496 assistance notice prominently displayed in the reception area of
16497 the provider and clearly noticeable by all patients. The
16498 consumer assistance notice must state the addresses and toll-
16499 free telephone numbers of the Agency for Health Care



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16500 Administration, the Statewide Provider and Subscriber Assistance
16501 Program, and the Department of Financial Services Insurance. The
16502 consumer assistance notice must also clearly state that the
16503 address and toll-free telephone number of the organization's
16504 grievance department shall be provided upon request. The agency
16505 may adopt ~~is authorized to promulgate~~ rules to implement this
16506 section.

16507 Section 327. Subsections (1), (3), and (6) of section
16508 641.512, Florida Statutes, are amended to read:

16509 641.512 Accreditation and external quality assurance
16510 assessment.--

16511 (1)(a) To promote the quality of health care services
16512 provided by health maintenance organizations and prepaid health
16513 clinics in this state, the office ~~department~~ shall require each
16514 health maintenance organization and prepaid health clinic to be
16515 accredited within 1 year of the organization's receipt of its
16516 certificate of authority and to maintain accreditation by an
16517 accreditation organization approved by the office ~~department~~, as
16518 a condition of doing business in the state.

16519 (b) In the event that no accreditation organization can be
16520 approved by the office ~~department~~, the office ~~department~~ shall
16521 require each health maintenance organization and prepaid health
16522 clinic to have an external quality assurance assessment
16523 performed by a review organization approved by the office
16524 ~~department~~, as a condition of doing business in the state. The
16525 assessment shall be conducted within 1 year of the
16526 organization's receipt of its certificate of authority and every



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16527 | 2 years thereafter, or when the office ~~department~~ deems
16528 | additional assessments necessary.

16529 | (3) A representative of the office ~~department~~ shall
16530 | accompany the accreditation or review organization throughout
16531 | the accreditation or assessment process, but shall not
16532 | participate in the final accreditation or assessment
16533 | determination. The accreditation or review organization shall
16534 | monitor and evaluate the quality and appropriateness of patient
16535 | care, the organization's pursuance of opportunities to improve
16536 | patient care and resolve identified problems, and the
16537 | effectiveness of the internal quality assurance program required
16538 | for health maintenance organization and prepaid health clinic
16539 | certification pursuant to s. 641.49(3)(p).

16540 | (6) The accreditation or review organization shall issue a
16541 | written report of its findings to the health maintenance
16542 | organization's or prepaid health clinic's board of directors. A
16543 | copy of the report shall be submitted to the office ~~department~~
16544 | by the organization within 30 business days of its receipt by
16545 | the health maintenance organization or prepaid health clinic.

16546 | Section 328. Section 641.52, Florida Statutes, is amended
16547 | to read:

16548 | 641.52 Revocation of certificate; suspension of new
16549 | enrollment; suspension of the health care provider certificate;
16550 | administrative fine; notice of action to the office ~~Department~~
16551 | ~~of Insurance~~; penalty for use of unlicensed providers.--

16552 | (1) The agency may suspend the authority of an
16553 | organization to enroll new subscribers or revoke the health care
16554 | provider certificate of any organization, or order compliance



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16555 within a time certain, if it finds that any of the following
16556 conditions exist:

16557 (a) The organization is in substantial violation of its
16558 contracts.

16559 (b) The organization is unable to fulfill its obligations
16560 under outstanding contracts entered into with its subscribers.

16561 (c) The organization knowingly utilizes a provider who is
16562 furnishing or has furnished health care services and who does
16563 not have a subsisting license or other authority to practice or
16564 furnish health care services in this state.

16565 (d) The organization no longer meets the requirements for
16566 the certificate as originally issued.

16567 (e) The organization has violated any lawful rule or order
16568 of the agency or any provision of this part.

16569 (f) The organization has refused to be examined or to
16570 produce its accounts, records, and files for examination or to
16571 perform any other legal obligation as to such examination, when
16572 required by the agency.

16573 (g) The organization has not, after given reasonable
16574 notice, maintained accreditation or received favorable external
16575 quality assurance reviews under s. 641.512 or, following an
16576 investigation under s. 641.515, has been determined to not
16577 materially meet requirements under this part.

16578 (2) Revocation of an organization's certificate shall be
16579 for a period of 2 years. After 2 years, the organization may
16580 apply for a new certificate by compliance with all application
16581 requirements applicable to first-time applicants.



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16582 (3) Suspension of an organization's authority to enroll
16583 new subscribers shall be for such period, not to exceed 1 year,
16584 as is fixed by the agency. The agency shall, in its order
16585 suspending the authority of an organization to enroll new
16586 subscribers, specify the period during which the suspension is
16587 to be in effect and the conditions, if any, which must be met by
16588 the organization prior to reinstatement of its authority to
16589 enroll new subscribers. The order of suspension is subject to
16590 rescission or modification by further order of the agency prior
16591 to the expiration of the suspension period. Authority to enroll
16592 new subscribers shall not be reinstated unless requested by the
16593 organization; however, the agency may not grant reinstatement if
16594 it finds that the circumstances for which the suspension of
16595 authority to enroll new subscribers occurred still exist or are
16596 likely to recur.

16597 (4) The agency may suspend the health care provider
16598 certificate issued to an organization. The agency shall, in its
16599 order suspending the health care provider certificate, specify
16600 the period during which the suspension is to be in effect and
16601 the conditions, if any, which must be met by the organization
16602 for reinstatement. Upon expiration of the suspension period, the
16603 organization's certificate automatically reinstates unless the
16604 agency finds that the causes of the suspension have not been
16605 removed or that the organization is otherwise not in compliance
16606 with this part. If the agency makes such a finding, the health
16607 care provider certificate shall not be reinstated and is
16608 considered to have expired as of the end of the suspension
16609 period.



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16610 (5) If the agency finds that one or more grounds exist for
16611 the revocation or suspension of a certificate issued under this
16612 part, the agency may, in lieu of such revocation or suspension,
16613 impose a fine upon the organization. With respect to any
16614 nonwillful violation, the fine may not exceed \$2,500 per
16615 violation. Such fines may not exceed an aggregate amount of
16616 \$25,000 for all nonwillful violations arising out of the same
16617 action. With respect to any knowing and willful violation of a
16618 lawful order or rule of the agency or a provision of this part,
16619 the agency may impose a fine upon the organization in an amount
16620 not to exceed \$20,000 for each such violation. Such fines may
16621 not exceed an aggregate amount of \$250,000 for all knowing and
16622 willful violations arising out of the same action. The agency
16623 shall, by January 1, 1997, adopt by rule penalty categories that
16624 specify varying ranges of fines for willful violations and for
16625 nonwillful violations.

16626 (6) The agency shall immediately notify the office
16627 ~~Department of Insurance~~ whenever it issues an administrative
16628 complaint or an order or otherwise initiates legal proceedings
16629 resulting in or which may result in suspension or revocation of
16630 an organization's health care provider certificate or suspension
16631 of new enrollment.

16632 (7) Any organization that knowingly utilizes the services
16633 of a provider who is not licensed or otherwise authorized by law
16634 to provide such services is guilty of a felony of the third
16635 degree, punishable as provided in s. 775.082, s. 775.083, or s.
16636 775.084.



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16637 Section 329. Subsection (2) of section 641.54, Florida
16638 Statutes, is amended to read:

16639 641.54 Information disclosure.--

16640 (2) The list shall be made available, upon request, to the
16641 office ~~department~~. The list shall also be made available, upon
16642 request:

16643 (a) With respect to negotiation, application, or
16644 effectuation of a group health maintenance contract, to the
16645 employer or other person who will hold the contract on behalf of
16646 the subscriber group. The list may be restricted to include
16647 only physicians and hospitals in the group's geographic area.

16648 (b) With respect to an individual health maintenance
16649 contract or any contract offered to a person who is entitled to
16650 have payments for health care costs made under Medicare, to the
16651 person considering or making application to, or under contract
16652 with, the health maintenance organization. The list may be
16653 restricted to include only physicians and hospitals in the
16654 person's geographic area.

16655 Section 330. Subsection (4) of section 641.55, Florida
16656 Statutes, is amended to read:

16657 641.55 Internal risk management program.--

16658 (4) The Agency for Health Care Administration shall adopt
16659 rules necessary to carry out the provisions of this section,
16660 including rules governing the establishment of required internal
16661 risk management programs to meet the needs of individual
16662 organizations and each specific organization type governed by
16663 this part. The office ~~Department of Insurance~~ shall assist the
16664 agency in preparing these rules. Each internal risk management



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16665 program shall include the use of incident reports to be filed
16666 with the risk manager. The risk manager shall have free access
16667 to all organization or provider medical records. The incident
16668 reports shall be considered to be a part of the workpapers of
16669 the attorney defending the organization in litigation relating
16670 thereto and shall be subject to discovery, but not be admissible
16671 as evidence in court, nor shall any person filing an incident
16672 report be subject to civil suit by virtue of the incident report
16673 and the matters it contains. As a part of each internal risk
16674 management program, the incident reports shall be utilized to
16675 develop categories of incidents which identify problem areas.
16676 Once identified, procedures must be adjusted to correct these
16677 problem areas.

16678
16679 The gross data compiled under this section or s. 395.0197 shall
16680 be furnished by the agency upon request to organizations to be
16681 utilized for risk management purposes. The agency shall adopt
16682 rules necessary to carry out the provisions of this section.

16683 Section 331. Subsection (2) of section 641.58, Florida
16684 Statutes, is amended to read:

16685 641.58 Regulatory assessment; levy and amount; use of
16686 funds; tax returns; penalty for failure to pay.--

16687 (2) The office ~~Department of Insurance~~ shall determine the
16688 amount of gross premiums for the purposes of the regulatory
16689 assessment, and then the agency shall determine on or before
16690 December 1 of each year the regulatory assessment percentage
16691 necessary to be imposed for that calendar year, payable on or
16692 before the following April 1, as herein prescribed, to provide



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16693 the funds appropriated to the agency to carry out the provisions
16694 of subsection (4).

16695 Section 332. Subsections (3) and (4) of section 642.0475,
16696 Florida Statutes, are amended to read:

16697 642.0475 Civil remedy.--

16698 (3) As a condition precedent to bringing an action under
16699 this section, the office ~~department~~ and the person against whom
16700 the action is to be brought shall be given notice of the
16701 violation. The notice shall state with specificity the facts
16702 which allegedly constitute the violation and the law which the
16703 plaintiff is relying upon. No action shall lie if, within 30
16704 days thereafter, the damages are paid or the circumstances
16705 giving rise to the violation are corrected.

16706 (4) This section shall not be construed to authorize a
16707 class action suit against a legal expense insurance corporation
16708 or a civil action against the department, commission, or office
16709 or their ~~its~~ employees, ~~or the Insurance Commissioner.~~

16710 Section 333. Section 651.119, Florida Statutes, is amended
16711 to read:

16712 651.119 Assistance to persons affected by closure due to
16713 liquidation or pending liquidation.--

16714 (1) If a facility closes and ceases to operate as a result
16715 of liquidation or pending liquidation and residents are forced
16716 to relocate, the department shall become a creditor of the
16717 facility for the purpose of providing moving expenses for
16718 displaced residents and such other care or services as is made
16719 possible by the unencumbered assets of the facility. To the
16720 extent that another provider provides, as approved by the office



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16721 ~~department~~, direct assistance to such residents, the cost of
16722 such direct assistance shall be offset against reserves pursuant
16723 to subsection (4). The department shall provide proportional
16724 reimbursements of such costs to the respective providers from
16725 such unencumbered assets.

16726 (2) If the moneys and direct assistance made available
16727 under subsection(1) are not sufficient to cover moving costs,
16728 the office ~~department~~ may seek voluntary contributions from the
16729 reserves maintained by providers under s. 651.035 in amounts
16730 approved by the office ~~department~~ to provide for the moving
16731 expenses of the residents in moving to another residence within
16732 the state.

16733 (3) If the moneys and direct assistance provided under
16734 subsections (1) and(2) are not sufficient to provide for the
16735 moving expenses of displaced residents in moving to other
16736 residences within the state, the office ~~department~~ may levy pro
16737 rata assessments on the reserves of providers maintained under
16738 s. 651.035 for such moving expenses of any displaced resident
16739 who lacks sufficient assets to pay for such moving expenses. The
16740 assessments for such moving expenses on any particular provider
16741 may not exceed for any 12-month period an aggregate of 1 percent
16742 of the unencumbered portion of the reserves maintained by the
16743 provider under s. 651.035. If the office ~~department~~ determines
16744 that payment of an assessment under this subsection would impair
16745 the financial standing of a facility or its residents, the
16746 office ~~department~~ may waive or temporarily defer all or part of
16747 the assessment with respect to that provider. The office
16748 ~~department~~ shall apply any moneys voluntarily paid by a provider



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16749 | under subsection (1) or subsection (2) to satisfaction of
16750 | assessments under this subsection.

16751 | (4) The office ~~department~~ shall permanently reduce the
16752 | reserves required of a provider under s. 651.035 to the extent
16753 | of the provider's costs under subsection (1), voluntary
16754 | contributions under subsection (2), and assessments under
16755 | subsection (3). However, the office ~~department~~ shall thereafter
16756 | raise the reserve requirements of a provider to the extent of
16757 | reimbursements paid to the provider under subsection (1) unless
16758 | such increase would raise the reserve requirement above the
16759 | amount required under s. 651.035.

16760 | (5) No payment, contribution, or assessment may be paid by
16761 | a provider under this section if the release of funds from the
16762 | reserves of the provider would violate a bond or lending
16763 | commitment or covenant.

16764 | (6) Moneys received under this section for the support of
16765 | residents shall be kept in a separate fund maintained and
16766 | administered by the department. The Continuing Care Advisory
16767 | Council shall monitor the collection and use of such funds and
16768 | shall advise the office or department on plans for resident
16769 | relocation. The council shall seek the assistance of providers
16770 | licensed under this chapter and other service providers in
16771 | locating alternative housing and care arrangements.

16772 | (7) For the purposes of this section, "moving expenses"
16773 | means transportation expenses and the cost of packing and
16774 | relocating personal belongings.

16775 | Section 334. Section 252.62, Florida Statutes, is amended
16776 | to read:



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16777 252.62 Director of Office of Financial Institutions and
16778 Securities Regulation ~~Comptroller's~~ powers in a state of
16779 emergency.--

16780 (1) It is the purpose and intent of this section to
16781 provide the Director of the Office of Financial Institutions and
16782 Securities Regulation of the Financial Services Commission
16783 ~~Comptroller, as head of the Department of Banking and Finance,~~
16784 the authority to make temporary modifications to or suspensions
16785 of the financial institutions codes in order to expedite the
16786 recovery of communities affected by a disaster or other
16787 emergency and in order to encourage financial institutions to
16788 meet the credit, deposit, and other financial needs of such
16789 communities.

16790 (2)(a) When the Governor declares a state of emergency
16791 pursuant to s. 252.36, the Director of the Office of Financial
16792 Institutions and Securities Regulation ~~Comptroller~~ may issue:

16793 1. One or more general orders applicable to all financial
16794 institutions that are subject to the financial institutions
16795 codes and that serve any portion of the area of the state under
16796 the state of emergency; or

16797 2. One or more specific orders to particular financial
16798 institutions that are subject to the financial institution codes
16799 and that normally derive more than 60 percent of their deposits
16800 from persons in the area of the state under the state of
16801 emergency,

16802
16803 which orders may modify or suspend, as to those institutions,
16804 all or any part of the financial institutions codes, as defined



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16805 in s. 655.005, or any applicable rule, consistent with the
16806 stated purposes of the financial institutions codes and with
16807 maintaining the safety and soundness of the financial
16808 institutions system in this state.

16809 (b) An order issued by the director ~~Comptroller~~ under this
16810 section becomes effective upon issuance and continues for 120
16811 days unless it is terminated by the director ~~Comptroller~~. The
16812 director ~~Comptroller~~ may extend an order for one additional
16813 period of 120 days if he or she ~~the Comptroller~~ determines that
16814 the emergency conditions that gave rise to the ~~Comptroller's~~
16815 initial order still exist. The Legislature, by concurrent
16816 resolution, may terminate any order issued under this section.

16817 (3) The director ~~Comptroller~~ shall publish, in the next
16818 available publication of the Florida Administrative Weekly, a
16819 copy of the text of any order issued under this section,
16820 together with a statement describing the modification or
16821 suspension and explaining how the modification or suspension
16822 will facilitate recovery from the emergency and maintain the
16823 safety and soundness of financial institutions in this state.

16824 Section 335. Section 288.778, Florida Statutes, is amended
16825 to read:

16826 288.778 Office of Financial Institutions and Securities
16827 Regulation ~~Department of Banking and Finance~~.--The Office of
16828 Financial Institutions and Securities Regulation ~~Department of~~
16829 ~~Banking and Finance~~ shall review the corporation's activities
16830 once every 24 months to determine compliance with this part and
16831 other related laws and rules and to evaluate the corporation's
16832 operations. The office ~~department~~ shall prepare a report based



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16833 on its review and evaluation with recommendation for any
 16834 corrective action. The president shall submit to the office
 16835 ~~department~~ regular reports on the corporation's activities. The
 16836 content and frequency of such reports shall be determined by the
 16837 office ~~department~~. The office ~~department~~ shall charge a fee for
 16838 conducting the review and evaluation and preparing the related
 16839 report, which fee shall not be in excess of the examination fee
 16840 paid by financial institutions chartered or licensed under the
 16841 financial institutions code of this state.

16842 Section 336. Paragraphs (c) and (e) through (p) of
 16843 subsection (3), paragraphs (a), (b), (c), (d), (g), and (h) of
 16844 subsection (4), paragraph (b) of subsection (5), subsection (7),
 16845 paragraphs (a) and (c) of subsection (8), paragraph (b) of
 16846 subsection (9), paragraphs (a) through (e), (h), and (j) of
 16847 subsection (10), subsections (12), (13), and (14), paragraphs
 16848 (a), (c), (d), (e), and (g) of subsection (15), and subsection
 16849 (17) of section 288.99, Florida Statutes, are amended to read:

16850 288.99 Certified Capital Company Act.--

16851 (3) DEFINITIONS.--As used in this section, the term:

16852 (c) "Certified capital company" means a corporation,
 16853 partnership, or limited liability company which:

16854 1. Is certified by the office ~~department~~ in accordance
 16855 with this act.

16856 2. Receives investments of certified capital from two or
 16857 more unaffiliated certified investors.

16858 3. Makes qualified investments as its primary activity.

16859 (e) "Commission" means the Financial Services Commission
 16860 ~~"Department" means the Department of Banking and Finance.~~



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16861 ~~(f)~~ "Director" means the director of the Office of
16862 Tourism, Trade, and Economic Development.

16863 (f)~~(g)~~ "Early stage technology business" means a qualified
16864 business that is:

16865 1. Involved, at the time of the certified capital
16866 company's initial investment in such business, in activities
16867 related to developing initial product or service offerings, such
16868 as prototype development or the establishment of initial
16869 production or service processes;

16870 2. Less than 2 years old and has, together with its
16871 affiliates, less than \$3 million in annual revenues for the
16872 fiscal year immediately preceding the initial investment by the
16873 certified capital company on a consolidated basis, as determined
16874 in accordance with generally accepted accounting principles;

16875 3. The Florida Black Business Investment Board;

16876 4. Any entity that is majority owned by the Florida Black
16877 Business Investment Board; or

16878 5. Any entity in which the Florida Black Business
16879 Investment Board holds a majority voting interest on the board
16880 of directors.

16881 (g)~~(h)~~ "Office" means the Office of Financial Institutions
16882 and Securities Regulation of the commission ~~Tourism, Trade, and~~
16883 ~~Economic Development.~~

16884 (h)~~(i)~~ "Premium tax liability" means any liability
16885 incurred by an insurance company under the provisions of ss.
16886 624.509 and 624.5091.

16887 (i)~~(j)~~ "Principal" means an executive officer of a
16888 corporation, partner of a partnership, manager of a limited



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16889 liability company, or any other person with equivalent executive
16890 functions.

16891 (j)~~(k)~~ "Qualified business" means the Digital Divide Trust
16892 Fund established under the State of Florida Technology Office or
16893 a business that meets the following conditions as evidenced by
16894 documentation required by commission ~~department~~ rule:

16895 1. The business is headquartered in this state and its
16896 principal business operations are located in this state or at
16897 least 75 percent of the employees are employed in the state.

16898 2. At the time a certified capital company makes an
16899 initial investment in a business, the business would qualify for
16900 investment under 13 C.F.R. s. 121.301(c), which is involved in
16901 manufacturing, processing or assembling products, conducting
16902 research and development, or providing services.

16903 3. At the time a certified capital company makes an
16904 initial investment in a business, the business certifies in an
16905 affidavit that:

16906 a. The business is unable to obtain conventional
16907 financing, which means that the business has failed in an
16908 attempt to obtain funding for a loan from a bank or other
16909 commercial lender or that the business cannot reasonably be
16910 expected to qualify for such financing under the standards of
16911 commercial lending;

16912 b. The business plan for the business projects that the
16913 business is reasonably expected to achieve in excess of \$25
16914 million in sales revenue within 5 years after the initial
16915 investment, or the business is located in a designated Front
16916 Porch community, enterprise zone, urban high crime area, rural



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16917 | job tax credit county, or nationally recognized historic
16918 | district;

16919 | c. The business will maintain its headquarters in this
16920 | state for the next 10 years and any new manufacturing facility
16921 | financed by a qualified investment will remain in this state for
16922 | the next 10 years, or the business is located in a designated
16923 | Front Porch community, enterprise zone, urban high crime area,
16924 | rural job tax credit county, or nationally recognized historic
16925 | district; and

16926 | d. The business has fewer than 200 employees and at least
16927 | 75 percent of the employees are employed in this state. For
16928 | purposes of this subsection, the term also includes the Florida
16929 | Black Business Investment Board, any entity majority owned by
16930 | the Florida Black Business Investment Board, or any entity in
16931 | which the Florida Black Business Investment Board holds a
16932 | majority voting interest on the board of directors.

16933 | 4. The term does not include:

16934 | a. Any business predominantly engaged in retail sales,
16935 | real estate development, insurance, banking, lending, or oil and
16936 | gas exploration.

16937 | b. Any business predominantly engaged in professional
16938 | services provided by accountants, lawyers, or physicians.

16939 | c. Any company that has no historical revenues and either
16940 | has no specific business plan or purpose or has indicated that
16941 | its business plan is solely to engage in a merger or acquisition
16942 | with any unidentified company or other entity.

16943 | d. Any company that has a strategic plan to grow through
16944 | the acquisition of firms with substantially similar business



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16945 | which would result in the planned net loss of Florida-based jobs
16946 | over a 12-month period after the acquisition as determined by
16947 | the office ~~department~~.

16948 | ~~(k)(1)~~ "Qualified debt instrument" means a debt
16949 | instrument, or a hybrid of a debt instrument, issued by a
16950 | certified capital company, at par value or a premium, with an
16951 | original maturity date of at least 5 years after the date of
16952 | issuance, a repayment schedule which is no faster than a level
16953 | principal amortization over a 5-year period, and interest,
16954 | distribution, or payment features which are not related to the
16955 | profitability of the certified capital company or the
16956 | performance of the certified capital company's investment
16957 | portfolio.

16958 | ~~(l)(m)~~ "Qualified distribution" means any distribution or
16959 | payment by a certified capital company for:

16960 | 1. Reasonable costs and expenses, including, but not
16961 | limited to, professional fees, of forming and syndicating the
16962 | certified capital company, if no such costs or expenses are paid
16963 | to a certified investor, except as provided in subparagraph
16964 | (4)(f)2., and the total cash, cash equivalents, and other
16965 | current assets permitted by sub-subparagraph (5)(b)3.g. that can
16966 | be converted into cash within 5 business days available to the
16967 | certified capital company at the time of receipt of certified
16968 | capital from certified investors, after deducting the costs and
16969 | expenses of forming and syndicating the certified capital
16970 | company, including any payments made over time for obligations
16971 | incurred at the time of receipt of certified capital but
16972 | excluding other future qualified distributions and payments made



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16973 | under paragraph (9)(a), are an amount equal to or greater than
16974 | 50 percent of the total certified capital allocated to the
16975 | certified capital pursuant to subsection (7);

16976 | 2. Reasonable costs of managing and operating the
16977 | certified capital company, not exceeding 5 percent of the
16978 | certified capital in any single year, including an annual
16979 | management fee in an amount that does not exceed 2.5 percent of
16980 | the certified capital of the certified capital company;

16981 | 3. Reasonable and necessary fees in accordance with
16982 | industry custom for professional services, including, but not
16983 | limited to, legal and accounting services, related to the
16984 | operation of the certified capital company; or

16985 | 4. Any projected increase in federal or state taxes,
16986 | including penalties and interest related to state and federal
16987 | income taxes, of the equity owners of a certified capital
16988 | company resulting from the earnings or other tax liability of
16989 | the certified capital company to the extent that the increase is
16990 | related to the ownership, management, or operation of a
16991 | certified capital company.

16992 | (m)~~(n)~~1. "Qualified investment" means the investment of
16993 | cash by a certified capital company in a qualified business for
16994 | the purchase of any debt, equity, or hybrid security, including
16995 | a debt instrument or security that has the characteristics of
16996 | debt but which provides for conversion into equity or equity
16997 | participation instruments such as options or warrants.

16998 | 2. The term does not include:

16999 | a. Any investment made after the effective date of this
17000 | act the contractual terms of which require the repayment of any



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17001 | portion of the principal in instances, other than default as
 17002 | determined by commission ~~department~~ rule, within 12 months
 17003 | following the initial investment by the certified capital
 17004 | company unless such investment has a repayment schedule no
 17005 | faster than a level principal amortization of at least 2 years;

17006 | b. Any "follow-on" or "add-on" investment except for the
 17007 | amount by which the new investment is in addition to the amount
 17008 | of the certified capital company's initial investment returned
 17009 | to it other than in the form of interest, dividends, or other
 17010 | types of profit participation or distributions; or

17011 | c. Any investment in a qualified business or affiliate of
 17012 | a qualified business that exceeds 15 percent of certified
 17013 | capital.

