

1
2 An act relating to governmental reorganization;
3 conforming the Florida Statutes to the
4 amendment of Article IV, Section 4 of the State
5 Constitution, in which the functions of the
6 former positions of Comptroller and Treasurer
7 were combined into the office of Chief
8 Financial Officer, and chapter 2002-404, Laws
9 of Florida, which reorganized certain
10 executive-branch duties and functions to
11 implement such constitutional amendment;
12 amending ss. 11.12, 11.13, 11.147, 11.151,
13 11.40, 11.42, 14.057, 14.058, 14.203, 15.09,
14 16.10, 17.001, 17.002, 17.011, 17.02, 17.03,
15 17.031, 17.04, 17.0401, 17.041, 17.0415, 17.05,
16 17.075, 17.076, 17.08, 17.09, 17.10, 17.11,
17 17.12, 17.13, 17.14, 17.16, 17.17, 17.20,
18 17.21, 17.22, 17.25, 17.26, 17.27, 17.28,
19 17.29, 17.30, 17.32, 17.325, 17.41, 17.43,
20 F.S.; transferring and amending ss. 18.01,
21 18.02, 18.021, 18.05, 18.06, 18.07, 18.08,
22 18.091, 18.10, 18.101, 18.103, 18.104, 18.125,
23 18.15, 18.17, 18.20, 18.23, 18.24, F.S.;
24 amending ss. 20.04, 20.055, 20.121, 20.195,
25 20.425, 20.435, 24.105, 24.111, 24.112, 24.120,
26 25.241, 26.39, 27.08, 27.10, 27.11, 27.12,
27 27.13, 27.34, 27.3455, 27.703, 27.710, 27.711,
28 28.235, 28.24, 30.49, 30.52, 40.30, 40.31,
29 40.33, 40.34, 40.35, 43.16, 43.19, 48.151,
30 55.03, 57.091, 68.083, 68.084, 68.087, 68.092,
31 77.0305, 92.39, 99.097, 103.091, 107.11,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 110.1127, 110.113, 110.114, 110.116, 110.1227,
2 110.1228, 110.123, 110.125, 110.181, 110.2037,
3 110.205, 112.061, 112.08, 112.191, 112.215,
4 112.3144, 112.3145, 112.3189, 112.31895,
5 112.3215, 112.63, 116.03, 116.04, 116.05,
6 116.06, 116.14, 120.52, 120.80, 121.051,
7 121.061, 121.133, 122.35, 125.0104, 129.201,
8 131.05, 137.09, 145.141, 154.02, 154.03,
9 154.05, 154.06, 154.209, 154.314, 163.01,
10 163.055, 163.3167, 166.111, 175.032, 175.101,
11 175.121, 175.151, 185.08, 185.10, 185.13,
12 189.4035, 189.412, 189.427, 190.007, 191.006,
13 192.091, 192.102, 193.092, 195.101, 198.29,
14 199.232, 203.01, 206.46, 210.16, 210.20,
15 210.50, 211.06, 211.31, 211.32, 212.08, 212.12,
16 212.20, 213.053, 213.054, 213.255, 213.67,
17 213.75, 215.02, 215.03, 215.04, 215.05, 215.11,
18 215.20, 215.22, 215.23, 215.24, 215.25, 215.26,
19 215.29, 215.31, 215.32, 215.3206, 215.3208,
20 215.322, 215.34, 215.35, 215.405, 215.42,
21 215.422, 215.50, 215.551, 215.552, 215.555,
22 215.559, 215.56005, 215.5601, 215.58, 215.684,
23 215.70, 215.91, 215.92, 215.93, 215.94,
24 215.965, 215.97, 216.0442, 216.102, 216.141,
25 216.177, 216.181, 216.183, 216.192, 216.212,
26 216.221, 216.222, 216.235, 216.237, 216.251,
27 216.271, 216.275, 216.292, 216.301, 217.07,
28 218.06, 218.23, 218.31, 218.321, 218.325,
29 220.151, 220.187, 220.62, 220.723, 238.11,
30 238.15, 238.172, 238.173, 250.22, 250.24,
31 250.25, 250.26, 250.34, 252.62, 252.87,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 253.025, 255.03, 255.052, 255.258, 255.503,
2 255.521, 257.22, 258.014, 259.032, 259.041,
3 265.53, 265.55, 267.075, 272.18, 280.02,
4 280.04, 280.041, 280.05, 280.051, 280.052,
5 280.053, 280.054, 280.055, 280.06, 280.07,
6 280.071, 280.08, 280.085, 280.09, 280.10,
7 280.11, 280.13, 280.16, 280.17, 280.18, 280.19,
8 282.1095, 284.02, 284.04, 284.05, 284.06,
9 284.08, 284.14, 284.17, 284.30, 284.31, 284.32,
10 284.33, 284.34, 284.35, 284.37, 284.385,
11 284.39, 284.40, 284.41, 284.42, 284.44, 284.50,
12 287.042, 287.057, 287.058, 287.059, 287.063,
13 287.064, 287.09451, 287.115, 287.131, 287.175,
14 288.1045, 288.106, 288.109, 288.1253, 288.709,
15 288.712, 288.776, 288.778, 288.901, 288.99,
16 289.051, 289.081, 289.121, 292.085, 313.02,
17 314.02, 316.3025, 316.545, 320.02, 320.081,
18 320.20, 320.71, 320.781, 322.21, 324.032,
19 324.171, 326.006, 331.303, 331.309, 331.3101,
20 331.348, 331.419, 336.022, 337.25, 339.035,
21 339.081, 344.17, 350.06, 354.03, 365.173,
22 370.06, 370.16, 370.19, 370.20, 373.503,
23 373.59, 373.6065, 374.983, 374.986, 376.11,
24 376.123, 376.307, 376.3071, 376.3072, 376.3075,
25 376.3078, 376.3079, 376.40, 377.23, 377.2425,
26 377.705, 378.035, 378.037, 378.208, 381.765,
27 381.90, 385.207, 388.201, 388.301, 391.025,
28 391.221, 392.69, 393.002, 393.075, 394.482,
29 400.0238, 400.063, 400.071, 400.4174, 400.4298,
30 400.471, 400.962, 401.245, 401.25, 402.04,
31 402.17, 402.33, 403.1835, 403.1837, 403.706,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 403.724, 403.8532, 404.111, 406.58, 408.040,
2 408.05, 408.08, 408.18, 408.50, 408.7056,
3 408.902, 408.909, 409.175, 409.25656,
4 409.25658, 409.2673, 409.8132, 409.817,
5 409.818, 409.910, 409.912, 409.9124, 409.915,
6 411.01, 413.32, 414.27, 414.28, 420.0005,
7 420.0006, 420.101, 420.123, 420.131, 420.141,
8 420.5092, 430.42, 430.703, 440.015, 440.02,
9 440.05, 440.09, 440.10, 440.1025, 440.103,
10 440.105, 440.1051, 440.106, 440.107, 440.13,
11 440.134, 440.14, 440.17, 440.20, 440.24,
12 440.38, 440.381, 440.385, 440.386, 440.40,
13 440.44, 440.49, 440.50, 440.51, 440.515,
14 440.52, 440.525, 440.591, 443.131, 443.191,
15 443.211, 445.0325, 447.12, 450.155, 468.392,
16 468.529, 473.3065, 475.045, 475.484, 475.485,
17 489.114, 489.144, 489.145, 489.510, 489.533,
18 494.001, 494.0011, 494.0012, 494.00125,
19 494.0013, 494.0014, 494.0016, 494.00165,
20 494.0017, 494.0021, 494.0025, 494.0028,
21 494.0029, 494.00295, 494.0031, 494.0032,
22 494.0033, 494.0034, 494.0035, 494.0036,
23 494.0038, 494.004, 494.0041, 494.00421,
24 494.0061, 494.0062, 494.0064, 494.0065,
25 494.0066, 494.0067, 494.0069, 494.0072,
26 494.00721, 494.0076, 494.0079, 494.00795,
27 494.00797, 497.005, 497.101, 497.105, 497.107,
28 497.109, 497.115, 497.117, 497.131, 497.201,
29 497.253, 497.313, 497.403, 498.025, 498.049,
30 499.057, 501.212, 507.03, 509.215, 513.055,
31 516.01, 516.02, 516.03, 516.031, 516.05,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 516.07, 516.11, 516.12, 516.22, 516.221,
2 516.23, 516.32, 516.33, 516.35, 517.021,
3 517.03, 517.051, 517.061, 517.07, 517.075,
4 517.081, 517.082, 517.101, 517.111, 517.12,
5 517.1201, 517.1203, 517.1204, 517.121, 517.131,
6 517.141, 517.151, 517.161, 517.181, 517.191,
7 517.201, 517.2015, 517.221, 517.241, 517.301,
8 517.302, 517.313, 517.315, 517.32, 518.115,
9 518.116, 518.15, 518.151, 518.152, 519.101,
10 520.02, 520.03, 520.07, 520.31, 520.32, 520.34,
11 520.52, 520.61, 520.63, 520.73, 520.76, 520.81,
12 520.83, 520.90, 520.994, 520.995, 520.996,
13 520.9965, 520.997, 520.998, 526.141, 537.003,
14 537.004, 537.005, 537.006, 537.008, 537.009,
15 537.011, 537.013, 537.016, 537.017, 548.066,
16 548.077, 550.0251, 550.054, 550.0951, 550.125,
17 550.135, 550.1645, 552.081, 552.161, 552.21,
18 552.26, 553.72, 553.73, 553.74, 553.79, 553.88,
19 554.1021, 554.105, 554.111, 559.10, 559.543,
20 559.544, 559.545, 559.546, 559.548, 559.55,
21 559.553, 559.555, 559.563, 559.725, 559.730,
22 559.785, 559.928, 559.9232, 560.102, 560.103,
23 560.105, 560.106, 560.107, 560.1073, 560.108,
24 560.109, 560.111, 560.112, 560.113, 560.114,
25 560.115, 560.116, 560.117, 560.118, 560.119,
26 560.121, 560.123, 560.125, 560.126, 560.127,
27 560.128, 560.129, 560.202, 560.205, 560.206,
28 560.207, 560.208, 560.209, 560.210, 560.211,
29 560.302, 560.305, 560.306, 560.307, 560.308,
30 560.309, 560.310, 560.402, 560.403, 560.404,
31 560.4041, 560.407, 560.408, 561.051, 562.44,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 567.08, 569.205, 569.215, 570.13, 570.195,
2 570.20, 574.03, 589.06, 597.010, 601.10,
3 601.15, 601.28, 607.0501, 607.14401, 609.05,
4 617.0501, 617.1440, 624.01, 624.05, 624.07,
5 624.09, 624.11, 624.124, 624.129, 624.155,
6 624.19, 624.302, 624.303, 624.307, 624.308,
7 624.310, 624.3102, 624.311, 624.312, 624.313,
8 624.314, 624.315, 624.316, 624.3161, 624.317,
9 624.318, 624.319, 624.320, 624.321, 624.322,
10 624.324, 624.33, 624.34, 624.401, 624.4031,
11 624.404, 624.4072, 624.4085, 624.40851,
12 624.4094, 624.4095, 624.410, 624.411, 624.412,
13 624.413, 624.4135, 624.414, 624.415, 624.416,
14 624.418, 624.420, 624.421, 624.4211, 624.422,
15 624.423, 624.424, 624.4241, 624.4243, 624.4245,
16 624.430, 624.4361, 624.437, 624.438, 624.439,
17 624.4392, 624.44, 624.441, 624.4411, 624.4412,
18 624.442, 624.443, 624.4431, 624.444, 624.445,
19 F.S.; amending and renumbering s. 624.4435,
20 F.S.; amending ss. 624.45, 624.4621, 624.4622,
21 624.464, 624.466, 624.468, 624.470, 624.473,
22 624.4741, 624.476, 624.477, 624.480, 624.482,
23 624.484, 624.486, 624.487, 624.501, 624.5015,
24 624.502, 624.506, 624.509, 624.5091, 624.5092,
25 624.516, 624.517, 624.519, 624.521, 624.523,
26 624.6012, 624.605, 624.607, 624.609, 624.610,
27 624.80, 624.81, 624.82, 624.83, 624.84, 624.85,
28 624.86, 624.87, 625.01115, 625.012, 625.041,
29 625.051, 625.061, 625.071, 625.081, 625.091,
30 625.101, 625.121, 625.131, 625.141, 625.151,
31 625.161, 625.172, 625.181, 625.303, 625.305,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

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

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

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

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 627.643, 627.647, 627.6472, 627.6475, 627.6482,
2 627.6484, 627.6487, 627.6488, 627.649,
3 627.6494, 627.6498, 627.6499, 627.6515,
4 627.6561, 627.6571, 627.6675, 627.6685,
5 627.6692, 627.6699, 627.673, 627.6735, 627.674,
6 627.6741, 627.6742, 627.6744, 627.6745,
7 627.678, 627.6785, 627.682, 627.6844, 627.6845,
8 627.701, 627.7011, 627.7012, 627.7015,
9 627.7017, 627.702, 627.706, 627.727, 627.7275,
10 627.728, 627.7282, 627.7295, 627.736, 627.739,
11 627.7401, 627.744, 627.758, 627.7711, 627.777,
12 627.7773, 627.780, 627.782, 627.783, 627.7843,
13 627.7845, 627.786, 627.7865, 627.791, 627.793,
14 627.798, 627.805, 627.8055, 627.828, 627.829,
15 627.832, 627.833, 627.834, 627.836, 627.838,
16 627.840, 627.8405, 627.848, 627.849, 627.912,
17 627.9122, 627.9126, 627.913, 627.914, 627.915,
18 627.917, 627.9175, 627.918, 627.919, 627.9403,
19 627.9404, 627.9405, 627.9406, 627.9407,
20 627.94072, 627.94074, 627.9408, 627.942,
21 627.943, 627.944, 627.948, 627.950, 627.951,
22 627.952, 627.954, 627.971, 627.972, 627.973,
23 627.974, 627.986, 627.987, 628.051, 628.061,
24 62.071, 628.091, 628.101, 628.111, 628.152,
25 628.161, 628.171, 628.221, 628.251, 628.255,
26 628.261, 628.271, 628.281, 628.341, 628.351,
27 628.371, 628.391, 628.401, 628.411, 628.421,
28 628.431, 628.441, 628.451, 628.461, 628.4615,
29 628.471, 628.481, 628.491, 628.501, 628.511,
30 628.520, 628.525, 628.530, 628.535, 628.6013,
31 628.6014, 628.6017, 628.705, 628.707, 628.711,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 628.713, 628.715, 628.717, 628.719, 628.721,
2 628.725, 628.729, 628.730, 628.733, 628.801,
3 628.802, 628.803, 628.905, 628.911, 628.913,
4 628.917, 629.081, 629.101, 629.121, 629.131,
5 629.161, 629.171, 629.181, 629.231, 629.241,
6 629.261, 629.281, 629.291, 629.301, 629.401,
7 629.520, 630.021, 630.031, 630.051, 630.071,
8 630.081, 630.091, 630.101, 630.131, 630.151,
9 630.161, 631.021, 631.025, 631.031, 631.051,
10 631.081, 631.152, 631.221, 631.231, 631.391,
11 631.392, 631.398, 631.54, 631.55, 631.56,
12 631.57, 631.59, 631.62, 631.66, 631.714,
13 631.72, 631.722, 631.723, 631.727, 631.813,
14 631.814, 631.818, 631.820, 631.821, 631.823,
15 631.825, 631.904, 631.911, 631.912, 631.917,
16 631.918, 631.931, 632.611, 632.612, 632.614,
17 632.615, 632.616, 632.621, 632.622, 632.627,
18 632.628, 632.629, 632.631, 632.632, 632.633,
19 632.637, 633.01, 633.022, 633.025, 633.052,
20 633.061, 633.081, 633.111, 633.161, 633.162,
21 633.30, 633.31, 633.353, 633.382, 633.43,
22 633.445, 633.45, 633.46, 633.461, 633.47,
23 633.50, 633.524, 633.802, 633.811, 633.814,
24 634.011, 634.021, 634.031, 634.041, 634.044,
25 634.045, 634.052, 634.053, 634.061, 634.081,
26 634.095, 634.101, 634.111, 634.121, 634.1213,
27 634.1216, 634.137, 634.141, 634.151, 634.161,
28 634.181, 634.191, 634.211, 634.221, 634.231,
29 634.242, 634.253, 634.261, 634.282, 634.283,
30 634.284, 634.285, 634.286, 634.287, 634.288,
31 634.289, 634.301, 634.302, 634.303, 634.304,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 634.305, 634.306, 634.307, 634.3077, 634.3078,
2 634.308, 634.310, 634.311, 634.3112, 634.312,
3 634.3123, 634.3126, 634.313, 634.314, 634.320,
4 634.321, 634.324, 634.325, 634.327, 634.3284,
5 634.336, 634.337, 634.338, 634.339, 634.34,
6 634.341, 634.342, 634.343, 634.344, 634.345,
7 634.348, 634.401, 634.402, 634.403, 634.404,
8 634.405, 634.406, 634.4061, 634.4065, 634.407,
9 634.409, 634.411, 634.413, 634.414, 634.4145,
10 634.415, 634.416, 634.422, 634.423, 634.426,
11 634.427, 634.428, 634.430, 634.433, 634.437,
12 634.438, 634.439, 634.44, 634.441, 634.442,
13 634.443, 634.444, 635.011, 635.031, 635.041,
14 635.042, 635.071, 635.081, 636.003, 636.006,
15 636.007, 636.008, 636.009, 636.015, 636.016,
16 636.017, 636.018, 636.025, 636.029, 636.036,
17 636.037, 636.038, 636.039, 636.043, 636.045,
18 636.046, 636.047, 636.048, 636.049, 636.052,
19 636.053, 636.055, 636.056, 636.057, 636.058,
20 636.062, 636.063, 636.064, 636.067, 641.185,
21 641.19, 641.2017, 641.2018, 641.21, 641.215,
22 641.22, 641.225, 641.227, 641.228, 641.23,
23 641.234, 641.2342, 641.25, 641.255, 641.26,
24 641.27, 641.28, 641.281, 641.284, 641.285,
25 641.29, 641.3007, 641.305, 641.31, 641.3105,
26 641.31071, 641.31074, 641.315, 641.3154,
27 641.3155, 641.316, 641.35, 641.36, 641.365,
28 641.385, 641.39001, 641.3903, 641.3905,
29 641.3907, 641.3909, 641.3911, 641.3913,
30 641.3917, 641.3922, 641.402, 641.403, 641.405,
31 641.406, 641.4065, 641.407, 641.409, 641.41,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 641.412, 641.418, 641.42, 641.421, 641.424,
2 641.437, 641.443, 641.444, 641.445, 641.446,
3 641.447, 641.448, 641.45, 641.452, 641.453,
4 641.454, 641.455, 641.457, 641.48, 641.49,
5 641.495, 641.511, 641.512, 641.52, 641.54,
6 641.55, 641.58, 642.015, 642.017, 642.021,
7 642.022, 642.023, 642.025, 642.027, 642.029,
8 642.0301, 642.0331, 642.0334, 642.0338,
9 642.041, 642.043, 642.047, 642.0475, 648.25,
10 648.26, 648.33, 648.34, 648.35, 648.355,
11 648.365, 648.386, 648.44, 648.442, 648.571,
12 650.06, 651.011, 651.012, 651.013, 651.014,
13 651.015, 651.018, 651.019, 651.021, 651.022,
14 651.023, 651.0235, 651.026, 651.0261, 651.028,
15 651.033, 651.035, 651.051, 651.055, 651.083,
16 651.085, 651.091, 651.095, 651.105, 651.106,
17 651.107, 651.108, 651.1081, 651.111, 651.114,
18 651.1151, 651.118, 651.119, 651.121, 651.123,
19 651.125, 651.134, 655.001, 655.005, 655.012,
20 655.015, 655.016, 655.031, 655.032, 655.0321,
21 655.0322, 655.033, 655.034, 655.037, 655.0385,
22 655.0386, 655.0391, 655.041, 655.043, 655.044,
23 655.045, 655.047, 655.049, 655.057, 655.059,
24 655.061, 655.071, 655.411, 655.412, 655.414,
25 655.416, 655.418, 655.50, 655.60, 655.762,
26 655.89, 655.90, 655.922, 655.942, 655.943,
27 655.948, 655.949, 655.963, 657.002, 657.005,
28 657.0061, 657.008, 657.021, 657.026, 657.028,
29 657.031, 657.033, 657.0335, 657.038, 657.042,
30 657.043, 657.053, 657.062, 657.063, 657.064,
31 657.065, 657.066, 657.068, 658.12, 658.16,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 658.165, 658.19, 658.20, 658.21, 658.22,
2 658.23, 658.235, 658.24, 658.25, 658.26,
3 658.27, 658.28, 658.285, 658.295, 658.2953,
4 658.296, 658.32, 658.33, 658.34, 658.35,
5 658.36, 658.37, 658.39, 658.40, 658.41, 658.42,
6 658.43, 658.44, 658.45, 658.48, 658.53, 658.67,
7 658.68, 658.73, 658.79, 658.80, 658.81, 658.82,
8 658.83, 658.84, 658.90, 658.94, 658.95, 658.96,
9 658.995, 660.26, 660.265, 660.27, 660.28,
10 660.33, 660.40, 606.47, 660.48, 663.02, 663.04,
11 663.05, 663.055, 663.06, 663.061, 663.064,
12 663.065, 663.07, 663.08, 663.083, 663.09,
13 663.10, 663.11, 663.12, 663.13, 663.14, 663.16,
14 663.17, 663.171, 663.172, 663.173, 663.174,
15 663.175, 663.176, 663.177, 663.178, 663.18,
16 663.181, 663.301, 663.302, 663.303, 663.304,
17 663.305, 663.306, 663.308, 663.309, 663.311,
18 663.312, 663.316, 663.319, 665.012, 665.013,
19 665.0315, 665.033, 665.0335, 665.034, 665.0345,
20 665.0711, 665.1001, 667.002, 667.003, 667.005,
21 667.006, 667.007, 667.008, 667.013, 687.13,
22 687.14, 687.141, 687.143, 687.144, 687.145,
23 687.148, 697.05, 713.596, 716.02, 716.03,
24 716.04, 716.05, 716.06, 716.07, 717.101,
25 717.117, 717.135, 717.138, 718.501, 719.501,
26 721.24, 721.26, 723.006, 732.107, 733.816,
27 744.534, 766.105, 766.1115, 766.314, 766.315,
28 768.28, 790.001, 790.1612, 791.01, 791.015,
29 817.16, 817.234, 817.2341, 817.50, 839.06,
30 849.086, 849.33, 860.154, 860.157, 896.102,
31 896.104, 903.09, 903.101, 903.27, 925.037,

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 932.7055, 932.707, 938.27, 939.13, 943.031,
2 943.032, 944.516, 946.33, 946.509, 946.5095,
3 946.510, 946.517, 946.522, 946.525, 947.12,
4 950.002, 957.04, 985.406, 985.409, 1000.05,
5 1001.23, 1002.36, 1002.38, 1002.39, 1003.48,
6 1004.30, 1004.725, 1006.29, 1006.33, 1006.34,
7 1006.39, 1008.33, 1009.265, 1009.54, 1009.56,
8 1009.66, 1009.72, 1009.73, 1009.765, 1009.77,
9 1009.971, 1009.972, 1010.56, 1010.74, 1010.75,
10 1011.10, 1011.17, 1011.18, 1011.4105, 1011.57,
11 1011.94, 1012.59, 1012.79, 1013.79, F.S.;
12 repealing s. 17.06, F.S., relating to items and
13 accounts disallowed by the Comptroller; s.
14 18.03, F.S., relating to residence and office
15 of the Treasurer; s. 18.09, F.S., relating to
16 delivery to the Legislature of the annual
17 report of the Treasurer; s. 18.22, F.S.,
18 relating to rulemaking authority of the
19 Department of Banking and Finance; s. 20.12,
20 F.S., relating to the Department of Banking and
21 Finance; s. 20.13, F.S., relating to the
22 Department of Insurance; s. 440.135, F.S.,
23 relating to pilot programs for medical and
24 remedial care in workers' compensation; s.
25 624.305, F.S., relating to prohibited financial
26 interests; s. 624.4071, F.S., relating to
27 special purpose homeowner insurance companies;
28 s. 624.463, F.S., relating to conversion of
29 self-insurance funds; s. 627.0623, F.S.,
30 relating to restrictions on expenditures and
31 solicitations of insurers and affiliates; s.

1 627.3516, F.S., relating to residential
2 property insurance market coordinating council;
3 s. 627.7825, F.S., relating to alternative rate
4 adoption; s. 655.019, F.S., relating to
5 campaign contribution limitations; s. 657.067,
6 F.S., relating to conversion from federal to
7 state charter and to requirements for
8 application approval; and ss. 657.25-657.269,
9 relating to the Florida Credit Union Guaranty
10 Corporation, Inc.; providing for retroactive
11 applicability; providing that this act and
12 chapter 2002-404, Laws of Florida, do not
13 affect the validity of certain administrative
14 or judicial action prior to or pending on
15 January 7, 2003; providing that filings or
16 actions approved or authorized by the
17 Department of Insurance or the Department of
18 Banking and Finance prior to that date may
19 continue to be used or be effective until
20 otherwise successor agencies otherwise
21 prescribe; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 11.12, Florida Statutes, is amended
26 to read:

27 11.12 Salary, subsistence, and mileage of members and
28 employees; expenses authorized by resolution; appropriation;
29 preaudit ~~by Comptroller~~.--

30 (1) The Chief Financial Officer ~~Treasurer~~ is
31 authorized to pay the salary, subsistence, and mileage of the

1 members of the Legislature, as the same shall be authorized
2 ~~from time to time by law, upon receipt of a warrant therefor~~
3 ~~of the Comptroller for the stated amount.~~ The Chief Financial
4 Officer ~~may~~ ~~Treasurer is authorized to~~ pay the compensation of
5 employees of the Legislature, together with reimbursement for
6 their authorized travel as provided in s. 112.061, and such
7 expense of the Legislature as shall be authorized by law, a
8 concurrent resolution, a resolution of either house, or rules
9 adopted by the respective houses, provided the total amount
10 appropriated to the legislative branch shall not be altered,
11 upon receipt of such warrant therefor. The number, duties, and
12 compensation of the employees of the respective houses and of
13 their committees shall be determined as provided by the rules
14 of the respective house or in this chapter. Each legislator
15 may designate no more than two employees to attend sessions of
16 the Legislature, and those employees who change their places
17 of residence in order to attend the session shall be paid
18 subsistence at a rate to be established by the President of
19 the Senate for Senate employees and the Speaker of the House
20 of Representatives for House employees. Such employees, in
21 addition to subsistence, shall be paid transportation expenses
22 in accordance with s. 112.061(7) and (8) for actual
23 transportation between their homes and the seat of government
24 in order to attend the legislative session and return home, as
25 well as for two round trips during the course of any regular
26 session of the Legislature.

27 (2) All vouchers covering legislative expenses shall
28 be preaudited by the Chief Financial Officer ~~Comptroller~~, and,
29 if found to be correct, state warrants shall be issued
30 therefor.

31

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

3 11.13 Compensation of members.--

4 (5)

5 (c) The Office of Legislative Services shall submit on
6 forms prescribed by the Chief Financial Officer ~~Comptroller~~
7 requested allotments of appropriations for the fiscal year. It
8 shall be the duty of the Chief Financial Officer ~~Comptroller~~
9 to release the funds and authorize the expenditures for the
10 legislative branch to be made from the appropriations on the
11 basis of the requested allotments. However, the aggregate of
12 such allotments shall not exceed the total appropriations
13 available for the fiscal year.

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

16 11.147 Office of Legislative Services.--

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

21 Section 4. Section 11.151, Florida Statutes, is
22 amended to read:

23 11.151 Annual legislative appropriation to contingency
24 fund for use of Senate President and House Speaker.--There is
25 established a legislative contingency fund consisting of
26 \$10,000 for the President of the Senate and \$10,000 for the
27 Speaker of the House of Representatives, which amounts shall
28 be set aside annually from moneys appropriated for legislative
29 expense. These funds shall be disbursed by the Chief
30 Financial Officer ~~Comptroller~~ upon receipt of vouchers
31 authorized by the President of the Senate or the Speaker of

1 the House of Representatives. Such ~~Said~~ funds may be expended
2 at the unrestricted discretion of the President of the Senate
3 or the Speaker of the House of Representatives in carrying out
4 their official duties during the entire period between the
5 date of their election as such officers at the organizational
6 meeting held pursuant to s. 3(a), Art. III of the State
7 Constitution and the next general election.

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

10 11.40 Legislative Auditing Committee.--

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

23 (a) In the case of a local governmental entity or
24 district school board, request the Department of Revenue and
25 the Department of Financial Services ~~Banking and Finance~~ to
26 withhold any funds not pledged for bond debt service
27 satisfaction which are payable to such entity until the entity
28 complies with the law. The committee, in its request, shall
29 specify the date such action shall begin, and the request must
30 be received by the Department of Revenue and the Department of
31 Financial Services ~~Banking and Finance~~ 30 days before the date

1 of the distribution mandated by law. The Department of Revenue
2 and the Department of Financial Services may ~~Banking and~~
3 ~~Finance~~ are authorized to implement the provisions of this
4 paragraph.

5 (b) In the case of a special district, notify the
6 Department of Community Affairs that the special district has
7 failed to comply with the law. Upon receipt of notification,
8 the Department of Community Affairs shall proceed pursuant to
9 the provisions specified in ss. 189.421 and 189.422.

10 (c) In the case of a charter school or charter
11 technical career center, notify the appropriate sponsoring
12 entity, which may terminate the charter pursuant to ss.
13 228.056 and 228.505.

14 Section 6. Paragraph (b) of subsection (6) of section
15 11.42, Florida Statutes, is amended to read:

16 11.42 The Auditor General.--

17 (6)

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

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

24 14.057 Governor-elect; establishment of operating
25 fund.--

26 (1) There is established an operating fund for the use
27 of the Governor-elect during the period dating from the
28 certification of his or her election by the Elections
29 Canvassing Commission to his or her inauguration as Governor.
30 The Governor-elect during this period may allocate the fund to
31 travel, expenses, his or her salary, and the salaries of the

1 Governor-elect's staff as he or she determines. Such staff may
2 include, but not be limited to, a chief administrative
3 assistant, a legal adviser, a fiscal expert, and a public
4 relations and information adviser. The salary of the
5 Governor-elect and each member of the Governor-elect's staff
6 during this period shall be determined by the Governor-elect,
7 except that the total expenditures chargeable to the state
8 under this section, including salaries, shall not exceed the
9 amount appropriated to the operating fund. The Executive
10 Office of the Governor shall supply to the Governor-elect
11 suitable forms to provide for the expenditure of the fund and
12 suitable forms to provide for the reporting of all
13 expenditures therefrom. The Chief Financial Officer
14 ~~Comptroller~~ shall release moneys from this fund upon the
15 request of the Governor-elect properly filed.

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

18 14.058 Inauguration expense fund.--There is
19 established an inauguration expense fund for the use of the
20 Governor-elect in planning and conducting the inauguration
21 ceremonies. The Governor-elect shall appoint an inauguration
22 coordinator and such staff as necessary to plan and conduct
23 the inauguration. Salaries for the inauguration coordinator
24 and the inauguration coordinator's staff shall be determined
25 by the Governor-elect and shall be paid from the inauguration
26 expense fund. The Executive Office of the Governor shall
27 supply to the inauguration coordinator suitable forms to
28 provide for the expenditure of the fund and suitable forms to
29 provide for the reporting of all expenditures therefrom. The
30 Chief Financial Officer ~~Comptroller~~ shall release moneys from
31

1 this fund upon the request of the inauguration coordinator
2 properly filed.

3 Section 9. Paragraph (f) of subsection (3) of section
4 14.203, Florida Statutes, is amended to read:

5 14.203 State Council on Competitive Government.--It is
6 the policy of this state that all state services be performed
7 in the most effective and efficient manner in order to provide
8 the best value to the citizens of the state. The state also
9 recognizes that competition among service providers may
10 improve the quality of services provided, and that
11 competition, innovation, and creativity among service
12 providers should be encouraged.

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

15 (f) Require that an identified state service be
16 submitted to competitive bidding or another process that
17 creates competition with private sources or other governmental
18 entities. In determining whether an identified state service
19 should be submitted to competitive bidding, the council shall
20 consider, at a minimum:

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

23 2. The cost of supervising the work of any private
24 contractor.

25 3. The total cost to the state agency of such state
26 agency's performance of a service, including all indirect
27 costs related to that state agency and costs of such agencies
28 as the Chief Financial Officer ~~Comptroller, the Treasurer,~~ the
29 Attorney General, and other such support agencies to the
30 extent such costs would not be incurred if a contract is
31 awarded. Costs for the current provision of the service shall

1 be considered only when such costs would actually be saved if
2 the contract were awarded to another entity.

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

5 15.09 Fees.--

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

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

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

25 Section 12. Section 17.001, Florida Statutes, is
26 created to read:

27 17.001 Chief Financial Officer.--As provided in s.
28 4(c), Art. IV of the State Constitution, the Chief Financial
29 Officer is the chief fiscal officer of the state and is
30 responsible for settling and approving accounts against the
31 state and keeping all state funds and securities.

1 Section 13. Section 17.002, Florida Statutes, is
2 created to read:

3 17.002 Definition.--For the purposes of this chapter,
4 the term "department" means the Department of Financial
5 Services.

6 Section 14. Section 17.011, Florida Statutes, is
7 amended to read:

8 17.011 Assistant Chief Financial Officer
9 ~~comptroller~~.--The Chief Financial Officer ~~Comptroller~~ of the
10 state may appoint an Assistant Chief Financial Officer
11 ~~comptroller~~ to hold office during the pleasure of the Chief
12 Financial Officer ~~Comptroller~~.

13 Section 15. Section 17.02, Florida Statutes, is
14 amended to read:

15 17.02 Place of residence and office.--The Chief
16 Financial Officer ~~Comptroller~~ shall reside at the seat of
17 government of this state, and shall hold office in a room in
18 the capitol.

19 Section 16. Section 17.03, Florida Statutes, is
20 amended to read:

21 17.03 To audit claims against the state.--

22 (1) The Chief Financial Officer ~~Comptroller~~ of this
23 state, using generally accepted auditing procedures for
24 testing or sampling, shall examine, audit, and settle all
25 accounts, claims, and demands, whatsoever, against the state,
26 arising under any law or resolution of the Legislature, and
27 issue a warrant ~~to the Treasurer~~ directing the payment
28 ~~Treasurer to pay~~ out of the State Treasury of such amount as
29 he or she allows ~~shall be allowed by the Comptroller~~ thereon.

30 (2) The Chief Financial Officer ~~Comptroller~~ may
31 establish dollar thresholds applicable to each invoice amount

1 and other criteria for testing or sampling invoices on a
2 preaudit and postaudit basis. The Chief Financial Officer
3 ~~Comptroller~~ may revise such thresholds and other criteria for
4 an agency or the unit of any agency as he or she deems
5 appropriate.

6 (3) The Chief Financial Officer ~~Comptroller~~ may adopt
7 and disseminate to the agencies procedural and documentation
8 standards for payment requests and may provide training and
9 technical assistance to the agencies for these standards.

10 (4) The Chief Financial Officer ~~Comptroller~~ shall have
11 the legal duty of delivering all state warrants and shall be
12 charged with the official responsibility of the protection and
13 security of the state warrants while in his or her custody.
14 The Chief Financial Officer ~~Comptroller~~ may delegate this
15 authority to other state agencies or officers.

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

18 17.031 Security of Chief Financial Officer's
19 ~~Comptroller's~~ office.--The Chief Financial Officer may
20 ~~Comptroller is authorized to~~ engage the full-time services of
21 two law enforcement officers, with power of arrest, to prevent
22 all acts of a criminal nature directed at the property in the
23 custody or control of the Chief Financial Officer ~~Comptroller~~.
24 While so assigned, such ~~said~~ officers shall be under the
25 direction and supervision of the Chief Financial Officer
26 ~~Comptroller~~, and their salaries and expenses shall be paid
27 from the general fund of the office of Chief Financial Officer
28 ~~Comptroller~~.

29 Section 18. Section 17.04, Florida Statutes, is
30 amended to read:

31

1 17.04 To audit and adjust accounts of officers and
2 those indebted to the state.--The Chief Financial Officer
3 ~~Department of Banking and Finance of this state~~, using
4 generally accepted auditing procedures for testing or
5 sampling, shall examine, audit, adjust, and settle the
6 accounts of all the officers of this state, and any other
7 person in anywise entrusted with, or who may have received any
8 property, funds, or moneys of this state, or who may be in
9 anywise indebted or accountable to this state for any
10 property, funds, or moneys, and require such officer or
11 persons to render full accounts thereof, and to yield up such
12 property or funds according to law, or pay such moneys into
13 the treasury of this state, or to such officer or agent of the
14 state as may be appointed to receive the same, and on failure
15 so to do, to cause to be instituted and prosecuted
16 proceedings, criminal or civil, at law or in equity, against
17 such persons, according to law. The Division of Accounting
18 and Auditing ~~Financial Investigations~~ may conduct
19 investigations within or outside of this state as it deems
20 necessary to aid in the enforcement of this section. If
21 during an investigation the division has reason to believe
22 that any criminal statute of this state has or may have been
23 violated, the division shall refer any records tending to show
24 such violation to state or federal law enforcement or
25 prosecutorial agencies and shall provide investigative
26 assistance to those agencies as required.

27 Section 19. Section 17.0401, Florida Statutes, is
28 amended to read:

29 17.0401 Confidentiality of information relating to
30 financial investigations.--Except as otherwise provided by
31 this section, information relative to an investigation

1 conducted by the Division of Accounting and Auditing ~~Financial~~
2 ~~Investigations~~ pursuant to s. 17.04, including any consumer
3 complaint, is confidential and exempt from the provisions of
4 s. 119.07(1) and s. 24(a), Art. I of the State Constitution
5 until the investigation is completed or ceases to be active.
6 Any information relating to an investigation conducted by the
7 division pursuant to s. 17.04 shall remain confidential and
8 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
9 I of the State Constitution after the division's investigation
10 is completed or ceases to be active if the division submits
11 the information to any law enforcement or prosecutorial agency
12 for further investigation. Such information shall remain
13 confidential and exempt from the provisions of s. 119.07(1)
14 and s. 24(a), Art. I of the State Constitution until that
15 agency's investigation is completed or ceases to be active.
16 For purposes of this section, an investigation shall be
17 considered "active" so long as the division or any law
18 enforcement or prosecutorial agency is proceeding with
19 reasonable dispatch and has a reasonable good faith belief
20 that the investigation may lead to the filing of an
21 administrative, civil, or criminal proceeding. This section
22 shall not be construed to prohibit disclosure of information
23 that ~~which~~ is required by law to be filed with the Department
24 of Financial Services or the Office of Financial Regulation
25 ~~Banking and Finance~~ and that ~~which~~, but for the investigation,
26 would otherwise be subject to public disclosure. Nothing in
27 this section shall be construed to prohibit the division from
28 providing information to any law enforcement or prosecutorial
29 agency. Any law enforcement or prosecutorial agency receiving
30 confidential information from the division in connection with
31

1 its official duties shall maintain the confidentiality of the
2 information as provided for in this section.

3 Section 20. Section 17.041, Florida Statutes, is
4 amended to read:

5 17.041 County and district accounts and claims.--

6 (1) It shall be the duty of the Chief Financial
7 Officer ~~Department of Banking and Finance of this state~~ to
8 adjust and settle, or cause to be adjusted and settled, all
9 accounts and claims heretofore or hereafter reported to it by
10 the Auditor General, the appropriate county or district
11 official, or any person against all county and district
12 officers and employees, and against all other persons
13 entrusted with, or who may have received, any property, funds,
14 or moneys of a county or district or who may be in anywise
15 indebted to or accountable to a county or district for any
16 property, funds, moneys, or other thing of value, and to
17 require such officer, employee, or person to render full
18 accounts thereof and to yield up such property, funds, moneys,
19 or other thing of value according to law to the officer or
20 authority entitled by law to receive the same.

21 (2) On the failure of such officer, employee, or
22 person to adjust and settle such account, or to yield up such
23 property, funds, moneys, or other thing of value, the Chief
24 Financial Officer ~~department~~ shall direct the attorney for the
25 board of county commissioners, the district school board, or
26 the district, as the case may be, entitled to such account,
27 property, funds, moneys, or other thing of value to represent
28 such county or district in enforcing settlement, payment or
29 delivery of such account, property, funds, moneys, or other
30 thing of value. The Chief Financial Officer ~~department~~ may
31

1 enforce such settlement, payment, or delivery pursuant to s.
2 17.20.

3 (3) Should the attorney for the county or district
4 aforesaid be disqualified or unable to act, and no other
5 attorney be furnished by the county or district, or should the
6 Chief Financial Officer ~~department~~ otherwise deem it
7 advisable, such account or claim may be certified to the
8 Department of Legal Affairs by the Chief Financial Officer
9 ~~department~~, to be prosecuted by the Department of Legal
10 Affairs at county or district expense, as the case may be,
11 including necessary per diem and travel expense in accordance
12 with s. 112.061, as now or hereafter amended. Such expenses,
13 when approved by the Chief Financial Officer ~~department~~, shall
14 be paid forthwith by such county or district.

15 (4) ~~If Should~~ it appears ~~appear~~ to the Chief Financial
16 Officer ~~department~~ that any criminal statute of this state has
17 or may have been violated by such defaulting officer,
18 employee, or person, such information, evidence, documents,
19 and other things tending to show such a violation, whether in
20 the hands of the Chief Financial Officer ~~Comptroller~~, the
21 Auditor General, the county, or the district, shall be
22 forthwith turned over to the proper state attorney for
23 inspection, study, and such action as may be deemed proper, or
24 the same may be brought to the attention of the proper grand
25 jury.

26 (5) No such account or claim, after it has been
27 certified to the Chief Financial Officer ~~department~~, may be
28 settled for less than the amount due according to law without
29 the written consent of the Chief Financial Officer ~~department~~,
30 and any attempt to make settlement in violation of this
31 subsection shall be deemed null and void. A county or

1 district board desiring to make such a settlement shall
2 incorporate the proposed settlement into a resolution, stating
3 that the proposed settlement is contingent upon the Chief
4 Financial Officer's ~~Comptroller's~~ approval, and shall submit
5 two copies of the resolution to the department. The Chief
6 Financial Officer ~~department~~ shall return one copy with his or
7 her ~~the Comptroller's~~ action endorsed thereon.

8 (6) No settlement of account of any such officer,
9 employee, or person, with the county or district, or any of
10 their officers or agents, made in an amount or manner other
11 than as authorized by law or for other than a lawful county or
12 district purpose, shall be binding upon such county or
13 district unless and until approved by the Chief Financial
14 Officer ~~department~~, or unless more than 4 years shall have
15 elapsed from the date of such settlement.

16 (7) Nothing in this section shall supersede the
17 continuing duty of the proper county and district officers to
18 require any officer, employee, or person to render full
19 accounts of and to yield up according to law to the officer or
20 authority entitled by law to receive the same, any property,
21 funds, moneys, or other thing of value as to which such
22 officer, employee, or person is in anywise indebted to or
23 accountable to such county or district. The provisions of
24 this section provide for collections and recoveries which the
25 proper county or district officers have failed to make, and
26 for correction of settlements made in an amount or manner
27 other than as authorized by law.

28 Section 21. Section 17.0415, Florida Statutes, is
29 amended to read:

30 17.0415 Transfer and assignment of claims.--In order
31 to facilitate their collection from third parties, the Chief

1 Financial Officer ~~Comptroller~~ may authorize the assignment of
2 claims among the state, its agencies, and its subdivisions,
3 whether arising from criminal, civil, or other judgments in
4 state or federal court. The state, its agencies, and its
5 subdivisions, may assign claims under such terms as are
6 mutually acceptable to the Chief Financial Officer ~~Comptroller~~
7 and the assignee and assignor. The assigned claim may be
8 enforced as a setoff to any claim against the state, its
9 agencies, or its subdivisions, by garnishment or in the same
10 manner as a judgment in a civil action. Claims against the
11 state, its agencies, and its subdivisions resulting from the
12 condemnation of property protected by the provisions of s. 4,
13 Art. X of the State Constitution are not subject to setoff
14 pursuant to this section.

15 Section 22. Section 17.05, Florida Statutes, is
16 amended to read:

17 17.05 Subpoenas; sworn statements; enforcement
18 proceedings.--

19 (1) The Chief Financial Officer ~~Comptroller~~ may demand
20 and require full answers on oath from any and every person,
21 party or privy to any account, claim, or demand against or by
22 the state, such as it may be the Chief Financial Officer's
23 ~~Comptroller's~~ official duty to examine into, and which answers
24 the Chief Financial Officer ~~Comptroller~~ may require to be in
25 writing and to be sworn to before the Chief Financial Officer
26 ~~Comptroller~~ or the department or before any judicial officer
27 or clerk of any court of the state so as to enable the Chief
28 Financial Officer ~~Comptroller~~ to determine the justice or
29 legality of such account, claim, or demand.

30
31

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

4 (a) Issue subpoenas, administer oaths, and examine
5 witnesses.

6 (b) Require or permit a person to file a statement in
7 writing, under oath or otherwise as the Chief Financial
8 Officer ~~Comptroller~~ or his or her designee requires, as to all
9 the facts and circumstances concerning the matter to be
10 audited, examined, or investigated.

11 (3) Subpoenas shall be issued by the Chief Financial
12 Officer ~~Comptroller~~ or his or her designee under seal
13 commanding such witnesses to appear before the Chief Financial
14 Officer ~~Comptroller~~ or his or her ~~the Comptroller's~~
15 representative or the department at a specified time and place
16 and to bring books, records, and documents as specified or to
17 submit books, records, and documents for inspection. Such
18 subpoenas may be served by an authorized representative of the
19 Chief Financial Officer ~~Comptroller~~ or the department.

20 (4) In the event of noncompliance with a subpoena
21 issued pursuant to this section, the Chief Financial Officer
22 ~~Comptroller~~ or the department may petition the circuit court
23 of the county in which the person subpoenaed resides or has
24 his or her principal place of business for an order requiring
25 the subpoenaed person to appear and testify and to produce
26 books, records, and documents as specified in the subpoena.
27 The court may grant legal, equitable, or injunctive relief,
28 including, but not limited to, issuance of a writ of ne exeat
29 or the restraint by injunction or appointment of a receiver of
30 any transfer, pledge, assignment, or other disposition of such
31 person's assets or any concealment, alteration, destruction,

1 or other disposition of subpoenaed books, records, or
2 documents, as the court deems appropriate, until such person
3 has fully complied with such subpoena and the Chief Financial
4 Officer ~~Comptroller~~ or the department has completed the audit,
5 examination, or investigation. The Chief Financial Officer
6 ~~Comptroller~~ or the department is entitled to the summary
7 procedure provided in s. 51.011, and the court shall advance
8 the cause on its calendar. Costs incurred by the Chief
9 Financial Officer ~~Comptroller~~ or the department to obtain an
10 order granting, in whole or in part, such petition for
11 enforcement of a subpoena shall be charged against the
12 subpoenaed person, and failure to comply with such order shall
13 be a contempt of court.

14 Section 23. Section 17.075, Florida Statutes, is
15 amended to read:

16 17.075 Form of state warrants and other payment
17 orders; rules.--

18 (1) The Chief Financial Officer ~~Department of Banking~~
19 ~~and Finance~~ is authorized to establish the form or forms of
20 state warrants which are to be drawn by him or her ~~it~~ and of
21 other orders for payment or disbursement of moneys out of the
22 State Treasury and to change the form thereof from time to
23 time as the Chief Financial Officer ~~department~~ may consider
24 necessary or appropriate. Such orders for payment may be in
25 any form, but, regardless of form, each order shall be subject
26 to the accounting and recordkeeping requirements applicable to
27 state warrants.

28 (2) The Chief Financial Officer ~~department~~ shall adopt
29 rules establishing accounting and recordkeeping procedures for
30 all payments made by electronic transfer of funds or by any
31 other means. Such procedures shall be consistent with the

1 statutory requirements applicable to payments by state
2 warrant.

3 Section 24. Section 17.076, Florida Statutes, is
4 amended to read:

5 17.076 Direct deposit of funds.--

6 (1) As used in this section, the term

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

10 ~~(b) "Department" means the Department of Banking and~~
11 ~~Finance.~~

12 (2) The Chief Financial Officer ~~department~~ shall
13 establish a program for the direct deposit of funds to the
14 account of the beneficiary of such a payment or disbursement
15 in any financial institution equipped for electronic fund
16 transfers, which institution is designated in writing by such
17 beneficiary and has lawful authority to accept such deposits.
18 Direct deposit of funds shall be by any electronic or other
19 transfer medium approved by the Chief Financial Officer
20 ~~department~~ for such purpose.