17014 | (n)~~(e)~~ "Program One" means the \$150 million in premium tax
 17015 | credits issued under this section in 1999, the allocation of
 17016 | such credits under this section, and the regulation of certified
 17017 | capital companies and investments made by them hereunder.

17018 | (o)~~(p)~~ "Program Two" means the \$150 million in premium tax
 17019 | credits to be issued under subsection (17), the allocation of
 17020 | such credits under this section, and the regulation of certified
 17021 | capital companies and investments made by them hereunder.

17022 | (4) CERTIFICATION; GROUNDS FOR DENIAL OR
 17023 | DECERTIFICATION.--

17024 | (a) To operate as a certified capital company, a
 17025 | corporation, partnership, or limited liability company must be
 17026 | certified by the Department of Banking and Finance or the office
 17027 | pursuant to this act.



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17028 (b) An applicant for certification as a certified capital
17029 company must file a verified application with the Department of
17030 Banking and Finance on or before December 1, 1998, a date
17031 determined in rules adopted pursuant to subsection (17) in the
17032 case of applicants for Program Two, in a form which the
17033 commission ~~department~~ may prescribe by rule. The applicant shall
17034 submit a nonrefundable application fee of \$7,500 to the office
17035 ~~department~~. The applicant shall provide:

17036 1. The name of the applicant and the address of its
17037 principal office and each office in this state.

17038 2. The applicant's form and place of organization and the
17039 relevant organizational documents, bylaws, and amendments or
17040 restatements of such documents, bylaws, or amendments.

17041 3. Evidence from the Department of State that the
17042 applicant is registered with the Department of State as required
17043 by law, maintains an active status with the Department of State,
17044 and has not been dissolved or had its registration revoked,
17045 canceled, or withdrawn.

17046 4. The applicant's proposed method of doing business.

17047 5. The applicant's financial condition and history,
17048 including an audit report on the financial statements prepared
17049 in accordance with generally accepted accounting principles. The
17050 applicant must have, at the time of application for
17051 certification, an equity capitalization of at least \$500,000 in
17052 the form of cash or cash equivalents. The applicant must
17053 maintain this equity capitalization until the applicant receives
17054 an allocation of certified capital pursuant to this act. If the
17055 date of the application is more than 90 days after preparation



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17056 of the applicant's fiscal year-end financial statements, the
17057 applicant may file financial statements reviewed by an
17058 independent certified public accountant for the period
17059 subsequent to the audit report, together with the audited
17060 financial statement for the most recent fiscal year. If the
17061 applicant has been in business less than 12 months, and has not
17062 prepared an audited financial statement, the applicant may file
17063 a financial statement reviewed by an independent certified
17064 public accountant.

17065 6. Copies of any offering materials used or proposed to be
17066 used by the applicant in soliciting investments of certified
17067 capital from certified investors.

17068 (c) Within 60 days after receipt of a verified
17069 application, the office ~~department~~ shall grant or deny
17070 certification as a certified capital company. If the office
17071 ~~department~~ denies certification within the time period
17072 specified, the office ~~department~~ shall inform the applicant of
17073 the grounds for the denial. If the office ~~department~~ has not
17074 granted or denied certification within the time specified, the
17075 application shall be deemed approved. The office ~~department~~
17076 shall approve the application if the office ~~department~~ finds
17077 that:

17078 1. The applicant satisfies the requirements of paragraph
17079 (b).

17080 2. No evidence exists that the applicant has committed any
17081 act specified in paragraph (d).

17082 3. At least two of the principals have a minimum of 5
17083 years of experience making venture capital investments out of



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17084 private equity funds, with not less than \$20 million being
17085 provided by third-party investors for investment in the early
17086 stage of operating businesses. At least one full-time manager or
17087 principal of the certified capital company who has such
17088 experience must be primarily located in an office of the
17089 certified capital company which is based in this state.

17090 4. The applicant's proposed method of doing business and
17091 raising certified capital as described in its offering materials
17092 and other materials submitted to the office ~~department~~ conforms
17093 with the requirements of this section.

17094 (d) The office ~~department~~ may deny certification or
17095 decertify a certified capital company if the grounds for
17096 decertification are not removed or corrected within 90 days
17097 after the notice of such grounds is received by the certified
17098 capital company. The office ~~department~~ may deny certification or
17099 decertify a certified capital company if the certified capital
17100 company fails to maintain common stock or paid-in capital of at
17101 least \$500,000, or if the office ~~department~~ determines that the
17102 applicant, or any principal or director of the certified capital
17103 company, has:

17104 1. Violated any provision of this section;

17105 2. Made a material misrepresentation or false statement or
17106 concealed any essential or material fact from any person during
17107 the application process or with respect to information and
17108 reports required of certified capital companies under this
17109 section;

17110 3. Been convicted of, or entered a plea of guilty or nolo
17111 contendere to, a crime against the laws of this state or any



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17112 other state or of the United States or any other country or
17113 government, including a fraudulent act in connection with the
17114 operation of a certified capital company, or in connection with
17115 the performance of fiduciary duties in another capacity;

17116 4. Been adjudicated liable in a civil action on grounds of
17117 fraud, embezzlement, misrepresentation, or deceit; or

17118 5.a. Been the subject of any decision, finding,
17119 injunction, suspension, prohibition, revocation, denial,
17120 judgment, or administrative order by any court of competent
17121 jurisdiction, administrative law judge, or any state or federal
17122 agency, national securities, commodities, or option exchange, or
17123 national securities, commodities, or option association,
17124 involving a material violation of any federal or state
17125 securities or commodities law or any rule or regulation adopted
17126 under such law, or any rule or regulation of any national
17127 securities, commodities, or options exchange, or national
17128 securities, commodities, or options association; or

17129 b. Been the subject of any injunction or adverse
17130 administrative order by a state or federal agency regulating
17131 banking, insurance, finance or small loan companies, real
17132 estate, mortgage brokers, or other related or similar
17133 industries.

17134 (g) On or before December 31 of each year, each certified
17135 capital company shall pay to the office ~~department~~ an annual,
17136 nonrefundable renewal certification fee of \$5,000. If a
17137 certified capital company fails to pay its renewal fee by the
17138 specified deadline, the company must pay a late fee of \$5,000 in
17139 addition to the renewal fee on or by January 31 of each year in



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17140 order to continue its certification in the program. On or before
17141 April 30 of each year, each certified capital company shall file
17142 audited financial statements with the office ~~department~~. No
17143 renewal fees shall be required within 6 months after the date of
17144 initial certification.

17145 (h) The commission and office ~~department~~ shall administer
17146 and provide for the enforcement of certification requirements
17147 for certified capital companies as provided in this act. The
17148 commission ~~department~~ may adopt any rules necessary to carry out
17149 its duties, obligations, and powers related to certification,
17150 renewal of certification, or decertification of certified
17151 capital companies and the commission and office may perform any
17152 other acts necessary for the proper administration and
17153 enforcement of such duties, obligations, and powers.

17154 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--

17155 (b) All capital not invested in qualified investments by
17156 the certified capital company:

17157 1. Must be held in a financial institution as defined by
17158 s. 655.005(1)(h) or held by a broker-dealer registered under s.
17159 517.12, except as set forth in sub-subparagraph 3.g.

17160 2. Must not be invested in a certified investor of the
17161 certified capital company or any affiliate of the certified
17162 investor of the certified capital company, except for an
17163 investment permitted by sub-subparagraph 3.g., provided
17164 repayment terms do not permit the obligor to directly or
17165 indirectly manage or control the investment decisions of the
17166 certified capital company.

17167 3. Must be invested only in:



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- 17168 a. Any United States Treasury obligations;
- 17169 b. Certificates of deposit or other obligations, maturing
- 17170 within 3 years after acquisition of such certificates or
- 17171 obligations, issued by any financial institution or trust
- 17172 company incorporated under the laws of the United States;
- 17173 c. Marketable obligations, maturing within 10 years or
- 17174 less after the acquisition of such obligations, which are rated
- 17175 "A" or better by any nationally recognized credit rating agency;
- 17176 d. Mortgage-backed securities, with an average life of 5
- 17177 years or less, after the acquisition of such securities, which
- 17178 are rated "A" or better by any nationally recognized credit
- 17179 rating agency;
- 17180 e. Collateralized mortgage obligations and real estate
- 17181 mortgage investment conduits that are direct obligations of an
- 17182 agency of the United States Government; are not private-label
- 17183 issues; are in book-entry form; and do not include the classes
- 17184 of interest only, principal only, residual, or zero;
- 17185 f. Interests in money market funds, the portfolio of which
- 17186 is limited to cash and obligations described in sub-
- 17187 subparagraphs a.-d.; or
- 17188 g. Obligations that are issued by an insurance company
- 17189 that is not a certified investor of the certified capital
- 17190 company making the investment, that has provided a guarantee
- 17191 indemnity bond, insurance policy, or other payment undertaking
- 17192 in favor of the certified capital company's certified investors
- 17193 as permitted by subparagraph (3) (1) ~~(m)~~ 1. or an affiliate of such
- 17194 insurance company as defined by subparagraph (3)(a)3. that is



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17195 | not a certified investor of the certified capital company making
17196 | the investment, provided that such obligations are:

17197 | (I) Issued or guaranteed as to principal by an entity
17198 | whose senior debt is rated "AA" or better by Standard & Poor's
17199 | Ratings Group or such other nationally recognized credit rating
17200 | agency as the commission ~~department~~ may by rule determine.

17201 | (II) Not subordinated to other unsecured indebtedness of
17202 | the issuer or the guarantor.

17203 | (III) Invested by such issuing entity in accordance with
17204 | sub-subparagraphs 3.a.-f.

17205 | (IV) Readily convertible into cash within 5 business days
17206 | for the purpose of making a qualified investment unless such
17207 | obligations are held to provide a guarantee, indemnity bond,
17208 | insurance policy, or other payment undertaking in favor of the
17209 | certified capital company's certified investors as permitted by
17210 | subparagraph (3)(1)~~(m)~~1.

17211 | (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
17212 | PROCESS.--

17213 | (a) The total amount of tax credits which may be allocated
17214 | by the Office of Tourism, Trade, and Economic Development shall
17215 | not exceed \$150 million with respect to Program One and \$150
17216 | million with respect to Program Two. The total amount of tax
17217 | credits which may be used by certified investors under this act
17218 | shall not exceed \$15 million annually with respect to credits
17219 | earned under Program One and \$15 million annually with respect
17220 | to credits earned under Program Two.



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17221 (b) The Office of Tourism, Trade, and Economic Development
17222 shall be responsible for allocating premium tax credits as
17223 provided for in this act to certified capital companies.

17224 (c) Each certified capital company must apply to the
17225 Office of Tourism, Trade, and Economic Development for an
17226 allocation of premium tax credits for potential certified
17227 investors on a form developed by the Office of Tourism, Trade,
17228 and Economic Development with the cooperation of the Department
17229 of Revenue. The form shall be accompanied by an affidavit from
17230 each potential certified investor confirming that the potential
17231 certified investor has agreed to make an investment of certified
17232 capital in a certified capital company up to a specified amount,
17233 subject only to the receipt of a premium tax credit allocation
17234 pursuant to this subsection. No certified capital company shall
17235 submit premium tax allocation claims on behalf of certified
17236 investors that in the aggregate would exceed the total dollar
17237 amount appropriated by the Legislature for the specific program.
17238 No allocation shall be made to the potential investors of a
17239 certified capital company under Program Two unless such
17240 certified capital company has filed premium tax allocation
17241 claims of not less than \$15 million in the aggregate.

17242 (d) The Office of Tourism, Trade, and Economic Development
17243 shall inform each certified capital company of its share of
17244 total premium tax credits available for allocation to each of
17245 its potential investors.

17246 (e) If a certified capital company does not receive
17247 certified capital equaling the amount of premium tax credits
17248 allocated to a potential certified investor for which the



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17249 investor filed a premium tax allocation claim within 10 business
17250 days after the investor received a notice of allocation, the
17251 certified capital company shall notify the Office of Tourism,
17252 Trade, and Economic Development by overnight common carrier
17253 delivery service of the company's failure to receive the
17254 capital. That portion of the premium tax credits allocated to
17255 the certified capital company shall be forfeited. If the Office
17256 of Tourism, Trade, and Economic Development must make a pro rata
17257 allocation under paragraph (f), that ~~the~~ office shall reallocate
17258 such available credits among the other certified capital
17259 companies on the same pro rata basis as the initial allocation.

17260 (f) If the total amount of capital committed by all
17261 certified investors to certified capital companies in premium
17262 tax allocation claims under Program Two exceeds the aggregate
17263 cap on the amount of credits that may be awarded under Program
17264 Two, the premium tax credits that may be allowed to any one
17265 certified investor under Program Two shall be allocated using
17266 the following ratio:

$$17267 \qquad \qquad \qquad A/B = X / >\$150,000,000$$

17268

17269 where the letter "A" represents the total amount of certified
17270 capital certified investors have agreed to invest in any one
17271 certified capital company under Program Two, the letter "B"
17272 represents the aggregate amount of certified capital that all
17273 certified investors have agreed to invest in all certified
17274 capital companies under Program Two, the letter "X" is the
17275 numerator and represents the total amount of premium tax credits
17276 and certified capital that may be allocated to a certified



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17277 capital company on a date determined by rule adopted by the
17278 commission ~~department~~ pursuant to subsection (17), and \$150
17279 million is the denominator and represents the total amount of
17280 premium tax credits and certified capital that may be allocated
17281 to all certified investors under Program Two. Any such premium
17282 tax credits are not first available for utilization until annual
17283 filings are made in 2001 for calendar year 2000 in the case of
17284 Program One, and the tax credits may be used at a rate not to
17285 exceed 10 percent annually per program.

17286 (g) The maximum amount of certified capital for which
17287 premium tax allocation claims may be filed on behalf of any
17288 certified investor and its affiliates by one or more certified
17289 capital companies may not exceed \$15 million for Program One and
17290 \$22.5 million for Program Two.

17291 (h) To the extent that less than \$150 million in certified
17292 capital is raised in connection with the procedure set forth in
17293 paragraphs (c)-(g), the commission ~~department~~ may adopt rules to
17294 allow a subsequent allocation of the remaining premium tax
17295 credits authorized under this section.

17296 (i) The Office of Tourism, Trade, and Economic Development
17297 shall issue a certification letter for each certified investor,
17298 showing the amount invested in the certified capital company
17299 under each program. The applicable certified capital company
17300 shall attest to the validity of the certification letter.

17301 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.--

17302 (a) On an annual basis, on or before January 31, each
17303 certified capital company shall file with the office ~~department~~
17304 and the Office of Tourism, Trade, and Economic Development, in



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17305 consultation with the office department, on a form prescribed by
17306 the Office of Tourism, Trade, and Economic Development, for each
17307 calendar year:

17308 1. The total dollar amount the certified capital company
17309 received from certified investors, the identity of the certified
17310 investors, and the amount received from each certified investor
17311 during the immediately preceding calendar year.

17312 2. The total dollar amount the certified capital company
17313 invested and the amount invested in qualified businesses,
17314 together with the identity and location of those businesses and
17315 the amount invested in each qualified business during the
17316 immediately preceding calendar year.

17317 3. For informational purposes only, the total number of
17318 permanent, full-time jobs either created or retained by the
17319 qualified business during the immediately preceding calendar
17320 year, the average wage of the jobs created or retained, the
17321 industry sectors in which the qualified businesses operate, and
17322 any additional capital invested in qualified businesses from
17323 sources other than certified capital companies.

17324 (c) The Office of Tourism, Trade, and Economic Development
17325 shall review the form, and any supplemental documentation,
17326 submitted by each certified capital company for the purpose of
17327 verifying:

17328 1. That the businesses in which certified capital has been
17329 invested by the certified capital company are in fact qualified
17330 businesses, and that the amount of certified capital invested by
17331 the certified capital company is as represented in the form.



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17332 2. The amount of certified capital invested in the
17333 certified capital company by the certified investors.

17334 3. The amount of premium tax credit available to certified
17335 investors.

17336 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
17337 PARTICIPATION.--

17338 (b) Cumulative distributions from a certified capital
17339 company from funds related to a particular program to its
17340 certified investors and equity holders under such program, other
17341 than qualified distributions, in excess of the certified capital
17342 company's original certified capital raised under such program
17343 and any additional capital contributions to the certified
17344 capital company with respect to such program may be audited by a
17345 nationally recognized certified public accounting firm
17346 acceptable to the office department, at the expense of the
17347 certified capital company, if the office department directs such
17348 audit be conducted. The audit shall determine whether aggregate
17349 cumulative distributions from the funds related to a particular
17350 program made by the certified capital company to all certified
17351 investors and equity holders under such program, other than
17352 qualified distributions, have equaled the sum of the certified
17353 capital company's original certified capital raised under such
17354 program and any additional capital contributions to the
17355 certified capital company with respect to such program. If at
17356 the time of any such distribution made by the certified capital
17357 company, such distribution taken together with all other such
17358 distributions from the funds related to such program made by the
17359 certified capital company, other than qualified distributions,



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17360 exceeds in the aggregate the sum of the certified capital
 17361 company's original certified capital raised under such program
 17362 and any additional capital contributions to the certified
 17363 capital company with respect to such program, as determined by
 17364 the audit, the certified capital company shall pay to the
 17365 Department of Revenue 10 percent of the portion of such
 17366 distribution in excess of such amount. Payments to the
 17367 Department of Revenue by a certified capital company pursuant to
 17368 this paragraph shall not exceed the aggregate amount of tax
 17369 credits used by all certified investors in such certified
 17370 capital company for such program.

17371 (10) DECERTIFICATION.--

17372 (a) The office ~~department~~ shall conduct an annual review
 17373 of each certified capital company to determine if the certified
 17374 capital company is abiding by the requirements of certification,
 17375 to advise the certified capital company as to the eligibility
 17376 status of its qualified investments, and to ensure that no
 17377 investment has been made in violation of this act. The cost of
 17378 the annual review shall be paid by each certified capital
 17379 company.

17380 (b) Nothing contained in this subsection shall be
 17381 construed to limit the Chief Financial Officer's or the office's
 17382 ~~Comptroller's~~ authority to conduct audits of certified capital
 17383 companies as deemed appropriate and necessary.

17384 (c) Any material violation of this section, or a finding
 17385 that the certified capital company or any principal or director
 17386 thereof has committed any act specified in paragraph (4)(d),
 17387 shall be grounds for decertification of the certified capital



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17388 | company. If the office ~~department~~ determines that a certified
 17389 | capital company is no longer in compliance with the
 17390 | certification requirements of this act, the office ~~department~~
 17391 | shall, by written notice, inform the officers of such company
 17392 | that the company may be subject to decertification 90 days after
 17393 | the date of mailing of the notice, unless the deficiencies are
 17394 | corrected and such company is again found to be in compliance
 17395 | with all certification requirements.

17396 | (d) At the end of the 90-day grace period, if the
 17397 | certified capital company is still not in compliance with the
 17398 | certification requirements, the office ~~department~~ may issue a
 17399 | notice to revoke or suspend the certification or to impose an
 17400 | administrative fine. The office ~~department~~ shall advise each
 17401 | respondent of the right to an administrative hearing under
 17402 | chapter 120 prior to final action by the office ~~department~~.

17403 | (e) If the office ~~department~~ revokes a certification, such
 17404 | revocation shall also deny, suspend, or revoke the
 17405 | certifications of all affiliates of the certified capital
 17406 | company.

17407 | (h) The Office of Tourism, Trade, and Economic Development
 17408 | shall send written notice to the address of each certified
 17409 | investor whose premium tax credit has been subject to recapture
 17410 | or forfeiture, using the address last shown on the last premium
 17411 | tax filing.

17412 | (j) The certified investor shall file with the Department
 17413 | of Revenue an amended return or such other report as the
 17414 | commission ~~department~~ may prescribe by rule ~~regulation~~ and pay
 17415 | any required tax, not later than 60 days after such



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17416 decertification has been agreed to or finally determined,
17417 whichever shall first occur.

17418 (12) REPORTING REQUIREMENTS.--The Office of Tourism,
17419 Trade, and Economic Development shall report on an annual basis
17420 to the Governor, the President of the Senate, and the Speaker of
17421 the House of Representatives on or before April 1:

17422 (a) The total dollar amount each certified capital company
17423 received from all certified investors and any other investor,
17424 the identity of the certified investors, and the total amount of
17425 premium tax credit used by each certified investor for the
17426 previous calendar year.

17427 (b) The total dollar amount invested by each certified
17428 capital company and that portion invested in qualified
17429 businesses, the identity and location of those businesses, the
17430 amount invested in each qualified business, and the total number
17431 of permanent, full-time jobs created or retained by each
17432 qualified business.

17433 (c) The return for the state as a result of the certified
17434 capital company investments, including the extent to which:

17435 1. Certified capital company investments have contributed
17436 to employment growth.

17437 2. The wage level of businesses in which certified capital
17438 companies have invested exceed the average wage for the county
17439 in which the jobs are located.

17440 3. The investments of the certified capital companies in
17441 qualified businesses have contributed to expanding or
17442 diversifying the economic base of the state.



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17443 (13) FEES.--All fees and charges of any nature collected
17444 by the office ~~department~~ pursuant to this act shall be paid into
17445 the State Treasury and credited to the General Revenue Fund.

17446 (14) RULEMAKING AUTHORITY.--

17447 (a) The Department of Revenue may by rule prescribe forms
17448 and procedures for the tax credit filings, audits, and
17449 forfeiture of premium tax credits described in this section, and
17450 for certified capital company payments under paragraph (9)(b).

17451 (b) The commission and the Office of Tourism, Trade, and
17452 Economic Development may adopt any rules necessary to carry out
17453 their respective ~~its~~ duties, obligations, and powers related to
17454 the administration, review, and reporting provisions of this
17455 section and may perform any other acts necessary for the proper
17456 administration and enforcement of such duties, obligations, and
17457 powers.

17458 (15)(a) CONFIDENTIALITY OF INVESTIGATION AND REVIEW
17459 INFORMATION.--Except as otherwise provided by this section, any
17460 information relating to an investigation or office ~~department~~
17461 review of a certified capital company, including any consumer
17462 complaint, is confidential and exempt from the provisions of s.
17463 119.07(1) and s. 24(a), Art. I of the State Constitution until
17464 the investigation or review is complete or ceases to be active.
17465 Such information shall remain confidential and exempt from the
17466 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
17467 Constitution after the investigation or review is complete or
17468 ceases to be active if the information is submitted to any law
17469 enforcement or administrative agency for further investigation,
17470 and shall remain confidential and exempt from the provisions of



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17471 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
17472 until that agency's investigation is complete or ceases to be
17473 active. For purposes of this subsection, an investigation or
17474 review shall be considered "active" so long as the office
17475 ~~department~~, a law enforcement agency, or an administrative
17476 agency is proceeding with reasonable dispatch and has a
17477 reasonable good faith belief that the investigation may lead to
17478 the filing of an administrative, civil, or criminal proceeding.
17479 This section shall not be construed to prohibit disclosure of
17480 information which is required by law to be filed with the office
17481 ~~department~~ and which, but for the investigation, would otherwise
17482 be subject to s. 119.07(1).

17483 (c) Nothing in this section shall be construed to prohibit
17484 the office ~~department~~ from providing information to any law
17485 enforcement or administrative agency. Any law enforcement or
17486 administrative agency receiving confidential information in
17487 connection with its official duties shall maintain the
17488 confidentiality of the information so long as it would otherwise
17489 be confidential.

17490 (d) In the event office ~~department~~ personnel are or have
17491 been involved in an investigation or review of such nature as to
17492 endanger their lives or physical safety or that of their
17493 families, the home addresses, telephone numbers, places of
17494 employment, and photographs of such personnel, together with the
17495 home addresses, telephone numbers, photographs, and places of
17496 employment of spouses and children of such personnel and the
17497 names and locations of schools and day care facilities attended



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17498 | by the children of such personnel are confidential and exempt
17499 | from s. 119.07(1).

17500 | (e) All information obtained by the office ~~department~~ from
17501 | any person which is only made available to the office ~~department~~
17502 | on a confidential or similarly restricted basis shall be
17503 | confidential and exempt from s. 119.07(1). This exemption shall
17504 | not be construed to prohibit disclosure of information which is
17505 | specifically required by law to be filed with the office
17506 | ~~department~~ or which is otherwise subject to s. 119.07(1).

17507 | (g) A privilege against civil liability is granted to a
17508 | person with regard to information or evidence furnished to the
17509 | office ~~department~~, unless such person acts in bad faith or with
17510 | malice in providing such information or evidence.

17511 | (17) Notwithstanding the limitations set forth in
17512 | paragraph (7)(a), in the first fiscal year in which the total
17513 | insurance premium tax collections as determined by the Revenue
17514 | Estimating Conference exceed collections for fiscal year 2000-
17515 | 2001 by more than the total amount of tax credits issued
17516 | pursuant to this section which were used by certified investors
17517 | in that year, the Office of Tourism, Trade, and Economic
17518 | Development may allocate to certified investors in accordance
17519 | with paragraph (7)(a) tax credits for Program Two. The
17520 | commission ~~department~~ shall establish, by rule, a date and
17521 | procedures by which certified capital companies must file
17522 | applications for allocations of such additional premium tax
17523 | credits, which date shall be no later than 180 days from the
17524 | date of determination by the Revenue Estimating Conference. With
17525 | respect to new certified capital invested and premium tax



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17526 credits earned pursuant to this subsection, the schedule
17527 specified in subparagraphs (5)(a)1.-4. is satisfied by
17528 investments by December 31 of the 2nd, 3rd, 4th, and 5th
17529 calendar year, respectively, after the date established by the
17530 commission ~~department~~ for applications of additional premium tax
17531 credits. The commission ~~department~~ shall adopt rules by which an
17532 entity not already certified as a certified capital company may
17533 apply for certification as a certified capital company for
17534 participation in this additional allocation. The insurance
17535 premium tax credit authorized by Program Two may not be used by
17536 certified investors until the annual return due March 1, 2004,
17537 and may be used on all subsequent returns and estimated
17538 payments; however, notwithstanding the provisions of s.
17539 624.5092(2)(b), the installments of taxes due and payable on
17540 April 15, 2004, and June 15, 2004, shall be based on the net tax
17541 due in 2003 not taking into account credits granted pursuant to
17542 this section for Program Two.