21 (3) The Chief Financial Officer ~~department~~ may
22 contract with an authorized financial institution for the
23 services necessary to operate the program. In order to
24 implement the provisions of this section, the Chief Financial
25 Officer ~~may~~ ~~Comptroller is authorized to~~ deposit with that
26 financial institution the funds payable to the beneficiaries,
27 in lump sum, by Chief Financial Officer's ~~Comptroller's~~
28 warrant to make the authorized direct deposits.

29 (4) The written authorization of a beneficiary shall
30 be filed with the department or its designee. Such
31 authorization shall remain in effect until withdrawn in

1 writing by the beneficiary or dishonored by the designated
2 financial institution.

3 (5) All direct deposit records made prior to October
4 1, 1986, are exempt from the provisions of s. 119.07(1). With
5 respect to direct deposit records made on or after October 1,
6 1986, the names of the authorized financial institutions and
7 the account numbers of the beneficiaries are confidential and
8 exempt from the provisions of s. 119.07(1).

9 ~~(6) The department shall implement local option direct~~
10 ~~deposit of funds for local governmental entities by January 1,~~
11 ~~1996.~~

12 (6)(7) To cover the department's actual costs for
13 processing the direct deposit of funds other than salary or
14 retirement benefits, the department may charge the beneficiary
15 of the direct deposit a reasonable fee. The department may
16 collect the fee by direct receipt from the beneficiary or by
17 subtracting the amount of the fee from the funds due the
18 beneficiary. Such fees collected by the department shall be
19 deposited into the Department of Financial Services Banking
20 ~~and Finance~~ Administrative Trust Fund.

21 (7)(8) Effective July 1, 2000, all new recipients of
22 retirement benefits from this state shall be paid by direct
23 deposit of funds. A retiree may request from the department an
24 exemption from the provisions of this subsection when such
25 retiree can demonstrate a hardship. The department may pay
26 retirement benefits by state warrant when deemed
27 administratively necessary.

28 Section 25. Section 17.08, Florida Statutes, is
29 amended to read:

30 17.08 Accounts, etc., on which warrants drawn, to be
31 filed.--All accounts, vouchers, and evidence, upon which

1 warrants have heretofore been, or shall hereafter be, drawn
2 upon the treasury by the Chief Financial Officer ~~Comptroller~~
3 shall be filed and deposited in the office of Chief Financial
4 Officer ~~Comptroller~~ or the office of the Chief Financial
5 Officer's ~~Comptroller's~~ designee, in accordance with
6 requirements established by the Secretary of State.

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

9 17.09 Application for warrants for salaries.--All
10 public officers who are entitled to salaries in this state,
11 shall make their application for warrants in writing, stating
12 for what terms and the amount they claim, which written
13 application shall be filed by the Chief Financial Officer
14 ~~Comptroller~~ as vouchers for the warrants issued thereupon.

15 Section 27. Section 17.10, Florida Statutes, is
16 amended to read:

17 17.10 Record of warrants and of state funds and
18 securities issued.--The Chief Financial Officer ~~Comptroller~~
19 shall cause to be entered in the warrant register a record of
20 the warrants issued during the previous month, and shall make
21 such entry in the record so required to be kept as shall show
22 the number of each warrant issued, in whose favor drawn, and
23 the date it was issued. He or she shall account for all state
24 funds and securities.

25 Section 28. Section 17.11, Florida Statutes, is
26 amended to read:

27 17.11 To report disbursements made.--

28 (1) The Chief Financial Officer ~~Comptroller~~ shall make
29 in all his or her future annual reports an exhibit stated from
30 the record of disbursements made during the fiscal year, and
31

1 the several heads of expenditures under which such
2 disbursements were made.

3 (2) The Chief Financial Officer ~~Comptroller~~ shall also
4 cause to have reported from the Florida Accounting Information
5 Resource Subsystem no less than quarterly the disbursements
6 which agencies made to small businesses, as defined in the
7 Florida Small and Minority Business Assistance Act of 1985; to
8 certified minority business enterprises in the aggregate; and
9 to certified minority business enterprises broken down into
10 categories of minority persons, as well as gender and
11 nationality subgroups. This information shall be made
12 available to the agencies, the Office of Supplier Diversity,
13 the Governor, the President of the Senate, and the Speaker of
14 the House of Representatives. Each agency shall be responsible
15 for the accuracy of information entered into the Florida
16 Accounting Information Resource Subsystem for use in this
17 reporting.

18 Section 29. Section 17.12, Florida Statutes, is
19 amended to read:

20 17.12 Authorized to issue warrants to tax collector or
21 sheriff for payment.--Whenever it shall appear to the
22 satisfaction of the Chief Financial Officer ~~Comptroller~~ of
23 ~~this state~~ from examination of the books of his or her office
24 that the tax collector or the sheriff for any county in this
25 state has paid into the State Treasury, through mistake or
26 otherwise, a larger or greater sum than is actually due from
27 such ~~said~~ collector or sheriff, then the Chief Financial
28 Officer ~~Comptroller~~ may issue a warrant to such ~~said~~ collector
29 or sheriff for the sum so found to be overpaid.

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

1 17.13 To duplicate warrants lost or destroyed.--
2 (1) The Chief Financial Officer ~~Comptroller~~ is
3 required to duplicate any Chief Financial Officer's
4 ~~Comptroller's~~ warrants that may have been lost or destroyed,
5 or may hereafter be lost or destroyed, upon the owner thereof
6 or the owner's agent or attorney presenting the Chief
7 Financial Officer ~~Comptroller~~ the statement, under oath,
8 reciting the number, date, and amount of any warrant or the
9 best and most definite description in his or her knowledge and
10 the circumstances of its loss; if the Chief Financial Officer
11 ~~Comptroller~~ deems it necessary, the owner or the owner's agent
12 or attorney shall file in the office of the Chief Financial
13 Officer ~~Comptroller~~ a surety bond, or a bond with securities,
14 to be approved by one of the judges of the circuit court or
15 one of the justices of the Supreme Court, in a penalty of not
16 less than twice the amount of any warrants so duplicated,
17 conditioned to indemnify the state and any innocent holders
18 thereof from any damages that may accrue from such
19 duplication.

20 (2) The Chief Financial Officer ~~Comptroller~~ is
21 required to duplicate any Chief Financial Officer's
22 ~~Comptroller's~~ warrant that may have been lost or destroyed, or
23 may hereafter be lost or destroyed, when sent to any payee via
24 any state agency when such warrant is lost or destroyed prior
25 to being received by the payee and provided the director of
26 the state agency to whom the warrant was sent presents to the
27 Chief Financial Officer ~~Comptroller~~ a statement, under oath,
28 reciting the number, date, and amount of the warrant lost or
29 destroyed, the circumstances surrounding the loss or
30 destruction of such warrant, and any additional information
31

1 that the Chief Financial Officer ~~Comptroller~~ shall request in
2 regard to such warrant.

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

7 Section 31. Section 17.14, Florida Statutes, is
8 amended to read:

9 17.14 To prescribe forms.--The Chief Financial Officer
10 ~~Department of Banking and Finance~~ may prescribe the forms of
11 all papers, vouchers, reports and returns and the manner of
12 keeping the accounts and papers to be used by the officers of
13 this state or other persons having accounts, claims, or
14 demands against the state or entrusted with the collection of
15 any of the revenue thereof or any demand due the same, which
16 form shall be pursued by such officer or other persons.

17 Section 32. Section 17.16, Florida Statutes, is
18 amended to read:

19 17.16 Seal.--The seal of office of the Chief Financial
20 Officer ~~Comptroller of the state~~ shall be the same as the seal
21 heretofore used for that purpose.

22 Section 33. Section 17.17, Florida Statutes, is
23 amended to read:

24 17.17 Examination by Governor and report.--The office
25 of Chief Financial Officer ~~Comptroller of the state~~, and the
26 books, files, documents, records, and papers shall always be
27 subject to the examination of the Governor of this state, or
28 any person the Governor may authorize to examine the same; and
29 on the first day of January of each and every year, or oftener
30 if called for by the Governor, the Chief Financial Officer
31 ~~Comptroller~~ shall make a full report of all his or her

1 official acts and proceedings for the last fiscal year to the
2 Governor, to be laid before the Legislature with the
3 Governor's message, and shall make such further report as the
4 constitution may require.

5 Section 34. Section 17.20, Florida Statutes, is
6 amended to read:

7 17.20 Assignment of claims for collection.--

8 (1) The Chief Financial Officer ~~Department of Banking~~
9 ~~and Finance~~ shall charge the state attorneys with the
10 collection of all claims that are placed in their hands for
11 collection of money or property for the state or any county or
12 special district, or that it otherwise requires them to
13 collect. The charges are evidence of indebtedness of a state
14 attorney against whom any charge is made for the full amount
15 of the claim, until the charges have been collected and paid
16 into the treasury of the state or of the county or special
17 district or the legal remedies of the state have been
18 exhausted, or until the state attorney demonstrates to the
19 Chief Financial Officer ~~department~~ that the failure to collect
20 the charges is not due to negligence and the Chief Financial
21 Officer ~~department~~ has made a proper entry of satisfaction of
22 the charge against the state attorney.

23 (2) The Chief Financial Officer ~~department~~ may assign
24 the collection of any claim to a collection agent who is
25 registered and in good standing pursuant to chapter 559, if
26 the Chief Financial Officer ~~department~~ determines the
27 assignment to be cost-effective. The Chief Financial Officer
28 ~~department~~ may pay an agent from any amount collected under
29 the claim a fee that the Chief Financial Officer ~~department~~
30 and the agent have agreed upon; may authorize the agent to
31 deduct the fee from the amount collected; may require the

1 appropriate state agency, county, or special district to pay
2 the agent the fee from any amount collected by the agent on
3 its behalf; or may authorize the agent to add the fee to the
4 amount to be collected.

5 (3) Notwithstanding any other provision of law, in any
6 contract providing for the location or collection of unclaimed
7 property, the Chief Financial Officer ~~department~~ may authorize
8 the contractor to deduct its fees and expenses for services
9 provided under the contract from the unclaimed property that
10 the contractor has recovered or collected under the contract.
11 The Chief Financial Officer ~~department~~ shall annually report
12 to the Governor, President of the Senate, and the Speaker of
13 the House of Representatives the total amount collected or
14 recovered by each contractor during the previous fiscal year
15 and the total fees and expenses deducted by each contractor.

16 Section 35. Section 17.21, Florida Statutes, is
17 amended to read:

18 17.21 Not to allow any claim of state attorney against
19 state until report made.--The Chief Financial Officer
20 ~~Comptroller~~ shall not audit or allow any claim which any state
21 attorney may have against the state for services who shall
22 fail to make any report which by law the state attorney is
23 required to make to the Chief Financial Officer ~~Comptroller~~ of
24 claims of the state which it is his or her duty to collect.

25 Section 36. Section 17.22, Florida Statutes, is
26 amended to read:

27 17.22 Notice to Department of Legal Affairs.--Whenever
28 the Chief Financial Officer ~~Department of Banking and Finance~~
29 forwards any bond or account or claim for suit to any state
30 attorney, he or she ~~it~~ shall advise the Department of Legal
31 Affairs of the fact, giving it the amount of the claim and

1 other necessary particulars for its full information upon the
2 subject.

3 Section 37. Section 17.25, Florida Statutes, is
4 amended to read:

5 17.25 May certify copies.--The Chief Financial Officer
6 ~~Comptroller of this state~~ may certify, under his or her seal
7 of office, copies of any record, paper, or document, by law
8 placed in the Chief Financial Officer's ~~Comptroller's~~ custody,
9 keeping, and care; and such certified copy shall have the same
10 force and effect as evidence as the original would have.

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

13 17.26 Cancellation of state warrants not presented
14 within 1 year.--

15 (1) If any state warrant issued by the Chief Financial
16 Officer or ~~Comptroller~~ against any fund in the State Treasury
17 is not presented for payment within 1 year after the last day
18 of the month in which it was originally issued, the Chief
19 Financial Officer ~~Comptroller~~ may cancel the warrant and
20 credit the amount of the warrant to the fund upon which it is
21 drawn. If the warrant so canceled was issued against a fund
22 that is no longer operative, the amount of the warrant shall
23 be credited to the General Revenue Fund. The Chief Financial
24 Officer ~~Treasurer~~ shall not honor any state warrant after it
25 has been canceled.

26 (3) When a warrant canceled under subsection (1)
27 represents funds that are in whole or in part derived from
28 federal contributions and disposition of the funds under
29 chapter 717 would cause a loss of the federal contributions,
30 the Governor shall certify to the Chief Financial Officer
31 ~~Comptroller~~ that funds represented by such warrants are for

1 that reason exempt from treatment as unclaimed property.
2 Obligations represented by warrants are unenforceable after 1
3 year from the last day of the month in which the warrant was
4 originally issued. An action may not be commenced thereafter
5 on the obligation unless authorized by the federal program
6 from which the original warrant was funded and unless payment
7 of the obligation is authorized to be made from the current
8 federal funding. When a payee or person entitled to a warrant
9 subject to this paragraph requests payment, and payment from
10 current federal funding is authorized by the federal program
11 from which the original warrant was funded, the Chief
12 Financial Officer ~~Comptroller~~ may, upon investigation, issue a
13 new warrant to be paid out of the proper fund in the State
14 Treasury, provided the payee or other person executes under
15 oath the statement required by s. 17.13 or surrenders the
16 canceled warrant.

17 Section 39. Subsections (1), (2), and (3) of section
18 17.27, Florida Statutes, are amended to read:

19 17.27 Microfilming and destroying records and
20 correspondence.--

21 (1) The Department of Financial Services ~~Banking and~~
22 ~~Finance~~ may destroy general correspondence files and also any
23 other records which the department may deem no longer
24 necessary to preserve in accordance with retention schedules
25 and destruction notices established under rules of the
26 Division of Library and Information Services, records and
27 information management program, of the Department of State.
28 Such schedules and notices relating to financial records of
29 the department shall be subject to the approval of the Auditor
30 General.

31

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

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

10 Section 40. Section 17.28, Florida Statutes, is
11 amended to read:

12 17.28 Chief Financial Officer ~~Comptroller~~ may
13 authorize biweekly salary payments.--The Chief Financial
14 Officer ~~Comptroller is authorized and~~ may permit biweekly
15 salary payments to personnel upon written request by a
16 specific state agency. The Chief Financial Officer
17 ~~Comptroller~~ shall adopt ~~promulgate~~ reasonable rules and
18 ~~regulations~~ to carry out the intent of this section.

19 Section 41. Section 17.29, Florida Statutes, is
20 amended to read:

21 17.29 Authority to prescribe rules.--The Chief
22 Financial Officer may ~~Comptroller has authority to~~ adopt rules
23 pursuant to ss. 120.54 and 120.536(1) to implement this
24 chapter and duties assigned by statute or the State
25 Constitution. Such rules may include, but are not limited to,
26 the following:

27 (1) Procedures or policies relating to the processing
28 of payments from salaries, other personal services, or any
29 other applicable appropriation.
30
31

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

4 Section 42. Section 17.30, Florida Statutes, is
5 amended to read:

6 17.30 Dissemination of information.--The Chief
7 Financial Officer ~~Comptroller~~ may disseminate, in any form or
8 manner he or she considers appropriate, information regarding
9 the Chief Financial Officer's ~~Comptroller's~~ official duties.

10 Section 43. Section 17.32, Florida Statutes, is
11 amended to read:

12 17.32 Annual report of trust funds; duties of Chief
13 Financial Officer ~~Comptroller~~.--

14 (1) On February 1 of each year, the Chief Financial
15 Officer ~~Comptroller~~ shall present to the President of the
16 Senate and the Speaker of the House of Representatives a
17 report listing all trust funds as defined in s. 215.32. The
18 report shall contain the following data elements for each fund
19 for the preceding fiscal year:

20 (a) The fund code.

21 (b) The title.

22 (c) The fund type according to generally accepted
23 accounting principles.

24 (d) The statutory authority.

25 (e) The beginning cash balance.

26 (f) Direct revenues.

27 (g) Nonoperating revenues.

28 (h) Operating disbursements.

29 (i) Nonoperating disbursements.

30 (j) The ending cash balance.

31

1 (k) The department and budget entity in which the fund
2 is located.

3 (2) The report shall separately list all funds that
4 received no revenues other than interest earnings or transfers
5 from the General Revenue Fund or from other trust funds during
6 the preceding fiscal year.

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

10 Section 44. Section 17.325, Florida Statutes, is
11 amended to read:

12 17.325 Governmental efficiency hotline; duties of
13 Chief Financial Officer ~~Comptroller~~.--

14 (1) ~~By September 1, 1992,~~The Chief Financial Officer
15 ~~Comptroller~~ shall establish and operate a statewide toll-free
16 telephone hotline to receive information or suggestions from
17 the citizens of this state on how to improve the operation of
18 government, increase governmental efficiency, and eliminate
19 waste in government. The Chief Financial Officer ~~Comptroller~~
20 shall report each month to the Appropriations Committee of the
21 House of Representatives and of the Senate the information or
22 suggestions received through the hotline and the evaluations
23 and determinations made by the affected agency, as provided in
24 subsection (3), with respect to such information or
25 suggestions.

26 (2) The Chief Financial Officer ~~Comptroller~~ shall
27 operate the hotline 24 hours a day. The Chief Financial
28 Officer ~~Comptroller~~ shall advertise the availability of the
29 hotline in newspapers of general circulation in this state and
30 shall provide for the posting of notices in conspicuous places
31 in state agency offices, city halls, county courthouses, and

1 places in which there is exposure to significant numbers of
2 the general public, including, but not limited to, local
3 convenience stores, shopping malls, shopping centers, gasoline
4 stations, or restaurants. The Chief Financial Officer
5 ~~Comptroller~~ shall use the slogan "Tell us where we can 'Get
6 Lean'" for the hotline and in advertisements for the hotline.

7 (3) Each telephone call on the hotline shall be
8 received by the office of the Chief Financial Officer
9 ~~Comptroller~~, and the office of the Chief Financial Officer
10 ~~Comptroller~~ shall conduct an evaluation to determine if it is
11 appropriate for the telephone call to be processed as a "Get
12 Lean" telephone call. If it is determined that the telephone
13 call should be processed as a "Get Lean" telephone call, a
14 record of each suggestion or item of information received
15 shall be entered into a log kept by the Chief Financial
16 Officer ~~Comptroller~~. A caller on the hotline may remain
17 anonymous, and, if the caller provides his or her name, the
18 name shall be confidential. If a caller discloses that he or
19 she is a state employee, the Chief Financial Officer
20 ~~Comptroller~~, in addition to maintaining a record as required
21 by this section, may refer any information or suggestion from
22 the caller to an existing state awards program administered by
23 the affected agency. The affected agency shall conduct a
24 preliminary evaluation of the efficacy of any suggestion or
25 item of information received through the hotline and shall
26 provide the Chief Financial Officer ~~Comptroller~~ with a
27 preliminary determination of the amount of revenues the state
28 might save by implementing the suggestion or making use of the
29 information.

30 (4) Any person who provides any information through
31 the hotline shall be immune from liability for any use of such

1 information and shall not be subject to any retaliation by any
2 employee of the state for providing such information or making
3 such suggestion.

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

7 Section 45. Section 17.41, Florida Statutes, is
8 amended to read:

9 17.41 Department of Financial Services ~~Banking and~~
10 ~~Finance~~ Tobacco Settlement Clearing Trust Fund.--

11 (1) The Department of Financial Services ~~Banking and~~
12 ~~Finance~~ Tobacco Settlement Clearing Trust Fund is created
13 within that department.

14 (2) Funds to be credited to the Tobacco Settlement
15 Clearing Trust Fund shall consist of payments received by the
16 state from settlement of State of Florida v. American Tobacco
17 Co., No. 95-1466AH (Fla. 15th Cir. Ct. 1996). Moneys received
18 from the settlement and deposited into the trust fund are
19 exempt from the service charges imposed under s. 215.20.

20 (3)(a) Subject to approval of the Legislature, all or
21 any portion of the state's right, title, and interest in and
22 to the tobacco settlement agreement may be sold to the Tobacco
23 Settlement Financing Corporation created pursuant to s.
24 215.56005. Any such sale shall be a true sale and not a
25 borrowing.

26 (b) Any moneys received by the state pursuant to any
27 residual interest retained in the tobacco settlement agreement
28 or the payments to be made under the tobacco settlement
29 agreement shall be deposited into the Tobacco Settlement
30 Clearing Trust Fund.

31

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

5 (5) The department shall disburse funds, by
6 nonoperating transfer, from the Tobacco Settlement Clearing
7 Trust Fund to the tobacco settlement trust funds of the
8 various agencies in amounts equal to the annual appropriations
9 made from those agencies' trust funds in the General
10 Appropriations Act.

11 (6) Pursuant to the provisions of s. 19(f)(3), Art.
12 III of the State Constitution, the Tobacco Settlement Clearing
13 Trust Fund is exempt from the termination provisions of s.
14 19(f)(2), Art. III of the State Constitution.

15 Section 46. Section 17.43, Florida Statutes, is
16 amended to read:

17 17.43 Chief Financial Officer's ~~Comptroller's~~ Federal
18 Equitable Sharing Trust Fund.--

19 (1) The Chief Financial Officer's ~~Comptroller's~~
20 Federal Equitable Sharing Trust Fund is created within the
21 Department of Financial Services ~~Banking and Finance~~. The
22 department may deposit into the trust fund receipts and
23 revenues received as a result of federal criminal,
24 administrative, or civil forfeiture proceedings and receipts
25 and revenues received from federal asset-sharing programs. The
26 trust fund is exempt from the service charges imposed by s.
27 215.20.

28 (2) Notwithstanding the provisions of s. 216.301 and
29 pursuant to s. 216.351, any balance in the trust fund at the
30 end of any fiscal year shall remain in the trust fund at the
31

1 end of the year and shall be available for carrying out the
2 purposes of the trust fund.

3 Section 47. Section 18.01, Florida Statutes, is
4 transferred, renumbered as section 17.51, Florida Statutes,
5 and amended to read:

6 17.51 ~~18.01~~ Oath and certificate of Chief Financial
7 Officer ~~Treasurer~~.--The Chief Financial Officer ~~Treasurer~~
8 shall, within 10 days before he or she enters upon the duties
9 of office, take and subscribe an oath or affirmation
10 faithfully to discharge the duties of office, which oath or
11 affirmation must be deposited with the Department of State.
12 The Chief Financial Officer ~~Treasurer~~ shall also file with the
13 Department of State a certificate ~~from the Comptroller~~
14 attesting that the retiring Treasurer or Chief Financial
15 Officer ~~has turned over vouchers for all payments made as~~
16 ~~required by law, and that the Treasurer's account has been~~
17 ~~truly credited with the same, and that he or she has filed~~
18 ~~receipts from his or her successor for all vouchers paid since~~
19 ~~the end of last quarter, and for balance of cash, and for all~~
20 bonds and other securities held by the Treasurer or Chief
21 Financial Officer as such, and a certificate from each board
22 of which he or she is made by law ex officio treasurer, that
23 he or she has satisfactorily accounted to such board as its
24 treasurer.

25 Section 48. Section 18.02, Florida Statutes, is
26 transferred, renumbered as section 17.52, Florida Statutes,
27 and amended to read:

28 17.52 ~~18.02~~ Moneys paid on warrants.--The Division of
29 Treasury ~~Treasurer~~ shall pay all warrants on the treasury
30 drawn by the Chief Financial Officer ~~or Comptroller~~ and other
31 orders by the Chief Financial Officer ~~or Comptroller~~ for the

1 disbursement of state funds by electronic means or by means of
2 a magnetic tape or any other transfer medium. No moneys shall
3 be paid out of the treasury except on such warrants or other
4 orders of the Chief Financial Officer or Comptroller.

5 Section 49. Section 18.021, Florida Statutes, is
6 transferred, renumbered as section 17.53, Florida Statutes,
7 and amended to read:

8 17.53 ~~18.021~~ Chief Financial Officer ~~Treasurer~~ to
9 operate personal check-cashing service.--

10 (1) The Chief Financial Officer ~~Treasurer~~ is
11 authorized to operate a personal check-cashing service or a
12 remote financial service unit at the capitol for the benefit
13 of state employees or other responsible persons who properly
14 identify themselves.

15 (2) If a personal check is dishonored or a state
16 warrant is forged and the Chief Financial Officer ~~Treasurer~~
17 has made diligent but unsuccessful effort to collect and has
18 forwarded the returned check for prosecution by the
19 appropriate state attorney, then he or she may include such
20 amount in his or her budget request to be considered during
21 the next legislative session.

22 Section 50. Section 18.05, Florida Statutes, is
23 transferred, renumbered as section 17.54, Florida Statutes,
24 and amended to read:

25 17.54 ~~18.05~~ Annual report to Governor.--The Chief
26 Financial Officer ~~Treasurer~~ shall make a report in detail to
27 the Governor, with a copy to the President of the Senate and
28 the Speaker of the House of Representatives as soon after the
29 1st day of July of each year as it is practicable to prepare
30 same of the transactions of the Division of Treasury ~~his or~~
31 ~~her office~~ for the preceding fiscal year, embracing a

1 statement of the receipts and payments on account of each of
2 the several funds of which he or she has the care and custody.

3 Section 51. Section 18.06, Florida Statutes, is
4 transferred, renumbered as section 17.55, Florida Statutes,
5 and amended to read:

6 17.55 ~~18.06~~ Examination by and monthly statements to
7 the Governor.--The office of the Chief Financial Officer
8 ~~Treasurer of this state~~, and the books, files, documents,
9 records, and papers thereof, shall always be subject to the
10 examination of the Governor of the state, or any person he or
11 she may authorize to examine same. The Chief Financial Officer
12 ~~Treasurer~~ shall exhibit to the Governor monthly a trial
13 balance sheet from the Division of Treasury ~~his or her books~~
14 and a statement of all the credits, moneys, or effects on hand
15 on the day for which such ~~said~~ trial balance sheet is made,
16 and such ~~said~~ statement accompanying such ~~said~~ trial balance
17 sheet shall particularly describe the exact character of
18 funds, credits, and securities, and shall state in detail the
19 amount which he or she may have representing cash, including
20 any not yet entered upon the books of his or her office, and
21 such statement shall be certified and signed by the Chief
22 Financial Officer ~~Treasurer~~ officially.

23 Section 52. Section 18.07, Florida Statutes, is
24 transferred, renumbered as section 17.555, Florida Statutes,
25 and amended to read:

26 17.555 ~~18.07~~ Division of Treasury ~~Treasurer~~ to keep
27 record of warrants and of state funds and securities.--The
28 Division of Treasury ~~Treasurer~~ shall keep a record of the
29 warrants or other orders of the Chief Financial Officer
30 ~~Comptroller~~ which the Division of Treasury ~~Treasurer~~ pays and
31 shall account for all state funds and securities.

1 Section 53. Section 18.091, Florida Statutes, is
2 transferred, renumbered as section 17.556, Florida Statutes,
3 and amended to read:

4 17.556 ~~18.091~~ Legislative sessions; additional
5 employees.--

6 (1) Hereafter during any period of time the
7 Legislature of Florida may be in actual session, the Chief
8 Financial Officer ~~Treasurer~~ is empowered to employ additional
9 persons to assist in performing the services required of the
10 Chief Financial Officer ~~Treasurer~~ in connection with s.
11 17.53(1)~~s. 18.021(1)~~. The salaries to be paid such employees
12 of the Chief Financial Officer ~~Treasurer~~ shall not be in
13 excess of the highest salary paid by the House of
14 Representatives or the state Senate for secretarial services;
15 and the salaries for said employees shall begin with the
16 convening of the Legislature in session and shall continue for
17 not more than 7 days after the close of the legislative
18 session; provided, that recesses of the Legislature not in
19 excess of 3 days shall be considered as time during which the
20 Legislature is actually in session.

21 (2) In addition to the regular annual appropriations
22 for the Chief Financial Officer ~~Treasurer~~, there is hereby
23 appropriated for use of the Chief Financial Officer ~~Treasurer~~
24 from the General Revenue Fund, from time to time as necessary,
25 sufficient sums to pay the salaries of the above-described
26 employees ~~of the Treasurer~~.

27 Section 54. Section 18.08, Florida Statutes, is
28 transferred, renumbered as section 17.56, Florida Statutes,
29 and amended to read:

30 17.56 ~~18.08~~ Division of Treasury ~~Treasurer~~ to turn
31 over to the Division of Accounting and Auditing ~~Comptroller~~

1 all warrants paid.--The Division of Treasury ~~Treasurer~~ shall
2 turn over to the Division of Accounting and Auditing
3 ~~Comptroller~~, through the data service center, all warrants
4 drawn by the Chief Financial Officer or the Comptroller and
5 paid by the Division of Treasury ~~Treasurer~~. ~~The Said~~ warrants
6 shall be turned over as soon as the Division of Treasury
7 ~~Treasurer~~ shall have recorded such warrants and charged the
8 same against the accounts upon which such warrants are drawn.

9 Section 55. Section 18.10, Florida Statutes, is
10 transferred, renumbered as section 17.57, Florida Statutes,
11 and amended to read:

12 17.57 ~~18.10~~ Deposits and investments of state money.--

13 (1) The Chief Financial Officer ~~Treasurer~~, or other
14 parties with the permission of the Chief Financial Officer
15 ~~Treasurer~~, shall deposit the money of the state or any money
16 in the State Treasury in such qualified public depositories of
17 the state as will offer satisfactory collateral security for
18 such deposits, pursuant to chapter 280. It is the duty of the
19 Chief Financial Officer ~~Treasurer~~, consistent with the cash
20 requirements of the state, to keep such money fully invested
21 or deposited as provided herein in order that the state may
22 realize maximum earnings and benefits.

23 (2) The Chief Financial Officer ~~Treasurer~~ shall make
24 funds available to meet the disbursement needs of the state.
25 Funds which are not needed for this purpose shall be placed in
26 qualified public depositories that will pay rates established
27 by the Chief Financial Officer ~~Treasurer~~ at levels not less
28 than the prevailing rate for United States Treasury securities
29 with a corresponding maturity. In the event money is available
30 for interest-bearing time deposits or savings accounts as
31 provided herein and qualified public depositories are

1 unwilling to accept such money and pay thereon the rates
2 established above, then such money which qualified public
3 depositories are unwilling to accept shall be invested in:
4 (a) Direct United States Treasury obligations.
5 (b) Obligations of the Federal Farm Credit Banks.
6 (c) Obligations of the Federal Home Loan Bank and its
7 district banks.
8 (d) Obligations of the Federal Home Loan Mortgage
9 Corporation, including participation certificates.
10 (e) Obligations guaranteed by the Government National
11 Mortgage Association.
12 (f) Obligations of the Federal National Mortgage
13 Association.
14 (g) Commercial paper of prime quality of the highest
15 letter and numerical rating as provided for by at least one
16 nationally recognized rating service.
17 (h) Time drafts or bills of exchange drawn on and
18 accepted by a commercial bank, otherwise known as "bankers
19 acceptances," which are accepted by a member bank of the
20 Federal Reserve System having total deposits of not less than
21 \$400 million or which are accepted by a commercial bank which
22 is not a member of the Federal Reserve System with deposits of
23 not less than \$400 million and which is licensed by a state
24 government or the Federal Government, and whose senior debt
25 issues are rated in one of the two highest rating categories
26 by a nationally recognized rating service and which are held
27 in custody by a domestic bank which is a member of the Federal
28 Reserve System.
29 (i) Corporate obligations or corporate master notes of
30 any corporation within the United States, if the long-term
31 obligations of such corporation are rated by at least two

1 nationally recognized rating services in any one of the four
2 highest classifications. However, if such obligations are
3 rated by only one nationally recognized rating service, then
4 the obligations shall be rated in any one of the two highest
5 classifications.

6 (j) Obligations of the Student Loan Marketing
7 Association.

8 (k) Obligations of the Resolution Funding Corporation.

9 (l) Asset-backed or mortgage-backed securities of the
10 highest credit quality.

11 (m) Any obligations not previously listed which are
12 guaranteed as to principal and interest by the full faith and
13 credit of the United States Government or are obligations of
14 United States agencies or instrumentalities which are rated in
15 the highest category by a nationally recognized rating
16 service.

17 (n) Commingled no-load investment funds or no-load
18 mutual funds in which all securities held by the funds are
19 authorized in this subsection.

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

22 (p) Obligations of state and local governments rated
23 in any of the four highest classifications by at least two
24 nationally recognized rating services. However, if such
25 obligations are rated by only one nationally recognized rating
26 service, then the obligations shall be rated in any one of the
27 two highest classifications.

28 (q) Derivatives of investment instruments authorized
29 in paragraphs (a)-(m).

30 (r) Covered put and call options on investment
31 instruments authorized in this subsection for the purpose of

1 hedging transactions by investment managers to mitigate risk
2 or to facilitate portfolio management.

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

8 (t) Foreign bonds denominated in United States dollars
9 and registered with the Securities and Exchange Commission for
10 sale in the United States, if the long-term obligations of
11 such issuers are rated by at least two nationally recognized
12 rating services in any one of the four highest
13 classifications. However, if such obligations are rated by
14 only one nationally recognized rating service, the obligations
15 shall be rated in any one of the two highest classifications.

16 (u) Convertible debt obligations of any corporation
17 domiciled within the United States, if the convertible debt
18 issue is rated by at least two nationally recognized rating
19 services in any one of the four highest classifications.
20 However, if such obligations are rated by only one nationally
21 recognized rating service, then the obligations shall be rated
22 in any one of the two highest classifications.

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

27
28 These investments may be in varying maturities and may be in
29 book-entry form. Investments made pursuant to this subsection
30 may be under repurchase agreement. The Chief Financial Officer
31 may ~~Treasurer is authorized to~~ hire registered investment

1 advisers and other consultants to assist in investment
2 management and to pay fees directly from investment earnings.
3 Investment securities, proprietary investment services related
4 to contracts, performance evaluation services,
5 investment-related equipment or software used directly to
6 assist investment trading or investment accounting operations
7 including bond calculators, telerates, Bloombergs, special
8 program calculators, intercom systems, and software used in
9 accounting, communications, and trading, and advisory and
10 consulting contracts made under this section are exempt from
11 the provisions of chapter 287.

12 (3) In the event the financial institutions in the
13 state do not make sufficient loan funds available for a
14 residential conservation program pursuant to any plan approved
15 by the Florida Public Service Commission under the Florida
16 Energy Efficiency and Conservation Act, the board may
17 authorize the investment of state funds, except retirement
18 trust funds, in such a loan program at rates not less than
19 prevailing United States Treasury bill rates. However, prior
20 to investment of such funds, the Florida Public Service
21 Commission shall develop a plan which must be approved by the
22 Legislature before implementation.

23 (4) All earnings on any investments made pursuant to
24 this section are hereby appropriated to the General Revenue
25 Fund, except that earnings attributable to moneys made
26 available pursuant to s. 17.61(3)~~s. 18.125(3)(a) and (b)~~
27 shall be credited pro rata to the funds from which such moneys
28 were made available.

29 (5) The fact that a municipal officer or a state
30 officer, including an officer of any municipal or state
31 agency, board, bureau, commission, institution, or department,

1 is a stockholder or an officer or director of a bank or
2 savings and loan association will not bar such bank or savings
3 and loan association from being a depository of funds coming
4 under the jurisdiction of any such municipal officer or state
5 officer if it shall appear in the records of the municipal or
6 state office that the governing body of such municipality or
7 state agency has investigated and determined that such
8 municipal or state officer is not favoring such banks or
9 savings and loan associations over other qualified banks or
10 savings and loan associations.

11 (6) The Chief Financial Officer ~~Treasurer~~ is
12 designated the cash management officer for the state and is
13 charged with the coordination and supervision of procedures
14 providing for the efficient handling of financial assets under
15 the control of the State Treasury and each of the various
16 state agencies, and of the judicial branch, as defined in s.
17 216.011. This responsibility shall include the supervision
18 and approval of all banking relationships. Pursuant to this
19 responsibility, the Chief Financial Officer may ~~Treasurer is~~
20 ~~authorized to~~ obtain information from financial institutions
21 regarding depository accounts maintained by any agency or
22 institution of the State of Florida.

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

26 17.57 Deposits and investments of state money.--

27 (4) All earnings on any investments made pursuant to
28 this section shall be credited to the General Revenue Fund,
29 except that earnings attributable to moneys made available
30 pursuant to s. 17.61(3)~~s. 18.125(3)~~ shall be credited pro
31 rata to the funds from which such moneys were made available.

1 Section 57. Section 18.101, Florida Statutes, is
2 transferred, renumbered as section 17.58, Florida Statutes,
3 and amended to read:

4 17.58 ~~18.101~~ Deposits of public money outside the
5 State Treasury; revolving funds.--

6 (1) All moneys collected by state agencies, boards,
7 bureaus, commissions, institutions, and departments shall,
8 except as otherwise provided by law, be deposited in the State
9 Treasury. However, when the volume and complexity of
10 collections so justify, the Chief Financial Officer ~~Treasurer~~
11 may give written approval for such moneys to be deposited in
12 clearing accounts outside the State Treasury in qualified
13 public depositories pursuant to chapter 280. Such deposits
14 shall only be made in depositories designated by the Chief
15 Financial Officer ~~Treasurer~~. No money may be maintained in
16 such clearing accounts for a period longer than approved by
17 the Chief Financial Officer ~~Treasurer~~ or 40 days, whichever is
18 shorter, prior to its being transmitted to the Chief Financial
19 Officer ~~Treasurer~~ or to an account designated by him or her,
20 distributed to a statutorily authorized account outside the
21 State Treasury, refunded, or transmitted to the Department of
22 Revenue. All depositories so designated shall pledge
23 sufficient collateral to be security for such funds as
24 provided in chapter 280.

25 (2) Revolving funds authorized by the Chief Financial
26 Officer ~~Comptroller~~ for all state agencies, boards, bureaus,
27 commissions, institutions, and departments may be deposited by
28 such agencies, boards, bureaus, commissions, institutions, and
29 departments in qualified public depositories designated by the
30 Chief Financial Officer ~~Treasurer~~ for such revolving fund
31

1 deposits; and the depositories in which such deposits are made
2 shall pledge collateral security as provided in chapter 280.

3 (3) Notwithstanding the foregoing provisions, clearing
4 and revolving accounts may be established outside the state
5 when necessary to facilitate the authorized operations of any
6 agency, board, bureau, commission, institution, or department.
7 Any of such accounts established in the United States shall be
8 subject to the collateral security requirements of chapter
9 280. Accounts established outside the United States may be
10 exempted from the requirements of chapter 280 as provided in
11 chapter 280; but before any unsecured account is established,
12 the agency requesting or maintaining the account shall
13 recommend a financial institution to the Chief Financial
14 Officer ~~Treasurer~~ for designation to hold the account and
15 shall submit evidence of the financial condition, size,
16 reputation, and relative prominence of the institution from
17 which the Chief Financial Officer ~~Treasurer~~ can reasonably
18 conclude that the institution is financially sound before
19 designating it to hold the account.

20 (4) Each department shall furnish a statement to the
21 Chief Financial Officer ~~Treasurer~~, on or before the 20th of
22 the month following the end of each calendar quarter, listing
23 each clearing account and revolving fund within that
24 department's jurisdiction. Such statement shall report, as of
25 the last day of the calendar quarter, the cash balance in each
26 revolving fund and that portion of the cash balance in each
27 clearing account that will eventually be deposited to the
28 State Treasury as provided by law. The Chief Financial Officer
29 ~~Treasurer~~ shall show the sum total of state funds in clearing
30 accounts and revolving funds, as most recently reported to the
31 Chief Financial Officer ~~Treasurer~~ by various departments, in

1 his or her monthly statement to the Governor, pursuant to s.
2 17.55 ~~s. 18.06~~.

3 Section 58. Section 18.103, Florida Statutes, is
4 transferred, renumbered as section 17.59, Florida Statutes,
5 and amended to read:

6 17.59 ~~18.103~~ Safekeeping services of ~~Treasurer~~.--

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

12 (2) The Chief Financial Officer ~~Treasurer~~ may, in his
13 or her discretion, establish a fee for processing, servicing,
14 and safekeeping deposits and other documents or articles of
15 value held in the Chief Financial Officer's ~~Treasurer's~~ vaults
16 as requested by the various entities or as provided for by
17 law. Such fee shall be equivalent to the fee charged by
18 financial institutions for processing, servicing, and
19 safekeeping the same types of deposits and other documents or
20 articles of value.

21 (3) The Chief Financial Officer ~~Treasurer~~ shall
22 collect in advance, and persons so served shall pay to the
23 Chief Financial Officer ~~Treasurer~~ in advance, the
24 miscellaneous charges as follows:

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

27 (b) For each certificate of the Chief Financial
28 Officer ~~Treasurer~~, certified or under the Chief Financial
29 Officer's ~~Treasurer's~~ seal, authenticating any document or
30 other instrument.....\$5.00.

31

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

4 Section 59. Section 18.104, Florida Statutes, is
5 transferred, renumbered as section 17.60, Florida Statutes,
6 and amended to read:

7 17.60 ~~18.104~~ Treasury Cash Deposit Trust Fund.--

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

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

13 Section 60. Section 18.125, Florida Statutes, is
14 transferred, renumbered as section 17.61, Florida Statutes,
15 and amended to read:

16 17.61 ~~18.125~~ Chief Financial Officer ~~Treasurer~~; powers
17 and duties in the investment of certain funds.--

18 (1) The Chief Financial Officer ~~Treasurer~~, ~~acting with~~
19 ~~the approval of a majority of the State Board of~~
20 ~~Administration~~, shall invest all general revenue funds and all
21 the trust funds and all agency funds of each state agency, and
22 of the judicial branch, as defined in s. 216.011, and may,
23 upon request, invest funds of any statutorily created board,
24 association, or entity, except for the funds required to be
25 invested pursuant to ss. 215.44-215.53, by the procedure and
26 in the authorized securities prescribed in s. 17.57 ~~s. 18.10~~;
27 for this purpose, the Chief Financial Officer may ~~Treasurer~~
28 ~~shall be authorized to~~ open and maintain one or more demand
29 and safekeeping accounts in any bank or savings association
30 for the investment and reinvestment and the purchase, sale,
31 and exchange of funds and securities in the accounts. Funds

1 in such accounts used solely for investments and reinvestments
2 shall be considered investment funds and not funds on deposit,
3 and such funds shall be exempt from the provisions of chapter
4 280. In addition, the securities or investments purchased or
5 held under the provisions of this section and s. 17.57 ~~s.~~
6 ~~18.10~~ may be loaned to securities dealers and banks and may be
7 registered by the Chief Financial Officer ~~Treasurer~~ in the
8 name of a third-party nominee in order to facilitate such
9 loans, provided the loan is collateralized by cash or United
10 States government securities having a market value of at least
11 100 percent of the market value of the securities loaned. The
12 Chief Financial Officer ~~Treasurer~~ shall keep a separate
13 account, designated by name and number, of each fund.
14 Individual transactions and totals of all investments, or the
15 share belonging to each fund, shall be recorded in the
16 accounts.

17 (2) By and with the consent and approval of any
18 constitutional board, the judicial branch, or agency now
19 having the constitutional power to make investments and in
20 accordance with this section, the Chief Financial Officer may
21 ~~Treasurer shall have the power to~~ make purchases, sales,
22 exchanges, investments, and reinvestments for and on behalf of
23 any such board.

24 (3)(a) Except as otherwise provided in this
25 subsection, it is the duty of each state agency, and of the
26 judicial branch, now or hereafter charged with the
27 administration of the funds referred to in subsection (1) to
28 make such moneys available for investment as fully as is
29 consistent with the cash requirements of the particular fund
30 and to authorize investment of such moneys by the Chief
31 Financial Officer ~~Treasurer~~.

1 (b) Monthly, and more often as circumstances require,
2 such agency or judicial branch shall notify the Chief
3 Financial Officer ~~Treasurer~~ of the amount available for
4 investment; and the moneys shall be invested by the Chief
5 Financial Officer ~~Treasurer~~. Such notification shall include
6 the name and number of the fund for which the investments are
7 to be made and the life of the investment if the principal sum
8 is to be required for meeting obligations. This subsection,
9 however, shall not be construed to make available for
10 investment any funds other than those referred to in
11 subsection (1).

12 (c) Except as provided in this paragraph and except
13 for moneys described in paragraph (d), the following agencies
14 shall not invest trust fund moneys as provided in this
15 section, but shall retain such moneys in their respective
16 trust funds for investment, with interest appropriated to the
17 General Revenue Fund, pursuant to s. 17.57 ~~s. 18.10~~:

18 1. The Agency for Health Care Administration, except
19 for the Tobacco Settlement Trust Fund.

20 2. The Department of Children and Family Services,
21 except for:

22 a. The Alcohol, Drug Abuse, and Mental Health Trust
23 Fund.

24 b. The Community Resources Development Trust Fund.

25 c. The Refugee Assistance Trust Fund.

26 d. The Social Services Block Grant Trust Fund.

27 e. The Tobacco Settlement Trust Fund.

28 f. The Working Capital Trust Fund.

29 3. The Department of Community Affairs, only for the
30 Operating Trust Fund.

31 4. The Department of Corrections.

- 1 5. The Department of Elderly Affairs, except for:
2 a. The Federal Grants Trust Fund.
3 b. The Tobacco Settlement Trust Fund.
4 6. The Department of Health, except for:
5 a. The Federal Grants Trust Fund.
6 b. The Grants and Donations Trust Fund.
7 c. The Maternal and Child Health Block Grant Trust
8 Fund.
9 d. The Tobacco Settlement Trust Fund.
10 7. The Department of Highway Safety and Motor
11 Vehicles, only for:
12 a. The DUI Programs Coordination Trust Fund.
13 b. The Security Deposits Trust Fund.
14 8. The Department of Juvenile Justice.
15 9. The Department of Labor and Employment Security,
16 only for the Administrative Trust Fund.
17 10. The Department of Law Enforcement.
18 11. The Department of Legal Affairs.
19 12. The Department of State, only for:
20 a. The Grants and Donations Trust Fund.
21 b. The Records Management Trust Fund.
22 13. The Executive Office of the Governor, only for:
23 a. The Economic Development Transportation Trust Fund.
24 b. The Economic Development Trust Fund.
25 14. The Florida Public Service Commission, only for
26 the Florida Public Service Regulatory Trust Fund.
27 15. The Justice Administrative Commission.
28 16. The state courts system.
29 (d) Moneys in any trust funds of the agencies in
30 paragraph (c) may be invested pursuant to the provisions of
31 this section if:

1 1. Investment of such moneys and the retention of
2 interest is required by federal programs or mandates;

3 2. Investment of such moneys and the retention of
4 interest is required by bond covenants, indentures, or
5 resolutions;

6 3. Such moneys are held by the state in a trustee
7 capacity as an agent or fiduciary for individuals, private
8 organizations, or other governmental units; or

9 4. The Executive Office of the Governor determines,
10 after consultation with the Legislature pursuant to the
11 procedures of s. 216.177, that federal matching funds or
12 contributions or private grants to any trust fund would be
13 lost to the state.

14 (4)(a) There is hereby created in the State Treasury
15 the Treasury ~~Treasurer's~~ Administrative and Investment Trust
16 Fund.

17 (b) The Chief Financial Officer ~~Treasurer~~ shall make
18 an annual assessment of 0.12 percent against the average daily
19 balance of those moneys made available pursuant to this
20 section and 0.2 percent against the average daily balance of
21 those funds requiring investment in a separate account. The
22 proceeds of this assessment shall be deposited in the Treasury
23 ~~Treasurer's~~ Administrative and Investment Trust Fund.

24 (c) The moneys so received and deposited in the fund
25 shall be used by the Chief Financial Officer ~~Treasurer~~ to
26 defray the expense of his or her office in the discharge of
27 the administrative and investment powers and duties prescribed
28 by this section and this chapter, including the maintaining of
29 an office and necessary supplies therefor, essential equipment
30 and other materials, salaries and expenses of required
31 personnel, and all other legitimate expenses relating to the

1 administrative and investment powers and duties imposed upon
2 and charged to the Chief Financial Officer ~~Treasurer~~ under
3 this section and this chapter. The unencumbered balance in the
4 trust fund at the close of each quarter shall not exceed
5 \$750,000. Any funds in excess of this amount shall be
6 transferred unallocated to the General Revenue Fund. However,
7 fees received from deferred compensation participants pursuant
8 to s. 112.215 shall not be transferred to the General Revenue
9 Fund and shall be used to operate the deferred compensation
10 program.

11 (5) The transfer of the powers, duties, and
12 responsibilities of existing state agencies and of the
13 judicial branch made by this section to the Chief Financial
14 Officer ~~Treasurer~~ shall include only the particular powers,
15 duties, and responsibilities hereby transferred, and all other
16 existing powers shall in no way be affected by this section.

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

20 17.61 Chief Financial Officer; powers and duties in
21 the investment of certain funds.--

22 (3)(a) It is the duty of each state agency, and of the
23 judicial branch, now or hereafter charged with the
24 administration of the funds referred to in subsection (1) to
25 make such moneys available for investment as fully as is
26 consistent with the cash requirements of the particular fund
27 and to authorize investment of such moneys by the Chief
28 Financial Officer ~~Treasurer~~.