17543 Section 337. Paragraph (c) of subsection (1) of section
17544 289.051, Florida Statutes, is amended to read:

17545 289.051 Membership of financial institutions; loans to
17546 corporation, limitations.--

17547 (1) Any financial institution may request membership in
17548 the corporation by making application to the board of directors
17549 on such form and in such manner as said board of directors may
17550 require, and membership shall become effective upon acceptance
17551 of such application by said board. Each member of the
17552 corporation shall make loans to the corporation as and when
17553 called upon by it to do so, on such terms and other conditions



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17554 as shall be approved from time to time by the board of
17555 directors, subject to the following conditions:

17556 (c) The total amount outstanding on loans to the
17557 corporation made by any member at any one time, when added to
17558 the amount of the investment in the capital stock of the
17559 corporation then held by such member, shall not exceed:

17560 1. Twenty percent of the total amount then outstanding on
17561 loans to the corporation by all members, including, in said
17562 total amount outstanding, amounts validly called for loan but
17563 not yet loaned.

17564 2. The following limit, to be determined as of the time
17565 such member becomes a member on the basis of the audited balance
17566 sheet of such member at the close of its fiscal year immediately
17567 preceding its application for membership, or, in the case of an
17568 insurance company, its last annual statement to the Office of
17569 Insurance Regulation of the Financial Services Commission
17570 ~~Department of Insurance~~: 2.5 percent of the capital and surplus
17571 of commercial banks and trust companies; 0.5 percent of the
17572 total outstanding loans made by savings and loan associations
17573 and building and loan associations; 2.5 percent of the capital
17574 and unassigned surplus of stock insurance companies, except fire
17575 insurance companies; 2.5 percent of the unassigned surplus of
17576 mutual insurance companies, except fire insurance companies; 0.1
17577 percent of the assets of fire insurance companies; and such
17578 limits as may be approved by the board of directors of the
17579 corporation for other financial institutions.

17580 Section 338. Subsection (1) of section 289.081, Florida
17581 Statutes, is amended to read:



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17582 289.081 Amendments to articles of incorporation.--
17583 (1) The articles of incorporation may be amended by the
17584 votes of the stockholders and the members of the corporation,
17585 voting separately by classes, and such amendments shall require
17586 approval by the affirmative vote of two-thirds of the votes to
17587 which the stockholders shall be entitled and two-thirds of the
17588 votes to which the members shall be entitled. No amendment of
17589 the articles of incorporation which is inconsistent with the
17590 general purposes expressed herein, or which authorizes any
17591 additional class of capital stock to be issued, or which
17592 eliminates or curtails the right of the Office of Financial
17593 Institutions and Securities Regulation of the Financial Services
17594 Commission ~~Department of Banking and Finance~~ to examine the
17595 corporation or the obligation of the corporation to make reports
17596 as provided in s. 289.121, shall be made. No amendment of the
17597 articles of incorporation which increases the obligation of a
17598 member to make loans to the corporation, or makes any change in
17599 the principal amount, interest rate, maturity date, or in the
17600 security or credit position of any outstanding loan of a member
17601 to the corporation, or affects a member's right to withdraw from
17602 membership as provided herein, or affects a member's voting
17603 rights as provided herein, shall be made without the consent of
17604 each member affected by such amendment.

17605 Section 339. Section 289.121, Florida Statutes, is amended
17606 to read:

17607 289.121 Periodic examinations; reports.--The corporation
17608 shall be examined at least once annually by the Office of
17609 Financial Institutions and Securities Regulation of the



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17610 Financial Services Commission ~~Department of Banking and Finance~~
 17611 and shall make reports of its condition not less than annually
 17612 to that office ~~said department~~ and more frequently upon call of
 17613 the office ~~department~~, which in turn shall make copies of such
 17614 reports available to the Office of Insurance Regulation of the
 17615 Financial Services Commission ~~Department of Insurance~~ and the
 17616 Governor; and the corporation shall also furnish such other
 17617 information as may from time to time be required by the Office
 17618 of Financial Institutions and Securities Regulation ~~Department~~
 17619 ~~of Banking and Finance~~ and Department of State. The corporation
 17620 shall pay the actual cost of ~~said~~ examinations. The office
 17621 ~~Department of Banking and Finance~~ shall exercise the same power
 17622 and authority over corporations organized under this act as is
 17623 exercised over financial institutions under the provisions of
 17624 the financial institutions codes, when such codes are not in
 17625 conflict with this act.

17626 Section 340. Paragraph (d) of subsection (1) of section
 17627 420.101, Florida Statutes, is amended to read:

17628 420.101 Housing Development Corporation of Florida;
 17629 creation, membership, and purposes.--

17630 (1) Twenty-five or more persons, a majority of whom shall
 17631 be residents of this state, who may desire to create a housing
 17632 development corporation under the provisions of this part for
 17633 the purpose of promoting and developing housing and advancing
 17634 the prosperity and economic welfare of the state and, to that
 17635 end, to exercise the powers and privileges hereinafter provided,
 17636 may be incorporated by filing in the Department of State, as



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17637 hereinafter provided, articles of incorporation. The articles
17638 of incorporation shall contain:

17639 (d) The names and post office addresses of the members of
17640 the first board of directors. The first board of directors shall
17641 be elected by and from the stockholders of the corporation and
17642 shall consist of 21 members. However, five of such members
17643 shall consist of the following persons, who shall be nonvoting
17644 members: the secretary of the Department of Community Affairs or
17645 her or his designee; the head of the Department of Financial
17646 Services Banking and Finance or her or his designee with
17647 expertise in insurance matters; a designee of the head of the
17648 Department of Financial Services with expertise in banking
17649 matters Insurance or her or his designee; one state senator
17650 appointed by the President of the Senate; and one representative
17651 appointed by the Speaker of the House of Representatives.

17652 Section 341. Section 494.00125, Florida Statutes, is
17653 amended to read:

17654 494.00125 Confidentiality of information relating to
17655 investigations and examinations.--

17656 (1)(a) Except as otherwise provided by this section,
17657 information relative to an investigation or examination by the
17658 office department pursuant to this chapter, including any
17659 consumer complaint received by the office or the Department of
17660 Financial Services, is confidential and exempt from s. 119.07(1)
17661 until the investigation or examination is completed or ceases to
17662 be active. The information compiled by the office department in
17663 such an investigation or examination shall remain confidential
17664 and exempt from s. 119.07(1) after the office's department's



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17665 investigation or examination is completed or ceases to be active
17666 if the office ~~department~~ submits the information to any law
17667 enforcement or administrative agency for further investigation.
17668 Such information shall remain confidential and exempt from s.
17669 119.07(1) until that agency's investigation is completed or
17670 ceases to be active. For purposes of this section, an
17671 investigation or examination shall be considered "active" so
17672 long as the office ~~department~~ or any law enforcement or
17673 administrative agency is proceeding with reasonable dispatch and
17674 has a reasonable good faith belief that the investigation or
17675 examination may lead to the filing of an administrative, civil,
17676 or criminal proceeding or to the denial or conditional grant of
17677 a license. This section shall not be construed to prohibit
17678 disclosure of information which is required by law to be filed
17679 with the office ~~department~~ and which, but for the investigation
17680 or examination, would be subject to s. 119.07(1).

17681 (b) Except as necessary for the office ~~department~~ to
17682 enforce the provisions of this chapter, a consumer complaint and
17683 other information relative to an investigation or examination
17684 shall remain confidential and exempt from s. 119.07(1) after the
17685 investigation or examination is completed or ceases to be active
17686 to the extent disclosure would:

17687 1. Jeopardize the integrity of another active
17688 investigation or examination.

17689 2. Reveal the name, address, telephone number, social
17690 security number, or any other identifying number or information
17691 of any complainant, customer, or account holder.

17692 3. Disclose the identity of a confidential source.



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17693 4. Disclose investigative techniques or procedures.

17694 5. Reveal a trade secret as defined in s. 688.002.

17695 (c) In the event that office ~~department~~ personnel are or
17696 have been involved in an investigation or examination of such
17697 nature as to endanger their lives or physical safety or that of
17698 their families, then the home addresses, telephone numbers,
17699 places of employment, and photographs of such personnel,
17700 together with the home addresses, telephone numbers,
17701 photographs, and places of employment of spouses and children of
17702 such personnel and the names and locations of schools and day
17703 care facilities attended by the children of such personnel are
17704 confidential and exempt from s. 119.07(1).

17705 (d) Nothing in this section shall be construed to prohibit
17706 the office ~~department~~ from providing information to any law
17707 enforcement or administrative agency. Any law enforcement or
17708 administrative agency receiving confidential information in
17709 connection with its official duties shall maintain the
17710 confidentiality of the information so long as it would otherwise
17711 be confidential.

17712 (e) All information obtained by the office ~~department~~ from
17713 any person which is only made available to the office ~~department~~
17714 on a confidential or similarly restricted basis shall be
17715 confidential and exempt from s. 119.07(1). This exemption shall
17716 not be construed to prohibit disclosure of information which is
17717 required by law to be filed with the office ~~department~~ or which
17718 is otherwise subject to s. 119.07(1).

17719 (2) If information subject to subsection (1) is offered in
17720 evidence in any administrative, civil, or criminal proceeding,



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17721 the presiding officer may, in her or his discretion, prevent the
17722 disclosure of information which would be confidential pursuant
17723 to paragraph (1)(b).

17724 (3) A privilege against civil liability is granted to a
17725 person who furnishes information or evidence to the office
17726 ~~department~~, unless such person acts in bad faith or with malice
17727 in providing such information or evidence.

17728 Section 342. Subsection (7) of section 494.00421, Florida
17729 Statutes, is amended to read:

17730 494.00421 Fees earned upon obtaining a bona fide
17731 commitment.--Notwithstanding the provisions of ss. 494.001-
17732 494.0077, any mortgage brokerage business which contracts to
17733 receive from a borrower a mortgage brokerage fee upon obtaining
17734 a bona fide commitment shall accurately disclose in the mortgage
17735 brokerage agreement:

17736 (7)(a) The following statement, in no less than 12-point
17737 boldface type immediately above the signature lines for the
17738 borrowers:

17739

17740 "You are entering into a contract with a mortgage brokerage
17741 business to obtain a bona fide mortgage loan commitment under
17742 the same terms and conditions as stated hereinabove or in a
17743 separate executed good faith estimate form. If the mortgage
17744 brokerage business obtains a bona fide commitment under the same
17745 terms and conditions, you will be obligated to pay the mortgage
17746 brokerage business fees, including, but not limited to, a
17747 mortgage brokerage fee, even if you choose not to complete the
17748 loan transaction. If the provisions of s. 494.00421, Florida



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17749 Statutes, are not met, the mortgage brokerage fee can only be
 17750 earned upon the funding of the mortgage loan. The borrower may
 17751 contact the Department of Financial Services ~~Banking and~~
 17752 ~~Finance~~, Tallahassee, Florida, regarding any complaints that the
 17753 borrower may have against the mortgage broker or the mortgage
 17754 brokerage business. The telephone number of the department ~~as~~
 17755 ~~set by rule of the department~~ is: . . . [insert telephone
 17756 number]"

17757 (b) Paragraph (a) does not apply to nonresidential
 17758 mortgage loan commitments in excess of \$1 million.

17759 Section 343. Subsection (7) of section 517.021, Florida
 17760 Statutes, is amended, present subsections (8)-(20) of said
 17761 section are renumbered as subsections (9)-(21), respectively,
 17762 and a new subsection (8) is added to that section to read:

17763 517.021 Definitions.--When used in this chapter, unless
 17764 the context otherwise indicates, the following terms have the
 17765 following respective meanings:

17766 (7) "Commission" means the Financial Services Commission
 17767 ~~"Department" means the Department of Banking and Finance.~~

17768 (8) "Office" means the Office of Financial Institutions
 17769 and Securities Regulation of the commission.

17770 Section 344. Section 517.03, Florida Statutes, is amended
 17771 to read:

17772 517.03 Rulemaking; immunity for acts in conformity with
 17773 rules.--

17774 (1) The office ~~Department of Banking and Finance~~ shall
 17775 administer and provide for the enforcement of all the provisions
 17776 of this chapter. The commission may ~~department has authority to~~



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17777 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
17778 the provisions of this chapter conferring powers or duties upon
17779 the office ~~it~~, including, without limitation, adopting rules and
17780 forms governing reports. The commission ~~department~~ shall also
17781 have the nonexclusive power to define by rule any term, whether
17782 or not used in this chapter, insofar as the definition is not
17783 inconsistent with the provisions of this chapter.

17784 (2) No provision of this chapter imposing liability shall
17785 apply to an act done, or omitted to be done, in conformity with
17786 a rule of the commission ~~department~~ in existence at the time of
17787 the act or omission, even though such rule may thereafter be
17788 amended or repealed or determined by judicial or other authority
17789 to be invalid for any reason.

17790 Section 345. Section 517.051, Florida Statutes, is amended
17791 to read:

17792 517.051 Exempt securities.--The exemptions provided herein
17793 from the registration requirements of s. 517.07 are self-
17794 executing and do not require any filing with the office
17795 ~~department~~ prior to claiming such exemption. Any person who
17796 claims entitlement to any of these exemptions bears the burden
17797 of proving such entitlement in any proceeding brought under this
17798 chapter. The registration provisions of s. 517.07 do not apply
17799 to any of the following securities:

17800 (1) A security issued or guaranteed by the United States
17801 or any territory or insular possession of the United States, by
17802 the District of Columbia, or by any state of the United States
17803 or by any political subdivision or agency or other
17804 instrumentality thereof; provided that no person shall directly



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17805 or indirectly offer or sell securities, other than general
17806 obligation bonds, under this subsection if the issuer or
17807 guarantor is in default or has been in default any time after
17808 December 31, 1975, as to principal or interest:

17809 (a) With respect to an obligation issued by the issuer or
17810 successor of the issuer; or

17811 (b) With respect to an obligation guaranteed by the
17812 guarantor or successor of the guarantor,

17813

17814 except by an offering circular containing a full and fair
17815 disclosure as prescribed by rule of the commission ~~department~~.

17816 (2) A security issued or guaranteed by any foreign
17817 government with which the United States is maintaining
17818 diplomatic relations at the time of the sale or offer of sale of
17819 the security, or by any state, province, or political
17820 subdivision thereof having the power of taxation or assessment,
17821 which security is recognized at the time it is offered for sale
17822 in this state as a valid obligation by such foreign government
17823 or by such state, province, or political subdivision thereof
17824 issuing the security.

17825 (3) A security issued or guaranteed by:

17826 (a) A national bank, a federally chartered savings and
17827 loan association, or a federally chartered savings bank, or the
17828 initial subscription for equity securities in such national
17829 bank, federally chartered savings and loan association, or
17830 federally chartered savings bank;



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17831 (b) Any federal land bank, joint-stock land bank, or
17832 national farm loan association under the provisions of the
17833 Federal Farm Loan Act of July 17, 1916;

17834 (c) An international bank of which the United States is a
17835 member; or

17836 (d) A corporation created and acting as an instrumentality
17837 of the government of the United States.

17838 (4) A security issued or guaranteed, as to principal,
17839 interest, or dividend, by a corporation owning or operating a
17840 railroad or any other public service utility; provided that such
17841 corporation is subject to regulation or supervision whether as
17842 to its rates and charges or as to the issue of its own
17843 securities by a public commission, board, or officer of the
17844 government of the United States, of any state, territory, or
17845 insular possession of the United States, of any municipality
17846 located therein, of the District of Columbia, or of the Dominion
17847 of Canada or of any province thereof; also equipment securities
17848 based on chattel mortgages, leases, or agreements for
17849 conditional sale of cars, motive power, or other rolling stock
17850 mortgaged, leased, or sold to or furnished for the use of or
17851 upon such railroad or other public service utility corporation
17852 or where the ownership or title of such equipment is pledged or
17853 retained in accordance with the provisions of the laws of the
17854 United States or of any state or of the Dominion of Canada to
17855 secure the payment of such equipment securities; and also bonds,
17856 notes, or other evidences of indebtedness issued by a holding
17857 corporation and secured by collateral consisting of any
17858 securities hereinabove described; provided, further, that the



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17859 collateral securities equal in fair value at least 125 percent
17860 of the par value of the bonds, notes, or other evidences of
17861 indebtedness so secured.

17862 (5) A security issued or guaranteed by any of the
17863 following which are subject to the examination, supervision, or
17864 control of this state or of the Federal Deposit Insurance
17865 Corporation or the National Credit Union Association:

- 17866 (a) A bank,
- 17867 (b) A trust company,
- 17868 (c) A savings institution,
- 17869 (d) A building or savings and loan association,
- 17870 (e) An international development bank, or
- 17871 (f) A credit union;

17872
17873 or the initial subscription for equity securities of any
17874 institution listed in paragraphs (a)-(f), provided such
17875 institution is subject to the examination, supervision, or
17876 control of this state.

17877 (6) A security, other than common stock, providing for a
17878 fixed return, which security has been outstanding in the hands
17879 of the public for a period of not less than 5 years, and upon
17880 which security no default in payment of principal or failure to
17881 pay the fixed return has occurred for an immediately preceding
17882 period of 5 years.

17883 (7) Securities of nonprofit agricultural cooperatives
17884 organized under the laws of this state when the securities are
17885 sold or offered for sale to persons principally engaged in
17886 agricultural production or selling agricultural products.



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17887 (8) A note, draft, bill of exchange, or banker's
17888 acceptance having a unit amount of \$25,000 or more which arises
17889 out of a current transaction, or the proceeds of which have been
17890 or are to be used for current transactions, and which has a
17891 maturity period at the time of issuance not exceeding 9 months
17892 exclusive of days of grace, or any renewal thereof which has a
17893 maturity period likewise limited. This subsection applies only
17894 to prime quality negotiable commercial paper of a type not
17895 ordinarily purchased by the general public; that is, paper
17896 issued to facilitate well-recognized types of current
17897 operational business requirements and of a type eligible for
17898 discounting by Federal Reserve banks.

17899 (9) A security issued by a corporation organized and
17900 operated exclusively for religious, educational, benevolent,
17901 fraternal, charitable, or reformatory purposes and not for
17902 pecuniary profit, no part of the net earnings of which
17903 corporation inures to the benefit of any private stockholder or
17904 individual, or any security of a fund that is excluded from the
17905 definition of an investment company under s. 3(c)(10)(B) of the
17906 Investment Company Act of 1940; provided that no person shall
17907 directly or indirectly offer or sell securities under this
17908 subsection except by an offering circular containing full and
17909 fair disclosure, as prescribed by the rules of the commission
17910 ~~department~~, of all material information, including, but not
17911 limited to, a description of the securities offered and terms of
17912 the offering, a description of the nature of the issuer's
17913 business, a statement of the purpose of the offering and the
17914 intended application by the issuer of the proceeds thereof, and



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17915 financial statements of the issuer prepared in conformance with
 17916 generally accepted accounting principles. Section 6(c) of the
 17917 Philanthropy Protection Act of 1995, Pub. L. No. 104-62, shall
 17918 not preempt any provision of this chapter.

17919 (10) Any insurance or endowment policy or annuity contract
 17920 or optional annuity contract or self-insurance agreement issued
 17921 by a corporation, insurance company, reciprocal insurer, or risk
 17922 retention group subject to the supervision of the insurance
 17923 regulator ~~commissioner~~ or bank regulator ~~commissioner~~, or any
 17924 agency or officer performing like functions, of any state or
 17925 territory of the United States or the District of Columbia.

17926 Section 346. Section 517.061, Florida Statutes, is amended
 17927 to read:

17928 517.061 Exempt transactions.--The exemption for each
 17929 transaction listed below is self-executing and does not require
 17930 any filing with the office ~~department~~ prior to claiming such
 17931 exemption. Any person who claims entitlement to any of the
 17932 exemptions bears the burden of proving such entitlement in any
 17933 proceeding brought under this chapter. The registration
 17934 provisions of s. 517.07 do not apply to any of the following
 17935 transactions; however, such transactions are subject to the
 17936 provisions of ss. 517.301, 517.311, and 517.312:

17937 (1) At any judicial, executor's, administrator's,
 17938 guardian's, or conservator's sale, or at any sale by a receiver
 17939 or trustee in insolvency or bankruptcy, or any transaction
 17940 incident to a judicially approved reorganization in which a
 17941 security is issued in exchange for one or more outstanding
 17942 securities, claims, or property interests.



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17943 (2) By or for the account of a pledgeholder or mortgagee
17944 selling or offering for sale or delivery in the ordinary course
17945 of business and not for the purposes of avoiding the provisions
17946 of this chapter, to liquidate a bona fide debt, a security
17947 pledged in good faith as security for such debt.

17948 (3) The isolated sale or offer for sale of securities when
17949 made by or on behalf of a vendor not the issuer or underwriter
17950 of the securities, who, being the bona fide owner of such
17951 securities, disposes of her or his own property for her or his
17952 own account, and such sale is not made directly or indirectly
17953 for the benefit of the issuer or an underwriter of such
17954 securities or for the direct or indirect promotion of any scheme
17955 or enterprise with the intent of violating or evading any
17956 provision of this chapter. For purposes of this subsection,
17957 isolated offers or sales include, but are not limited to, an
17958 isolated offer or sale made by or on behalf of a vendor of
17959 securities not the issuer or underwriter of the securities if:

17960 (a) The offer or sale of securities is in a transaction
17961 satisfying all of the requirements of subparagraphs (11)(a)1.,
17962 2., 3., and 4. and paragraph(11)(b); or

17963 (b) The offer or sale of securities is in a transaction
17964 exempt under s. 4(1) of the Securities Act of 1933, as amended.

17965
17966 For purposes of this subsection, any person, including, without
17967 limitation, a promoter or affiliate of an issuer, shall not be
17968 deemed an underwriter, an issuer, or a person acting for the
17969 direct or indirect benefit of the issuer or an underwriter with



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17970 | respect to any securities of the issuer which she or he has
17971 | owned beneficially for at least 1 year.

17972 | (4) The distribution by a corporation, trust, or
17973 | partnership, actively engaged in the business authorized by its
17974 | charter or other organizational articles or agreement, of
17975 | securities to its stockholders or other equity security holders,
17976 | partners, or beneficiaries as a stock dividend or other
17977 | distribution out of earnings or surplus.

17978 | (5) The issuance of securities to such equity security
17979 | holders or other creditors of a corporation, trust, or
17980 | partnership in the process of a reorganization of such
17981 | corporation or entity, made in good faith and not for the
17982 | purpose of avoiding the provisions of this chapter, either in
17983 | exchange for the securities of such equity security holders or
17984 | claims of such creditors or partly for cash and partly in
17985 | exchange for the securities or claims of such equity security
17986 | holders or creditors.

17987 | (6) Any transaction involving the distribution of the
17988 | securities of an issuer exclusively among its own security
17989 | holders, including any person who at the time of the transaction
17990 | is a holder of any convertible security, any nontransferable
17991 | warrant, or any transferable warrant which is exercisable within
17992 | not more than 90 days of issuance, when no commission or other
17993 | remuneration is paid or given directly or indirectly in
17994 | connection with the sale or distribution of such additional
17995 | securities.

17996 | (7) The offer or sale of securities to a bank, trust
17997 | company, savings institution, insurance company, dealer,



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17998 investment company as defined by the Investment Company Act of
17999 1940, pension or profit-sharing trust, or qualified
18000 institutional buyer as defined by rule of the commission
18001 ~~department~~ in accordance with Securities and Exchange Commission
18002 Rule 144A (17 C.F.R. 230.144(A)(a)), whether any of such
18003 entities is acting in its individual or fiduciary capacity;
18004 provided that such offer or sale of securities is not for the
18005 direct or indirect promotion of any scheme or enterprise with
18006 the intent of violating or evading any provision of this
18007 chapter.

18008 (8) The sale of securities from one corporation to another
18009 corporation provided that:

18010 (a) The sale price of the securities is \$50,000 or more;
18011 and

18012 (b) The buyer and seller corporations each have assets of
18013 \$500,000 or more.

18014 (9) The offer or sale of securities from one corporation
18015 to another corporation, or to security holders thereof, pursuant
18016 to a vote or consent of such security holders as may be provided
18017 by the articles of incorporation and the applicable corporate
18018 statutes in connection with mergers, share exchanges,
18019 consolidations, or sale of corporate assets.

18020 (10) The issuance of notes or bonds in connection with the
18021 acquisition of real property or renewals thereof, if such notes
18022 or bonds are issued to the sellers of, and are secured by all or
18023 part of, the real property so acquired.

18024 (11)(a) The offer or sale, by or on behalf of an issuer,
18025 of its own securities, which offer or sale is part of an



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18026 offering made in accordance with all of the following
18027 conditions:

18028 1. There are no more than 35 purchasers, or the issuer
18029 reasonably believes that there are no more than 35 purchasers,
18030 of the securities of the issuer in this state during an offering
18031 made in reliance upon this subsection or, if such offering
18032 continues for a period in excess of 12 months, in any
18033 consecutive 12-month period.

18034 2. Neither the issuer nor any person acting on behalf of
18035 the issuer offers or sells securities pursuant to this
18036 subsection by means of any form of general solicitation or
18037 general advertising in this state.

18038 3. Prior to the sale, each purchaser or the purchaser's
18039 representative, if any, is provided with, or given reasonable
18040 access to, full and fair disclosure of all material information.