29 (b) Monthly, and more often as circumstances require,
30 such agency or judicial branch shall notify the Chief
31 Financial Officer ~~Treasurer~~ of the amount available for

1 investment; and the moneys shall be invested by the Chief
2 Financial Officer ~~Treasurer~~. Such notification shall include
3 the name and number of the fund for which the investments are
4 to be made and the life of the investment if the principal sum
5 is to be required for meeting obligations. This subsection,
6 however, shall not be construed to make available for
7 investment any funds other than those referred to in
8 subsection (1).

9 Section 62. Section 18.15, Florida Statutes, is
10 transferred, renumbered as section 17.62, Florida Statutes,
11 and amended to read:

12 17.62 ~~18.15~~ Interest on state moneys deposited; when
13 paid.--Interest on state moneys deposited in qualified public
14 depositories under s. 17.57 ~~s. 18.10~~ shall be payable to the
15 Chief Financial Officer ~~Treasurer~~ quarterly ~~or semiannually~~.

16 Section 63. Section 18.17, Florida Statutes, is
17 transferred, renumbered as section 17.63, Florida Statutes,
18 and amended to read:

19 17.63 ~~18.17~~ Chief Financial Officer ~~Treasurer~~ not to
20 issue evidences of indebtedness.--It is not lawful for the
21 Chief Financial Officer ~~Treasurer~~ of this state to issue any
22 treasury certificates, or any other evidences of indebtedness,
23 for any purpose whatever, and the Chief Financial Officer
24 ~~Treasurer~~ is prohibited from issuing the same.

25 Section 64. Section 18.20, Florida Statutes, is
26 transferred, renumbered as section 17.64, Florida Statutes,
27 and amended to read:

28 17.64 ~~18.20~~ Division of Treasury ~~Treasurer~~ to make
29 reproductions of certain warrants, records, and documents.--

30 ~~(1) All vouchers or checks heretofore or hereafter~~
31 ~~drawn by appropriate court officials of the several counties~~

1 ~~of the state against money deposited with the Treasurer under~~
2 ~~the provisions of s. 43.17, and paid by the Treasurer, may be~~
3 ~~photographed, microphotographed, or reproduced on film by the~~
4 ~~Treasurer. Such photographic film shall be durable material~~
5 ~~and the device used to so reproduce such warrants, vouchers,~~
6 ~~or checks shall be one which accurately reproduces the~~
7 ~~originals thereof in all detail; and such photographs,~~
8 ~~microphotographs, or reproductions on film shall be placed in~~
9 ~~conveniently accessible and identified files and shall be~~
10 ~~preserved by the Treasurer as a part of the permanent records~~
11 ~~of office. When any such warrants, vouchers, or checks have~~
12 ~~been so photographed, microphotographed, or reproduced on~~
13 ~~film, and the photographs, microphotographs, or reproductions~~
14 ~~on film thereof have been placed in files as a part of the~~
15 ~~permanent records of the office of the Treasurer as aforesaid,~~
16 ~~the Treasurer is authorized to return such warrants, vouchers,~~
17 ~~or checks to the offices of the respective county officials~~
18 ~~who drew the same and such warrants, vouchers, or checks shall~~
19 ~~be retained and preserved in such offices to which returned as~~
20 ~~a part of the permanent records of such offices.~~

21 (1)~~(2)~~ Such Photographs, microphotographs, or
22 reproductions on film of ~~said~~ warrants, vouchers, or checks
23 shall be deemed to be original records for all purposes; and
24 any copy or reproduction thereof made from such original film,
25 duly certified by the Division of Treasury ~~Treasurer~~ as a true
26 and correct copy or reproduction made from such film, shall be
27 deemed to be a transcript, exemplification or certified copy
28 of the original warrant, voucher, or check such copy
29 represents, and shall in all cases and in all courts and
30 places be admitted and received in evidence with the like
31 force and effect as the original thereof might be.

1 (2)(3) The Division of Treasury may ~~Treasurer is also~~
2 ~~hereby authorized to~~ photograph, microphotograph, or reproduce
3 on film, all records and documents of the division ~~said~~
4 ~~office~~, as the Chief Financial Officer ~~Treasurer may~~, in his
5 or her discretion, selects ~~select~~; and the division may ~~said~~
6 ~~Treasurer is hereby authorized to~~ destroy any such ~~of the said~~
7 documents or records after they have been photographed and
8 filed and after audit of the division ~~Treasurer's office~~ has
9 been completed for the period embracing the dates of such ~~said~~
10 documents and records.

11 (3)(4) Photographs or microphotographs in the form of
12 film or prints of any records made in compliance with the
13 provisions of this section shall have the same force and
14 effect as the originals thereof would have, and shall be
15 treated as originals for the purpose of their admissibility in
16 evidence. Duly certified or authenticated reproductions of
17 such photographs or microphotographs shall be admitted in
18 evidence equally with the original photographs or
19 microphotographs.

20 Section 65. Section 18.23, Florida Statutes, is
21 transferred, renumbered as section 17.65, Florida Statutes,
22 and amended to read:

23 17.65 ~~18.23~~ Chief Financial Officer ~~Treasurer~~ to
24 prescribe forms.--The Chief Financial Officer ~~Treasurer~~ may
25 prescribe the forms, and the manner of keeping the same, for
26 all receipts, credit advices, abstracts, reports, and other
27 papers furnished the Chief Financial Officer ~~Treasurer~~ by the
28 officers of this state or other persons or entities as a
29 result of their having, or depositing, state moneys.

30
31

1 Section 66. Section 18.24, Florida Statutes, is
2 transferred, renumbered as section 17.66, Florida Statutes,
3 and amended to read:

4 17.66 ~~18.24~~ Securities in book-entry form.--Any
5 security that ~~which~~:

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

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

11 (2)(a) Is held in the name of the Chief Financial
12 Officer, in the name of the State Treasurer, or in the name of
13 the State Insurance Commissioner; or

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

16
17 under any state law for any purpose whatsoever, may be held in
18 book-entry form on the books of the Federal Reserve Book-Entry
19 System or on deposit in a depository trust clearing system.

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

22 20.04 Structure of executive branch.--The executive
23 branch of state government is structured as follows:

24 (3) For their internal structure, all departments,
25 except for the Department of Financial Services ~~Banking and~~
26 ~~Finance~~, the Department of Children and Family Services, the
27 Department of Corrections, the Department of Management
28 Services, the Department of Revenue, and the Department of
29 Transportation, must adhere to the following standard terms:

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

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

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

5 (d) If further subdivision is necessary, sections may
6 be divided into "subsections," which are headed by
7 "supervisors."

8 Section 68. Subsection (1) and paragraph (h) of
9 subsection (5) of section 20.055, Florida Statutes, are
10 amended to read:

11 20.055 Agency inspectors general.--

12 (1) For the purposes of this section:

13 (a) "State agency" means each department created
14 pursuant to this chapter, and also includes the Executive
15 Office of the Governor, the Department of Military Affairs,
16 the Board of Regents, the Fish and Wildlife Conservation
17 Commission, the Office of Insurance Regulation of the
18 Financial Services Commission, the Office of Financial
19 Regulation of the Financial Services Commission,the Public
20 Service Commission, and the state courts system.

21 (b) "Agency head" means the Governor, a Cabinet
22 officer, a secretary as defined in s. 20.03(5), or an
23 executive director as defined in s. 20.03(6). It also includes
24 the chair of the Public Service Commission, the Director of
25 the Office of Insurance Regulation of the Financial Services
26 Commission, the Director of the Office of Financial Regulation
27 of the Financial Services Commission,and the Chief Justice of
28 the State Supreme Court.

29 (5) In carrying out the auditing duties and
30 responsibilities of this act, each inspector general shall
31 review and evaluate internal controls necessary to ensure the

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

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

29 Section 69. Section 20.121, Florida Statutes, is
30 amended to read:

31

1 20.121 Department of Financial Services.--There is
2 created a Department of Financial Services.

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

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

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

9 1. The Bureau of Unclaimed Property.

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

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

21 (b) The Division of State Fire Marshal.

22 (c) The Division of Risk Management.

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

27 (e) The Division of Insurance Fraud.

28 (f) The Division of Rehabilitation and Liquidation.

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

31

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

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

7 a. Receive inquiries and complaints from consumers;

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

10 c. Provide direct assistance and advocacy for
11 consumers who request such assistance or advocacy;

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

18 2. Any person licensed or issued a certificate of
19 authority by the department or by the Office of Insurance
20 Regulation shall respond, in writing, to the Division of
21 Consumer Services within 20 days after receipt of a written
22 request for information from the division concerning a
23 consumer complaint. The response must address the issues and
24 allegations raised in this complaint. The division may, in its
25 discretion, impose an administrative penalty for failure to
26 comply with this sub-paragraph in an amount up to \$2,500 per
27 violation upon any entity licensed by the department or the
28 Office of Insurance Regulation and \$250 for the first
29 violation, \$500 for the second violation and up to \$1,000 per
30 violation thereafter upon any individual licensed by the
31 department or the Office of Insurance Regulation.

1 3. The department may adopt rules to implement the
2 provisions of this paragraph.

3 4. The powers, duties, and responsibilities expressed
4 or granted in this paragraph shall not limit the powers,
5 duties, and responsibilities of the Department of Financial
6 Services, the Financial Services Commission, the Office of
7 Insurance Regulation, or the Office of Financial Regulation
8 set forth elsewhere in the Florida Statutes.

9 (i) The Division of Workers' Compensation.

10 (j) The Division of Administration.

11 (k) The Division of Legal Services.

12 (l) The Division of Information Systems.

13 (m) The Office of Insurance Consumer Advocate.

14 (3) FINANCIAL SERVICES COMMISSION.--Effective January
15 7, 2003, there is created within the Department of Financial
16 Services the Financial Services Commission, composed of the
17 Governor, the Attorney General, the Chief Financial Officer,
18 and the Commissioner of Agriculture, which shall for purposes
19 of this section be referred to as the commission. Commission
20 members shall serve as agency head of the Financial Services
21 Commission. The commission shall be a separate budget entity
22 and shall be exempt from the provisions of s. 20.052.

23 Commission action shall be by majority vote consisting of at
24 least three affirmative votes. The commission shall not be
25 subject to control, supervision, or direction by the
26 Department of Financial Services in any manner, including
27 purchasing, transactions involving real or personal property,
28 personnel, or budgetary matters.

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

1 1. The Office of Insurance Regulation, which shall be
2 responsible for all activities concerning insurers and other
3 risk bearing entities, including licensing, rates, policy
4 forms, market conduct, claims, adjusters, issuance of
5 certificates of authority, solvency, viatical settlements,
6 premium financing, and administrative supervision, as provided
7 under the insurance code or chapter 636. The head of the
8 Office of Insurance Regulation is the Director of the Office
9 of Insurance Regulation.

10 2. The Office of Financial ~~Institutions and Securities~~
11 Regulation, which shall be responsible for all activities of
12 the Financial Services Commission relating to the regulation
13 of banks, credit unions, other financial institutions, finance
14 companies, and the securities industry. The head of the
15 office is the Director of the Office of Financial ~~Institutions~~
16 ~~and Securities~~ Regulation. The Office of Financial
17 ~~Institutions and Securities~~ Regulation shall include a Bureau
18 of Financial Investigations, which shall function as a
19 criminal justice agency for purposes of ss. 943.045-943.08 and
20 shall have a separate budget. The bureau may conduct
21 investigations within or outside this state as the bureau
22 deems necessary to aid in the enforcement of this section. If,
23 during an investigation, the office has reason to believe that
24 any criminal law of this state has or may have been violated,
25 the office shall refer any records tending to show such
26 violation to state or federal law enforcement or prosecutorial
27 agencies and shall provide investigative assistance to those
28 agencies as required.

29 (b) Organization.--The commission shall establish by
30 rule any additional organizational structure of the offices.
31 It is the intent of the Legislature to provide the commission

1 with the flexibility to organize the offices in any manner
2 they determine appropriate to promote both efficiency and
3 accountability.

4 (c) Powers.--Commission members shall serve as the
5 agency head for purposes of rulemaking under ss.
6 120.536-120.565 by the commission and all subunits of the
7 commission. Each director is agency head for purposes of
8 final agency action under chapter 120 for all areas within the
9 regulatory authority delegated to the director's office.

10 (d) Appointment and qualifications of directors.--The
11 commission shall appoint or remove each director by a majority
12 vote consisting of at least three affirmative votes, with both
13 the Governor and the Chief Financial Officer on the prevailing
14 side. The minimum qualifications of the directors are as
15 follows:

16 1. Prior to appointment as director, the Director of
17 the Office of Insurance Regulation must have had, within the
18 previous 10 years, at least 5 years of responsible private
19 sector experience working full time in areas within the scope
20 of the subject matter jurisdiction of the Office of Insurance
21 Regulation or at least 5 years of experience as a senior
22 examiner or other senior employee of a state or federal agency
23 having regulatory responsibility over insurers or insurance
24 agencies.

25 2. Prior to appointment as director, the Director of
26 the Office of Financial ~~Institutions and Securities~~ Regulation
27 must have had, within the previous 10 years, at least 5 years
28 of responsible private sector experience working full time in
29 areas within the subject matter jurisdiction of the Office of
30 Financial ~~Institutions and Securities~~ Regulation or at least 5
31 years of experience as a senior examiner or other senior

1 employee of a state or federal agency having regulatory
2 responsibility over financial institutions, finance companies,
3 or securities companies.

4 (e) Administrative support.--The offices shall have a
5 sufficient number of attorneys, examiners, investigators,
6 other professional personnel to carry out their
7 responsibilities and administrative personnel as determined
8 annually in the appropriations process. The Department of
9 Financial Services shall provide administrative and
10 information systems support to the offices.

11 (f) The commission and the offices may destroy general
12 correspondence files and also any other records that they deem
13 no longer necessary to preserve in accordance with retention
14 schedules and destruction notices established under rules of
15 the Division of Library and Information Services, records and
16 information management program, of the Department of State.
17 Such schedules and notices relating to financial records of
18 the commission and offices shall be subject to the approval of
19 the Auditor General.

20 (g) The commission and offices may photograph,
21 microphotograph, or reproduce on film such documents and
22 records as they may select, in such manner that each page will
23 be exposed in exact conformity with the original. After
24 reproduction and filing, original documents and records may be
25 destroyed in accordance with the provisions of paragraph (f).

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

28 20.195 Department of Children and Family Services
29 Tobacco Settlement Trust Fund.--

30 (1) The Department of Children and Family Services
31 Tobacco Settlement Trust Fund is created within that

1 department. Funds to be credited to the trust fund shall
2 consist of funds disbursed, by nonoperating transfer, from the
3 Department of Financial Services ~~Banking and Finance~~ Tobacco
4 Settlement Clearing Trust Fund in amounts equal to the annual
5 appropriations made from this trust fund.

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

12 Section 71. Section 20.425, Florida Statutes, is
13 amended to read:

14 20.425 Agency for Health Care Administration Tobacco
15 Settlement Trust Fund.--

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

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

29 Section 72. Paragraph (g) of subsection (1) of section
30 20.435, Florida Statutes, is amended to read:

31 20.435 Department of Health; trust funds.--

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

3 (g) Department of Health Tobacco Settlement Trust
4 Fund.

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

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

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

18 24.105 Powers and duties of department.--The
19 department shall:

20 (4) Submit monthly and annual reports to the Governor,
21 the Chief Financial Officer ~~Treasurer~~, the President of the
22 Senate, and the Speaker of the House of Representatives
23 disclosing the total lottery revenues, prize disbursements,
24 and other expenses of the department during the preceding
25 month. The annual report shall additionally describe the
26 organizational structure of the department, including its
27 hierarchical structure, and shall identify the divisions and
28 bureaus created by the secretary and summarize the
29 departmental functions performed by each.

30 Section 74. Subsection (5) of section 24.111, Florida
31 Statutes, is amended to read:

1 24.111 Vendors; disclosure and contract
2 requirements.--

3 (5) Each vendor in a major procurement in excess of
4 \$25,000, and any other vendor if the department deems it
5 necessary to protect the state's financial interest, shall, at
6 the time of executing the contract with the department, post
7 an appropriate bond with the department in an amount
8 determined by the department to be adequate to protect the
9 state's interests, but not higher than the full amount
10 estimated to be paid annually to the vendor under the
11 contract. In lieu of the bond, a vendor may, to assure the
12 faithful performance of its obligations, file with the
13 department an irrevocable letter of credit acceptable to the
14 department in an amount determined by the department to be
15 adequate to protect the state's interests or deposit and
16 maintain with the Chief Financial Officer ~~Treasurer~~ securities
17 that are interest bearing or accruing and that, with the
18 exception of those specified in paragraphs (a) and (b), are
19 rated in one of the four highest classifications by an
20 established nationally recognized investment rating service.
21 Securities eligible under this subsection shall be limited to:

22 (a) Certificates of deposit issued by solvent banks or
23 savings associations organized and existing under the laws of
24 this state or under the laws of the United States and having
25 their principal place of business in this state.

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

29 (c) General obligation bonds and notes of any
30 political subdivision of the state.

31

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

3
4 Such securities shall be held in trust and shall have at all
5 times a market value at least equal to an amount determined by
6 the department to be adequate to protect the state's
7 interests, which amount shall not be set higher than the full
8 amount estimated to be paid annually to the vendor under
9 contract.

10 Section 75. Paragraph (b) of subsection (9) of section
11 24.112, Florida Statutes, is amended to read:

12 24.112 Retailers of lottery tickets.--

13 (9)

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

23 1. Certificates of deposit issued by solvent banks or
24 savings associations organized and existing under the laws of
25 this state or under the laws of the United States and having
26 their principal place of business in this state.

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

30 3. General obligation bonds and notes of any political
31 subdivision of the state.

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

3
4 Such securities shall be held in trust and shall have at all
5 times a market value at least equal to an amount required by
6 the department.

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

9 24.120 Financial matters; Administrative Trust Fund;
10 interagency cooperation.--

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

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

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

29 25.241 Clerk of Supreme Court; compensation;
30 assistants; filing fees, etc.--

31

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

7 Section 78. Section 26.39, Florida Statutes, is
8 amended to read:

9 26.39 Penalty for nonattendance of judge.--Whenever
10 such default shall occur, the clerk of the court (unless such
11 judge shall file his or her reasons for such default as
12 hereinbefore provided) shall certify the fact, under his or
13 her official signature and seal, to the Chief Financial
14 Officer ~~Comptroller~~ of the state, who shall deduct from the
15 warrants ~~on the Treasurer~~, thereafter to be issued in favor of
16 the judge making such default, the sum of \$100 as aforesaid
17 for every such default.

18 Section 79. Section 27.08, Florida Statutes, is
19 amended to read:

20 27.08 State claims; surrender of papers to
21 successor.--Upon the qualification of the successor of any
22 state attorney, the state attorney going out of office shall
23 deliver to his or her successor a statement of all cases for
24 the collection of money in favor of the state under his or her
25 control and the papers connected with the same, and take his
26 or her receipt for the same, which receipt, when filed with
27 the Department of Financial Services ~~Banking and Finance~~,
28 shall release such state attorney from any further liability
29 to the state upon the claims receipted for; and the state
30 attorney receiving the claims shall be liable in all respects
31 for the same, as provided against state attorneys in s. 17.20.

1 Section 80. Section 27.10, Florida Statutes, is
2 amended to read:

3 27.10 Obligation as to claims; how discharged.--The
4 charges mentioned in s. 17.20 shall be evidence of
5 indebtedness on the part of any state attorney against whom
6 any charge is made for the full amount of such claim to the
7 state until the same shall be collected and paid into the
8 treasury or sued to insolvency, which fact of insolvency shall
9 be certified by the circuit judge of his or her circuit,
10 unless the said state attorney makes ~~shall make~~ it fully
11 appear to the Department of Financial Services ~~Banking and~~
12 ~~Finance~~ that the failure to collect the same did not result
13 from his or her neglect.

14 Section 81. Section 27.11, Florida Statutes, is
15 amended to read:

16 27.11 Report upon claims committed to state
17 attorney.--The state attorney shall make a report to the Chief
18 Financial Officer ~~Comptroller~~ on the first Monday in January
19 and July in each and every year of the condition of all claims
20 placed in his or her hands or which the state attorney may
21 have been required to prosecute and collect, whether the same
22 is in suit or in judgment, or collected, and the probable
23 solvency or insolvency of claims not collected, and shall at
24 the same time pay over all moneys which he or she may have
25 collected belonging to the state; and the Chief Financial
26 Officer ~~Comptroller~~ shall not audit or allow any claim which
27 any state attorney may have against the state for services
28 until he or she makes the report herein required.

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

31 27.12 Power to compromise.--

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

8 Section 83. Section 27.13, Florida Statutes, is
9 amended to read:

10 27.13 Completion of compromise.--The state attorney
11 shall, on agreeing to any compromise or settlement, report the
12 same to the Department of Financial Services ~~Banking and~~
13 ~~Finance~~ for its approval; and, on its approving such
14 compromise or settlement, the ~~said~~ state attorney, on a
15 compliance with the terms of such compromise or settlement
16 shall give a receipt to the collector of revenue, sheriff or
17 other officer, or the sureties on their bonds, or to the legal
18 representatives, which receipt shall be a discharge from all
19 judgments, claims or demands of the state against such
20 collector of revenue or other officer, or the sureties on
21 their bonds.

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

24 27.34 Salaries and other related costs of state
25 attorneys' offices; limitations.--

26 (4) Notwithstanding s. 27.25, the Chief Financial
27 Officer ~~Insurance Commissioner~~ may contract with the state
28 attorney of any judicial circuit of the state for the
29 prosecution of criminal violations of the Workers'
30 Compensation Law and related crimes and may contribute funds
31 for such purposes. Such contracts may provide for the

1 training, salary, and expenses of one or more assistant state
2 attorneys used in the prosecution of such crimes.

3 Section 85. Section 27.3455, Florida Statutes, is
4 amended to read:

5 27.3455 Annual statement of certain revenues and
6 expenditures.--

7 (1) Each county shall submit annually to the Chief
8 Financial Officer ~~Comptroller~~ a statement of revenues and
9 expenditures as set forth in this section in the form and
10 manner prescribed by the Chief Financial Officer ~~Comptroller~~
11 in consultation with the Legislative Committee on
12 Intergovernmental Relations, provided that such statement
13 identify total county expenditures on:

14 (a) Medical examiner services.

15 (b) County victim witness programs.

16 (c) Each of the services outlined in ss. 27.34(2) and
17 27.54(3).

18 (d) Appellate filing fees in criminal cases in which
19 an indigent defendant appeals a judgment of a county or
20 circuit court to a district court of appeal or the Florida
21 Supreme Court.

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

26
27 Such statement also shall identify the revenues provided by s.
28 938.05(1) that were used to meet or reimburse the county for
29 such expenditures.

30 (2)(a) Within 6 months of the close of the local
31 government fiscal year, each county shall submit to the Chief

1 Financial Officer ~~Comptroller~~ a statement of compliance from
2 its independent certified public accountant, engaged pursuant
3 to s. 218.39, that the certified statement of expenditures was
4 in accordance with ss. 27.34(2), 27.54(3), and this section.
5 All discrepancies noted by the independent certified public
6 accountant shall be included in the statement furnished by the
7 county to the Chief Financial Officer ~~Comptroller~~.

8 (b) ~~If Should~~ the Chief Financial Officer determines
9 ~~Comptroller determine~~ that additional auditing procedures are
10 appropriate because:

11 1. The county failed to submit timely its annual
12 statement;

13 2. Discrepancies were noted by the independent
14 certified public accountant; or

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

23 (c) Where the Chief Financial Officer ~~Comptroller~~
24 elects to utilize the services of an independent contractor,
25 such certification by the Chief Financial Officer ~~Comptroller~~
26 may require the county to make direct payment to a contractor.
27 Any funds owed by a county in such matters shall be recovered
28 pursuant to s. 17.04 or s. 17.041.

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

31

1 (a) Reimbursement to the county for actual county
2 expenditures incurred in providing the state attorney and
3 public defender the services outlined in ss. 27.34(2) and
4 27.54(3), with the exception of office space, utilities, and
5 custodial services.