18041 4. No person defined as a "dealer" in this chapter is paid
18042 a commission or compensation for the sale of the issuer's
18043 securities unless such person is registered as a dealer under
18044 this chapter.

18045 5. When sales are made to five or more persons in this
18046 state, any sale in this state made pursuant to this subsection
18047 is voidable by the purchaser in such sale either within 3 days
18048 after the first tender of consideration is made by such
18049 purchaser to the issuer, an agent of the issuer, or an escrow
18050 agent or within 3 days after the availability of that privilege
18051 is communicated to such purchaser, whichever occurs later.



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18052 (b) The following purchasers are excluded from the
 18053 calculation of the number of purchasers under subparagraph
 18054 (a)1.:

18055 1. Any relative or spouse, or relative of such spouse, of
 18056 a purchaser who has the same principal residence as such
 18057 purchaser.

18058 2. Any trust or estate in which a purchaser, any of the
 18059 persons related to such purchaser specified in subparagraph 1.,
 18060 and any corporation specified in subparagraph 3. collectively
 18061 have more than 50 percent of the beneficial interest (excluding
 18062 contingent interest).

18063 3. Any corporation or other organization of which a
 18064 purchaser, any of the persons related to such purchaser
 18065 specified in subparagraph 1., and any trust or estate specified
 18066 in subparagraph 2. collectively are beneficial owners of more
 18067 than 50 percent of the equity securities or equity interest.

18068 4. Any purchaser who makes a bona fide investment of
 18069 \$100,000 or more, provided such purchaser or the purchaser's
 18070 representative receives, or has access to, the information
 18071 required to be disclosed by subparagraph (a)3.

18072 5. Any accredited investor, as defined by rule of the
 18073 commission ~~department~~ in accordance with Securities and Exchange
 18074 Commission Regulation 230.501 (17 C.F.R. 230.501).

18075 (c)1. For purposes of determining which offers and sales
 18076 of securities constitute part of the same offering under this
 18077 subsection and are therefore deemed to be integrated with one
 18078 another:



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18079 a. Offers or sales of securities occurring more than 6
18080 months prior to an offer or sale of securities made pursuant to
18081 this subsection shall not be considered part of the same
18082 offering, provided there are no offers or sales by or for the
18083 issuer of the same or a similar class of securities during such
18084 6-month period.

18085 b. Offers or sales of securities occurring at any time
18086 after 6 months from an offer or sale made pursuant to this
18087 subsection shall not be considered part of the same offering,
18088 provided there are no offers or sales by or for the issuer of
18089 the same or a similar class of securities during such 6-month
18090 period.

18091 2. Offers or sales which do not satisfy the conditions of
18092 any of the provisions of subparagraph 1. may or may not be part
18093 of the same offering, depending on the particular facts and
18094 circumstances in each case. The commission ~~department~~ may, ~~but~~
18095 ~~is not required to~~, adopt a rule or rules indicating what
18096 factors should be considered in determining whether offers and
18097 sales not qualifying for the provisions of subparagraph 1. are
18098 part of the same offering for purposes of this subsection.

18099 (d) Offers or sales of securities made pursuant to, and in
18100 compliance with, any other subsection of this section or any
18101 subsection of s. 517.051 shall not be considered part of an
18102 offering pursuant to this subsection, regardless of when such
18103 offers and sales are made.

18104 (12) The sale of securities by a bank or trust company
18105 organized or incorporated under the laws of the United States or
18106 this state at a profit to such bank or trust company of not more



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18107 | than 2 percent of the total sale price of such securities;
18108 | provided that there is no solicitation of this business by such
18109 | bank or trust company where such bank or trust company acts as
18110 | agent in the purchase or sale of such securities.

18111 | (13) An unsolicited purchase or sale of securities on
18112 | order of, and as the agent for, another by a dealer registered
18113 | ~~with the Department of Banking and Finance~~ pursuant to the
18114 | provisions of s. 517.12; provided that this exemption applies
18115 | solely and exclusively to such registered dealers and does not
18116 | authorize or permit the purchase or sale of securities on order
18117 | of, and as agent for, another by any person other than a dealer
18118 | so registered; and provided, further, that such purchase or sale
18119 | is not directly or indirectly for the benefit of the issuer or
18120 | an underwriter of such securities or for the direct or indirect
18121 | promotion of any scheme or enterprise with the intent of
18122 | violation or evading any provision of this chapter.

18123 | (14) The offer or sale of shares of a corporation which
18124 | represent ownership, or entitle the holders of the shares to
18125 | possession and occupancy, of specific apartment units in
18126 | property owned by such corporation and organized and operated on
18127 | a cooperative basis, solely for residential purposes.

18128 | (15) The offer or sale of securities under a bona fide
18129 | employer-sponsored stock option, stock purchase, pension,
18130 | profit-sharing, savings, or other benefit plan when offered only
18131 | to employees of the sponsoring organization or to employees of
18132 | its controlled subsidiaries.

18133 | (16) The sale by or through a registered dealer of any
18134 | securities option if at the time of the sale of the option:



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18135 (a) The performance of the terms of the option is
18136 guaranteed by any dealer registered under the federal Securities
18137 Exchange Act of 1934, as amended, which guaranty and dealer are
18138 in compliance with such requirements or rules as may be approved
18139 or adopted by the commission ~~department~~; or

18140 (b) Such options transactions are cleared by the Options
18141 Clearing Corporation or any other clearinghouse recognized by
18142 the office ~~department~~; and

18143 (c) The option is not sold by or for the benefit of the
18144 issuer of the underlying security; and

18145 (d) The underlying security may be purchased or sold on a
18146 recognized securities exchange or is quoted on the National
18147 Association of Securities Dealers Automated Quotation System;
18148 and

18149 (e) Such sale is not directly or indirectly for the
18150 purpose of providing or furthering any scheme to violate or
18151 evade any provisions of this chapter.

18152 (17)(a) The offer or sale of securities, as agent or
18153 principal, by a dealer registered pursuant to s. 517.12, when
18154 such securities are offered or sold at a price reasonably
18155 related to the current market price of such securities, provided
18156 such securities are:

18157 1. Securities of an issuer for which reports are required
18158 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act
18159 of 1934, as amended;

18160 2. Securities of a company registered under the Investment
18161 Company Act of 1940, as amended;



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18162 3. Securities of an insurance company, as that term is
18163 defined in s. 2(a)(17) of the Investment Company Act of 1940, as
18164 amended;

18165 4. Securities, other than any security that is a federal
18166 covered security pursuant to s. 18(b)(1) of the Securities Act
18167 of 1933 and is not subject to any registration or filing
18168 requirements under this act, which appear in any list of
18169 securities dealt in on any stock exchange registered pursuant to
18170 the Securities Exchange Act of 1934, as amended, and which
18171 securities have been listed or approved for listing upon notice
18172 of issuance by such exchange, and also all securities senior to
18173 any securities so listed or approved for listing upon notice of
18174 issuance, or represented by subscription rights which have been
18175 so listed or approved for listing upon notice of issuance, or
18176 evidences of indebtedness guaranteed by companies any stock of
18177 which is so listed or approved for listing upon notice of
18178 issuance, such securities to be exempt only so long as such
18179 listings or approvals remain in effect. The exemption provided
18180 for herein does not apply when the securities are suspended from
18181 listing approval for listing or trading.

18182 (b) The exemption provided in this subsection does not
18183 apply if the sale is made for the direct or indirect benefit of
18184 an issuer or controlling persons of such issuer or if such
18185 securities constitute the whole or part of an unsold allotment
18186 to, or subscription or participation by, a dealer as an
18187 underwriter of such securities.

18188 (c) This exemption shall not be available for any
18189 securities which have been denied registration ~~by the department~~



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18190 pursuant to s. 517.111. Additionally, the office ~~department~~ may
18191 deny this exemption with reference to any particular security,
18192 other than a federal covered security, by order published in
18193 such manner as the office ~~department~~ finds proper.

18194 (18) The offer or sale of any security effected by or
18195 through a person registered pursuant to s. 517.12(17).

18196 (19) Other transactions defined by rules as transactions
18197 exempted from the registration provisions of s. 517.07, which
18198 rules the commission ~~department~~ may, ~~but is not required to,~~
18199 adopt from time to time, but only after a finding by the office
18200 ~~department~~ that the application of the provisions of s. 517.07
18201 to a particular transaction is not necessary in the public
18202 interest and for the protection of investors because of the
18203 small dollar amount of securities involved or the limited
18204 character of the offering. In conjunction with its adoption of
18205 such rules, the commission ~~department~~ may also provide in such
18206 rules that persons selling or offering for sale the exempted
18207 securities are exempt from the registration requirements of s.
18208 517.12. No rule so adopted may have the effect of narrowing or
18209 limiting any exemption provided for by statute in the other
18210 subsections of this section.

18211 (20) Any nonissuer transaction by a registered associated
18212 person of a registered dealer, and any resale transaction by a
18213 sponsor of a unit investment trust registered under the
18214 Investment Company Act of 1940, in a security of a class that
18215 has been outstanding in the hands of the public for at least 90
18216 days; provided, at the time of the transaction:



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18217 (a) The issuer of the security is actually engaged in
18218 business and is not in the organization stage or in bankruptcy
18219 or receivership and is not a blank check, blind pool, or shell
18220 company whose primary plan of business is to engage in a merger
18221 or combination of the business with, or an acquisition of, any
18222 unidentified person;

18223 (b) The security is sold at a price reasonably related to
18224 the current market price of the security;

18225 (c) The security does not constitute the whole or part of
18226 an unsold allotment to, or a subscription or participation by,
18227 the broker-dealer as an underwriter of the security;

18228 (d) A nationally recognized securities manual designated
18229 by rule of the commission or order of the office ~~department~~ or a
18230 document filed with the Securities and Exchange Commission that
18231 is publicly available through the commission's electronic data
18232 gathering and retrieval system contains:

18233 1. A description of the business and operations of the
18234 issuer;

18235 2. The names of the issuer's officers and directors, if
18236 any, or, in the case of an issuer not domiciled in the United
18237 States, the corporate equivalents of such persons in the
18238 issuer's country of domicile;

18239 3. An audited balance sheet of the issuer as of a date
18240 within 18 months before such transaction or, in the case of a
18241 reorganization or merger in which parties to the reorganization
18242 or merger had such audited balance sheet, a pro forma balance
18243 sheet; and



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18244 4. An audited income statement for each of the issuer's
18245 immediately preceding 2 fiscal years, or for the period of
18246 existence of the issuer, if in existence for less than 2 years
18247 or, in the case of a reorganization or merger in which the
18248 parties to the reorganization or merger had such audited income
18249 statement, a pro forma income statement; and

18250 (e) The issuer of the security has a class of equity
18251 securities listed on a national securities exchange registered
18252 under the Securities Exchange Act of 1934 or designated for
18253 trading on the National Association of Securities Dealers
18254 Automated Quotation System, unless:

18255 1. The issuer of the security is a unit investment trust
18256 registered under the Investment Company Act of 1940;

18257 2. The issuer of the security has been engaged in
18258 continuous business, including predecessors, for at least 3
18259 years; or

18260 3. The issuer of the security has total assets of at least
18261 \$2 million based on an audited balance sheet as of a date within
18262 18 months before such transaction or, in the case of a
18263 reorganization or merger in which parties to the reorganization
18264 or merger had such audited balance sheet, a pro forma balance
18265 sheet.

18266 Section 347. Section 517.07, Florida Statutes, is amended
18267 to read:

18268 517.07 Registration of securities.--

18269 (1) It is unlawful and a violation of this chapter for any
18270 person to sell or offer to sell a security within this state
18271 unless the security is exempt under s. 517.051, is sold in a



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18272 transaction exempt under s. 517.061, is a federal covered
18273 security, or is registered pursuant to this chapter.

18274 (2) No securities that are required to be registered under
18275 this chapter shall be sold or offered for sale within this state
18276 unless such securities have been registered pursuant to this
18277 chapter and unless prior to each sale the purchaser is furnished
18278 with a prospectus meeting the requirements of rules adopted by
18279 the commission ~~department~~.

18280 (3) The office ~~department~~ shall issue a permit when
18281 registration has been granted by the office ~~department~~. A
18282 permit to sell securities is effective for 1 year from the date
18283 it was granted. Registration of securities shall be deemed to
18284 include the registration of rights to subscribe to such
18285 securities if the application under s. 517.081 or s. 517.082 for
18286 registration of such securities includes a statement that such
18287 rights are to be issued.

18288 (4) A record of the registration of securities shall be
18289 kept by ~~in~~ the office ~~of the department~~, in which register of
18290 securities shall also be recorded any orders entered by the
18291 office ~~department~~ with respect to such securities. Such
18292 register, and all information with respect to the securities
18293 registered therein, shall be open to public inspection.

18294 (5) Notwithstanding any other provision of this section,
18295 offers of securities required to be registered by this section
18296 may be made in this state before the registration of such
18297 securities if the offers are made in conformity with rules
18298 adopted by the commission ~~department~~.



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18299 Section 348. Subsections (2), (3), (4), and (5) of section
18300 517.075, Florida Statutes, are amended to read:

18301 517.075 Cuba, prospectus disclosure of doing business
18302 with, required.--

18303 (2) Any disclosure required by subsection (1) must
18304 include:

18305 (a) The name of such person, affiliate, or government with
18306 which the issuer does business and the nature of that business;

18307 (b) A statement that the information is accurate as of the
18308 date the securities were effective with the United States
18309 Securities and Exchange Commission or with the office
18310 ~~department~~, whichever date is later; and

18311 (c) A statement that current information concerning the
18312 issuer's business dealings with the government of Cuba or with
18313 any person or affiliate located in Cuba may be obtained from the
18314 office ~~Department of Banking and Finance~~, which statement must
18315 include the address and phone number of the office ~~department~~.

18316 (3) If an issuer commences engaging in business with the
18317 government of Cuba or with any person or affiliate located in
18318 Cuba, after the date issuer's securities become effective with
18319 the Securities and Exchange Commission or with the office
18320 ~~department~~, whichever date is later, or if the information
18321 reported in the prospectus concerning that business changes in
18322 any material way, the issuer must provide the office ~~department~~
18323 notice of that business or change, as appropriate, in a manner
18324 ~~form~~ acceptable to the office ~~department~~. The commission
18325 ~~department~~ shall prescribe by rule a form for persons to use to
18326 report the commencement of such business or any change in such



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18327 business which occurs after the effective registration of such
18328 securities. This form must include, at a minimum, the
18329 information required by subsection (2). The information reported
18330 on the form must be kept current. Information is current if
18331 reported to the office ~~department~~ within 90 days after the
18332 commencement of business or within 90 days after the change
18333 occurs with respect to previously reported information.

18334 (4) The office ~~department~~ shall provide, upon request, a
18335 copy of any form filed with the office ~~department~~ under
18336 subsection (3) to any person requesting the form.

18337 (5) Each securities offering sold in violation of this
18338 section, and each failure of an issuer to timely file the form
18339 required by subsection (3), subjects the issuer to a fine of up
18340 to \$5,000. Any fine collected under this section shall be
18341 deposited into the Anti-Fraud Trust Fund of the office
18342 ~~Department of Banking and Finance~~.

18343 Section 349. Section 517.081, Florida Statutes, is amended
18344 to read:

18345 517.081 Registration procedure.--

18346 (1) All securities required by this chapter to be
18347 registered before being sold in this state and not entitled to
18348 registration by notification shall be registered in the manner
18349 provided by this section.

18350 (2) The office ~~department~~ shall receive and act upon
18351 applications to have securities registered and the commission
18352 may prescribe forms on which it may require such applications to
18353 be submitted. Applications shall be duly signed by the
18354 applicant, sworn to by any person having knowledge of the facts,



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18355 and filed with the office ~~department~~. The commission ~~department~~
18356 may establish, by rule, procedures for depositing fees and
18357 filing documents by electronic means provided such procedures
18358 provide the office ~~department~~ with the information and data
18359 required by this section. An application may be made either by
18360 the issuer of the securities for which registration is applied
18361 or by any registered dealer desiring to sell the same within the
18362 state.

18363 (3) The office ~~department~~ may require the applicant to
18364 submit to the office ~~department~~ the following information
18365 concerning the issuer and such other relevant information as the
18366 office ~~department~~ may in its judgment deem necessary to enable
18367 it to ascertain whether such securities shall be registered
18368 pursuant to the provisions of this section:

18369 (a) The names and addresses of the directors, trustees,
18370 and officers, if the issuer be a corporation, association, or
18371 trust; of all the partners, if the issuer be a partnership; or
18372 of the issuer, if the issuer be an individual.

18373 (b) The location of the issuer's principal business office
18374 and of its principal office in this state, if any.

18375 (c) The general character of the business actually to be
18376 transacted by the issuer and the purposes of the proposed issue.

18377 (d) A statement of the capitalization of the issuer.

18378 (e) A balance sheet showing the amount and general
18379 character of its assets and liabilities on a day not more than
18380 90 days prior to the date of filing such balance sheet or such
18381 longer period of time, not exceeding 6 months, as the office



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18382 ~~department~~ may permit at the written request of the issuer on a
18383 showing of good cause therefor.

18384 (f) A detailed statement of the plan upon which the issuer
18385 proposes to transact business.

18386 (g)1. A specimen copy of the security and a copy of any
18387 circular, prospectus, advertisement, or other description of
18388 such securities.

18389 2. The commission ~~department~~ shall adopt a form for a
18390 simplified offering circular to be used solely by corporations
18391 to register, under this section, securities of the corporation
18392 that are sold in offerings in which the aggregate offering price
18393 in any consecutive 12-month period does not exceed the amount
18394 provided in s. 3(b) of the Securities Act of 1933. The
18395 following issuers shall not be eligible to submit a simplified
18396 offering circular adopted pursuant to this subparagraph:

18397 a. An issuer seeking to register securities for resale by
18398 persons other than the issuer.

18399 b. An issuer who is subject to any of the
18400 disqualifications described in 17 C.F.R. s. 230.262, adopted
18401 pursuant to the Securities Act of 1933, or who has been or is
18402 engaged or is about to engage in an activity that would be
18403 grounds for denial, revocation, or suspension under s. 517.111.
18404 For purposes of this subparagraph, an issuer includes an
18405 issuer's director, officer, shareholder who owns at least 10
18406 percent of the shares of the issuer, promoter, or selling agent
18407 of the securities to be offered or any officer, director, or
18408 partner of such selling agent.



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18409 c. An issuer who is a development-stage company that
18410 either has no specific business plan or purpose or has indicated
18411 that its business plan is to merge with an unidentified company
18412 or companies.

18413 d. An issuer of offerings in which the specific business
18414 or properties cannot be described.

18415 e. Any issuer the office ~~department~~ determines is
18416 ineligible if the form would not provide full and fair
18417 disclosure of material information for the type of offering to
18418 be registered by the issuer.

18419 f. Any corporation which has failed to provide the office
18420 ~~department~~ the reports required for a previous offering
18421 registered pursuant to this subparagraph.

18422
18423 As a condition precedent to qualifying for use of the simplified
18424 offering circular, a corporation shall agree to provide the
18425 office ~~department~~ with an annual financial report containing a
18426 balance sheet as of the end of the issuer's fiscal year and a
18427 statement of income for such year, prepared in accordance with
18428 generally accepted accounting principles and accompanied by an
18429 independent accountant's report. If the issuer has more than
18430 100 security holders at the end of a fiscal year, the financial
18431 statements must be audited. Annual financial reports must be
18432 filed with the office ~~department~~ within 90 days after the close
18433 of the issuer's fiscal year for each of the first 5 years
18434 following the effective date of the registration.

18435 (h) A statement of the amount of the issuer's income,
18436 expenses, and fixed charges during the last fiscal year or, if



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18437 | in actual business less than 1 year, then for such time as the
18438 | issuer has been in actual business.

18439 | (i) A statement of the issuer's cash sources and
18440 | application during the last fiscal year or, if in actual
18441 | business less than 1 year, then for such time as the issuer has
18442 | been in actual business.

18443 | (j) A statement showing the maximum price at which such
18444 | security is proposed to be sold, together with the maximum
18445 | amount of commission, including expenses, or other form of
18446 | remuneration to be paid in cash or otherwise, directly or
18447 | indirectly, for or in connection with the sale or offering for
18448 | sale of such securities.

18449 | (k) A copy of the opinion or opinions of counsel
18450 | concerning the legality of the issue or other matters which the
18451 | office ~~department~~ may determine to be relevant to the issue.

18452 | (l) A detailed statement showing the items of cash,
18453 | property, services, patents, good will, and any other
18454 | consideration in payment for which such securities have been or
18455 | are to be issued.

18456 | (m) The amount of securities to be set aside and disposed
18457 | of and a statement of all securities issued from time to time
18458 | for promotional purposes.

18459 | (n) If the issuer is a corporation, there shall be filed
18460 | with the application a copy of its articles of incorporation
18461 | with all amendments and of its existing bylaws, if not already
18462 | on file in the office ~~department~~. If the issuer is a trustee,
18463 | there shall be filed with the application a copy of all
18464 | instruments by which the trust is created or declared and in



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18465 | which it is accepted and acknowledged. If the issuer is a
18466 | partnership, unincorporated association, joint-stock company, or
18467 | any other form of organization whatsoever, there shall be filed
18468 | with the application a copy of its articles of partnership or
18469 | association and all other papers pertaining to its organization,
18470 | if not already on file in the office ~~department~~.

18471 | (4) All of the statements, exhibits, and documents of
18472 | every kind required ~~by the department~~ under this section, except
18473 | properly certified public documents, shall be verified by the
18474 | oath of the applicant or of the issuer in such manner and form
18475 | as may be required by the commission ~~department~~.

18476 | (5) The commission ~~department~~ may by rule fix the maximum
18477 | discounts, commissions, expenses, remuneration, and other
18478 | compensation to be paid in cash or otherwise, not to exceed 20
18479 | percent, directly or indirectly, for or in connection with the
18480 | sale or offering for sale of such securities in this state.

18481 | (6) An issuer filing an application under this section
18482 | shall, at the time of filing, pay the office ~~department~~ a
18483 | nonreturnable fee of \$1,000 per application.

18484 | (7) If upon examination of any application the office
18485 | ~~department~~ shall find that the sale of the security referred to
18486 | therein would not be fraudulent and would not work or tend to
18487 | work a fraud upon the purchaser, that the terms of the sale of
18488 | such securities would be fair, just, and equitable, and that the
18489 | enterprise or business of the issuer is not based upon unsound
18490 | business principles, it shall record the registration of such
18491 | security in the register of securities; and thereupon such



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18492 security so registered may be sold by any registered dealer,
18493 subject, however, to the further order of the office ~~department~~.

18494 Section 350. Section 517.082, Florida Statutes, is amended
18495 to read:

18496 517.082 Notification registration.--

18497 (1) Except as provided in subsection (3), securities
18498 offered or sold pursuant to a registration statement filed under
18499 the Securities Act of 1933 shall be entitled to registration by
18500 notification in the manner provided in subsection (2), provided
18501 that prior to the offer or sale the registration statement has
18502 become effective.

18503 (2) An application for registration by notification shall
18504 be filed with the office ~~department~~, shall contain the following
18505 information, and shall be accompanied by the following:

18506 (a) An application to sell executed by the issuer, any
18507 person on whose behalf the offering is made, a dealer registered
18508 under this chapter, or any duly authorized agent of any such
18509 person, setting forth the name and address of the applicant, the
18510 name and address of the issuer, and the title of the securities
18511 to be offered and sold;

18512 (b) Copies of such documents filed with the Securities and
18513 Exchange Commission as the Financial Services Commission
18514 ~~department~~ may by rule require;

18515 (c) An irrevocable written consent to service as required
18516 by s. 517.101; and

18517 (d) A nonreturnable fee of \$1,000 per application.

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18519 A registration under this section becomes effective when the
18520 federal registration statement becomes effective or as of the
18521 date the application is filed with the office ~~department~~,
18522 whichever is later, provided that, in addition to the items
18523 listed in paragraphs (a)-(d), the office ~~department~~ has received
18524 written notification of effective registration under the
18525 Securities Act of 1933 or the Investment Company Act of 1940
18526 within 10 business days from the date federal registration is
18527 granted. Failure to provide all the information required by
18528 this subsection to the office ~~department~~ within 60 days of the
18529 date the registration statement becomes effective with the
18530 Securities and Exchange Commission shall be a violation of this
18531 chapter.

18532 (3) Except for units of limited partnership interests or
18533 such other securities as the commission ~~department~~ describes by
18534 rule as exempt from this subsection due to high investment
18535 quality, the provisions of this section may not be used to
18536 register securities if the offering price at the time of
18537 effectiveness with the Securities and Exchange Commission is \$5
18538 or less per share, unless such securities are listed or
18539 designated, or approved for listing or designation upon notice
18540 of issuance, on a stock exchange registered pursuant to the
18541 Securities Exchange Act of 1934 or on the National Association
18542 of Securities Dealers Automated Quotation (NASDAQ) System, or
18543 unless such securities are of the same issuer and of senior or
18544 substantially equal rank to securities so listed or designated.

18545 (4) In lieu of filing with the office ~~department~~ the
18546 application, fees, and documents for registration required by



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18547 subsection (2), the commission ~~department~~ may establish, by
18548 rule, procedures for depositing fees and filing documents by
18549 electronic means, provided such procedures provide the office
18550 ~~department~~ with the information and data required by this
18551 section.

18552 Section 351. Section 517.101, Florida Statutes, is amended
18553 to read:

18554 517.101 Consent to service.--

18555 (1) Upon any initial application for registration under s.
18556 517.081 or s. 517.082 or upon request of the office ~~department~~,
18557 the issuer shall file with such application the irrevocable
18558 written consent of the issuer that in suits, proceedings, and
18559 actions growing out of the violation of any provision of this
18560 chapter, the service on the office ~~department~~ of a notice,
18561 process, or pleading therein, authorized by the laws of this
18562 state, shall be as valid and binding as if due service had been
18563 made on the issuer.

18564 (2) Any such action shall be brought either in the county
18565 of the plaintiff's residence or in the county in which the
18566 office ~~department~~ has its official headquarters. The written
18567 consent shall be authenticated by the seal of said issuer, if it
18568 has a seal, and by the acknowledged signature of a member of the
18569 copartnership or company, or by the acknowledged signature of
18570 any officer of the incorporated or unincorporated association,
18571 if it be an incorporated or unincorporated association, duly
18572 authorized by resolution of the board of directors, trustees, or
18573 managers of the corporation or association, and shall in such
18574 case be accompanied by a duly certified copy of the resolution



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18575 of the board of directors, trustees, or managers of the
18576 corporation or association, authorizing the officers to execute
18577 the same. In case any process or pleadings mentioned in this
18578 chapter are served upon the office ~~department~~, it shall be by
18579 duplicate copies, one of which shall be filed in the office
18580 ~~department~~ and another immediately forwarded by the office
18581 ~~department~~ by registered mail to the principal office of the
18582 issuer against which said process or pleadings are directed.

18583 Section 352. Section 517.111, Florida Statutes, is amended
18584 to read:

18585 517.111 Revocation or denial of registration of
18586 securities.--

18587 (1) The office ~~department~~ may revoke or suspend the
18588 registration of any security, or may deny any application to
18589 register securities, if upon examination into the affairs of the
18590 issuer of such security it shall appear that:

18591 (a) The issuer is insolvent;

18592 (b) The issuer or any officer, director, or control person
18593 of the issuer has violated any provision of this chapter or any
18594 rule made hereunder or any order of the office ~~department~~ of
18595 which such issuer has notice;

18596 (c) The issuer or any officer, director, or control person
18597 of the issuer has been or is engaged or is about to engage in
18598 fraudulent transactions;

18599 (d) The issuer or any officer, director, or control person
18600 of the issuer has been found guilty of a fraudulent act in
18601 connection with any sale of securities, has engaged, is engaged,
18602 or is about to engage, in making a fictitious sale or purchase



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18603 of any security, or in any practice or sale of any security
18604 which is fraudulent or a violation of any law;

18605 (e) The issuer or any officer, director, or control person
18606 of the issuer has had a final judgment entered against such
18607 issuer or person in a civil action on the grounds of fraud,
18608 embezzlement, misrepresentation, or deceit;

18609 (f) The issuer or any officer, director, or control person
18610 of the issuer has demonstrated any evidence of unworthiness;

18611 (g) The issuer or any officer, director, or control person
18612 of the issuer is in any other way dishonest or has made any
18613 fraudulent representations or failed to disclose any material
18614 information in any prospectus or in any circular or other
18615 literature that has been distributed concerning the issuer or
18616 its securities;

18617 (h) The security registered or sought to be registered is
18618 the subject of an injunction entered by a court of competent
18619 jurisdiction or is the subject of an administrative stop-order
18620 or similar order prohibiting the offer or sale of the security;

18621 (i) For any security for which registration has been
18622 applied pursuant to s. 517.081, the terms of the offer or sale
18623 of such securities would not be fair, just, or equitable; or

18624 (j) The issuer or any person acting on behalf of the
18625 issuer has failed to timely complete any application for
18626 registration filed with the office ~~department~~ pursuant to the
18627 provisions of s. 517.081 or s. 517.082 or any rule adopted under
18628 such sections.

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18630 In making such examination, the office ~~department~~ shall have
18631 access to and may compel the production of all the books and
18632 papers of such issuer and may administer oaths to and examine
18633 the officers of such issuer or any other person connected
18634 therewith as to its business and affairs and may also require a
18635 balance sheet exhibiting the assets and liabilities of any such
18636 issuer or its income statement, or both, to be certified to by a
18637 public accountant either of this state or of any other state
18638 where the issuer's business is located. Whenever the office
18639 deems ~~department may deem~~ it necessary, it may also require such
18640 balance sheet or income statement, or both, to be made more
18641 specific in such particulars as the office ~~department~~ may
18642 require.

18643 (2) If any issuer shall refuse to permit an examination to
18644 be made by the office ~~department~~, it shall be proper ground for
18645 revocation of registration.

18646 (3) If the office deems ~~department shall deem~~ it
18647 necessary, it may enter an order suspending the right to sell
18648 securities pending any investigation, provided that the order
18649 shall state the office's ~~department's~~ grounds for taking such
18650 action.

18651 (4) Notice of the entry of such order shall be given by
18652 mail, personally, by telephone confirmed in writing, or by
18653 telegraph to the issuer. Before such order is made final, the
18654 issuer applying for registration shall, on application, be
18655 entitled to a hearing.

18656 (5) The office ~~department~~ may deny any request to
18657 terminate any registration or to withdraw any application for



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18658 registration if the office ~~department~~ believes that an act which
18659 would be grounds for denial, suspension, or revocation under
18660 this chapter has been committed.

18661 Section 353. Section 517.12, Florida Statutes, is amended
18662 to read:

18663 517.12 Registration of dealers, associated persons,
18664 investment advisers, and branch offices.--

18665 (1) No dealer, associated person, or issuer of securities
18666 shall sell or offer for sale any securities in or from offices
18667 in this state, or sell securities to persons in this state from
18668 offices outside this state, by mail or otherwise, unless the
18669 person has been registered with the office ~~department~~ pursuant
18670 to the provisions of this section. The office ~~department~~ shall
18671 not register any person as an associated person of a dealer
18672 unless the dealer with which the applicant seeks registration is
18673 lawfully registered with the office ~~department~~ pursuant to this
18674 chapter.

18675 (2) The registration requirements of this section do not
18676 apply to the issuers of securities exempted by s. 517.051(1)-(8)
18677 and (10).

18678 (3) Except as otherwise provided in s. 517.061(11)(a)4.,
18679 (13), (16), (17), or (19), the registration requirements of this
18680 section do not apply in a transaction exempted by s. 517.061(1)-
18681 (12), (14), and (15).

18682 (4) No investment adviser or associated person of an
18683 investment adviser or federal covered adviser shall engage in
18684 business from offices in this state, or render investment advice
18685 to persons of this state, by mail or otherwise, unless the



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18686 federal covered adviser has made a notice filing with the office
18687 ~~department~~ pursuant to s. 517.1201 or the investment adviser is
18688 registered pursuant to the provisions of this chapter and
18689 associated persons of the federal covered adviser or investment
18690 adviser have been registered with the office ~~department~~ pursuant
18691 to this section. The office ~~department~~ shall not register any
18692 person or an associated person of a federal covered adviser or
18693 an investment adviser unless the federal covered adviser or
18694 investment adviser with which the applicant seeks registration
18695 is in compliance with the notice filing requirements of s.
18696 517.1201 or is lawfully registered with the office ~~department~~
18697 pursuant to this chapter. A dealer or associated person who is
18698 registered pursuant to this section may render investment advice
18699 upon notification to and approval from the office ~~department~~.

18700 (5) No dealer or investment adviser shall conduct business
18701 from a branch office within this state unless the branch office
18702 is registered with the office ~~department~~ pursuant to the
18703 provisions of this section.

18704 (6) A dealer, associated person, investment adviser, or
18705 branch office, in order to obtain registration, must file with
18706 the office ~~department~~ a written application, on a form which the
18707 commission ~~department~~ may by rule prescribe, verified under
18708 oath. The commission ~~department~~ may establish, by rule,
18709 procedures for depositing fees and filing documents by
18710 electronic means provided such procedures provide the office
18711 ~~department~~ with the information and data required by this
18712 section. Each dealer or investment adviser must also file an
18713 irrevocable written consent to service of civil process similar



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18714 to that provided for in s. 517.101. The application shall
18715 contain such information as the commission or office ~~department~~
18716 may require concerning such matters as:

18717 (a) The name of the applicant and the address of its
18718 principal office and each office in this state.

18719 (b) The applicant's form and place of organization; and,
18720 if the applicant is a corporation, a copy of its articles of
18721 incorporation and amendments to the articles of incorporation
18722 or, if a partnership, a copy of the partnership agreement.

18723 (c) The applicant's proposed method of doing business and
18724 financial condition and history, including a certified financial
18725 statement showing all assets and all liabilities, including
18726 contingent liabilities of the applicant as of a date not more
18727 than 90 days prior to the filing of the application.

18728 (d) The names and addresses of all associated persons of
18729 the applicant to be employed in this state and the offices to
18730 which they will be assigned.

18731 (7) The application shall also contain such information as
18732 the commission or office ~~department~~ may require about the
18733 applicant; any partner, officer, or director of the applicant or
18734 any person having a similar status or performing similar
18735 functions; any person directly or indirectly controlling the
18736 applicant; or any employee of a dealer or of an investment
18737 adviser rendering investment advisory services. Each applicant
18738 shall file a complete set of fingerprints taken by an authorized
18739 law enforcement officer. Such fingerprints shall be submitted
18740 to the Department of Law Enforcement or the Federal Bureau of
18741 Investigation for state and federal processing. The commission



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18742 ~~department~~ may waive, by rule, the requirement that applicants
18743 must file a set of fingerprints or the requirement that such
18744 fingerprints must be processed by the Department of Law
18745 Enforcement or the Federal Bureau of Investigation. The
18746 commission or office ~~department~~ may require information about
18747 any such applicant or person concerning such matters as:

18748 (a) His or her full name, and any other names by which he
18749 or she may have been known, and his or her age, photograph,
18750 qualifications, and educational and business history.

18751 (b) Any injunction or administrative order by a state or
18752 federal agency, national securities exchange, or national
18753 securities association involving a security or any aspect of the
18754 securities business and any injunction or administrative order
18755 by a state or federal agency regulating banking, insurance,
18756 finance, or small loan companies, real estate, mortgage brokers,
18757 or other related or similar industries, which injunctions or
18758 administrative orders relate to such person.

18759 (c) His or her conviction of, or plea of nolo contendere
18760 to, a criminal offense or his or her commission of any acts
18761 which would be grounds for refusal of an application under s.
18762 517.161.

18763 (d) The names and addresses of other persons of whom the
18764 office ~~department~~ may inquire as to his or her character,
18765 reputation, and financial responsibility.

18766 (8) The commission or office ~~department~~ may require the
18767 applicant or one or more principals or general partners, or
18768 natural persons exercising similar functions, or any associated
18769 person applicant to successfully pass oral or written



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18770 examinations. Because any principal, manager, supervisor, or
18771 person exercising similar functions shall be responsible for the
18772 acts of the associated persons affiliated with a dealer or
18773 investment adviser, the examination standards may be higher for
18774 a dealer, office manager, principal, or person exercising
18775 similar functions than for a nonsupervisory associated person.
18776 The commission ~~department~~ may waive the examination process when
18777 it determines that such examinations are not in the public
18778 interest. The office ~~department~~ shall waive the examination
18779 requirements for any person who has passed any tests as
18780 prescribed in s. 15(b)(7) of the Securities Exchange Act of 1934
18781 that relates to the position to be filled by the applicant.

18782 (9)(a) All dealers, except securities dealers who are
18783 designated by the Federal Reserve Bank of New York as primary
18784 government securities dealers or securities dealers registered
18785 as issuers of securities, shall comply with the net capital and
18786 ratio requirements imposed pursuant to the Securities Exchange
18787 Act of 1934. The commission ~~department~~ may by rule require a
18788 dealer to file with the office ~~department~~ any financial or
18789 operational information that is required to be filed by the
18790 Securities Exchange Act of 1934 or any rules adopted under such
18791 act.

18792 (b) The commission ~~department~~ may by rule require the
18793 maintenance of a minimum net capital for securities dealers who
18794 are designated by the Federal Reserve Bank of New York as
18795 primary government securities dealers and securities dealers
18796 registered as issuers of securities and investment advisers, or
18797 prescribe a ratio between net capital and aggregate



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18798 indebtedness, to assure adequate protection for the investing
18799 public. The provisions of this section shall not apply to any
18800 investment adviser that maintains its principal place of
18801 business in a state other than this state, provided such
18802 investment adviser is registered in the state where it maintains
18803 its principal place of business and is in compliance with such
18804 state's net capital requirements.

18805 (10) An applicant for registration shall pay an assessment
18806 fee of \$200, in the case of a dealer or investment adviser, or
18807 \$40, in the case of an associated person. The assessment fee of
18808 an associated person shall be reduced to \$30, but only after the
18809 office department determines, by final order, that sufficient
18810 funds have been allocated to the Securities Guaranty Fund
18811 pursuant to s. 517.1203 to satisfy all valid claims filed in
18812 accordance with s. 517.1203(2) and after all amounts payable
18813 under any service contract entered into by the office department
18814 pursuant to s. 517.1204, and all notes, bonds, certificates of
18815 indebtedness, other obligations, or evidences of indebtedness
18816 secured by such notes, bonds, certificates of indebtedness, or
18817 other obligations, have been paid or provision has been made for
18818 the payment of such amounts, notes, bonds, certificates of
18819 indebtedness, other obligations, or evidences of indebtedness.
18820 An associated person not having current fingerprint cards filed
18821 with the National Association of Securities Dealers or a
18822 national securities exchange registered with the Securities and
18823 Exchange Commission shall be assessed an additional fee to cover
18824 the cost for said fingerprint cards to be processed by the
18825 office department. Such fee shall be determined by rule of the



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18826 commission department. Each dealer and each investment adviser
18827 shall pay an assessment fee of \$100 for each office in this
18828 state, except its designated principal office. Such fees become
18829 the revenue of the state, except for those assessments provided
18830 for under s. 517.131(1) until such time as the Securities
18831 Guaranty Fund satisfies the statutory limits, and are not
18832 returnable in the event that registration is withdrawn or not
18833 granted.

18834 (11) If the office department finds that the applicant is
18835 of good repute and character and has complied with the
18836 provisions of this chapter and the rules made pursuant hereto,
18837 it shall register the applicant. The registration of each
18838 dealer, investment adviser, and associated person will expire on
18839 December 31, and the registration of each branch office will
18840 expire on March 31, of the year in which it became effective
18841 unless the registrant has renewed its registration on or before
18842 that date. Registration may be renewed by furnishing such
18843 information as the commission department may require, together
18844 with payment of the fee required in subsection (10) for dealers,
18845 investment advisers, associated persons, or branch offices and
18846 the payment of any amount lawfully due and owing to the office
18847 ~~department~~ pursuant to any order of the office department or
18848 pursuant to any agreement with the office department. Any
18849 dealer, investment adviser, or associated person registrant who
18850 has not renewed a registration by the time the current
18851 registration expires may request reinstatement of such
18852 registration by filing with the office department, on or before
18853 January 31 of the year following the year of expiration, such



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18854 information as may be required by the commission ~~department~~,
18855 together with payment of the fee required in subsection (10) for
18856 dealers, investment advisers, or associated persons and a late
18857 fee equal to the amount of such fee. Any reinstatement of
18858 registration granted by the office ~~department~~ during the month
18859 of January shall be deemed effective retroactive to January 1 of
18860 that year.

18861 (12)(a) The office ~~department~~ may issue a license to a
18862 dealer, investment adviser, associated person, or branch office
18863 to evidence registration under this chapter. The office
18864 ~~department~~ may require the return to the office ~~department~~ of
18865 any license it may issue prior to issuing a new license.

18866 (b) Every dealer, investment adviser, or federal covered
18867 adviser shall promptly file with the office ~~department~~, as
18868 prescribed by rules adopted by the commission ~~department~~, notice
18869 as to the termination of employment of any associated person
18870 registered for such dealer or investment adviser in this state
18871 and shall also furnish the reason or reasons for such
18872 termination.

18873 (c) Each dealer or investment adviser shall designate in
18874 writing to, and register with, the office ~~department~~ a manager
18875 for each office the dealer or investment adviser has in this
18876 state.

18877 (13) Changes in registration occasioned by changes in
18878 personnel of a partnership or in the principals, copartners,
18879 officers, or directors of any dealer or investment adviser or by
18880 changes of any material fact or method of doing business shall
18881 be reported by written amendment in such form and at such time



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18882 as the commission ~~department~~ may specify. In any case in which
18883 a person or a group of persons, directly or indirectly or acting
18884 by or through one or more persons, proposes to purchase or
18885 acquire a controlling interest in a registered dealer or
18886 investment adviser, such person or group shall submit an initial
18887 application for registration as a dealer or investment adviser
18888 prior to such purchase or acquisition. The commission ~~department~~
18889 shall adopt rules providing for waiver of the application
18890 required by this subsection where control of a registered dealer
18891 or investment adviser is to be acquired by another dealer or
18892 investment adviser registered under this chapter or where the
18893 application is otherwise unnecessary in the public interest.

18894 (14) Every dealer, investment adviser, or branch office
18895 registered or required to be registered with the office
18896 ~~department~~ shall keep records of all currency transactions in
18897 excess of \$10,000 and shall file reports, as prescribed under
18898 the financial recordkeeping regulations in 31 C.F.R. part 103,
18899 with the office ~~department~~ when transactions occur in or from
18900 this state. All reports required by this subsection to be filed
18901 with the office ~~department~~ shall be confidential and exempt from
18902 s. 119.07(1) except that any law enforcement agency or the
18903 Department of Revenue shall have access to, and shall be
18904 authorized to inspect and copy, such reports.

18905 (15) In lieu of filing with the office ~~department~~ the
18906 applications specified in subsection (6), the fees required by
18907 subsection(10), and the termination notices required by
18908 subsection (12), the commission ~~department~~ may by rule establish
18909 procedures for the deposit of such fees and documents with the



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18910 Central Registration Depository of the National Association of
18911 Securities Dealers, Inc., as developed under contract with the
18912 North American Securities Administrators Association, Inc. ;
18913 provided, however, that such procedures shall provide the office
18914 ~~department~~ with the information and data as required by this
18915 section.

18916 (16) Except for securities dealers who are designated by
18917 the Federal Reserve Bank of New York as primary government
18918 securities dealers or securities dealers registered as issuers
18919 of securities, every applicant for initial or renewal
18920 registration as a securities dealer and every person registered
18921 as a securities dealer shall be registered as a broker or dealer
18922 with the Securities and Exchange Commission and shall be subject
18923 to insurance coverage by the Securities Investor Protection
18924 Corporation.

18925 (17)(a) A dealer that is located in Canada and has no
18926 office or other physical presence in this state may, provided
18927 the dealer is registered in accordance with this section, effect
18928 transactions in securities with or for, or induce or attempt to
18929 induce the purchase or sale of any security by:

18930 1. A person from Canada who temporarily resides in this
18931 state and with whom the Canadian dealer had a bona fide dealer-
18932 client relationship before the person entered the United States ;
18933 or

18934 2. A person from Canada who is a resident of this state,
18935 and whose transactions are in a self-directed tax advantage
18936 retirement plan in Canada of which the person is the holder or
18937 contributor.



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18938 (b) An associated person who represents a Canadian dealer
 18939 registered under this section may, provided the agent is
 18940 registered in accordance with this section, effect transactions
 18941 in securities in this state as permitted for a dealer, under
 18942 subsection (a).

18943 (c) A Canadian dealer may register under this section
 18944 provided that such dealer:

18945 1. Files an application in the form required by the
 18946 jurisdiction in which the dealer has a head office.

18947 2. Files a consent to service of process.

18948 3. Is registered as a dealer in good standing in the
 18949 jurisdiction from which it is effecting transactions into this
 18950 state and files evidence of such registration with the office
 18951 ~~department~~.

18952 4. Is a member of a self-regulatory organization or stock
 18953 exchange in Canada.

18954 (d) An associated person who represents a Canadian dealer
 18955 registered under this section in effecting transactions in
 18956 securities in this state may register under this section
 18957 provided that such person:

18958 1. Files an application in the form required by the
 18959 jurisdiction in which the dealer has its head office.

18960 2. Is registered in good standing in the jurisdiction from
 18961 which he or she is effecting transactions into this state and
 18962 files evidence of such registration with the office ~~department~~.

18963 (e) If the office ~~department~~ finds that the applicant is
 18964 of good repute and character and has complied with the



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18965 | provisions of this chapter, the office ~~department~~ shall register
18966 | the applicant.

18967 | (f) A Canadian dealer registered under this section shall:

18968 | 1. Maintain its provincial or territorial registration and
18969 | its membership in a self-regulatory organization or stock
18970 | exchange in good standing.

18971 | 2. Provide the office ~~department~~ upon request with its
18972 | books and records relating to its business in this state as a
18973 | dealer.

18974 | 3. Provide the office ~~department~~ notice of each civil,
18975 | criminal, or administrative action initiated against the dealer.

18976 | 4. Disclose to its clients in this state that the dealer
18977 | and its agents are not subject to the full regulatory
18978 | requirements under this chapter.

18979 | 5. Correct any inaccurate information within 30 days, if
18980 | the information contained in the application form becomes
18981 | inaccurate for any reason before or after the dealer becomes
18982 | registered.

18983 | (g) An associated person of a Canadian dealer registered
18984 | under this section shall:

18985 | 1. Maintain provincial or territorial registration in good
18986 | standing.

18987 | 2. Provide the office ~~department~~ with notice of each
18988 | civil, criminal, or administrative action initiated against such
18989 | person.

18990 | 3. Through the dealer, correct any inaccurate information
18991 | within 30 days, if the information contained in the application



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18992 form becomes inaccurate for any reason before or after the
18993 associated person becomes registered.

18994 (h) Renewal applications for Canadian dealers and
18995 associated persons under this section must be filed before
18996 December 31 each year. Every applicant for registration or
18997 renewal registration under this section shall pay the fee for
18998 dealers and associated persons under this chapter.

18999 (18) Every dealer or associated person registered or
19000 required to be registered with the office ~~department~~ shall
19001 satisfy any continuing education requirements established by
19002 rule pursuant to law.

19003 (19) The registration requirements of this section which
19004 apply to investment advisers and associated persons do not apply
19005 to a commodity trading adviser who:

19006 (a) Is registered as such with the Commodity Futures
19007 Trading Commission pursuant to the Commodity Exchange Act.

19008 (b) Advises or exercises trading discretion, with respect
19009 to foreign currency options listed and traded exclusively on the
19010 Philadelphia Stock Exchange, on behalf of an "appropriate
19011 person" as defined by the Commodity Exchange Act.

19012
19013 The exemption provided in this subsection does not apply to a
19014 commodity trading adviser who engages in other activities that
19015 require registration under this chapter.

19016 (20) The registration requirements of this section do not
19017 apply to any general lines insurance agent or life insurance
19018 agent licensed under chapter 626 ~~individuals licensed under s.~~
19019 ~~626.041 or its successor statute, or s. 626.051 or its successor~~



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19020 ~~statute~~, for the sale of a security as defined in s.
19021 517.021(20)(19)(g), if the individual is directly authorized by
19022 the issuer to offer or sell the security on behalf of the issuer
19023 and the issuer is a federally chartered savings bank subject to
19024 regulation by the Federal Deposit Insurance Corporation. Actions
19025 under this subsection shall constitute activity under the
19026 insurance agent's license for purposes of ss. 626.611 and
19027 626.621.

19028 Section 354. Section 517.1201, Florida Statutes, is
19029 amended to read:

19030 517.1201 Notice filing requirements for federal covered
19031 advisers.--

19032 (1) It is unlawful for a person to transact business in
19033 this state as a federal covered adviser unless such person has
19034 made a notice filing with the office ~~department~~. A notice
19035 filing under this section shall consist of a copy of those
19036 documents that have been filed or are required to be filed by
19037 the federal covered adviser with the Securities and Exchange
19038 Commission that the Financial Services Commission ~~department~~ by
19039 rule requires to be filed, together with a consent to service of
19040 process and a filing fee of \$200. The commission ~~department~~ may
19041 establish by rule procedures for the deposit of fees and the
19042 filing of documents to be made through electronic means, if the
19043 procedures provide to the office ~~department~~ the information and
19044 data required by this section.

19045 (2) A notice filing shall be effective upon receipt. A
19046 notice filing shall expire on December 31 of the year in which
19047 the filing became effective unless the federal covered adviser



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19048 has renewed the filing on or before that date. A federal covered
19049 adviser may renew a notice filing by furnishing to the office
19050 ~~department~~ such information that has been filed or is required
19051 to be filed with the Securities and Exchange Commission, as the
19052 Financial Services Commission or office ~~department~~ may require,
19053 together with a renewal fee of \$200 and the payment of any
19054 amount due and owing the office ~~department~~ pursuant to any
19055 agreement with the office ~~department~~. Any federal covered
19056 adviser who has not renewed a notice filing by the time a
19057 current notice filing expires may request reinstatement of such
19058 notice filing by filing with the office ~~department~~, on or before
19059 January 31 of the year following the year the notice filing
19060 expires, such information that has been filed or is required to
19061 be filed with the Securities and Exchange Commission as may be
19062 required by the Financial Services Commission or office
19063 ~~department~~, together with the payment of \$200 and a late fee
19064 equal to \$200. Any reinstatement of a notice filing granted by
19065 the office ~~department~~ during the month of January shall be
19066 deemed effective retroactive to January 1 of that year.

19067 (3) The commission ~~department~~ may require, by rule, a
19068 federal covered adviser who has made a notice filing pursuant to
19069 this section to file with the office ~~department~~ copies of any
19070 amendments filed or required to be filed with the Securities and
19071 Exchange Commission.

19072 (4) The office ~~department~~ may issue a permit to evidence
19073 the effectiveness of a notice filing for a federal covered
19074 adviser.



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19075 (5) A notice filing may be terminated by filing notice of
 19076 such termination with the office ~~department~~. Unless another
 19077 date is specified by the federal covered adviser, such notice
 19078 shall be effective upon its receipt by the office ~~department~~.

19079 (6) All fees collected under this section become the
 19080 revenue of the state, except for those assessments provided for
 19081 under s. 517.131(1) until such time as the Securities Guaranty
 19082 Fund satisfies the statutory limits, and are not returnable in
 19083 the event that a notice filing is withdrawn.