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

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

25 (d) At the close of the local government fiscal year,
26 funds remaining in the special trust fund after reimbursements
27 have been made pursuant to paragraphs (a), (b), and (c) shall
28 be used to reimburse the county for county costs incurred in
29 the provision of office space, utilities, and custodial
30 services to the state attorney and public defender, for county
31 expenditures on appellate filing fees in criminal cases in

1 which an indigent defendant appeals a judgment of a county or
2 circuit court to a district court of appeal or the Florida
3 Supreme Court, and for county expenditures on court-related
4 costs of the state attorney and public defender that were paid
5 by the county, provided that such court-related costs were
6 included in a judgment or order rendered by the trial court
7 against the county. Where a state attorney or a public
8 defender is provided space in a county-owned facility,
9 responsibility for calculating county costs associated with
10 the provision of such office space, utilities, and custodial
11 services is hereby vested in the Chief Financial Officer
12 ~~Comptroller~~ in consultation with the Legislative Committee on
13 Intergovernmental Relations.

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

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

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

25 27.703 Conflict of interest and substitute counsel.--

26 (2) Appointed counsel shall be paid from funds
27 appropriated to the Chief Financial Officer ~~Comptroller~~. The
28 hourly rate may not exceed \$100. However, ~~effective July 1,~~
29 ~~1999,~~ all appointments of private counsel under this section
30 shall be in accordance with ss. 27.710 and 27.711.

31

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

3 27.710 Registry of attorneys applying to represent
4 persons in postconviction capital collateral proceedings;
5 certification of minimum requirements; appointment by trial
6 court.--

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

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

24 27.711 Terms and conditions of appointment of
25 attorneys as counsel in postconviction capital collateral
26 proceedings.--

27 (3) An attorney appointed to represent a capital
28 defendant is entitled to payment of the fees set forth in this
29 section only upon full performance by the attorney of the
30 duties specified in this section and approval of payment by
31 the trial court, and the submission of a payment request by

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

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

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

24 (b) The attorney is entitled to \$100 per hour, up to a
25 maximum of \$20,000, after timely filing in the trial court the
26 capital defendant's complete original motion for
27 postconviction relief under the Florida Rules of Criminal
28 Procedure. The motion must raise all issues to be addressed by
29 the trial court. However, an attorney is entitled to fees
30 under this paragraph if the court schedules a hearing on a
31 matter that makes the filing of the original motion for

1 postconviction relief unnecessary or if the court otherwise
2 disposes of the case.

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

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

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

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

23 (g) At the conclusion of the capital defendant's
24 postconviction capital collateral proceedings in state court,
25 the attorney is entitled to \$100 per hour, up to a maximum of
26 \$2,500, after filing a petition for writ of certiorari in the
27 Supreme Court of the United States.

28 (h) If, at any time, a death warrant is issued, the
29 attorney is entitled to \$100 per hour, up to a maximum of
30 \$5,000. This payment shall be full compensation for attorney's
31

1 fees and costs for representing the capital defendant
2 throughout the proceedings before the state courts of Florida.

3
4 The hours billed by a contracting attorney under this
5 subsection may include time devoted to representation of the
6 defendant by another attorney who is qualified under s. 27.710
7 and who has been designated by the contracting attorney to
8 assist him or her.

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

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

25 (7) An attorney who is actively representing a capital
26 defendant is entitled to a maximum of \$500 per fiscal year for
27 tuition and expenses for continuing legal education that
28 pertains to the representation of capital defendants. Upon
29 approval by the trial court, the attorney is entitled to
30 payment by the Chief Financial Officer ~~Comptroller~~ for
31 expenses for such tuition and continuing legal education.

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

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

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

12 Section 89. Section 28.235, Florida Statutes, is
13 amended to read:

14 28.235 Advance payments by clerk of circuit
15 court.--The clerk of the circuit court is authorized to make
16 advance payments on behalf of the county for goods and
17 services, including, but not limited to, maintenance
18 agreements and subscriptions, pursuant to rules or procedures
19 adopted by the Chief Financial Officer ~~Comptroller~~ for advance
20 payments of invoices submitted to agencies of the state.

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

23 28.24 Service charges by clerk of the circuit
24 court.--The clerk of the circuit court shall make the
25 following charges for services rendered by the clerk's office
26 in recording documents and instruments and in performing the
27 duties enumerated. However, in those counties where the
28 clerk's office operates as a fiscal unit of the county
29 pursuant to s. 145.022(1), the clerk shall not charge the
30 county for such services.

31

1 Charges

2

3 (7) For making and reporting payrolls of jurors to

4 Chief Financial Officer ~~State Comptroller~~, per page, per copy

55.00

6 (23) For paying of witnesses and making and reporting

7 payroll to Chief Financial Officer ~~State Comptroller~~, per

8 copy, per page.....5.00

9 Section 91. Paragraph (b) of subsection (2) of section

10 30.49, Florida Statutes, is amended to read:

11 30.49 Budgets.--

12 (2)

13 (b) Within the appropriate fund and functional

14 category, expenditures shall be itemized in accordance with

15 the uniform chart of accounts prescribed by the Department of

16 Financial Services ~~Banking and Finance~~, as follows:

17 1. Personal services.

18 2. Operating expenses.

19 3. Capital outlay.

20 4. Debt service.

21 5. Nonoperating disbursements and contingency

22 reserves.

23 Section 92. Section 30.52, Florida Statutes, is

24 amended to read:

25 30.52 Handling of public funds.--The sheriff shall

26 keep public funds in his or her custody, either in his or her

27 office in an amount not in excess of the burglary, theft, and

28 robbery insurance provided, the cost of which is hereby

29 authorized as an expense of the office, or in a depository in

30 an amount not in excess of the security provided pursuant to

31 s. 658.60 and the regulations of the Department of Financial

1 Services Banking and Finance. The title of the depository
2 accounts shall include the word "sheriff" and the name of the
3 county, and withdrawals from the accounts shall be made by
4 checks signed by the duly qualified and acting sheriff of the
5 county, or his or her designated deputy or agent.

6 Section 93. Section 40.30, Florida Statutes, is
7 amended to read:

8 40.30 Requisition endorsed by State Courts
9 Administrator or designee.--Upon receipt of such estimate and
10 the requisition from the clerk of the court, the State Courts
11 Administrator or designee shall endorse the amount that he or
12 she may deem necessary for the pay of jurors and witnesses
13 during the quarterly fiscal period and shall submit a request
14 for payment to the Chief Financial Officer ~~Comptroller~~.

15 Section 94. Section 40.31, Florida Statutes, is
16 amended to read:

17 40.31 State Courts Administrator may apportion
18 appropriation.--If the State Courts Administrator shall have
19 reason to believe that the amount appropriated by the
20 Legislature is insufficient to meet the expenses of jurors and
21 witnesses during the remaining part of the state fiscal year,
22 he or she may apportion the money in the treasury for that
23 purpose among the several counties, basing such apportionment
24 upon the amount expended for the payment of jurors and
25 witnesses in each county during the prior fiscal year. In such
26 case, each county shall be paid by warrant, issued by the
27 Chief Financial Officer ~~Comptroller~~, only the amount so
28 apportioned to each county, and, when the amount so
29 apportioned is insufficient to pay in full all the jurors and
30 witnesses during a quarterly fiscal period, the clerk of the
31 court shall apportion the money received pro rata among the

1 jurors and witnesses entitled to pay and shall give to each
2 juror or witness a certificate of the amount of compensation
3 still due, which certificate shall be held by the State Courts
4 Administrator as other demands against the state.

5 Section 95. Section 40.33, Florida Statutes, is
6 amended to read:

7 40.33 Deficiency.--If the compensation of jurors and
8 witnesses during a quarterly fiscal period exceeds the amount
9 estimated by the clerk of the court and therefore is
10 insufficient to pay in full the jurors and witnesses, the
11 clerk of the court shall make a further requisition upon the
12 State Courts Administrator for the amount necessary to pay
13 such default, and the amount required shall be transmitted to
14 the clerk of the court by warrant issued by the Chief
15 Financial Officer ~~Comptroller~~ in the same manner as the
16 original requisition or order.

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

19 40.34 Clerks to make triplicate payroll.--

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

22 Section 97. Section 40.35, Florida Statutes, is
23 amended to read:

24 40.35 Accounting and payment to the State Courts
25 Administrator.--

26 (1) The clerk of the court shall, within 2 weeks after
27 the last day of the quarterly fiscal period, render to the
28 State Courts Administrator a full statement of accounts for
29 moneys received and disbursed under the provisions of this
30 chapter and refund to the State Courts Administrator any
31 balance in the clerk's hands. If upon audit the State Courts

1 Administrator shall determine a balance due the clerk of the
2 court, the State Courts Administrator shall submit a request
3 for payment to the Chief Financial Officer ~~Comptroller~~.

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

11 Section 98. Paragraph (b) of subsection (5) of section
12 43.16, Florida Statutes, is amended to read:

13 43.16 Justice Administrative Commission; membership,
14 powers and duties.--

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

17 (b) Each state attorney and public defender and the
18 Judicial Qualifications Commission shall continue to prepare
19 necessary budgets, vouchers which represent valid claims for
20 reimbursement by the state for authorized expenses, and other
21 things incidental to the proper administrative operation of
22 the office, such as revenue transmittals to the Chief
23 Financial Officer ~~treasurer~~, automated systems plans, etc.,
24 but will forward same to the commission for recording and
25 submission to the proper state officer. However, when
26 requested by a state attorney or a public defender or the
27 Judicial Qualifications Commission, the commission will either
28 assist in the preparation of budget requests, voucher
29 schedules, and other forms and reports or accomplish the
30 entire project involved.

31

1 Section 99. Subsections (1), (3), and (4) of section
2 43.19, Florida Statutes, are amended to read:

3 43.19 Money paid into court; unclaimed funds.--

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

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

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

28 Section 100. Subsections (3) and (4) of section
29 48.151, Florida Statutes, are amended to read:

30 48.151 Service on statutory agents for certain
31 persons.--

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

14 (4) The Director of the Office of Financial Regulation
15 of the Financial Services Commission ~~Comptroller~~ is the agent
16 for service of process for any issuer as defined in s.
17 517.021, or any dealer, investment adviser, or associated
18 person registered with that office ~~the Department of Banking~~
19 ~~and Finance~~, for any violation of any provision of chapter
20 517.

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

23 55.03 Judgments; rate of interest, generally.--

24 (1) On December 1 of each year ~~beginning December 1,~~
25 ~~1994~~, the Chief Financial Officer ~~Comptroller of the State of~~
26 ~~Florida~~ shall set the rate of interest that shall be payable
27 on judgments or decrees for the year beginning January 1 by
28 averaging the discount rate of the Federal Reserve Bank of New
29 York for the preceding year, then adding 500 basis points to
30 the averaged federal discount rate. The Chief Financial
31 Officer ~~Comptroller~~ shall inform the clerk of the courts and

1 chief judge for each judicial circuit of the rate that has
2 been established for the upcoming year. The ~~initial interest~~
3 ~~rate established by the Comptroller shall take effect on~~
4 ~~January 1, 1995, and the interest rate established by the~~
5 Chief Financial Officer ~~Comptroller in subsequent years~~ shall
6 take effect on January 1 of each following year. Judgments
7 obtained on or after January 1, 1995, shall use the previous
8 statutory rate for time periods before January 1, 1995, for
9 which interest is due and shall apply the rate set by the
10 Chief Financial Officer ~~Comptroller~~ for time periods after
11 January 1, 1995, for which interest is due. Nothing contained
12 herein shall affect a rate of interest established by written
13 contract or obligation.

14 Section 102. Section 57.091, Florida Statutes, is
15 amended to read:

16 57.091 Costs; refunded to counties in certain
17 proceedings relating to state prisoners.--All lawful fees,
18 costs, and expenses hereafter adjudged against, and paid by,
19 any county in all competency proceedings and all criminal
20 prosecutions against state prisoners imprisoned in a state
21 correctional institution, and in all habeas corpus cases
22 brought to test the legality of the imprisonment of state
23 prisoners of such correctional institutions, shall be refunded
24 to the county paying the sum from the General Revenue Fund in
25 the State Treasury in the manner and to the extent herein
26 provided, to wit: between the 1st and 15th of the month next
27 succeeding the month in which the fees, costs, and expenses
28 have been allowed and paid by the county, the clerk of the
29 court shall make requisition on the Department of Corrections
30 for the fees, costs, and expenses so allowed and paid during
31 the preceding month, giving the style of the cases in which

1 fees, costs, and expenses were incurred and the amount and
2 items of cost in each case; providing a certified copy of the
3 judgment adjudging the fees, costs, and expenses against the
4 county and showing that the amount represented thereby has
5 been approved by the presiding judge, paid by the county, and
6 verified by the clerk; and attaching a certified copy of the
7 bill as approved and allowed by the board of county
8 commissioners of the county. If the Department of Corrections
9 finds the bills legal and adjudged against and paid by the
10 county, the department shall submit a request to the Chief
11 Financial Officer ~~Comptroller~~ to draw a warrant in the amount
12 thereof, or in the amount the department finds legal and
13 adjudged against and paid by the county, in favor of the
14 county paying the fees, costs, and expenses, which shall be
15 paid by the Chief Financial Officer ~~State Treasurer~~ from the
16 general revenue funds of the state.

17 Section 103. Subsections (1), (3), and (4) of section
18 68.083, Florida Statutes, are amended to read:

19 68.083 Civil actions for false claims.--

20 (1) The department may diligently investigate a
21 violation under s. 68.082. If the department finds that a
22 person has violated or is violating s. 68.082, the department
23 may bring a civil action under the Florida False Claims Act
24 against the person. The Department of Financial Services
25 ~~Banking and Finance~~ may bring a civil action under this
26 section if the action arises from an investigation by that
27 department and the Department of Legal Affairs has not filed
28 an action under this act.

29 (3) The complaint shall be identified on its face as a
30 qui tam action and shall be filed in the circuit court of the
31 Second Judicial Circuit, in and for Leon County. Immediately

1 upon the filing of the complaint, a copy of the complaint and
2 written disclosure of substantially all material evidence and
3 information the person possesses shall be served on the
4 Attorney General, as head of the department, and on the Chief
5 Financial Officer ~~Comptroller~~, as head of the Department of
6 Financial Services ~~Banking and Finance~~, by registered mail,
7 return receipt requested. The department, or the Department of
8 Financial Services ~~Banking and Finance~~ under the circumstances
9 specified in subsection (4), may elect to intervene and
10 proceed with the action, on behalf of the state, within 90
11 days after it receives both the complaint and the material
12 evidence and information.

13 (4) If a person brings an action under subsection (2)
14 and the action is based upon the facts underlying a pending
15 investigation by the Department of Financial Services ~~Banking~~
16 ~~and Finance~~, the Department of Financial Services ~~Banking and~~
17 ~~Finance~~, instead of the department, may take over the action
18 on behalf of the state. In order to take over the action, the
19 Department of Financial Services ~~Banking and Finance~~ must give
20 the department written notification within 20 days after the
21 action is filed that the Department of Financial Services
22 ~~Banking and Finance~~ is conducting an investigation of the
23 facts of the action and that the Department of Financial
24 Services ~~Banking and Finance~~, instead of the department, will
25 take over the action filed under subsection (2). If the
26 Department of Financial Services ~~Banking and Finance~~ takes
27 over the action under this subsection, the word "department"
28 as used in this act means the Department of Financial Services
29 ~~Banking and Finance~~, and that department, for purposes of that
30 action, shall have all rights and standing granted the
31 department under this act.

1 Section 104. Subsections (3) and (6) of section
2 68.084, Florida Statutes, are amended to read:

3 68.084 Rights of the parties in civil actions.--

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

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

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

22 68.087 Exemptions to civil actions.--

23 (3) No court shall have jurisdiction over an action
24 brought under this act based upon the public disclosure of
25 allegations or transactions in a criminal, civil, or
26 administrative hearing; in a legislative, administrative,
27 inspector general, or Auditor General, Chief Financial Officer
28 ~~Comptroller~~, or Department of Financial Services ~~Banking and~~
29 ~~Finance~~ report, hearing, audit, or investigation; or from the
30 news media, unless the action is brought by the department, or
31 unless the person bringing the action is an original source of

1 the information. For purposes of this subsection, the term
2 "original source" means an individual who has direct and
3 independent knowledge of the information on which the
4 allegations are based and has voluntarily provided the
5 information to the department before filing an action under
6 this act based on the information.

7 Section 106. Section 68.092, Florida Statutes, is
8 amended to read:

9 68.092 Deposit of recovered moneys.--All moneys
10 recovered by the Chief Financial Officer ~~Comptroller~~, as head
11 of the Department of Financial Services ~~Banking and Finance~~,
12 under s. 68.086(1) in any civil action for violation of the
13 Florida False Claims Act shall be deposited in the
14 Administrative Trust Fund of the Department of Financial
15 Services ~~Banking and Finance~~.

16 Section 107. Section 77.0305, Florida Statutes, is
17 amended to read:

18 77.0305 Continuing writ of garnishment against salary
19 or wages.--Notwithstanding any other provision of this
20 chapter, if salary or wages are to be garnished to satisfy a
21 judgment, the court shall issue a continuing writ of
22 garnishment to the judgment debtor's employer which provides
23 for the periodic payment of a portion of the salary or wages
24 of the judgment debtor as the salary or wages become due until
25 the judgment is satisfied or until otherwise provided by court
26 order. A debtor's status as an employee of the state or its
27 agencies or political subdivisions does not preclude a
28 judgment creditor's right to garnish the debtor's wages. For
29 the purposes of this section, the state includes the judicial
30 branch and the legislative branch as defined in s. 216.011.
31 The state, for itself and for its agencies and subdivisions,

1 waives sovereign immunity for the express and limited purpose
2 necessary to carry out this section. The court shall allow
3 the judgment debtor's employer to collect up to \$5 against the
4 salary or wages of the judgment debtor to reimburse the
5 employer for administrative costs for the first deduction from
6 the judgment debtor's salary or wages and up to \$2 for each
7 deduction thereafter. The funds collected by the state under
8 this section must be deposited in the Department of Financial
9 Services ~~Banking and Finance~~ Administrative Trust Fund for
10 purposes of carrying out this section.

11 Section 108. Section 92.39, Florida Statutes, is
12 amended to read:

13 92.39 Evidence of individual's claim against the state
14 in suits between them.--In suits between the state and
15 individuals, no claim for a credit shall be allowed upon
16 trial, but such as shall appear to have been presented to the
17 Chief Financial Officer ~~Comptroller~~ for his or her ~~the~~
18 ~~Comptroller's~~ examination, and by him or her disallowed in
19 whole or in part, unless it shall be proved to the
20 satisfaction of the court that the defendant is, at the time
21 of the trial, in possession of vouchers not before in the
22 defendant's power to procure, and that the defendant was
23 prevented from exhibiting a claim for such credit at the Chief
24 Financial Officer's ~~Comptroller's~~ office by unavoidable
25 accident.

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

28 99.097 Verification of signatures on petitions.--

29 (4) The supervisor shall be paid in advance the sum of
30 10 cents for each signature checked or the actual cost of
31 checking such signature, whichever is less, by the candidate

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

26 Section 110. Subsection (6) of section 103.091,
27 Florida Statutes, is amended to read:

28 103.091 Political parties.--

29 (6)(a)1. In addition to the members provided for in
30 subsection (1), each county executive committee shall include
31 all members of the Legislature who are residents of the county

1 and members of their respective political party and who shall
2 be known as at-large committeemen and committeewomen.

3 2. Each state executive committee shall include, as
4 at-large committeemen and committeewomen, all members of the
5 United States Congress representing the State of Florida who
6 are members of the political party, all statewide elected
7 officials who are members of the party, and the President of
8 the Senate or the Minority Leader in the Senate, and the
9 Speaker of the House of Representatives or the Minority Leader
10 in the House of Representatives, whichever is a member of the
11 political party, and 20 members of the Legislature who are
12 members of the political party. Ten of the legislators shall
13 be appointed with the concurrence of the state chair of the
14 respective party, as follows: five to be appointed by the
15 President of the Senate; five by the Minority Leader in the
16 Senate; five by the Speaker of the House of Representatives;
17 and five by the Minority Leader in the House.

18 3. When a political party allows any member of the
19 state executive committee to have more than one vote per
20 person, other than by proxy, in a matter coming before the
21 state executive committee, the 20 members of the Legislature
22 appointed under subparagraph 2. shall not be appointed to the
23 state executive committee and the following elected officials
24 who are members of that political party shall be appointed and
25 shall have the following votes:

26 a. Governor: a number equal to 15 percent of votes
27 cast by state executive committeemen and committeewomen;

28 b. Lieutenant Governor: a number equal to 5 percent
29 of the votes cast by state executive committeemen and
30 committeewomen;

31

1 c. Each member of the United States Senate
2 representing the state: a number equal to 10 percent of the
3 votes cast by state executive committeemen and committeewomen;

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

7 d.e. Attorney General: a number equal to 5 percent of
8 the votes cast by state executive committeemen and
9 committeewomen;

10 e.f. Chief Financial Officer ~~Comptroller~~: a number
11 equal to 5 percent of the votes cast by state executive
12 committeemen and committeewomen;

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

15 f.h. Commissioner of Agriculture: a number equal to 5
16 percent of the votes cast by state executive committeemen and
17 committeewomen;

18 ~~i. Commissioner of Education: a number equal to 5~~
19 ~~percent of the votes cast by state executive committeemen and~~
20 ~~committeewomen;~~

21 g.j. President of the Senate: a number equal to 10
22 percent of the votes cast by state executive committeemen and
23 committeewomen;

24 h.k. Minority leader of the Senate: a number equal to
25 10 percent of the votes cast by state executive committeemen
26 and committeewomen;

27 i.l. Speaker of the House of Representatives: a
28 number equal to 10 percent of the votes cast by state
29 executive committeemen and committeewomen;

30
31

1 ~~j.m.~~ Minority leader of the House of Representatives:
2 a number equal to 10 percent of the votes cast by state
3 executive committeemen and committeewomen; and

4 ~~k.m.~~ Each member of the United States House of
5 Representatives representing the state: a number equal to 1
6 percent of the votes cast by state executive committeemen and
7 committeewomen.

8 4.a. The governing body of each state executive
9 committee as defined by party rule shall include as at-large
10 committeemen and committeewomen all statewide elected
11 officials who are members of such political party; up to four
12 members of the United States Congress representing the state
13 who are members of such political party and who shall be
14 appointed by the state chair on the basis of geographic
15 representation; the permanent presiding officer selected by
16 the members of each house of the Legislature who are members
17 of such political party; and the minority leader selected by
18 the members of each house of the Legislature who are members
19 of such political party.

20 b. All members of the governing body shall have one
21 vote per person.

22 Section 111. Section 107.11, Florida Statutes, is
23 amended to read:

24 107.11 Appropriation for expenses.--For the purpose of
25 defraying the expenses of preparing for, conducting, holding
26 and declaring the result of the election provided for by this
27 chapter and also for the purpose of defraying the expenses
28 allowed by this chapter for the holding of sessions of the
29 convention as herein provided, to be audited by the Chief
30 Financial Officer ~~Comptroller~~, there is appropriated out of
31 the General Revenue Fund of the State of Florida a sufficient

1 sum of money for the payment of all amounts necessary to be
2 expended under the terms of this chapter, which sums of money
3 shall be disbursed by the State of Florida pursuant to
4 warrants drawn by the Chief Financial Officer ~~Comptroller upon~~
5 ~~the Treasurer~~ for the payment of same.

6 Section 112. Paragraph (a) of subsection (2) of
7 section 110.1127, Florida Statutes, is amended to read:

8 110.1127 Employee security checks.--

9 (2)(a) All positions within the Division of Treasury
10 of the Department of Financial Services ~~Insurance~~ are deemed
11 to be positions of special trust or responsibility, and a
12 person may be disqualified for employment in any such position
13 by reason of:

14 1. The conviction or prior conviction of a crime which
15 is reasonably related to the nature of the position sought or
16 held by the individual; or

17 2. The entering of a plea of nolo contendere or, when
18 a jury verdict of guilty is rendered but adjudication of guilt
19 is withheld, with respect to a crime which is reasonably
20 related to the nature of the position sought or held by the
21 individual.

22 Section 113. Subsection (1) of section 110.113,
23 Florida Statutes, is amended to read:

24 110.113 Pay periods for state officers and employees;
25 salary payments by direct deposit.--

26 (1) The normal pay period for salaries of state
27 officers and employees shall be 1 month. The Department of
28 Financial Services ~~Banking and Finance~~ shall issue either
29 monthly or biweekly salary payments by state warrants or by
30 direct deposit pursuant to s. 17.076 or make semimonthly
31 salary payments by direct deposit pursuant to s. 17.076, as

1 requested by the head of each state agency and approved by the
2 Executive Office of the Governor and the Department of
3 Financial Services ~~Banking and Finance~~.