19084 Section 355. Section 517.1203, Florida Statutes, is
 19085 amended to read:

19086 517.1203 Allocation and disbursement of assessment fees.--

19087 (1) Notwithstanding s. 517.131(1), an additional amount
 19088 equal to 25 percent of all revenues received as assessment fees
 19089 pursuant to s. 517.12(10) and (11) from persons applying for or
 19090 renewing registrations as associated persons shall be allocated
 19091 to the Securities Guaranty Fund and disbursed as provided in
 19092 this section. This allocation shall continue until the office
 19093 ~~department~~ determines, by final order, that sufficient funds
 19094 have been allocated to the Securities Guaranty Fund pursuant to
 19095 this section to satisfy all valid claims filed in accordance
 19096 with subsection (2) and until all amounts payable under any
 19097 service contract entered into by the office ~~department~~ pursuant
 19098 to s. 517.1204, and all notes, bonds, certificates of
 19099 indebtedness, other obligations, or evidences of indebtedness
 19100 secured by such notes, bonds, certificates of indebtedness, or
 19101 other obligations, have been paid or provision has been made for
 19102 the payment of such amounts, notes, bonds, certificates of



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19103 indebtedness, other obligations, or evidences of indebtedness.
 19104 This assessment fee shall be part of the regular license fee and
 19105 shall be transferred to or deposited into the Securities
 19106 Guaranty Fund. The moneys allocated to the Securities Guaranty
 19107 Fund under this section shall not be included in the calculation
 19108 of the allocation of the assessment fees referred to in s.
 19109 517.131(1)(b). Moneys allocated under this section in excess of
 19110 the valid claims filed pursuant to subsection (2) shall be
 19111 allocated to the Anti-Fraud Trust Fund.

19112 (2)(a) Notwithstanding the provisions of ss. 517.131 and
 19113 517.141, moneys allocated to the Securities Guaranty Fund under
 19114 this section shall be used to pay amounts payable under any
 19115 service contract entered into by the office ~~department~~ pursuant
 19116 to s. 517.1204, subject to annual appropriation by the
 19117 Legislature, and to pay investors who have filed claims with the
 19118 Department of Banking and Finance after October 1, 1996, and on
 19119 or before December 31, 1998, who have:

19120 1. Received a final judgment against an associated person
 19121 of GIC Government Securities, Inc., based upon allegations which
 19122 would amount to a violation of s. 517.07 or s. 517.301; or

19123 2. Demonstrated to the former Department of Banking and
 19124 Finance or office that the claimant has suffered monetary
 19125 damages as a result of the acts or actions of GIC Government
 19126 Securities, Inc., or any associated person thereof, based upon
 19127 allegations which would amount to a violation of s. 517.07 or s.
 19128 517.301.

19129 (b)1. Claims shall be paid in the order that they were
 19130 ~~have been~~ filed with the former Department of Banking and



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19131 Finance, unless the department ~~has~~ noticed its intent to deny
19132 the claim in whole or in part. If a notice of intent to deny a
19133 claim in whole or in part was ~~is~~ issued, the claim shall not be
19134 paid until a final order has been entered which is not subject
19135 to an order staying its effect.

19136 2. If at any time the money in the Securities Guaranty
19137 Fund allocated under this section is insufficient to satisfy any
19138 valid claim or portion of a valid claim approved by the
19139 department or office under this section, the office ~~department~~
19140 shall prorate the payment based upon the ratio that the person's
19141 claim bears to the total approved claims filed on the same day.
19142 The office ~~department~~ shall satisfy the unpaid claims as soon as
19143 a sufficient amount of money has been deposited in or
19144 transferred to the fund as provided in this section.

19145 3. A claimant shall not be substantially affected by the
19146 payment of another person's claim.

19147 (c) Claims shall be limited to the amount of the
19148 investment, reduced by any amounts received from a bankruptcy
19149 proceeding or from any other source. If an investor is deceased,
19150 the award shall be made to the surviving spouse. If the investor
19151 and surviving spouse are both deceased, the award shall be made
19152 pursuant to the laws of descent and distribution. Neither the
19153 office ~~department~~ nor the Investment Fraud Restoration Financing
19154 Corporation shall make payment to assignees, secured parties,
19155 lien creditors, or other such entities.

19156 (3) In rendering a determination, the office ~~department~~
19157 may rely on records from the bankruptcy proceeding regarding GIC



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19158 Government Securities, Inc., unless there is good cause to
19159 believe that the record is not genuine.

19160 (4) Amounts deposited into the Securities Guaranty Fund
19161 pursuant to this section shall be applied to or allocated for
19162 payment of amounts payable by the office ~~department~~ pursuant to
19163 paragraph (2)(a), under a service contract entered into by the
19164 office ~~department~~ pursuant to s. 517.1204, subject to annual
19165 appropriation by the Legislature, before making or providing for
19166 any other disbursements from the fund.

19167 Section 356. Subsection (2), paragraph (e) of subsection
19168 (3), and subsections (4), (5), and(6) of section 517.1204,
19169 Florida Statutes, are amended to read:

19170 517.1204 Investment Fraud Restoration Financing
19171 Corporation.--

19172 (2) The corporation shall be governed by a board of
19173 directors consisting of the director of the office or his or her
19174 designee ~~assistant comptroller~~, the Secretary of Elderly Affairs
19175 or the secretary's designee, and the executive director of the
19176 Department of Veterans' Affairs or the executive director's
19177 designee. The executive director of the State Board of
19178 Administration shall be the chief executive officer of the
19179 corporation and shall direct and supervise the administrative
19180 affairs of the corporation and shall control, direct, and
19181 supervise the operation of the corporation. The corporation
19182 shall also have such other officers as may be determined by the
19183 board of directors.

19184 (3) The corporation shall have all the powers of a
19185 corporate body under the laws of this state to the extent not



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19186 inconsistent with or restricted by the provisions of this
19187 section, including, but not limited to, the power to:

19188 (e) Elect or appoint and employ such officers, agents, and
19189 employees as the corporation deems advisable to operate and
19190 manage the affairs of the corporation, which officers, agents,
19191 and employees may be officers or employees of the office
19192 ~~department~~ and the state agencies represented on the board of
19193 directors of the corporation.

19194 (4) The corporation is authorized to enter into one or
19195 more service contracts with the office ~~department~~ pursuant to
19196 which the corporation shall provide services to the office
19197 ~~department~~ in connection with financing the functions and
19198 activities provided for in s. 517.1203. The office ~~department~~
19199 may enter into one or more such service contracts with the
19200 corporation and provide for payments under such contracts
19201 pursuant to s. 517.1203(2)(a), subject to annual appropriation
19202 by the Legislature. The proceeds from such service contracts
19203 may be used for the costs and expenses of administration of the
19204 corporation after payments as set forth in subsection(5). Each
19205 service contract shall have a term not to exceed 15 years and
19206 shall terminate no later than July 1, 2021. The aggregate
19207 amount payable from the Securities Guaranty Fund under all such
19208 service contracts shall not exceed the amount provided by s.
19209 517.1203(1). In compliance with provisions of s. 287.0641 and
19210 other applicable provisions of law, the obligations of the
19211 office ~~department~~ under such service contracts shall not
19212 constitute a general obligation of the state or a pledge of the
19213 faith and credit or taxing power of the state nor shall such



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19214 obligations be construed in any manner as an obligation of the
19215 State Board of Administration or entities for which it invests
19216 funds, other than the office ~~department~~ as provided in this
19217 section, but shall be payable solely from amounts available in
19218 the Securities Guaranty Fund, subject to annual appropriation.
19219 In compliance with this subsection and s. 287.0582, such service
19220 contracts shall expressly include the following statement: "The
19221 State of Florida's performance and obligation to pay under this
19222 contract is contingent upon an annual appropriation by the
19223 Legislature."

19224 (5) The corporation may issue and incur notes, bonds,
19225 certificates of indebtedness, or other obligations or evidences
19226 of indebtedness payable from and secured by amounts payable to
19227 the corporation by the office ~~department~~ under a service
19228 contract entered into pursuant to subsection (4) for the purpose
19229 of the simultaneous payment of all claims approved pursuant to
19230 s. 517.1203. The term of any such note, bond, certificate of
19231 indebtedness, or other obligation or evidence of indebtedness
19232 shall not exceed 15 years. The corporation may select a
19233 financing team and issue obligations through competitive bidding
19234 or negotiated contracts, whichever is most cost-effective. Any
19235 such indebtedness of the corporation shall not constitute a debt
19236 or obligation of the state or a pledge of the faith and credit
19237 or taxing power of the state, but shall be payable from and
19238 secured by payments made by the office ~~department~~ under the
19239 service contract pursuant to subsection (4).



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19240 (6) The corporation shall pay all claims approved pursuant
 19241 to s. 517.1203 as determined by and at the direction of the
 19242 office ~~department~~.

19243 Section 357. Section 517.121, Florida Statutes, is amended
 19244 to read:

19245 517.121 Books and records requirements; examinations.--

19246 (1) A dealer, investment adviser, branch office, or
 19247 associated person shall maintain such books and records as the
 19248 commission ~~department~~ may prescribe by rule.

19249 (2) The office ~~department~~ shall, at intermittent periods,
 19250 examine the affairs and books and records of each registered
 19251 dealer, investment adviser, branch office, or associated person,
 19252 or require such records and reports to be submitted to it as
 19253 required ~~it may require~~ by rule of the commission, to determine
 19254 compliance with this act.

19255 Section 358. Paragraph (a) of subsection (1), paragraphs
 19256 (b) and (e) of subsection (3), and subsection (4) of section
 19257 517.131, Florida Statutes, are amended to read:

19258 517.131 Securities Guaranty Fund.--

19259 (1)(a) The Chief Financial Officer ~~Treasurer~~ shall
 19260 establish a Securities Guaranty Fund. An amount not exceeding
 19261 20 percent of all revenues received as assessment fees pursuant
 19262 to s. 517.12(10) and (11) for dealers and investment advisers or
 19263 s. 517.1201 for federal covered advisers and an amount not
 19264 exceeding 10 percent of all revenues received as assessment fees
 19265 pursuant to s. 517.12(10) and (11) for associated persons shall
 19266 be allocated to the fund. An additional amount not exceeding
 19267 3.5 percent of all revenues received as assessment fees for



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19268 associated persons pursuant to s. 517.12(10) and (11) shall be
19269 allocated to the Securities Guaranty Fund but only after the
19270 office department determines, by final order, that sufficient
19271 funds have been allocated to the fund pursuant to s. 517.1203 to
19272 satisfy all valid claims filed in accordance with s. 517.1203(2)
19273 and after all amounts payable under any service contract entered
19274 into by the office department pursuant to s. 517.1204, and all
19275 notes, bonds, certificates of indebtedness, other obligations,
19276 or evidences of indebtedness secured by such notes, bonds,
19277 certificates of indebtedness, or other obligations, have been
19278 paid or provision has been made for the payment of such amounts,
19279 notes, bonds, certificates of indebtedness, other obligations,
19280 or evidences of indebtedness. This assessment fee shall be part
19281 of the regular license fee and shall be transferred to or
19282 deposited in the Securities Guaranty Fund.

19283 (3) Any person is eligible to seek recovery from the
19284 Securities Guaranty Fund if:

19285 (b) Such person has made all reasonable searches and
19286 inquiries to ascertain whether the judgment debtor possesses
19287 real or personal property or other assets subject to being sold
19288 or applied in satisfaction of the judgment, and by her or his
19289 search the person has discovered no property or assets; or she
19290 or he has discovered property and assets and has taken all
19291 necessary action and proceedings for the application thereof to
19292 the judgment, but the amount thereby realized was insufficient
19293 to satisfy the judgment. To verify compliance with such
19294 condition, the office department may require such person to have
19295 a writ of execution be issued upon such judgment and may further



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19296 require a showing that no personal or real property of the
19297 judgment debtor liable to be levied upon in complete
19298 satisfaction of the judgment can be found.

19299 (e) The office ~~department~~ waives compliance with the
19300 requirements of paragraph (a) or paragraph (b). The office
19301 ~~department~~ may waive such compliance if the dealer, investment
19302 adviser, or associated person which is the subject of the claim
19303 filed with the office ~~department~~ is the subject of any
19304 proceeding in which a receiver has been appointed by a court of
19305 competent jurisdiction. If the office ~~department~~ waives such
19306 compliance, the office ~~department~~ may, upon petition by the
19307 debtor or the court-appointed trustee, examiner, or receiver,
19308 distribute funds from the Securities Guaranty Fund up to the
19309 amount allowed under s. 517.141. Any waiver granted pursuant to
19310 this section shall be considered a judgment for purposes of
19311 complying with the requirements of this section and of s.
19312 517.141.

19313 (4) Any person who files an action that may result in the
19314 disbursement of funds from the Securities Guaranty Fund pursuant
19315 to the provisions of s. 517.141 shall give written notice by
19316 certified mail to the office ~~department~~ as soon as practicable
19317 after such action has been filed. The failure to give such
19318 notice shall not bar a payment from the Securities Guaranty Fund
19319 if all of the conditions specified in subsection (3) are
19320 satisfied.

19321 Section 359. Section 517.141, Florida Statutes, is amended
19322 to read:

19323 517.141 Payment from the fund.--



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19324 (1) Any person who meets all of the conditions prescribed
19325 in s. 517.131 may apply to the office ~~department~~ for payment to
19326 be made to such person from the Securities Guaranty Fund in the
19327 amount equal to the unsatisfied portion of such person's
19328 judgment or \$10,000, whichever is less, but only to the extent
19329 and amount reflected in the judgment as being actual or
19330 compensatory damages, excluding costs and attorney's fees.

19331 (2) Regardless of the number of claimants involved,
19332 payments for claims shall be limited in the aggregate to
19333 \$100,000 against any one dealer, investment adviser, or
19334 associated person. If the total claims exceed the aggregate
19335 limit of \$100,000, the office ~~department~~ shall prorate the
19336 payment based upon the ratio that the person's claim bears to
19337 the total claims filed.

19338 (3) No payment shall be made on any claim against any one
19339 dealer, investment adviser, or associated person before the
19340 expiration of 2 years from the date any claimant is found by the
19341 office ~~department~~ to be eligible for recovery pursuant to this
19342 section. If during this 2-year period more than one claim is
19343 filed against the same dealer, investment adviser, or associated
19344 person, or if the office ~~department~~ receives notice pursuant to
19345 s. 517.131(4) that an action against the same dealer, investment
19346 adviser, or associated person is pending, all such claims and
19347 notices of pending claims received during this period against
19348 the same dealer, investment adviser, or associated person may be
19349 handled by the office ~~department~~ as provided in this section.
19350 Two years after the first claimant against that same dealer,



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19351 investment adviser, or associated person applies for payment
19352 pursuant to this section:

19353 (a) The office ~~department~~ shall determine those persons
19354 eligible for payment or for potential payment in the event of a
19355 pending action. All such persons may be entitled to receive
19356 their pro rata shares of the fund as provided in this section.

19357 (b) Those persons who meet all the conditions prescribed
19358 in s. 517.131 and who have applied for payment pursuant to this
19359 section will be entitled to receive their pro rata shares of the
19360 total disbursement.

19361 (c) Those persons who have filed notice with the office
19362 ~~department~~ of a pending claim pursuant to s. 517.131(4) but who
19363 are not yet eligible for payment from the fund will be entitled
19364 to receive their pro rata shares of the total disbursement once
19365 they have complied with subsection (1). However, in the event
19366 that the amounts they are eligible to receive pursuant to
19367 subsection (1) are less than their pro rata shares as determined
19368 under this section, any excess shall be distributed pro rata to
19369 those persons entitled to disbursement under this subsection
19370 whose pro rata shares of the total disbursement were less than
19371 the amounts of their claims.

19372 (4) Individual claims filed by persons owning the same
19373 joint account, or claims stemming from any other type of account
19374 maintained by a particular licensee on which more than one name
19375 appears, shall be treated as the claims of one eligible claimant
19376 with respect to payment from the fund. If a claimant who has
19377 obtained a judgment which qualifies for disbursement under s.
19378 517.131 has maintained more than one account with the dealer,



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19379 investment adviser, or associated person who is the subject of
19380 the claims, for purposes of disbursement of the fund, all such
19381 accounts, whether joint or individual, shall be considered as
19382 one account and shall entitle such claimant to only one
19383 distribution from the fund not to exceed the lesser of \$10,000
19384 or the unsatisfied portion of such claimant's judgment as
19385 provided in subsection (1). To the extent that a claimant
19386 obtains more than one judgment against a dealer, investment
19387 adviser, or one or more associated persons arising out of the
19388 same transactions, occurrences, or conduct or out of the
19389 dealer's, investment adviser's, or associated person's handling
19390 of the claimant's account, such judgments shall be consolidated
19391 for purposes of this section and shall entitle the claimant to
19392 only one disbursement from the fund not to exceed the lesser of
19393 \$10,000 or the unsatisfied portion of such claimant's judgment
19394 as provided in subsection (1).

19395 (5) If the final judgment which gave rise to the claim is
19396 overturned in any appeal or in any collateral proceeding, the
19397 claimant shall reimburse the fund all amounts paid to the
19398 claimant on the claim. Such reimbursement shall be paid to the
19399 office department within 60 days after the final resolution of
19400 the appellate or collateral proceedings, with the 60-day period
19401 commencing on the date the final order or decision is entered in
19402 such proceedings.

19403 (6) If a claimant receives payments in excess of that
19404 which is permitted under this chapter, the claimant shall
19405 reimburse the fund such excess within 60 days after the claimant



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19406 receives such excess payment or after the payment is determined
19407 to be in excess of that permitted by law, whichever is later.

19408 (7) The office ~~department~~ may institute legal proceedings
19409 to enforce compliance with this section and with s. 517.131 to
19410 recover moneys owed to the fund, and shall be entitled to
19411 recover interest, costs, and attorney's fees in any action
19412 brought pursuant to this section in which the office ~~department~~
19413 prevails.

19414 (8) If at any time the money in the Securities Guaranty
19415 Fund is insufficient to satisfy any valid claim or portion of a
19416 valid claim approved by the office ~~department~~, the office
19417 ~~department~~ shall satisfy such unpaid claim or portion of such
19418 valid claim as soon as a sufficient amount of money has been
19419 deposited in or transferred to the fund. When there is more
19420 than one unsatisfied claim outstanding, such claims shall be
19421 paid in the order in which the claims were approved by final
19422 order of the office ~~department~~, which order is not subject to an
19423 appeal or other pending proceeding.

19424 (9) Upon receipt by the claimant of the payment from the
19425 Securities Guaranty Fund, the claimant shall assign any
19426 additional right, title, and interest in the judgment, to the
19427 extent of such payment, to the office ~~department~~. If the
19428 provisions of s. 517.131(3)(e) apply, the claimant must assign
19429 to the office ~~department~~ any right, title, and interest in the
19430 debt to the extent of any payment by the office ~~department~~ from
19431 the Securities Guaranty Fund.

19432 (10) All payments and disbursements made from the
19433 Securities Guaranty Fund shall be made by the Chief Financial



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19434 Officer Treasurer upon authorization a ~~voucher~~ signed by the
19435 director of the office Comptroller, ~~as head of the department~~,
19436 or such agent as she or he may designate.

19437 Section 360. Section 517.151, Florida Statutes, is amended
19438 to read:

19439 517.151 Investments of the fund.--The funds of the
19440 Securities Guaranty Fund shall be invested by the Chief
19441 Financial Officer Treasurer under the same limitations as other
19442 state funds, and the interest earned thereon shall be deposited
19443 to the credit of the fund and available for the same purpose as
19444 other moneys deposited in the Securities Guaranty Fund.

19445 Section 361. Subsection (1), (3), and (5), and paragraph
19446 (b) of subsection (6) of section 517.161, Florida Statutes, are
19447 amended to read:

19448 517.161 Revocation, denial, or suspension of registration
19449 of dealer, investment adviser, associated person, or branch
19450 office.--

19451 (1) Registration under s. 517.12 may be denied or any
19452 registration granted may be revoked, restricted, or suspended by
19453 the office department if the office department determines that
19454 such applicant or registrant:

19455 (a) Has violated any provision of this chapter or any rule
19456 or order made under this chapter;

19457 (b) Has made a material false statement in the application
19458 for registration;

19459 (c) Has been guilty of a fraudulent act in connection with
19460 rendering investment advice or in connection with any sale of
19461 securities, has been or is engaged or is about to engage in



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19462 making fictitious or pretended sales or purchases of any such
19463 securities or in any practice involving the rendering of
19464 investment advice or the sale of securities which is fraudulent
19465 or in violation of the law;

19466 (d) Has made a misrepresentation or false statement to, or
19467 concealed any essential or material fact from, any person in the
19468 rendering of investment advice or the sale of a security to such
19469 person;

19470 (e) Has failed to account to persons interested for all
19471 money and property received;

19472 (f) Has not delivered, after a reasonable time, to persons
19473 entitled thereto securities held or agreed to be delivered by
19474 the dealer, broker, or investment adviser, as and when paid for,
19475 and due to be delivered;

19476 (g) Is rendering investment advice or selling or offering
19477 for sale securities through any associated person not registered
19478 in compliance with the provisions of this chapter;

19479 (h) Has demonstrated unworthiness to transact the business
19480 of dealer, investment adviser, or associated person;

19481 (i) Has exercised management or policy control over or
19482 owned 10 percent or more of the securities of any dealer or
19483 investment adviser that has been declared bankrupt, or had a
19484 trustee appointed under the Securities Investor Protection Act;
19485 or is, in the case of a dealer or investment adviser, insolvent;

19486 (j) Has been convicted of, or has entered a plea of guilty
19487 or nolo contendere to, a crime against the laws of this state or
19488 any other state or of the United States or of any other country
19489 or government which relates to registration as a dealer,



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19490 investment adviser, issuer of securities, associated person, or
19491 branch office; which relates to the application for such
19492 registration; or which involves moral turpitude or fraudulent or
19493 dishonest dealing;

19494 (k) Has had a final judgment entered against her or him in
19495 a civil action upon grounds of fraud, embezzlement,
19496 misrepresentation, or deceit;

19497 (l) Is of bad business repute; or

19498 (m) Has been the subject of any decision, finding,
19499 injunction, suspension, prohibition, revocation, denial,
19500 judgment, or administrative order by any court of competent
19501 jurisdiction, administrative law judge, or by any state or
19502 federal agency, national securities, commodities, or option
19503 exchange, or national securities, commodities, or option
19504 association, involving a violation of any federal or state
19505 securities or commodities law or any rule or regulation
19506 promulgated thereunder, or any rule or regulation of any
19507 national securities, commodities, or options exchange or
19508 national securities, commodities, or options association, or has
19509 been the subject of any injunction or adverse administrative
19510 order by a state or federal agency regulating banking,
19511 insurance, finance or small loan companies, real estate,
19512 mortgage brokers, or other related or similar industries. For
19513 purposes of this subsection, the office ~~department~~ may not deny
19514 registration to any applicant who has been continuously
19515 registered with the office ~~department~~ for 5 years from the entry
19516 of such decision, finding, injunction, suspension, prohibition,
19517 revocation, denial, judgment, or administrative order provided



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19518 such decision, finding, injunction, suspension, prohibition,
19519 revocation, denial, judgment, or administrative order has been
19520 timely reported to the office ~~department~~ pursuant to the
19521 commission's ~~department's~~ rules and regulations.

19522 (3) In the event the office ~~department~~ determines to deny
19523 an application or revoke a registration, it shall enter a final
19524 order with its findings on the register of dealers and
19525 associated persons; and denial, suspension, or revocation of the
19526 registration of a dealer or investment adviser shall also deny,
19527 suspend, or revoke the registration of all her or his associated
19528 persons.

19529 (5) The office ~~department~~ may deny any request to
19530 terminate or withdraw any application or registration if the
19531 office ~~department~~ believes that an act which would be a ground
19532 for denial, suspension, restriction, or revocation under this
19533 chapter has been committed.

19534 (6) Registration under s. 517.12 may be denied or any
19535 registration granted may be suspended or restricted if an
19536 applicant or registrant is charged, in a pending enforcement
19537 action or pending criminal prosecution, with any conduct that
19538 would authorize denial or revocation under subsection (1).

19539 (b) Any order of suspension or restriction under this
19540 subsection shall:

19541 1. Take effect only after a hearing, unless no hearing is
19542 requested by the registrant or unless the suspension or
19543 restriction is made in accordance with s. 120.60(6).



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19544 2. Contain a finding that evidence of a prima facie case
19545 supports the charge made in the enforcement action or criminal
19546 prosecution.

19547 3. Operate for no longer than 10 days beyond receipt of
19548 notice by the office ~~department~~ of termination with respect to
19549 the registrant of the enforcement action or criminal
19550 prosecution.

19551 Section 362. Section 517.181, Florida Statutes, is amended
19552 to read:

19553 517.181 Escrow agreement.--

19554 (1) If the statement containing information as to
19555 securities to be registered, as provided for in s. 517.081,
19556 shall disclose that any such securities or any securities senior
19557 thereto shall have been or shall be intended to be issued for
19558 any patent right, copyright, trademark, process, formula, or
19559 goodwill; for organization or promotion fees or expenses; or for
19560 goodwill or going-concern value or other intangible assets, then
19561 the amount and nature thereof shall be fully set forth, and the
19562 office ~~department~~ may require that such securities so issued in
19563 payment of such patent right, copyright, trademark, process,
19564 formula, or goodwill; for organization or promotion fees or
19565 expenses; or for other intangible assets shall be delivered in
19566 escrow to the office ~~department~~ or other depository satisfactory
19567 to the office ~~department~~ under an escrow agreement. The escrow
19568 agreement shall be in a form suitable to the office ~~department~~
19569 and shall provide for the escrow or impoundment of such
19570 securities for a reasonable length of time determined by the
19571 office ~~department~~ to be in the best interest of other



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19572 | shareholders. The securities subject to escrow shall also
19573 | include any dividend, cash, or stock that may be paid during the
19574 | life of the escrow and any stock issued through, or by reason
19575 | of, any stock split, exchange of shares, recapitalization,
19576 | merger, consolidation, reorganization, or similar combination or
19577 | subdivision in substitution for or in lieu of any stock subject
19578 | to this provision; and in case of dissolution or insolvency
19579 | during the time such securities are held in escrow, the owners
19580 | of such securities shall not participate in the assets until
19581 | after the owners of all other securities shall have been paid in
19582 | full.

19583 | (2) Any securities held in escrow under this section on
19584 | November 1, 1978, may be released to the owners thereof upon
19585 | request, if satisfactory financial data is submitted to the
19586 | office ~~department~~ showing that the issuer is currently operating
19587 | on sound business principles and has net income in accordance
19588 | with criteria-implementing rules of the commission ~~department~~
19589 | relating to escrow of securities. At any time, the office
19590 | ~~department~~ may review any existing escrow agreement made under
19591 | this section and determine that the same may be amended in order
19592 | to permit a subsequent release of the securities upon terms and
19593 | conditions which are just and equitable as defined by said
19594 | rules.

19595 | (3) When it shall appear from information available to the
19596 | office ~~department~~ that the issuer of securities held in escrow
19597 | has been dissolved or disbanded or is defunct or no longer
19598 | actively engaged in business and such securities are of no
19599 | value, the office ~~department~~, after giving at least 60 days'



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19600 notice in at least one newspaper of general circulation and
19601 after giving interested parties opportunity for hearing, may
19602 enter its order authorizing the destruction of said securities.
19603 Any affected escrow agent may rely on such order and shall not
19604 be required to determine the validity or sufficiency thereof.

19605 Section 363. Section 517.191, Florida Statutes, is amended
19606 to read:

19607 517.191 Injunction to restrain violations.--

19608 (1) When it appears ~~shall appear~~ to the office ~~department~~,
19609 either upon complaint or otherwise, that a person has engaged or
19610 is about to engage in any act or practice constituting a
19611 violation of this chapter or a rule or order hereunder, the
19612 office ~~department~~ may investigate; and whenever it shall believe
19613 from evidence satisfactory to it that any such person has
19614 engaged, is engaged, or is about to engage in any act or
19615 practice constituting a violation of this chapter or a rule or
19616 order hereunder, the office ~~department~~ may, in addition to any
19617 other remedies, bring action in the name and on behalf of the
19618 state against such person and any other person concerned in or
19619 in any way participating in or about to participate in such
19620 practices or engaging therein or doing any act or acts in
19621 furtherance thereof or in violation of this chapter to enjoin
19622 such person or persons from continuing such fraudulent practices
19623 or engaging therein or doing any act or acts in furtherance
19624 thereof or in violation of this chapter. In any such court
19625 proceedings, the office ~~department~~ may apply for, and on due
19626 showing be entitled to have issued, the court's subpoena
19627 requiring forthwith the appearance of any defendant and her or



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19628 | his employees, associated persons, or agents and the production
19629 | of documents, books, and records that may appear necessary for
19630 | the hearing of such petition, to testify or give evidence
19631 | concerning the acts or conduct or things complained of in such
19632 | application for injunction. In such action, the equity courts
19633 | shall have jurisdiction of the subject matter, and a judgment
19634 | may be entered awarding such injunction as may be proper.

19635 | (2) In addition to all other means provided by law for the
19636 | enforcement of any temporary restraining order, temporary
19637 | injunction, or permanent injunction issued in any such court
19638 | proceedings, the court shall have the power and jurisdiction,
19639 | upon application of the office ~~department~~, to impound and to
19640 | appoint a receiver or administrator for the property, assets,
19641 | and business of the defendant, including, but not limited to,
19642 | the books, records, documents, and papers appertaining thereto.
19643 | Such receiver or administrator, when appointed and qualified,
19644 | shall have all powers and duties as to custody, collection,
19645 | administration, winding up, and liquidation of said property and
19646 | business as shall from time to time be conferred upon her or him
19647 | by the court. In any such action, the court may issue orders
19648 | and decrees staying all pending suits and enjoining any further
19649 | suits affecting the receiver's or administrator's custody or
19650 | possession of the said property, assets, and business or, in its
19651 | discretion, may with the consent of the presiding judge of the
19652 | circuit require that all such suits be assigned to the circuit
19653 | court judge appointing the said receiver or administrator.

19654 | (3) In addition to any other remedies provided by this
19655 | chapter, the office ~~department~~ may apply to the court hearing



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19656 | this matter for an order of restitution whereby the defendants
19657 | in such action shall be ordered to make restitution of those
19658 | sums shown by the office ~~department~~ to have been obtained by
19659 | them in violation of any of the provisions of this chapter.
19660 | Such restitution shall, at the option of the court, be payable
19661 | to the administrator or receiver appointed pursuant to this
19662 | section or directly to the persons whose assets were obtained in
19663 | violation of this chapter.

19664 | Section 364. Section 517.201, Florida Statutes, is amended
19665 | to read:

19666 | 517.201 Investigations; examinations; subpoenas; hearings;
19667 | witnesses.--

19668 | (1) The office ~~department~~:

19669 | (a) May make investigations and examinations within or
19670 | outside of this state as it deems necessary:

19671 | 1. To determine whether a person has violated or is about
19672 | to violate any provision of this chapter or a rule or order
19673 | hereunder; or

19674 | 2. To aid in the enforcement of this chapter.

19675 | (b) May require or permit a person to file a statement in
19676 | writing, under oath or otherwise as the office ~~department~~
19677 | determines, as to all the facts and circumstances concerning the
19678 | matter to be investigated.

19679 | (2) When it is proposed to conduct an investigation or
19680 | examination, the office ~~department~~ may gather evidence in the
19681 | matter. The office ~~department~~ may administer oaths, examine
19682 | witnesses, and issue subpoenas.



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19683 (3) Subpoenas for witnesses whose evidence is deemed
19684 material to any investigation or examination may be issued by
19685 the office department under the seal of the office department,
19686 or by any county court judge or clerk of the circuit court or
19687 county court, commanding such witnesses to be or appear before
19688 the office department at a time and place to be therein named
19689 and to bring such books, records, and documents as may be
19690 specified or to submit such books, records, and documents to
19691 inspection; and such subpoenas may be served by an authorized
19692 representative of the office department.

19693 (4)(a) In the event of substantial noncompliance with a
19694 subpoena or subpoena duces tecum issued or caused to be issued
19695 by the office department pursuant to this section, the office
19696 ~~department~~ may petition the circuit court of the county in which
19697 the person subpoenaed resides or has its principal place of
19698 business for an order requiring the subpoenaed person to appear
19699 and testify and to produce such books, records, and documents as
19700 are specified in such subpoena duces tecum. The court may grant
19701 injunctive relief restraining the issuance, sale or offer for
19702 sale, purchase or offer to purchase, promotion, negotiation,
19703 advertisement, or distribution in or from offices in this state
19704 of securities or investments by a person or agent, employee,
19705 broker, partner, officer, director, or stockholder thereof, and
19706 may grant such other relief, including, but not limited to, the
19707 restraint, by injunction or appointment of a receiver, of any
19708 transfer, pledge, assignment, or other disposition of such
19709 person's assets or any concealment, alteration, destruction, or
19710 other disposition of subpoenaed books, records, or documents, as



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19711 the court deems appropriate, until such person has fully
19712 complied with such subpoena or subpoena duces tecum and the
19713 office department has completed its investigation or
19714 examination. The office department is entitled to the summary
19715 procedure provided in s. 51.011, and the court shall advance the
19716 cause on its calendar. Costs incurred by the office department
19717 to obtain an order granting, in whole or in part, such petition
19718 for enforcement of a subpoena or subpoena duces tecum shall be
19719 taxed against the subpoenaed person, and failure to comply with
19720 such order shall be a contempt of court.

19721 (b) When it shall appear to the office department that the
19722 compliance with a subpoena or subpoena duces tecum issued or
19723 caused to be issued by the office department pursuant to this
19724 section is essential and otherwise unavailable to an
19725 investigation or examination, the office department, in addition
19726 to the other remedies provided for herein, may, by verified
19727 petition setting forth the facts, apply to the circuit court of
19728 the county in which the subpoenaed person resides or has its
19729 principal place of business for a writ of ne exeat. The court
19730 shall thereupon direct the issuance of the writ against the
19731 subpoenaed person requiring sufficient bond conditioned on
19732 compliance with the subpoena or subpoena duces tecum. The court
19733 shall cause to be endorsed on the writ a suitable amount of bond
19734 on payment of which the person named in the writ shall be freed,
19735 having a due regard to the nature of the case.

19736 (5) Witnesses shall be entitled to the same fees and
19737 mileage as they may be entitled by law for attending as
19738 witnesses in the circuit court, except where such examination or



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19739 investigation is held at the place of business or residence of
19740 the witness.

19741 Section 365. Subsections (1) and (3) of section 517.2015,
19742 Florida Statutes, are amended to read:

19743 517.2015 Confidentiality of information relating to
19744 investigations and examinations.--

19745 (1)(a) Except as otherwise provided by this section,
19746 information relative to an investigation or examination by the
19747 office ~~department~~ pursuant to this chapter, including any
19748 consumer complaint, is confidential and exempt from s. 119.07(1)
19749 until the investigation or examination is completed or ceases to
19750 be active. The information compiled by the office ~~department~~ in
19751 such an investigation or examination shall remain confidential
19752 and exempt from s. 119.07(1) after the office's ~~department's~~
19753 investigation or examination is completed or ceases to be active
19754 if the office ~~department~~ submits the information to any law
19755 enforcement or administrative agency or regulatory organization
19756 for further investigation. Such information shall remain
19757 confidential and exempt from s. 119.07(1) until that agency's or
19758 organization's investigation is completed or ceases to be
19759 active. For purposes of this section, an investigation or
19760 examination shall be considered "active" so long as the office
19761 ~~department~~ or any law enforcement or administrative agency or
19762 regulatory organization is proceeding with reasonable dispatch
19763 and has a reasonable good faith belief that the investigation or
19764 examination may lead to the filing of an administrative, civil,
19765 or criminal proceeding or to the denial or conditional grant of
19766 a license, registration, or permit. This section shall not be



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19767 | construed to prohibit disclosure of information which is
19768 | required by law to be filed with the office ~~department~~ and
19769 | which, but for the investigation or examination, would be
19770 | subject to s. 119.07(1).

19771 | (b) Except as necessary for the office ~~department~~ to
19772 | enforce the provisions of this chapter, a consumer complaint and
19773 | other information relative to an investigation or examination
19774 | shall remain confidential and exempt from s. 119.07(1) after the
19775 | investigation or examination is completed or ceases to be active
19776 | to the extent disclosure would:

19777 | 1. Jeopardize the integrity of another active
19778 | investigation or examination.

19779 | 2. Reveal the name, address, telephone number, social
19780 | security number, or any other identifying number or information
19781 | of any complainant, customer, or account holder.

19782 | 3. Disclose the identity of a confidential source.

19783 | 4. Disclose investigative techniques or procedures.

19784 | 5. Reveal a trade secret as defined in s. 688.002.

19785 | (c) In the event that office ~~department~~ personnel are or
19786 | have been involved in an investigation or examination of such
19787 | nature as to endanger their lives or physical safety or that of
19788 | their families, then the home addresses, telephone numbers,
19789 | places of employment, and photographs of such personnel,
19790 | together with the home addresses, telephone numbers,
19791 | photographs, and places of employment of spouses and children of
19792 | such personnel and the names and locations of schools and day
19793 | care facilities attended by the children of such personnel are
19794 | confidential and exempt from s. 119.07(1).



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19795 (d) Nothing in this section shall be construed to prohibit
19796 the office ~~department~~ from providing information to any law
19797 enforcement or administrative agency or regulatory organization.
19798 Any law enforcement or administrative agency or regulatory
19799 organization receiving confidential information in connection
19800 with its official duties shall maintain the confidentiality of
19801 the information so long as it would otherwise be confidential.

19802 (e) All information obtained by the office ~~department~~ from
19803 any person which is only made available to the office ~~department~~
19804 on a confidential or similarly restricted basis shall be
19805 confidential and exempt from s. 119.07(1). This exemption shall
19806 not be construed to prohibit disclosure of information which is
19807 required by law to be filed with the office ~~department~~ or which
19808 is otherwise subject to s. 119.07(1).

19809 (3) A privilege against civil liability is granted to a
19810 person who furnishes information or evidence to the office
19811 ~~department~~, unless such person acts in bad faith or with malice
19812 in providing such information or evidence.

19813 Section 366. Section 517.221, Florida Statutes, is amended
19814 to read:

19815 517.221 Cease and desist orders.--

19816 (1) The office ~~department~~ may issue and serve upon a
19817 person a cease and desist order whenever the office ~~department~~
19818 has reason to believe that such person is violating, has
19819 violated, or is about to violate any provision of this chapter,
19820 any rule or order promulgated by the commission or office
19821 ~~department~~, or any written agreement entered into with the
19822 office ~~department~~.



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19823 (2) Whenever the office ~~department~~ finds that conduct
 19824 described in subsection (1) presents an immediate danger to the
 19825 public requiring an immediate final order, it may issue an
 19826 emergency cease and desist order reciting with particularity the
 19827 facts underlying such findings. The emergency cease and desist
 19828 order is effective immediately upon service of a copy of the
 19829 order on the respondent named therein and remains effective for
 19830 90 days. If the office ~~department~~ begins nonemergency cease and
 19831 desist proceedings under subsection (1), the emergency cease and
 19832 desist order remains effective until conclusion of the
 19833 proceedings under ss. 120.569 and 120.57.

19834 (3) The office ~~department~~ may impose and collect an
 19835 administrative fine against any person found to have violated
 19836 any provision of this chapter, any rule or order promulgated by
 19837 the commission or office ~~department~~, or any written agreement
 19838 entered into with the office ~~department~~ in an amount not to
 19839 exceed \$5,000 for each such violation. All fines collected
 19840 hereunder shall be deposited as received in the Anti-Fraud Trust
 19841 Fund.

19842 Section 367. Subsection (1) of section 517.241, Florida
 19843 Statutes, is amended to read:

19844 517.241 Remedies.--

19845 (1) Any person aggrieved by a final order of the office
 19846 ~~department~~ may have the order reviewed as provided by chapter
 19847 120, the Administrative Procedure Act.

19848 Section 368. Paragraph (c) of subsection (1) and paragraph
 19849 (b) of subsection (2) of section 517.301, Florida Statutes, are
 19850 amended to read:



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19851 | 517.301 Fraudulent transactions; falsification or
19852 | concealment of facts.--

19853 | (1) It is unlawful and a violation of the provisions of
19854 | this chapter for a person:

19855 | (c) In any matter within the jurisdiction of the office
19856 | ~~department~~, to knowingly and willfully falsify, conceal, or
19857 | cover up, by any trick, scheme, or device, a material fact, make
19858 | any false, fictitious, or fraudulent statement or
19859 | representation, or make or use any false writing or document,
19860 | knowing the same to contain any false, fictitious, or fraudulent
19861 | statement or entry.

19862 | (2) For purposes of ss. 517.311 and 517.312 and this
19863 | section, the term "investment" means any commitment of money or
19864 | property principally induced by a representation that an
19865 | economic benefit may be derived from such commitment, except
19866 | that the term "investment" does not include a commitment of
19867 | money or property for:

19868 | (b) The purchase of tangible personal property through a
19869 | person not engaged in telephone solicitation, where said
19870 | property is offered and sold in accordance with the following
19871 | conditions:

19872 | 1. There are no specific representations or guarantees
19873 | made by the offeror or seller as to the economic benefit to be
19874 | derived from the purchase;

19875 | 2. The tangible property is delivered to the purchaser
19876 | within 30 days after sale, except that such 30-day period may be
19877 | extended by the office ~~department~~ if market conditions so
19878 | warrant; and



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19879 | 3. The seller has offered the purchaser a full refund
19880 | policy in writing, exercisable by the purchaser within 10 days
19881 | of the date of delivery of such tangible personal property,
19882 | except that the amount of such refund in no event shall exceed
19883 | the bid price in effect at the time the property is returned to
19884 | the seller. If the applicable sellers' market is closed at the
19885 | time the property is returned to the seller for a refund, the
19886 | amount of such refund shall be based on the bid price for such
19887 | property at the next opening of such market.

19888 | Section 369. Subsection (3) of section 517.302, Florida
19889 | Statutes, is amended to read:

19890 | 517.302 Criminal penalties; alternative fine; Anti-Fraud
19891 | Trust Fund; time limitation for criminal prosecution.--

19892 | (3) In lieu of a fine otherwise authorized by law, a
19893 | person who has been convicted of or who has pleaded guilty or no
19894 | contest to having engaged in conduct in violation of the
19895 | provisions of this chapter may be sentenced to pay a fine that
19896 | does not exceed the greater of three times the gross value
19897 | gained or three times the gross loss caused by such conduct,
19898 | plus court costs and the costs of investigation and prosecution
19899 | reasonably incurred.

19900 | (a) There is created within the office ~~department~~ a trust
19901 | fund to be known as the Anti-Fraud Trust Fund. Any amounts
19902 | assessed as costs of investigation and prosecution under this
19903 | subsection shall be deposited in the trust fund. Funds deposited
19904 | in such trust fund shall be used, when authorized by
19905 | appropriation, for investigation and prosecution of
19906 | administrative, civil, and criminal actions arising under the



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19907 provisions of this chapter. Funds may also be used to improve
19908 the public's awareness and understanding of prudent investing.

19909 (b) The office ~~department~~ shall report to the Executive
19910 Office of the Governor annually by November 15, the amounts
19911 deposited into the Anti-Fraud Trust Fund during the previous
19912 fiscal year. The Executive Office of the Governor shall
19913 distribute these reports to the President of the Senate and the
19914 Speaker of the House of Representatives.

19915 Section 370. Subsections (1) and (2) of section 517.313,
19916 Florida Statutes, are amended to read:

19917 517.313 Destroying certain records; reproduction.--

19918 (1) The commission and office may ~~department is authorized~~
19919 ~~to~~ photograph, microphotograph, or reproduce on film or prints
19920 documents, records, data, and information of a permanent
19921 character.

19922 (2) The commission and office may ~~department is authorized~~
19923 ~~to~~ destroy any of said documents after audit ~~of the office~~ has
19924 been completed for the period embracing the dates of said
19925 instruments, after complying with the provisions of chapter 119.

19926 Section 371. Section 517.315, Florida Statutes, is amended
19927 to read:

19928 517.315 Fees.--All fees and charges of any nature
19929 collected by the office ~~department~~ pursuant to this chapter,
19930 except the fees and charges collected pursuant to s. 517.131,
19931 shall be paid into the State Treasury and credited to the
19932 General Revenue Fund; and an appropriation shall be made
19933 annually of necessary funds for the administration of the
19934 provisions of this chapter.



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19935 Section 372. Section 517.32, Florida Statutes, is amended
19936 to read:

19937 517.32 Exemption from excise tax, certain obligations to
19938 pay.--There shall be exempt from all excise taxes imposed by
19939 chapter 201 all promissory notes, nonnegotiable notes, and other
19940 written obligations to pay money bearing dates subsequent to
19941 July 1, 1957, when the maker thereof is a security dealer
19942 registered by the office ~~department~~ under this chapter and when
19943 such promissory note, nonnegotiable note or notes, or other
19944 written obligation to pay money shall be for the duration of 30
19945 days or less and secured by pledge or deposit, as collateral
19946 security for the payment thereof, security or securities as
19947 defined in s. 517.021, provided all excise taxes imposed by
19948 chapter 201 shall have been paid upon such collateral security.

19949 Section 373. Section 520.996, Florida Statutes, is amended
19950 to read:

19951 520.996 Investigations and complaints.--

19952 (1)(a) The office ~~department~~ or its agent may, at
19953 intermittent periods, make such investigations and examinations
19954 of any licensee or other person as it deems necessary to
19955 determine compliance with this chapter. For such purposes, it
19956 may examine the books, accounts, records, and other documents or
19957 matters of any licensee or other person. It shall have the power
19958 to compel the production of all relevant books, records, and
19959 other documents and materials relative to an examination or
19960 investigation. Such investigations and examinations shall not
19961 be made more often than once during any 12-month period unless
19962 the office ~~department~~ has good and sufficient reason to believe



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19963 | the licensee is not complying with the provisions of this
19964 | chapter. Such examination fee shall be calculated on an hourly
19965 | basis and shall be rounded to the nearest hour.

19966 | (b) The office ~~department~~ shall conduct all examinations
19967 | at a convenient location in this state unless the office
19968 | ~~department~~ determines that it is more effective or cost-
19969 | efficient to perform an examination at the licensee's out-of-
19970 | state location. For an examination performed at the licensee's
19971 | out-of-state location, the licensee shall pay the travel expense
19972 | and per diem subsistence at the rate provided by law for up to
19973 | thirty 8-hour days per year for each examiner who participates
19974 | in such an examination. However, if the examination involves or
19975 | reveals possible fraudulent conduct of the licensee, the
19976 | licensee shall pay the travel expenses and per diem subsistence
19977 | provided by law, without limitation, for each participating
19978 | examiner.

19979 | (2) The examination expenses incurred by the office
19980 | ~~department~~ in each examination shall be paid by the licensee
19981 | examined. The expenses of the office ~~department~~ incurred in
19982 | each examination of a home improvement finance seller or of an
19983 | employee representing such home improvement finance seller shall
19984 | be paid by the home improvement finance seller. Expenses
19985 | incurred for each examination of a sales finance company shall
19986 | be paid by it. The examination expenses shall be paid by such
19987 | licensee examined or such other person obligated to pay such
19988 | examination expenses within 30 days after demand therefor by the
19989 | office ~~department~~.



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19990 (3) Any retail buyer or owner having reason to believe
19991 that the provisions of this chapter have been violated may file
19992 with the office or the Department of Financial Services a
19993 written complaint setting forth the details of such alleged
19994 violations and the office ~~department~~ upon receipt of such
19995 complaint, may inspect the pertinent books, records, letters,
19996 and contracts of the licensee and of the seller involved,
19997 relating to such specific written complaint.

19998 Section 374. Section 520.9965, Florida Statutes, is
19999 amended to read:

20000 520.9965 Confidentiality of information relating to
20001 investigations and examinations.--

20002 (1)(a) Except as otherwise provided by this section,
20003 information relative to an investigation or examination by the
20004 office ~~department~~ pursuant to this chapter, including any
20005 consumer complaint received by the office or the Department of
20006 Financial Services, is confidential and exempt from s. 119.07(1)
20007 until the investigation or examination is completed or ceases to
20008 be active. The information compiled by the office ~~department~~ in
20009 such an investigation or examination shall remain confidential
20010 and exempt from s. 119.07(1) after the office's ~~department's~~
20011 investigation or examination is completed or ceases to be active
20012 if the office ~~department~~ submits the information to any law
20013 enforcement or administrative agency for further investigation.
20014 Such information shall remain confidential and exempt from s.
20015 119.07(1) until that agency's investigation is completed or
20016 ceases to be active. For purposes of this section, an
20017 investigation or examination shall be considered "active" so



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20018 | long as the office ~~department~~ or any law enforcement or
 20019 | administrative agency is proceeding with reasonable dispatch and
 20020 | has a reasonable good faith belief that the investigation or
 20021 | examination may lead to the filing of an administrative, civil,
 20022 | or criminal proceeding or to the denial or conditional grant of
 20023 | a license, registration, or permit. This section shall not be
 20024 | construed to prohibit disclosure of information which is
 20025 | required by law to be filed with the office ~~department~~ and
 20026 | which, but for the investigation or examination, would be
 20027 | subject to s. 119.07(1).

20028 | (b) Except as necessary for the office ~~department~~ to
 20029 | enforce the provisions of this chapter, a consumer complaint and
 20030 | other information relative to an investigation or examination
 20031 | shall remain confidential and exempt from s. 119.07(1) after the
 20032 | investigation or examination is completed or ceases to be active
 20033 | to the extent disclosure would:

20034 | 1. Jeopardize the integrity of another active
 20035 | investigation or examination.

20036 | 2. Reveal the name, address, telephone number, social
 20037 | security number, or any other identifying number or information
 20038 | of any complainant, customer, or account holder.

20039 | 3. Disclose the identity of a confidential source.

20040 | 4. Disclose investigative techniques or procedures.

20041 | 5. Reveal a trade secret as defined in s. 688.002.

20042 | (c) In the event that office ~~department~~ personnel or
 20043 | personnel of the former Department of Banking and Finance are or
 20044 | have been involved in an investigation or examination of such
 20045 | nature as to endanger their lives or physical safety or that of



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20046 | their families, then the home addresses, telephone numbers,
20047 | places of employment, and photographs of such personnel,
20048 | together with the home addresses, telephone numbers,
20049 | photographs, and places of employment of spouses and children of
20050 | such personnel and the names and locations of schools and day
20051 | care facilities attended by the children of such personnel are
20052 | confidential and exempt from s. 119.07(1).

20053 | (d) Nothing in this section shall be construed to prohibit
20054 | the office ~~department~~ from providing information to any law
20055 | enforcement or administrative agency. Any law enforcement or
20056 | administrative agency receiving confidential information in
20057 | connection with its official duties shall maintain the
20058 | confidentiality of the information so long as it would otherwise
20059 | be confidential.

20060 | (e) All information obtained by the office ~~department~~ from
20061 | any person which is only made available to the office ~~department~~
20062 | on a confidential or similarly restricted basis shall be
20063 | confidential and exempt from s. 119.07(1). This exemption shall
20064 | not be construed to prohibit disclosure of information which is
20065 | required by law to be filed with the office ~~department~~ or which
20066 | is otherwise subject to s. 119.07(1).

20067 | (2) If information subject to subsection (1) is offered in
20068 | evidence in any administrative, civil, or criminal proceeding,
20069 | the presiding officer may, in his or her discretion, prevent the
20070 | disclosure of information which would be confidential pursuant
20071 | to paragraph (1)(b).

20072 | (3) A privilege against civil liability is granted to a
20073 | person who furnishes information or evidence to the office



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20074 | ~~department~~, unless such person acts in bad faith or with malice
20075 | in providing such information or evidence.