4 Section 114. Subsection (1) of section 110.114,
5 Florida Statutes, is amended to read:

6 110.114 Employee wage deductions.--

7 (1) The state or any of its departments, bureaus,
8 commissions, and officers are authorized and permitted, with
9 the concurrence of the Department of Financial Services
10 ~~Banking and Finance~~, to make deductions from the salary or
11 wage of any employee or employees in such amount as shall be
12 authorized and requested by such employee or employees and for
13 such purpose as shall be authorized and requested by such
14 employee or employees and shall pay such sums so deducted as
15 directed by such employee or employees. The concurrence of
16 the Department of Financial Services ~~Banking and Finance~~ shall
17 not be required for the deduction of a certified bargaining
18 agent's membership dues deductions pursuant to s. 447.303 or
19 any deductions authorized by a collective bargaining
20 agreement.

21 Section 115. Subsection (1) of section 110.116,
22 Florida Statutes, is amended to read:

23 110.116 Personnel information system; payroll
24 procedures.--

25 (1) The Department of Management Services shall
26 establish and maintain, in coordination with the payroll
27 system of the Department of Financial Services ~~Banking and~~
28 ~~Finance~~, a complete personnel information system for all
29 authorized and established positions in the state service,
30 with the exception of employees of the Legislature. The
31 specifications shall be developed in conjunction with the

1 payroll system of the Department of Financial Services ~~Banking~~
2 ~~and Finance~~ and in coordination with the Auditor General. The
3 Department of Financial Services ~~Banking and Finance~~ shall
4 determine that the position occupied by each employee has been
5 authorized and established in accordance with the provisions
6 of s. 216.251. The Department of Management Services shall
7 develop and maintain a position numbering system that will
8 identify each established position, and such information shall
9 be a part of the payroll system of the Department of Financial
10 Services ~~Banking and Finance~~. With the exception of employees
11 of the Legislature, this system shall include all career
12 service positions and those positions exempted from career
13 service provisions, notwithstanding the funding source of the
14 salary payments, and information regarding persons receiving
15 payments from other sources. Necessary revisions shall be made
16 in the personnel and payroll procedures of the state to avoid
17 duplication insofar as is feasible. A list shall be organized
18 by budget entity to show the employees or vacant positions
19 within each budget entity. This list shall be available to
20 the Speaker of the House of Representatives and the President
21 of the Senate upon request.

22 Section 116. Paragraph (a) of subsection (3) and
23 paragraph (b) of subsection (6) of section 110.1227, Florida
24 Statutes, are amended to read:

25 110.1227 Florida Employee Long-Term-Care Plan Act.--

26 (3) The Department of Management Services and the
27 department shall, in consultation with public employers and
28 employees and representatives from unions and associations
29 representing state, university, local government, and other
30 public employees, establish and supervise the implementation
31 and administration of a self-funded or fully insured

1 long-term-care plan entitled "Florida Employee Long-Term-Care
2 Plan."

3 (a) The Department of Management Services and the
4 department shall, in consultation with the Office of Insurance
5 Regulation of the Financial Services Commission ~~Department of~~
6 ~~Insurance~~, contract for actuarial, professional-administrator,
7 and other services for the Florida Employee Long-Term-Care
8 Plan.

9 (6) A Florida Employee Long-Term-Care Plan Board of
10 Directors is created, composed of nine members who shall serve
11 2-year terms, to be appointed after May 1, 1999, as follows:

12 (b) The Chief Financial Officer ~~Insurance Commissioner~~
13 shall appoint an actuary.

14 Section 117. Paragraph (f) of subsection (5) of
15 section 110.1228, Florida Statutes, is amended to read:

16 110.1228 Participation by small counties, small
17 municipalities, and district school boards located in small
18 counties.--

19 (5) If the department determines that a small county,
20 small municipality, or district school board is eligible to
21 enroll, the small county, small municipality, or district
22 school board must agree to the following terms and conditions:

23 (f) If a small county, small municipality, or district
24 school board employer fails to make the payments required by
25 this section to fully reimburse the state, the Department of
26 Revenue or the Department of Financial Services ~~Banking and~~
27 ~~Finance~~ shall, upon the request of the Department of
28 Management Services, deduct the amount owed by the employer
29 from any funds not pledged to bond debt service satisfaction
30 that are to be distributed by it to the small county, small
31 municipality, or district school board. The amounts so

1 deducted shall be transferred to the Department of Management
2 Services for further distribution to the trust funds in
3 accordance with this chapter.

4 Section 118. Paragraph (f) of subsection (4) and
5 paragraphs (b) and (c) of subsection (5) of section 110.123,
6 Florida Statutes, are amended to read:

7 110.123 State group insurance program.--

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

10 (f) Pursuant to the request of each state officer,
11 full-time or part-time state employee, or retiree
12 participating in the state group insurance program, and upon
13 certification of the employing agency approved by the
14 department, the Chief Financial Officer ~~Comptroller~~ shall
15 deduct from the salary or retirement warrant payable to each
16 participant the amount so certified and shall handle such
17 deductions in accordance with rules established by the
18 department.

19 (5) DEPARTMENT POWERS AND DUTIES.--The department is
20 responsible for the administration of the state group
21 insurance program. The department shall initiate and
22 supervise the program as established by this section and shall
23 adopt such rules as are necessary to perform its
24 responsibilities. To implement this program, the department
25 shall, with prior approval by the Legislature:

26 (b) Prepare, in cooperation with the Office of
27 Insurance Regulation of the Financial Services Commission
28 ~~Department of Insurance~~, the specifications necessary to
29 implement the program.

30 (c) Contract on a competitive proposal basis with an
31 insurance carrier or carriers, or professional administrator,

1 determined by the Office of Insurance Regulation of the
2 Financial Services Commission ~~Department of Insurance~~ to be
3 fully qualified, financially sound, and capable of meeting all
4 servicing requirements. Alternatively, the department may
5 self-insure any plan or plans contained in the state group
6 insurance program subject to approval based on actuarial
7 soundness by the Office of Insurance Regulation ~~Department of~~
8 ~~Insurance~~. The department may contract with an insurance
9 company or professional administrator qualified and approved
10 by the Office of Insurance Regulation ~~Department of Insurance~~
11 to administer such plan. Before entering into any contract,
12 the department shall advertise for competitive proposals, and
13 such contract shall be let upon the consideration of the
14 benefits provided in relationship to the cost of such
15 benefits. In determining which entity to contract with, the
16 department shall, at a minimum, consider: the entity's
17 previous experience and expertise in administering group
18 insurance programs of the type it proposes to administer; the
19 entity's ability to specifically perform its contractual
20 obligations in this state and other governmental
21 jurisdictions; the entity's anticipated administrative costs
22 and claims experience; the entity's capability to adequately
23 provide service coverage and sufficient number of experienced
24 and qualified personnel in the areas of claims processing,
25 recordkeeping, and underwriting, as determined by the
26 department; the entity's accessibility to state employees and
27 providers; the financial solvency of the entity, using
28 accepted business sector measures of financial performance.
29 The department may contract for medical services which will
30 improve the health or reduce medical costs for employees who
31 participate in the state group insurance plan.

1
2 Final decisions concerning enrollment, the existence of
3 coverage, or covered benefits under the state group insurance
4 program shall not be delegated or deemed to have been
5 delegated by the department.

6 Section 119. Section 110.125, Florida Statutes, is
7 amended to read:

8 110.125 Administrative costs.--The administrative
9 expenses and costs of operating the personnel program
10 established by this chapter shall be paid by the various
11 agencies of the state government, and each such agency shall
12 include in its budget estimates its pro rata share of such
13 cost as determined by the Department of Management Services.
14 To establish an equitable division of the costs, the amount to
15 be paid by each agency shall be determined in such proportion
16 as the service rendered to each agency bears to the total
17 service rendered under the provisions of this chapter. The
18 amounts paid to the Department of Management Services which
19 are attributable to positions within the Senior Management
20 Service and the Selected Professional Service shall be used
21 for the administration of such services, training activities
22 for positions within those services, and the development and
23 implementation of a database of pertinent historical
24 information on exempt positions. Should any state agency
25 become more than 90 days delinquent in payment of this
26 obligation, the department shall certify to the Chief
27 Financial Officer ~~Comptroller~~ the amount due and the Chief
28 Financial Officer ~~Comptroller~~ shall transfer the amount due to
29 the department from any debtor agency funds available.

30 Section 120. Paragraph (a) of subsection (1) of
31 section 110.181, Florida Statutes, is amended to read:

1 110.181 Florida State Employees' Charitable
2 Campaign.--

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

4 (a) The Department of Management Services shall
5 establish and maintain, in coordination with the payroll
6 system of the Department of Financial Services ~~Banking and~~
7 ~~Finance~~, an annual Florida State Employees' Charitable
8 Campaign. Except as provided in subsection (5), this annual
9 fundraising drive is the only authorized charitable
10 fundraising drive directed toward state employees within work
11 areas during work hours, and for which the state will provide
12 payroll deduction.

13 Section 121. Subsection (1) of section 110.2037,
14 Florida Statutes, is amended to read:

15 110.2037 Alternative benefits; tax-sheltered annual
16 leave and sick leave payments and special compensation
17 payments.--

18 (1) The Department of Management Services has
19 authority to adopt tax-sheltered plans under s. 401(a) of the
20 Internal Revenue Code for state employees who are eligible for
21 payment for accumulated leave. The department, upon adoption
22 of the plans, shall contract for a private vendor or vendors
23 to administer the plans. These plans shall be limited to state
24 employees who are over age 55 and who are: eligible for
25 accumulated leave and special compensation payments and
26 separating from employment with 10 years of service in
27 accordance with the Internal Revenue Code, or who are
28 participating in the Deferred Retirement Option Program on or
29 after July 1, 2001. The plans must provide benefits in a
30 manner that minimizes the tax liability of the state and
31 participants. The plans must be funded by employer

1 contributions of payments for accumulated leave or special
2 compensation payments, or both, as specified by the
3 department. The plans must have received all necessary federal
4 and state approval as required by law, must not adversely
5 impact the qualified status of the Florida Retirement System
6 defined benefit or defined contribution plans or the pretax
7 benefits program, and must comply with the provisions of s.
8 112.65. Adoption of any plan is contingent on: the department
9 receiving appropriate favorable rulings from the Internal
10 Revenue Service; the department negotiating under the
11 provisions of chapter 447, where applicable; and the Chief
12 Financial Officer ~~Comptroller~~ making appropriate changes to
13 the state payroll system. The department's request for
14 proposals by vendors for such plans may require that the
15 vendors provide market-risk or volatility ratings from
16 recognized rating agencies for each of their investment
17 products. The department shall provide for a system of
18 continuous quality assurance oversight to ensure that the
19 program objectives are achieved and that the program is
20 prudently managed.

21 Section 122. Subsection (6) of section 110.205,
22 Florida Statutes, is amended to read:

23 110.205 Career service; exemptions.--

24 (6) EXEMPTION OF CHIEF INSPECTOR OF BOILER SAFETY
25 PROGRAM, DEPARTMENT OF FINANCIAL SERVICES ~~INSURANCE~~.--In
26 addition to those positions exempted from this part, there is
27 hereby exempted from the Career Service System the chief
28 inspector of the boiler inspection program of the Department
29 of Financial Services ~~Insurance~~. The salary range of this
30 position shall be established by the Department of Management
31

1 Services in accordance with the classification and pay plan
2 established for the Selected Exempt Service.

3 Section 123. Paragraph (b) of subsection (5),
4 paragraph (b) of subsection (7), paragraph (b) of subsection
5 (8), and subsections (9), (11), and (13) of section 112.061,
6 Florida Statutes, are amended to read:

7 112.061 Per diem and travel expenses of public
8 officers, employees, and authorized persons.--

9 (5) COMPUTATION OF TRAVEL TIME FOR REIMBURSEMENT.--For
10 purposes of reimbursement and methods of calculating
11 fractional days of travel, the following principles are
12 prescribed:

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

17 1. Breakfast--When travel begins before 6 a.m. and
18 extends beyond 8 a.m.

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

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

24
25 No allowance shall be made for meals when travel is confined
26 to the city or town of the official headquarters or immediate
27 vicinity; except assignments of official business outside the
28 traveler's regular place of employment if travel expenses are
29 approved. The Chief Financial Officer ~~Comptroller~~ shall
30 establish a schedule for processing Class C travel subsistence
31 payments at least on a monthly basis.

1 (7) TRANSPORTATION.--

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

6 (8) OTHER EXPENSES.--

7 (b) Other expenses which are not specifically
8 authorized by this section may be approved by the Department
9 of Financial Services ~~Banking and Finance~~ pursuant to rules
10 adopted by it. Expenses approved pursuant to this paragraph
11 shall be reported by the Department of Financial Services
12 ~~Banking and Finance~~ to the Auditor General annually.

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

14 (a) The Department of Financial Services ~~Banking and~~
15 ~~Finance~~ shall adopt ~~promulgate~~ such rules ~~and regulations~~,
16 including, but not limited to, the general criteria to be used
17 by a state agency to predetermine justification for attendance
18 by state officers and employees and authorized persons at
19 conventions and conferences, and prescribe such forms as are
20 ~~may be~~ necessary to effectuate the purposes of this section.
21 The department may also adopt rules prescribing the proper
22 disposition and use of promotional items and rebates offered
23 by common carriers and other entities in connection with
24 travel at public expense; however, before adopting such rules,
25 the department shall consult with the appropriation committees
26 of the Legislature.

27 (b) Each state agency shall adopt ~~promulgate~~ such
28 additional specific rules ~~and regulations~~ and specific
29 criteria to be used by it to predetermine justification for
30 attendance by state officers and employees and authorized
31 persons at conventions and conferences, not in conflict with

1 the rules ~~and regulations~~ of the Department of Financial
2 Services ~~Banking and Finance~~ or with the general criteria to
3 be used by a state agency to predetermine justification for
4 attendance by state officers and employees and authorized
5 persons at conventions, as may be necessary to effectuate the
6 purposes of this section.

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

8 (a) Authorization forms.--The Department of Financial
9 Services ~~Banking and Finance~~ shall furnish a uniform travel
10 authorization request form which shall be used by all state
11 officers and employees and authorized persons when requesting
12 approval for the performance of travel to a convention or
13 conference. The form shall include, but not be limited to,
14 provision for the name of each traveler, purpose of travel,
15 period of travel, estimated cost to the state, and a statement
16 of benefits accruing to the state by virtue of such travel. A
17 copy of the program or agenda of the convention or conference,
18 itemizing registration fees and any meals or lodging included
19 in the registration fee, shall be attached to, and filed with,
20 the copy of the travel authorization request form on file with
21 the agency. The form shall be signed by the traveler and by
22 the traveler's supervisor stating that the travel is to be
23 incurred in connection with official business of the state.
24 The head of the agency or his or her designated representative
25 shall not authorize or approve such request in the absence of
26 the appropriate signatures. A copy of the travel authorization
27 form shall be attached to, and become a part of, the support
28 of the agency's copy of the travel voucher.

29 (b) Voucher forms.--

30 1. The Department of Financial Services ~~Banking and~~
31 ~~Finance~~ shall furnish a uniform travel voucher form which

1 shall be used by all state officers and employees and
2 authorized persons when submitting travel expense statements
3 for approval and payment. No travel expense statement shall
4 be approved for payment by the Chief Financial Officer
5 ~~Comptroller~~ unless made on the form prescribed and furnished
6 by the department. The travel voucher form shall provide for,
7 among other things, the purpose of the official travel and a
8 certification or affirmation, to be signed by the traveler,
9 indicating the truth and correctness of the claim in every
10 material matter, that the travel expenses were actually
11 incurred by the traveler as necessary in the performance of
12 official duties, that per diem claimed has been appropriately
13 reduced for any meals or lodging included in the convention or
14 conference registration fees claimed by the traveler, and that
15 the voucher conforms in every respect with the requirements of
16 this section. The original copy of the executed uniform
17 travel authorization request form shall be attached to the
18 uniform travel voucher on file with the respective agency.

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

23 (13) DIRECT PAYMENT OF EXPENSES BY AGENCY.--Whenever
24 an agency requires an employee to incur either Class A or
25 Class B travel on emergency notice to the traveler, such
26 traveler may request the agency to pay his or her expenses for
27 meals and lodging directly to the vendor, and the agency may
28 pay the vendor the actual expenses for meals and lodging
29 during the travel period, limited to an amount not to exceed
30 that authorized pursuant to this section. In emergency
31 situations, the agency head or his or her designee may

1 authorize an increase in the amount paid for a specific meal,
2 provided that the total daily cost of meals does not exceed
3 the total amount authorized for meals each day. The agency
4 head or his or her designee may also grant prior approval for
5 a state agency to make direct payments of travel expenses in
6 other situations that result in cost savings to the state, and
7 such cost savings shall be documented in the voucher submitted
8 to the Chief Financial Officer ~~Comptroller~~ for the direct
9 payment of travel expenses. The provisions of this subsection
10 shall not be deemed to apply to any legislator or to any
11 employee of the Legislature.

12 Section 124. Subsections (2), (5), and (6) of section
13 112.08, Florida Statutes, are amended to read:

14 112.08 Group insurance for public officers, employees,
15 and certain volunteers; physical examinations.--

16 (2)(a) Every local governmental unit is authorized to
17 provide and pay out of its available funds for all or part of
18 the premium for life, health, accident, hospitalization, legal
19 expense, or annuity insurance, or all or any kinds of such
20 insurance, for the officers and employees of the local
21 governmental unit and for health, accident, hospitalization,
22 and legal expense insurance for the dependents of such
23 officers and employees upon a group insurance plan and, to
24 that end, to enter into contracts with insurance companies or
25 professional administrators to provide such insurance. Before
26 entering any contract for insurance, the local governmental
27 unit shall advertise for competitive bids; and such contract
28 shall be let upon the basis of such bids. If a contracting
29 health insurance provider becomes financially impaired as
30 determined by the Office of Insurance Regulation of the
31 Financial Services Commission ~~Department of Insurance~~ or

1 otherwise fails or refuses to provide the contracted-for
2 coverage or coverages, the local government may purchase
3 insurance, enter into risk management programs, or contract
4 with third-party administrators and may make such acquisitions
5 by advertising for competitive bids or by direct negotiations
6 and contract. The local governmental unit may undertake
7 simultaneous negotiations with those companies which have
8 submitted reasonable and timely bids and are found by the
9 local governmental unit to be fully qualified and capable of
10 meeting all servicing requirements. Each local governmental
11 unit may self-insure any plan for health, accident, and
12 hospitalization coverage or enter into a risk management
13 consortium to provide such coverage, subject to approval based
14 on actuarial soundness by the Office of Insurance Regulation
15 ~~Department of Insurance~~; and each shall contract with an
16 insurance company or professional administrator qualified and
17 approved by the office ~~Department of Insurance~~ to administer
18 such a plan.

19 (b) In order to obtain approval from the Office of
20 Insurance Regulation ~~Department of Insurance~~ of any
21 self-insured plan for health, accident, and hospitalization
22 coverage, each local governmental unit or consortium shall
23 submit its plan along with a certification as to the actuarial
24 soundness of the plan, which certification is prepared by an
25 actuary who is a member of the Society of Actuaries or the
26 American Academy of Actuaries. The Office of Insurance
27 Regulation ~~Department of Insurance~~ shall not approve the plan
28 unless it determines that the plan is designed to provide
29 sufficient revenues to pay current and future liabilities, as
30 determined according to generally accepted actuarial
31 principles. After implementation of an approved plan, each

1 local governmental unit or consortium shall annually submit to
2 the Office of Insurance Regulation ~~Department of Insurance~~ a
3 report which includes a statement prepared by an actuary who
4 is a member of the Society of Actuaries or the American
5 Academy of Actuaries as to the actuarial soundness of the
6 plan. The report is due 90 days after the close of the fiscal
7 year of the plan. The report shall consist of, but is not
8 limited to:

9 1. The adequacy of contribution rates in meeting the
10 level of benefits provided and the changes, if any, needed in
11 the contribution rates to achieve or preserve a level of
12 funding deemed adequate to enable payment of the benefit
13 amounts provided under the plan and a valuation of present
14 assets, based on statement value, and prospective assets and
15 liabilities of the plan and the extent of any unfunded accrued
16 liabilities.

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

19 3. A description and explanation of actuarial
20 assumptions.

21 4. A schedule illustrating the amortization of any
22 unfunded liabilities.

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

27 6. A statement by the actuary that the report is
28 complete and accurate and that in the actuary's opinion the
29 techniques and assumptions used are reasonable and meet the
30 requirements and intent of this subsection.

31

1 7. Other factors or statements as required by the
2 Department of Insurance in order to determine the actuarial
3 soundness of the plan.

4
5 All assumptions used in the report shall be based on
6 recognized actuarial principles acceptable to the Office of
7 Insurance Regulation ~~Department of Insurance~~. The office
8 ~~Department of Insurance~~ shall review the report and shall
9 notify the administrator of the plan and each entity
10 participating in the plan, as identified by the administrator,
11 of any actuarial deficiencies. Each local governmental unit
12 is responsible for payment of valid claims of its employees
13 that are not paid within 60 days after receipt by the plan
14 administrator or consortium.

15 (c) Every local governmental unit is authorized to
16 expend funds for preemployment physical examinations and
17 postemployment physical examinations.

18 (5) The Department of Management Services shall
19 initiate and supervise a group insurance program providing
20 death and disability benefits for active members of the
21 Florida Highway Patrol Auxiliary, with coverage beginning July
22 1, 1978, and purchased from state funds appropriated for that
23 purpose. The Department of Management Services, in
24 cooperation with the Office of Insurance Regulation ~~Department~~
25 ~~of Insurance~~, shall prepare specifications necessary to
26 implement the program, and the Department of Management
27 Services shall receive bids and award the contract in
28 accordance with general law.

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

1 Section 125. Paragraph (h) of subsection (2) of
2 section 112.191, Florida Statutes, is amended to read:

3 112.191 Firefighters; death benefits.--

4 (2)

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

8 Section 126. Subsection (4), paragraph (a) of
9 subsection (6), paragraphs (a), (d), (f), and (h) of
10 subsection (8), paragraph (b) of subsection (10), and
11 subsections (11) and (12) of section 112.215, Florida
12 Statutes, are amended to read:

13 112.215 Government employees; deferred compensation
14 program.--

15 (4)(a) The Chief Financial Officer ~~Treasurer~~, with the
16 approval of the State Board of Administration, shall establish
17 such plan or plans of deferred compensation for state
18 employees, including all such investment vehicles or products
19 incident thereto, as may be available through, or offered by,
20 qualified companies or persons, and may approve one or more
21 such plans for implementation by and on behalf of the state
22 and its agencies and employees.

23 (b) If the Chief Financial Officer ~~Treasurer~~ deems it
24 advisable, he or she shall have the power, with the approval
25 of the State Board of Administration, to create a trust or
26 other special funds for the segregation of funds or assets
27 resulting from compensation deferred at the request of
28 employees of the state or its agencies and for the
29 administration of such program.

30 (c) The Chief Financial Officer ~~Treasurer~~, with the
31 approval of the State Board of Administration, may delegate

1 responsibility for administration of the plan to a person the
2 Chief Financial Officer ~~Treasurer~~ determines to be qualified,
3 compensate such person, and, directly or through such person
4 or pursuant to a collective bargaining agreement, contract
5 with a private corporation or institution to provide such
6 services as may be part of any such plan or as may be deemed
7 necessary or proper by the Chief Financial Officer ~~Treasurer~~
8 or such person, including, but not limited to, providing
9 consolidated billing, individual and collective recordkeeping
10 and accountings, asset purchase, control, and safekeeping, and
11 direct disbursement of funds to employees or other
12 beneficiaries. The Chief Financial Officer ~~Treasurer~~ may
13 authorize a person, private corporation, or institution to
14 make direct disbursement of funds under the plan to an
15 employee or other beneficiary ~~only upon the order of the~~
16 ~~Comptroller to the Treasurer.~~

17 (d) In accordance with such approved plan, and upon
18 contract or agreement with an eligible employee, deferrals of
19 compensation may be accomplished by payroll deductions made by
20 the appropriate officer or officers of the state, with such
21 funds being thereafter held and administered in accordance
22 with the plan.

23 (6)(a) No deferred compensation plan of the state
24 shall become effective until approved by the State Board of
25 Administration and the Chief Financial Officer ~~Treasurer~~ is
26 satisfied by opinion from such federal agency or agencies as
27 may be deemed necessary that the compensation deferred
28 thereunder and/or the investment products purchased pursuant
29 to the plan will not be included in the employee's taxable
30 income under federal or state law until it is actually
31 received by such employee under the terms of the plan, and

1 that such compensation will nonetheless be deemed compensation
2 at the time of deferral for the purposes of social security
3 coverage, for the purposes of the state retirement system, and
4 for any other retirement, pension, or benefit program
5 established by law.