20076 | Section 375. Paragraph (b) of subsection (2) of section
20077 | 537.008, Florida Statutes, is amended to read:

20078 | 537.008 Title loan agreement.--

20079 | (2) The following information shall also be printed on all
20080 | title loan agreements:

20081 | (b) The name and address of the Department of Financial
20082 | Services as well as a telephone number to which consumers may
20083 | address complaints.

20084 | Section 376. Section 537.009, Florida Statutes, is amended
20085 | to read:

20086 | 537.009 Recordkeeping; reporting; safekeeping of
20087 | property.--

20088 | (1) Every title loan lender shall maintain, at the
20089 | lender's title loan office, such books, accounts, and records of
20090 | the business conducted under the license issued for such place
20091 | of business as will enable the office ~~department~~ to determine
20092 | the licensee's compliance with this act.

20093 | (2) The office ~~department~~ may authorize the maintenance of
20094 | books, accounts, and records at a location other than the
20095 | lender's title loan office. The office ~~department~~ may require
20096 | books, accounts, and records to be produced and available at a
20097 | reasonable and convenient location in this state within a
20098 | reasonable period of time after such a request.

20099 | (3) The title loan lender shall maintain the original copy
20100 | of each completed title loan agreement on the title loan office
20101 | premises, and shall not obliterate, discard, or destroy any such



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20102 original copy, for a period of at least 2 years after making the
20103 final entry on any loan recorded in such office or after an a
20104 ~~department~~ examination by the Office of Financial Institutions
20105 and Securities Regulation, whichever is later.

20106 (4) Loan property which is delivered to a title loan
20107 lender shall be securely stored and maintained at the title loan
20108 office unless the loan property has been forwarded to the
20109 appropriate state agency for the purpose of having a lien
20110 recorded or deleted.

20111 (5) The commission ~~department~~ may prescribe by rule the
20112 books, accounts, and records, and the minimum information to be
20113 shown in the books, accounts, and records, of licensees so that
20114 such records will enable the office ~~department~~ to determine
20115 compliance with the provisions of this act.

20116 Section 377. Subsection (2) and paragraph (c) of
20117 subsection (4) of section 537.011, Florida Statutes, are amended
20118 to read:

20119 537.011 Title loan charges.--

20120 (2) The annual percentage rate that may be charged for a
20121 title loan may equal, but not exceed, the annual percentage rate
20122 that must be computed and disclosed as required by the federal
20123 Truth in Lending Act and Regulation Z of the Board of Governors
20124 of the Federal Reserve System. The maximum annual percentage
20125 rate of interest that may be charged is 12 times the maximum
20126 monthly rate, and the maximum monthly rate must be computed on
20127 the basis of one-twelfth of the annual rate for each full month.
20128 The commission ~~Department of Banking and Finance~~ shall establish
20129 by rule the rate for each day in a fraction of a month when the



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20130 | period for which the charge is computed is more or less than 1
20131 | month.

20132 | (4) Any interest contracted for or received, directly or
20133 | indirectly, by a title loan lender, or an agent of the title
20134 | loan lender, in excess of the amounts authorized under this
20135 | chapter is prohibited and may not be collected by the title loan
20136 | lender or an agent of the title loan lender.

20137 | (c) The office ~~department~~ may order a title loan lender,
20138 | or an agent of the title loan lender, to comply with the
20139 | provisions of paragraphs (a) and (b).

20140 | Section 378. Paragraphs (b), (f), and (n) of subsection
20141 | (1) of section 537.013, Florida Statutes, are amended to read:

20142 | 537.013 Prohibited acts.--

20143 | (1) A title loan lender, or any agent or employee of a
20144 | title loan lender, shall not:

20145 | (b) Refuse to allow the office ~~department~~ to inspect
20146 | completed title loan agreements, extensions of such agreements,
20147 | or loan property during the ordinary operating hours of the
20148 | title loan lender's business or other times acceptable to both
20149 | parties.

20150 | (f) Fail to exercise reasonable care, as defined by
20151 | commission ~~department~~ rule, in the safekeeping of loan property
20152 | or of titled personal property repossessed pursuant to this act.

20153 | (n) Act as a title loan lender under this act within a
20154 | place of business in which the licensee solicits or engages in
20155 | business outside the scope of this act if the office ~~department~~
20156 | determines that the licensee's operation of and conduct
20157 | pertaining to such other business results in an evasion of this



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20158 act. Upon making such a determination, the office ~~department~~
20159 shall order the licensee to cease and desist from such evasion;
20160 provided, no licensee shall engage in the pawnbroker business.

20161 Section 379. Section 537.016, Florida Statutes, is amended
20162 to read:

20163 537.016 Subpoenas; enforcement actions; rules.--

20164 (1) The office ~~department~~ may issue and serve subpoenas to
20165 compel the attendance of witnesses and the production of
20166 documents, papers, books, records, and other evidence before the
20167 office ~~department~~ in any matter pertaining to this act. The
20168 office ~~department~~ may administer oaths and affirmations to any
20169 person whose testimony is required. If any person refuses to
20170 testify; produce books, records, and documents; or otherwise
20171 refuses to obey a subpoena issued under this section, the office
20172 ~~department~~ may enforce the subpoena in the same manner as
20173 subpoenas issued under the Administrative Procedure Act are
20174 enforced. Witnesses are entitled to the same fees and mileage as
20175 they are entitled to by law for attending as witnesses in the
20176 circuit court, unless such examination or investigation is held
20177 at the place of business or residence of the witness.

20178 (2) In addition to any other powers conferred upon the
20179 office ~~department~~ to enforce or administer this act, the office
20180 ~~department~~ may:

20181 (a) Bring an action in any court of competent jurisdiction
20182 to enforce or administer this act, any rule or order adopted
20183 under this act, or any written agreement entered into with the
20184 office ~~department~~. In such action, the office ~~department~~ may
20185 seek any relief at law or equity, including a temporary or



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20186 permanent injunction, appointment of a receiver or
20187 administrator, or an order of restitution.

20188 (b) Issue and serve upon a person an order requiring such
20189 person to cease and desist and take corrective action whenever
20190 the office ~~department~~ finds that such person is violating, has
20191 violated, or is about to violate any provision of this act, any
20192 rule or order adopted under this act, or any written agreement
20193 entered into with the office ~~department~~.

20194 (c) Whenever the office ~~department~~ finds that conduct
20195 described in paragraph (b) presents an immediate danger to the
20196 public health, safety, or welfare requiring an immediate final
20197 order, the office ~~department~~ may issue an emergency cease and
20198 desist order reciting with particularity the facts underlying
20199 such findings. The emergency cease and desist order is effective
20200 immediately upon service of a copy of the order on the
20201 respondent named in the order and shall remain effective for 90
20202 days. If the office ~~department~~ begins nonemergency proceedings
20203 under paragraph (b), the emergency cease and desist order
20204 remains effective until the conclusion of the proceedings under
20205 ss. 120.569 and 120.57.

20206 (3) The commission ~~department~~ may adopt rules to
20207 administer this act.

20208 Section 380. Section 537.017, Florida Statutes, is amended
20209 to read:

20210 537.017 Investigations and complaints.--

20211 (1) The office ~~department~~ may make any investigation and
20212 examination of any licensee or other person the office
20213 ~~department~~ deems necessary to determine compliance with this



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20214 act. For such purposes, the office ~~department~~ may examine the
20215 books, accounts, records, and other documents or matters of any
20216 licensee or other person. The office ~~department~~ may compel the
20217 production of all relevant books, records, and other documents
20218 and materials relative to an examination or investigation.
20219 Examinations shall not be made more often than once during any
20220 12-month period unless the office ~~department~~ has reason to
20221 believe the licensee is not complying with the provisions of
20222 this act.

20223 (2) The office ~~department~~ shall conduct all examinations
20224 at a convenient location in this state unless the office
20225 ~~department~~ determines that it is more effective or cost-
20226 efficient to perform an examination at the licensee's out-of-
20227 state location. For an examination performed at the licensee's
20228 out-of-state location, the licensee shall pay the travel expense
20229 and per diem subsistence at the rate provided by law for up to
20230 thirty 8-hour days per year for each office ~~department~~ examiner
20231 who participates in such an examination. However, if the
20232 examination involves or reveals possible fraudulent conduct by
20233 the licensee, the licensee shall pay the travel expenses and per
20234 diem subsistence provided by law, without limitation, for each
20235 participating examiner.

20236 (3) Any person having reason to believe that any provision
20237 of this act has been violated may file with the Department of of
20238 Financial Services or the office a written complaint setting
20239 forth the details of such alleged violation, and the office
20240 ~~department~~ may investigate such complaint.



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20241 Section 381. Section 559.725, Florida Statutes, is amended
20242 to read:

20243 559.725 Consumer complaints; administrative duties.--

20244 (1) The Division of Consumer Services of the Department of
20245 Financial Services shall serve as the registry for receiving and
20246 maintaining records of inquiries, correspondence, and complaints
20247 from consumers concerning any and all persons who collect debts,
20248 including consumer collection agencies.

20249 (2) The division shall classify complaints by type and
20250 identify the number of written complaints against persons
20251 collecting or attempting to collect debts in this state,
20252 including credit grantors collecting their own debts, debt
20253 collectors generally, and, specifically, consumer collection
20254 agencies as distinguished from other persons who collect debts
20255 such as commercial debt collection agencies regulated under part
20256 V of this chapter. The division shall identify the nature and
20257 number of various kinds of written complaints, including
20258 specifically those alleging violations of s. 559.72.

20259 (3) The division shall inform and furnish relevant
20260 information to the appropriate regulatory body of the state, or
20261 The Florida Bar in the case of attorneys, when any consumer debt
20262 collector exempt from registration under this part has been
20263 named in five or more written consumer complaints alleging
20264 violations of s. 559.72 within a 12-month period.

20265 (4) The division shall furnish a form to each complainant
20266 whose complaint concerns an alleged violation of s. 559.72 by a
20267 consumer collection agency. Such form may be filed with the
20268 office ~~Department of Banking and Finance~~. The form shall



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20269 identify the accused consumer collection agency and provide for
20270 the complainant's summary of the nature of the alleged violation
20271 and facts which allegedly support the complaint. The form shall
20272 include a provision for the complainant to state under oath
20273 before a notary public that the allegations therein made are
20274 true.

20275 (5) Upon receipt of such sworn complaint, the office
20276 ~~department~~ shall promptly furnish a copy of the sworn complaint
20277 to the accused consumer collection agency.

20278 (6) The office ~~department~~ shall investigate sworn
20279 complaints by direct written communication with the complainant
20280 and the affected consumer collection agency. In addition, the
20281 office ~~department~~ shall attempt to resolve each sworn complaint
20282 and shall record the resolution of such complaints.

20283 (7) Periodically, the office ~~department~~ shall identify
20284 consumer collection agencies that have unresolved sworn consumer
20285 complaints from five or more different consumers within a 12-
20286 month period under the provisions of this part.

20287 (8) The office ~~department~~ shall issue a written warning
20288 notice to the accused consumer collection agency if the office
20289 ~~department~~ is unable to resolve all such sworn complaints and
20290 fewer than five unresolved complaints remain. Such notice shall
20291 include a statement that the warning may constitute evidence in
20292 any future investigation of similar complaints against that
20293 agency and in any future administrative determination of the
20294 imposition of other administrative remedies available to the
20295 office ~~department~~ under this part.



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20296 (9) The office ~~department~~ may issue a written reprimand
20297 when five or more such unresolved sworn complaints against a
20298 consumer collection agency collectively fall short of
20299 constituting apparent repeated violations that warrant more
20300 serious administrative sanctions. Such reprimand shall include a
20301 statement that the reprimand may constitute evidence in any
20302 future investigation of similar complaints against that agency
20303 and in any future administrative determination of the imposition
20304 of other administrative remedies available to the office
20305 ~~department~~.

20306 (10) The office ~~department~~ shall issue a notice of intent
20307 either to revoke or suspend the registration or to impose an
20308 administrative fine when the office ~~department~~ preliminarily
20309 determines that repeated violations of s. 559.72 by an accused
20310 registrant have occurred which would warrant more serious
20311 administrative sanctions being imposed under this part. The
20312 office ~~department~~ shall advise each registrant of the right to
20313 require an administrative hearing under chapter 120, prior to
20314 the agency's final action on the matter as authorized by s.
20315 559.730.

20316 (11) The office ~~department~~ shall advise the appropriate
20317 state attorney, or the Attorney General in the case of an out-
20318 of-state consumer debt collector, of any determination by the
20319 office ~~department~~ of a violation of the requirements of this
20320 part by any consumer collection agency which is not registered
20321 as required by this part. The office ~~department~~ shall furnish
20322 the state attorney or Attorney General with the office's



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20323 ~~department's~~ information concerning the alleged violations of
20324 such requirements.

20325 Section 382. Section 560.128, Florida Statutes, is amended
20326 to read:

20327 560.128 Consumer disclosure.--

20328 (1) Every money transmitter and authorized vendor shall
20329 provide each consumer of a money transmitter transaction a toll-
20330 free telephone number for the purpose of consumer contacts;
20331 however, in lieu of such toll-free telephone number, the money
20332 transmitter or authorized vendor may provide the address and
20333 telephone number of the office and the Division of Consumer
20334 Services of the Department of Financial Services ~~department~~.

20335 (2) The commission ~~department~~ may by rule require every
20336 money transmitter to display its registration at each location,
20337 including the location of each person designated by the
20338 registrant as an authorized vendor, where the money transmitter
20339 engages in the activities authorized by the registration.

20340 Section 383. Section 560.129, Florida Statutes, is amended
20341 to read:

20342 560.129 Confidentiality.--

20343 ~~(1) For purposes of this section, the definitions~~
20344 ~~contained in s. 560.103, as created by chapter 94-238, Laws of~~
20345 ~~Florida, and chapter 94-354, Laws of Florida, apply.~~

20346 (1)(2)(a) Except as otherwise provided in this section,
20347 all information concerning an investigation or examination by
20348 the office ~~department~~ pursuant to this chapter, including any
20349 consumer complaint received by the office or the Department of
20350 Financial Services, is confidential and exempt from s. 119.07(1)



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20351 and s. 24(a), Art. I of the State Constitution until the
20352 investigation or examination ceases to be active. For purposes
20353 of this section, an investigation or examination is considered
20354 "active" so long as the office ~~department~~ or any other
20355 administrative, regulatory, or law enforcement agency of any
20356 jurisdiction is proceeding with reasonable dispatch and has a
20357 reasonable good faith belief that action may be initiated by the
20358 office ~~department~~ or other administrative, regulatory, or law
20359 enforcement agency.

20360 (b) Notwithstanding paragraph (a), all information
20361 obtained by the office ~~department~~ in the course of its
20362 investigation or examination which is a trade secret, as defined
20363 in s. 688.002, or which is personal financial information shall
20364 remain confidential. If any administrative, civil, or criminal
20365 proceeding against the money transmitter or a money transmitter-
20366 affiliated party is initiated and the office ~~department~~ seeks to
20367 use matter that a registrant believes to be a trade secret or
20368 personal financial information, such records shall be subject to
20369 an in camera review by the administrative law judge, if the
20370 matter is before the Division of Administrative Hearings, or a
20371 judge of any court of this state, any other state, or the United
20372 States, as appropriate, for the purpose of determining if the
20373 matter is a trade secret or is personal financial information.
20374 If it is determined that the matter is a trade secret, the
20375 matter shall remain confidential. If it is determined that the
20376 matter is personal financial information, the matter shall
20377 remain confidential unless the administrative law judge or judge



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20378 determines that, in the interests of justice, the matter should
20379 become public.

20380 (c) If any administrative, civil, or criminal proceeding
20381 against the money transmitter or a money transmitter-affiliated
20382 party results in an acquittal or the dismissal of all of the
20383 allegations against the money transmitter or a money
20384 transmitter-affiliated party, upon the request of any party, the
20385 administrative law judge or the judge may order all or a portion
20386 of the record of the proceeding to be sealed, and it shall
20387 thereafter be confidential and exempt from s. 119.07(1) and s.
20388 24(a), Art. I of the State Constitution.

20389 (d) Except as necessary for the office ~~department~~ or any
20390 other administrative, regulatory, or law enforcement agency of
20391 any jurisdiction to enforce the provisions of this chapter or
20392 the law of any other state or the United States, a consumer
20393 complaint and other information concerning an investigation or
20394 examination shall remain confidential and exempt from s.
20395 119.07(1) and s. 24(a), Art. I of the State Constitution after
20396 the investigation or examination ceases to be active to the
20397 extent that disclosure would:

- 20398 1. Jeopardize the integrity of another active
20399 investigation;
- 20400 2. Reveal personal financial information;
- 20401 3. Reveal the identity of a confidential source; or
- 20402 4. Reveal investigative techniques or procedures.

20403 (2)~~(3)~~ This section does not prevent or restrict:



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20404 (a) Furnishing records or information to any appropriate
20405 regulatory agency if such agency adheres to the confidentiality
20406 provisions of the code;

20407 (b) Furnishing records or information to an independent
20408 third party or a certified public accountant who has been
20409 approved by the office ~~department~~ to conduct an examination
20410 under s. 560.118(1)(b), if the independent third party or
20411 certified public accountant adheres to the confidentiality
20412 provisions of the code; or

20413 (c) Reporting any suspected criminal activity, with
20414 supporting documents and information, to appropriate law
20415 enforcement or prosecutorial agencies.

20416 (3)~~(4)~~ All quarterly reports submitted by a money
20417 transmitter to the office ~~department~~ under s. 560.118(2)(b) are
20418 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
20419 of the State Constitution.

20420 (4)~~(5)~~ Examination reports, investigatory records,
20421 applications, and related information compiled by the office
20422 ~~department~~, or photographic copies thereof, shall be retained by
20423 the office ~~department~~ for a period of at least 10 years.

20424 (5)~~(6)~~ Any person who willfully discloses information made
20425 confidential by this section commits a felony of the third
20426 degree, punishable as provided in s. 775.082 or s. 775.083.

20427 Section 384. Subsection (3), paragraph (b) of subsection
20428 (19), paragraph (b) of subsection(22), and subsection (23) of
20429 section 560.404, Florida Statutes, are amended to read:

20430 560.404 Requirements for deferred presentment
20431 transactions.--



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20432 (3) Each written agreement shall contain the following
20433 information, in addition to any information the commission
20434 ~~department~~ requires by rule:

20435 (a) The name or trade name, address, and telephone number
20436 of the deferred presentment provider and the name and title of
20437 the person who signs the agreement on behalf of the deferred
20438 presentment provider.

20439 (b) The date the deferred presentment transaction was
20440 made.

20441 (c) The amount of the drawer's check.

20442 (d) The length of deferral period.

20443 (e) The last day of the deferment period.

20444 (f) The address and telephone number of the office and the
20445 Division of Consumer Services of the Department of Financial
20446 Services department.

20447 (g) A clear description of the drawer's payment
20448 obligations under the deferred presentment transaction.

20449 (h) The transaction number assigned by the office's
20450 ~~department's~~ database.

20451 (19) A deferred presentment provider may not enter into a
20452 deferred presentment transaction with a person who has an
20453 outstanding deferred presentment transaction with that provider
20454 or with any other deferred presentment provider, or with a
20455 person whose previous deferred presentment transaction with that
20456 provider or with any other provider has been terminated for less
20457 than 24 hours. The deferred presentment provider must verify
20458 such information as follows:



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20459 (b) The deferred presentment provider shall access the
20460 office's ~~department's~~ database established pursuant to
20461 subsection (23) and shall verify whether any other deferred
20462 presentment provider has an outstanding deferred presentment
20463 transaction with a particular person or has terminated a
20464 transaction with that person within the previous 24 hours. Prior
20465 to the time that the office ~~department~~ has implemented such a
20466 database, the deferred presentment provider may rely upon the
20467 written verification of the drawer as provided in subsection
20468 (20).

20469 (22)

20470 (b) At the commencement of the grace period, the deferred
20471 presentment provider shall provide the drawer:

20472 1. Verbal notice of the availability of the grace period
20473 consistent with the written notice in subsection (20).

20474 2. A list of approved consumer credit counseling agencies
20475 prepared by the office ~~department~~. ~~The department shall prepare~~
20476 ~~the list by October 1, 2001.~~ The office ~~department~~ list shall
20477 include nonprofit consumer credit counseling agencies affiliated
20478 with the National Foundation for Credit Counseling which provide
20479 credit counseling services to Florida residents in person, by
20480 telephone, or through the Internet. The office ~~department~~ list
20481 must include phone numbers for the agencies, the counties served
20482 by the agencies, and indicate the agencies that provide
20483 telephone counseling and those that provide Internet counseling.
20484 The office ~~department~~ shall update the list at least once each
20485 year.



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20486 3. The following notice in at least 14-point type in
20487 substantially the following form:

20488

20489 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM OF
20490 YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL 60 DAYS,
20491 UNTIL [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST COMPLETE
20492 CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE
20493 LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO
20494 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY
20495 THE AGENCY. THE COUNSELING MAY BE IN PERSON, BY TELEPHONE, OR
20496 THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN SEVEN (7) DAYS,
20497 BY [DATE], THAT YOU HAVE MADE AN APPOINTMENT WITH SUCH A
20498 CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US
20499 WITHIN SIXTY (60) DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE
20500 CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH
20501 THE AGENCY. IF YOU FAIL TO PROVIDE EITHER THE 7-DAY OR 60-DAY
20502 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE
20503 COUNSELING WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT
20504 YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL
20505 MEANS TO ENFORCE THE DEBT.

20506 (23) On or before March 1, 2002, the office ~~department~~
20507 shall implement a common database with real-time access through
20508 an Internet connection for deferred presentment providers, as
20509 provided in this subsection. The database must be accessible to
20510 the office ~~department~~ and the deferred presentment providers to
20511 verify whether any deferred presentment transactions are
20512 outstanding for a particular person. Deferred presentment
20513 providers shall submit such data before entering into each



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20514 deferred presentment transaction in such format as the
 20515 commission ~~department~~ shall require by rule, including the
 20516 drawer's name, social security number or employment
 20517 authorization alien number, address, driver's license number,
 20518 amount of the transaction, date of transaction, the date that
 20519 the transaction is closed, and such additional information as is
 20520 required by the commission ~~department~~. The commission ~~department~~
 20521 may impose a fee not to exceed \$1 per transaction for data
 20522 required to be submitted by a deferred presentment provider. A
 20523 deferred presentment provider may rely on the information
 20524 contained in the database as accurate and is not subject to any
 20525 administrative penalty or civil liability as a result of relying
 20526 on inaccurate information contained in the database. The
 20527 commission ~~department~~ may adopt rules to administer and enforce
 20528 the provisions of this section and to assure that the database
 20529 is used by deferred presentment providers in accordance with
 20530 this section.

20531 Section 385. Section 609.05, Florida Statutes, is amended
 20532 to read:

20533 609.05 Qualification with Office of Financial Institutions
 20534 and Securities Regulation ~~Department of Banking and~~
 20535 ~~Finance~~.--Before any person may offer for sale, barter or sell
 20536 any unit, share, contract, note, bond, mortgage, oil or mineral
 20537 lease or other security of an association doing business under
 20538 what is known as a "declaration of trust" in this state, such
 20539 person shall procure from the Office of Financial Institutions
 20540 and Securities Regulation of the Financial Services Commission
 20541 ~~Department of Banking and Finance~~ a permit to offer for sale and



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20542 | sell such securities, which permit shall be applied for and
20543 | granted under the same conditions as like permits are applied
20544 | for and granted to corporations.

20545 | Section 386. Section 655.012, Florida Statutes, is amended
20546 | to read:

20547 | 655.012 General supervisory powers ~~of the department;~~
20548 | rulemaking; seal.--

20549 | (1) In addition to other powers conferred by the financial
20550 | institutions codes, the office ~~department~~ shall have:

20551 |
20552 | (a)(1) General supervision over all state financial
20553 | institutions, their subsidiaries, and service corporations.

20554 | (b)(2) Access to all books and records of all persons over
20555 | whom the office ~~department~~ exercises general supervision as is
20556 | necessary for the performance of the duties and functions of the
20557 | office ~~department~~ prescribed by the financial institutions
20558 | codes.

20559 | (c)(3) Power to issue orders and declaratory statements,
20560 | disseminate information, and otherwise exercise its discretion
20561 | to effectuate the purposes, policies, and provisions of the
20562 | financial institutions codes.

20563 | (2) In addition to other powers conferred by the financial
20564 | institutions codes, the commission shall have the power and to
20565 | adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
20566 | the provisions of such codes.

20567 | (3) The office shall have an official seal by which its
20568 | proceedings are authenticated.



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20569 Section 387. This act shall not affect the validity of any
20570 administrative or judicial action involving the Department of
20571 Banking and Finance or the Department of Insurance occurring
20572 prior to, or pending on, January 7, 2003, and the Department of
20573 Financial Services or the Financial Services Commission, or the
20574 respective office, shall be substituted as a party in interest
20575 on any such pending action.

20576 Section 388. Any certificate of authority, license, form,
20577 rate, or other filing or action that was approved or authorized
20578 by the Department of Insurance or the Department of Banking and
20579 Finance, or that was otherwise lawfully in use prior to January
20580 7, 2003, may continue to be used or be effective as originally
20581 authorized or permitted, until the Chief Financial Officer, the
20582 Department of Financial Services, the Financial Services
20583 Commission, or either of the respective offices, otherwise
20584 prescribes.

20585 Section 389 Section 627.3111, Florida Statutes, is
20586 transferred and renumbered as section 624.23, Florida Statutes.

20587 Section 390 Section 624.305, Florida Statutes, is
20588 repealed.

20589 Section 391. In the event of any conflict between any
20590 provision of this act and any provision of other legislation
20591 enacted during the 2003 Regular Session, the provisions of this
20592 act shall control.

20593 Section 392. This act shall take effect upon becoming a
20594 law.