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

8 1. One member shall be appointed by the Speaker of the
9 House of Representatives and the President of the Senate
10 jointly and shall be an employee of the legislative branch.

11 2. One member shall be appointed by the Chief Justice
12 of the Supreme Court and shall be an employee of the judicial
13 branch.

14 3. One member shall be appointed by the chair of the
15 Public Employees Relations Commission and shall be a nonexempt
16 public employee.

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

19 a. One member shall be appointed by the Chancellor of
20 the State University System and shall be an employee of the
21 university system.

22 b. One member shall be appointed by the Chief
23 Financial Officer ~~Treasurer~~ and shall be an employee of the
24 Chief Financial Officer ~~Treasurer~~.

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

27 d. One member shall be appointed by the Executive
28 Director of the State Board of Administration ~~Comptroller~~ and
29 shall be an employee of the State Board of Administration
30 ~~Comptroller~~.

31

1 (d) The council shall meet at the call of its chair,
2 at the request of a majority of its membership, or at the
3 request of the Chief Financial Officer ~~Treasurer~~, but not less
4 than twice a year. The business of the council shall be
5 presented to the council in the form of an agenda. The agenda
6 shall be set by the Chief Financial Officer ~~Treasurer~~ and
7 shall include items of business requested by the council
8 members.

9 (f) The council shall make a report of each meeting to
10 the Chief Financial Officer ~~Treasurer~~, which shall show the
11 names of the members present and shall include a record of its
12 discussions, recommendations, and actions taken. The Chief
13 Financial Officer ~~Treasurer~~ shall keep the records of the
14 proceedings of each meeting on file and shall make the records
15 available to any interested person or group.

16 (h) The advisory council shall provide assistance and
17 recommendations to the Chief Financial Officer ~~Treasurer~~
18 relating to the provisions of the plan, the insurance or
19 investment options to be offered under the plan, and any other
20 contracts or appointments deemed necessary by the council and
21 the Chief Financial Officer ~~Treasurer~~ to carry out the
22 provisions of this act. The Chief Financial Officer ~~Treasurer~~
23 shall inform the council of the manner in which each council
24 recommendation is being addressed. The Chief Financial
25 Officer ~~Treasurer~~ shall provide the council, at least
26 annually, a report on the status of the deferred compensation
27 program, including, but not limited to, information on
28 participant enrollment, amount of compensation deferred, total
29 plan assets, product provider performance, and participant
30 satisfaction with the program.

31 (10)

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

8 a. All amounts of compensation deferred thereunder;

9 b. All property and rights purchased with such
10 amounts; and

11 c. All income attributable to such amounts, property,
12 or rights.

13 2. Notwithstanding the mandates of 26 U.S.C. s.
14 457(b)(6), all of the assets specified in subparagraph 1.
15 shall be held in trust for the exclusive benefit of
16 participants and their beneficiaries as mandated by 26 U.S.C.
17 s. 457(g)(1).

18 (11) With respect to any funds held pursuant to a
19 deferred compensation plan, any plan provider which is a bank
20 or savings association and which provides time deposit
21 accounts and certificates of deposit as an investment product
22 to the plan participants may, with the approval of the State
23 Board of Administration for providers in the state plan, or
24 with the approval of the appropriate official or body
25 designated under subsection (5) for a plan of a county,
26 municipality, other political subdivision, or constitutional
27 county officer, be exempt from the provisions of chapter 280
28 requiring it to be a qualified public depository, provided:

29 (a) The bank or savings association shall, to the
30 extent that the time deposit accounts or certificates of
31 deposit are not insured by the Federal Deposit Insurance

1 Corporation ~~or the Federal Savings and Loan Insurance~~
2 ~~Corporation~~, deposit or issue pledge collateral with the Chief
3 Financial Officer ~~Treasurer~~ for all state funds held by it
4 under a deferred compensation plan, or with such other
5 appropriate official for all public funds held by it under a
6 deferred compensation plan of a county, municipality, other
7 political subdivision, or constitutional county officer, in an
8 amount which equals at least 150 percent of all uninsured
9 deferred compensation funds then held.

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

13

14 The Chief Financial Officer ~~Treasurer~~ shall have all the
15 applicable powers provided in ss. 280.04, 280.05, and 280.08
16 relating to the sale or other disposition of the pledged
17 collateral.

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

21 Section 127. Paragraph (h) of subsection (4) of
22 section 112.3144, Florida Statutes, is amended to read:

23 112.3144 Full and public disclosure of financial
24 interests.--

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

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

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

8 Section 128. Paragraph (i) of subsection (6) of
9 section 112.3145, Florida Statutes, is amended to read:

10 112.3145 Disclosure of financial interests and clients
11 represented before agencies.--

12 (6) Forms for compliance with the disclosure
13 requirements of this section and a current list of persons
14 subject to disclosure shall be created by the commission and
15 provided to each supervisor of elections. The commission and
16 each supervisor of elections shall give notice of disclosure
17 deadlines and delinquencies and distribute forms in the
18 following manner:

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

28 Section 129. Paragraph (c) of subsection (9) of
29 section 112.3189, Florida Statutes, is amended to read:

30 112.3189 Investigative procedures upon receipt of
31 whistle-blower information from certain state employees.--

1 (9)

2 (c) The Chief Inspector General shall transmit any
3 final report under this section, any comments provided by the
4 complainant, and any appropriate comments or recommendations
5 by the Chief Inspector General to the Governor, to the Joint
6 Legislative Auditing Committee, to the investigating agency,
7 and to the Chief Financial Officer ~~Comptroller~~.

8 Section 130. Paragraph (e) of subsection (3) of
9 section 112.31895, Florida Statutes, is amended to read:

10 112.31895 Investigative procedures in response to
11 prohibited personnel actions.--

12 (3) CORRECTIVE ACTION AND TERMINATION OF
13 INVESTIGATION.--

14 (e)1. The Florida Commission on Human Relations may
15 request an agency or circuit court to order a stay, on such
16 terms as the court requires, of any personnel action for 45
17 days if the Florida Commission on Human Relations determines
18 that reasonable grounds exist to believe that a prohibited
19 personnel action has occurred, is occurring, or is to be
20 taken. The Florida Commission on Human Relations may request
21 that such stay be extended for appropriate periods of time.

22 2. If, in connection with any investigation, the
23 Florida Commission on Human Relations determines that
24 reasonable grounds exist to believe that a prohibited action
25 has occurred, is occurring, or is to be taken which requires
26 corrective action, the Florida Commission on Human Relations
27 shall report the determination together with any findings or
28 recommendations to the agency head and may report that
29 determination and those findings and recommendations to the
30 Governor and the Chief Financial Officer ~~Comptroller~~. The

31

1 Florida Commission on Human Relations may include in the
2 report recommendations for corrective action to be taken.

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

9 4. If the Florida Commission on Human Relations finds,
10 in consultation with the individual subject to the prohibited
11 action, that the agency has implemented the corrective action,
12 the commission shall file such finding with the agency head,
13 together with any written comments that the individual
14 provides, and terminate the investigation.

15 Section 131. Paragraph (f) of subsection (5) of
16 section 112.3215, Florida Statutes, is amended to read:

17 112.3215 Lobbyists before the executive branch or the
18 Constitution Revision Commission; registration and reporting;
19 investigation by commission.--

20 (5)

21 (f) The commission shall provide by rule a procedure
22 by which a lobbyist who fails to timely file a report shall be
23 notified and assessed fines. The rule shall provide for the
24 following:

25 1. Upon determining that the report is late, the
26 person designated to review the timeliness of reports shall
27 immediately notify the lobbyist as to the failure to timely
28 file the report and that a fine is being assessed for each
29 late day. The fine shall be \$50 per day per report for each
30 late day up to a maximum of \$5,000 per late report.

31

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

4 a. When a report is actually received by the lobbyist
5 registration and reporting office.

6 b. When the report is postmarked.

7 c. When the certificate of mailing is dated.

8 d. When the receipt from an established courier
9 company is dated.

10 3. Such fine shall be paid within 30 days after the
11 notice of payment due is transmitted by the Lobbyist
12 Registration Office, unless appeal is made to the commission.
13 The moneys shall be deposited into the Executive Branch Lobby
14 Registration Trust Fund.

15 4. A fine shall not be assessed against a lobbyist the
16 first time any reports for which the lobbyist is responsible
17 are not timely filed. However, to receive the one-time fine
18 waiver, all reports for which the lobbyist is responsible must
19 be filed within 30 days after the notice that any reports have
20 not been timely filed is transmitted by the Lobbyist
21 Registration Office. A fine shall be assessed for any
22 subsequent late-filed reports.

23 5. Any lobbyist may appeal or dispute a fine, based
24 upon unusual circumstances surrounding the failure to file on
25 the designated due date, and may request and shall be entitled
26 to a hearing before the commission, which shall have the
27 authority to waive the fine in whole or in part for good cause
28 shown. Any such request shall be made within 30 days after
29 the notice of payment due is transmitted by the Lobbyist
30 Registration Office. In such case, the lobbyist shall, within
31 the 30-day period, notify the person designated to review the

1 timeliness of reports in writing of his or her intention to
2 bring the matter before the commission.

3 6. The person designated to review the timeliness of
4 reports shall notify the commission of the failure of a
5 lobbyist to file a report after notice or of the failure of a
6 lobbyist to pay the fine imposed.

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

17 Section 132. Subsection (4) of section 112.63, Florida
18 Statutes, is amended to read:

19 112.63 Actuarial reports and statements of actuarial
20 impact; review.--

21 (4) Upon receipt, pursuant to subsection (2), of an
22 actuarial report, or upon receipt, pursuant to subsection (3),
23 of a statement of actuarial impact, the Department of
24 Management Services shall acknowledge such receipt, but shall
25 only review and comment on each retirement system's or plan's
26 actuarial valuations at least on a triennial basis. If the
27 department finds that the actuarial valuation is not complete,
28 accurate, or based on reasonable assumptions, or if the
29 department does not receive the actuarial report or statement
30 of actuarial impact, the department shall notify the local
31 government and request appropriate adjustment. If, after a

1 reasonable period of time, a satisfactory adjustment is not
2 made, the affected local government or the department may
3 petition for a hearing under the provisions of ss. 120.569 and
4 120.57. If the administrative law judge recommends in favor of
5 the department, the department shall perform an actuarial
6 review or prepare the statement of actuarial impact. The cost
7 to the department of performing such actuarial review or
8 preparing such statement shall be charged to the governmental
9 entity of which the employees are covered by the retirement
10 system or plan. If payment of such costs is not received by
11 the department within 60 days after receipt by the
12 governmental entity of the request for payment, the department
13 shall certify to the Chief Financial Officer ~~Comptroller~~ the
14 amount due, and the Chief Financial Officer ~~Comptroller~~ shall
15 pay such amount to the department from any funds payable to
16 the governmental entity of which the employees are covered by
17 the retirement system or plan. If the administrative law
18 judge recommends in favor of the local retirement system and
19 the department performs an actuarial review, the cost to the
20 department of performing the actuarial review shall be paid by
21 the department.

22 Section 133. Section 116.03, Florida Statutes, is
23 amended to read:

24 116.03 Officers to report fees collected.--Each state
25 and county officer who receives all or any part of his or her
26 compensation in fees or commissions, or other remuneration,
27 shall keep a complete report of all fees and commissions, or
28 other remuneration collected, and shall make a report to the
29 Department of Financial Services ~~Banking and Finance~~ of all
30 such fees and commissions, or other remuneration, annually on
31 December 31 of each and every year. Such report shall be made

1 upon forms to be prescribed from time to time by the
2 department, and shall show in detail the source, character and
3 amount of all his or her official expenses and the net amount
4 that the office has paid up to the time of making such report.
5 All officers shall make out, fill in and subscribe and
6 properly forward to the department such reports, and swear to
7 the accuracy and competency of such reports.

8 Section 134. Section 116.04, Florida Statutes, is
9 amended to read:

10 116.04 Failure of officer to make sworn report of
11 fees.--Any officer who shall fail or refuse to make,
12 subscribe, and swear, or to file with the Department of
13 Financial Services ~~Banking and Finance~~ a report of all fees,
14 commissions, or other remuneration collected, as required by
15 law, or if any officer shall knowingly or willfully make false
16 or incomplete reports, or in any report violate any of the
17 provisions of s. 116.03 he or she shall be guilty of a
18 misdemeanor of the first degree, punishable as provided in s.
19 775.082 or s. 775.083.

20 Section 135. Section 116.05, Florida Statutes, is
21 amended to read:

22 116.05 Examination and publication by Department of
23 Financial Services ~~Banking and Finance~~.--The Department of
24 Financial Services ~~Banking and Finance~~ shall have examined and
25 verified any of the reports received under s. 116.03 whenever
26 in its judgment the same may be necessary, and the department
27 shall cause the matter and things in each of said reports to
28 be published one time in a newspaper published in the county
29 in which such report originated, in such form as it shall
30 direct, and the expense of such publication shall be paid by
31 the county commissioners of such county.

1 Section 136. Section 116.06, Florida Statutes, is
2 amended to read:

3 116.06 Summary of reports; certain officers not
4 required to report fees.--A summary of all such reports shall
5 be included by the Department of Financial Services ~~Banking~~
6 ~~and Finance~~ in its annual report to the Governor, except that
7 jurors and notaries public shall not be required to make such
8 reports as provided for in s. 116.03.

9 Section 137. Section 116.14, Florida Statutes, is
10 amended to read:

11 116.14 Receipts required from purchasers of state
12 property.--Upon the sale of any state property by the
13 superintendent and presidents of state institutions as
14 provided by law, they shall take receipt for the same from the
15 purchaser, which receipt shall be forwarded, together with the
16 proceeds of the sale, to the Chief Financial Officer ~~State~~
17 ~~Treasurer~~.

18 Section 138. Paragraph (c) of subsection (15) of
19 section 120.52, Florida Statutes, is amended to read:

20 120.52 Definitions.--As used in this act:

21 (15) "Rule" means each agency statement of general
22 applicability that implements, interprets, or prescribes law
23 or policy or describes the procedure or practice requirements
24 of an agency and includes any form which imposes any
25 requirement or solicits any information not specifically
26 required by statute or by an existing rule. The term also
27 includes the amendment or repeal of a rule. The term does not
28 include:

29 (c) The preparation or modification of:

30 1. Agency budgets.

31

1 2. Statements, memoranda, or instructions to state
2 agencies issued by the Chief Financial Officer or Comptroller
3 as chief fiscal officer of the state and relating or
4 pertaining to claims for payment submitted by state agencies
5 to the Chief Financial Officer or Comptroller.

6 3. Contractual provisions reached as a result of
7 collective bargaining.

8 4. Memoranda issued by the Executive Office of the
9 Governor relating to information resources management.

10 Section 139. Subsections (3) and (9) of section
11 120.80, Florida Statutes, are amended to read:

12 120.80 Exceptions and special requirements;
13 agencies.--

14 (3) OFFICE OF FINANCIAL REGULATION ~~DEPARTMENT OF~~
15 ~~BANKING AND FINANCE~~.--

16 (a) Notwithstanding s. 120.60(1), in proceedings for
17 the issuance, denial, renewal, or amendment of a license or
18 approval of a merger pursuant to title XXXVIII:

19 1.a. The Office of Financial Regulation of the
20 Financial Services Commission ~~Department of Banking and~~
21 ~~Finance~~ shall have published in the Florida Administrative
22 Weekly notice of the application within 21 days after receipt.

23 b. Within 21 days after publication of notice, any
24 person may request a hearing. Failure to request a hearing
25 within 21 days after notice constitutes a waiver of any right
26 to a hearing. The Office of Financial Regulation ~~Department of~~
27 ~~Banking and Finance~~ or an applicant may request a hearing at
28 any time prior to the issuance of a final order. Hearings
29 shall be conducted pursuant to ss. 120.569 and 120.57, except
30 that the Financial Services Commission ~~Department of Banking~~
31

1 ~~and Finance~~ shall by rule provide for participation by the
2 general public.

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

9 3. Notwithstanding s. 120.60(1), and except as
10 provided in subparagraph 4., every application for license for
11 a new bank, new trust company, new credit union, or new
12 savings and loan association shall be approved or denied
13 within 180 days after receipt of the original application or
14 receipt of the timely requested additional information or
15 correction of errors or omissions. Any application for such a
16 license or for acquisition of such control which is not
17 approved or denied within the 180-day period or within 30 days
18 after conclusion of a public hearing on the application,
19 whichever is later, shall be deemed approved subject to the
20 satisfactory completion of conditions required by statute as a
21 prerequisite to license and approval of insurance of accounts
22 for a new bank, a new savings and loan association, or a new
23 credit union by the appropriate insurer.

24 4. In the case of every application for license to
25 establish a new bank, trust company, or capital stock savings
26 association in which a foreign national proposes to own or
27 control 10 percent or more of any class of voting securities,
28 and in the case of every application by a foreign national for
29 approval to acquire control of a bank, trust company, or
30 capital stock savings association, the Office of Financial
31 Regulation ~~Department of Banking and Finance~~ shall request

1 that a public hearing be conducted pursuant to ss. 120.569 and
2 120.57. Notice of such hearing shall be published by the
3 applicant as provided in subparagraph 2. The failure of any
4 such foreign national to appear personally at the hearing
5 shall be grounds for denial of the application.

6 Notwithstanding the provisions of s. 120.60(1) and
7 subparagraph 3., every application involving a foreign
8 national shall be approved or denied within 1 year after
9 receipt of the original application or any timely requested
10 additional information or the correction of any errors or
11 omissions, or within 30 days after the conclusion of the
12 public hearing on the application, whichever is later.

13 (b) In any application for a license or merger
14 pursuant to title XXXVIII which is referred by the agency to
15 the division for hearing, the administrative law judge shall
16 complete and submit to the agency and to all parties a written
17 report consisting of findings of fact and rulings on
18 evidentiary matters. The agency shall allow each party at
19 least 10 days in which to submit written exceptions to the
20 report.

21 (9) OFFICE OF INSURANCE REGULATION ~~DEPARTMENT OF~~
22 ~~INSURANCE~~.--Notwithstanding s. 120.60(1), every application
23 for a certificate of authority as required by s. 624.401 shall
24 be approved or denied within 180 days after receipt of the
25 original application. Any application for a certificate of
26 authority which is not approved or denied within the 180-day
27 period, or within 30 days after conclusion of a public hearing
28 held on the application, shall be deemed approved, subject to
29 the satisfactory completion of conditions required by statute
30 as a prerequisite to licensure.

31

1 Section 140. Subsection (8) of section 121.051,
2 Florida Statutes, is amended to read:

3 121.051 Participation in the system.--

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

19 Section 141. Paragraph (e) of subsection (1) of
20 section 121.055, Florida Statutes, is amended to read:

21 121.055 Senior Management Service Class.--There is
22 hereby established a separate class of membership within the
23 Florida Retirement System to be known as the "Senior
24 Management Service Class," which shall become effective
25 February 1, 1987.

26 (1)

27 (e) Effective January 1, 1991, participation in the
28 Senior Management Service Class shall be compulsory for the
29 number of senior managers who have policymaking authority with
30 the State Board of Administration, as determined by the
31 Governor, Chief Financial Officer ~~Treasurer~~, and Attorney

1 General Comptroller acting as the State Board of
2 Administration, unless such member elects to participate in
3 the Senior Management Service Optional Annuity Program as
4 established in subsection (6) in lieu of participation in the
5 Senior Management Service Class. Such election shall be made
6 in writing and filed with the division and the personnel
7 officer of the State Board of Administration within 90 days
8 after becoming eligible for membership in the Senior
9 Management Service Class.

10 Section 142. Paragraph (a) of subsection (2) of
11 section 121.061, Florida Statutes, is amended to read:

12 121.061 Funding.--

13 (2)(a) Should any employer other than a state employer
14 fail to make the retirement and social security contributions,
15 both member and employer contributions, required by this
16 chapter, then, upon request by the administrator, the
17 Department of Revenue or the Department of Financial Services
18 ~~Banking and Finance~~, as the case may be, shall deduct the
19 amount owed by the employer from any funds to be distributed
20 by it to the county, city, special district, or consolidated
21 form of government. The amounts so deducted shall be
22 transferred to the administrator for further distribution to
23 the trust funds in accordance with this chapter.

24 Section 143. Section 121.133, Florida Statutes, is
25 amended to read:

26 121.133 Cancellation of uncashed
27 warrants.--Notwithstanding the provisions of s. 17.26 or s.
28 717.123 to the contrary, ~~effective July 1, 1998,~~ if any state
29 warrant issued by the Chief Financial Officer ~~Comptroller~~ for
30 the payment of retirement benefits from the Florida Retirement
31 System Trust Fund, or any other pension trust fund

1 administered by the department, is not presented for payment
2 within 1 year after the last day of the month in which it was
3 originally issued, the Chief Financial Officer ~~Comptroller~~
4 shall cancel the benefit warrant and credit the amount of the
5 warrant to the Florida Retirement System Trust Fund or other
6 pension trust fund administered by the department, as
7 appropriate. The department may provide for issuance of a
8 replacement warrant when deemed appropriate.

9 Section 144. Paragraph (b) of subsection (4) of
10 section 122.35, Florida Statutes, is amended to read:

11 122.35 Funding.--

12 (4) Effective October 1, 1967, the proceeds of the
13 intangible tax collections of the state remaining after the
14 payment of administrative expenses, commissions which are
15 applicable, and other costs incident to its collection shall
16 be set aside into an account designated as account B of the
17 Intangible Tax Trust Fund, which account shall also receive
18 all of the matching payments for retirement and social
19 security remitted by each officer or board as provided in
20 subsection (1). The amounts received and deposited into
21 account B of the Intangible Tax Trust Fund are appropriated
22 and shall be used for the following purposes and paid out on
23 the priority basis as shown below:

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

28 1. Each county shall receive each fiscal year ending
29 June 30 an allocation in an amount equal to 55 percent of the
30 total net intangible taxes collected and remitted to the

31

1 Department of Revenue by the tax collector of the county
2 during the prior fiscal year.

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

19 b. Each county, county agency and school board shall
20 pay all matching cost for retirement and social security as
21 required by this act and s. 238.11(1), notwithstanding the
22 provisions of any other law.

23 2. The balance remaining in account B of the
24 Intangible Tax Trust Fund after the retirement and social
25 security contributions have been matched and the allocations
26 to each county have been paid as provided in this act, shall
27 be paid over to the General Revenue Fund of the state.

28 Section 145. Paragraphs (a) and (b) of subsection (11)
29 of section 125.0104, Florida Statutes, are amended to read:

30 125.0104 Tourist development tax; procedure for
31 levying; authorized uses; referendum; enforcement.--

1 (11) INTEREST PAID ON DISTRIBUTIONS.--

2 (a) Interest shall be paid on undistributed taxes
3 collected and remitted to the Department of Revenue under this
4 section. Such interest shall be included along with the tax
5 proceeds distributed to the counties and shall be paid from
6 moneys transferred from the General Revenue Fund. The
7 department shall calculate the interest for net tax
8 distributions using the average daily rate that was earned by
9 the State Treasury for the preceding calendar quarter and paid
10 to the General Revenue Fund. This rate shall be certified by
11 the Chief Financial Officer ~~Treasurer~~ to the department by the
12 20th day following the close of each quarter.

13 (b) The interest applicable to taxes collected under
14 this section shall be calculated by multiplying the tax
15 amounts to be distributed times the daily rate times the
16 number of days after the third working day following the date
17 the tax is due and payable pursuant to s. 212.11 until the
18 date the department issues a voucher to request the Chief
19 Financial Officer ~~Comptroller~~ to issue the payment warrant.
20 The warrant shall be issued within 7 days after the request.

21 Section 146. Paragraph (b) of subsection (2) of
22 section 129.201, Florida Statutes, is amended to read:

23 129.201 Budget of supervisor of elections; manner and
24 time of preparation and presentation.--

25 (2)

26 (b) To the extent appropriate, the budget shall be
27 further itemized in conformance with the Uniform Accounting
28 System for Local Units of Government in Florida adopted
29 ~~promulgated~~ by rule of the Chief Financial Officer ~~Comptroller~~
30 ~~of the state~~.

31

1 Section 147. Section 131.05, Florida Statutes, is
2 amended to read:

3 131.05 Disposition of proceeds of sale.--In the event
4 refunding bonds are issued under the provisions of this
5 chapter prior to the date of maturity or option date of the
6 obligations proposed to be refunded, the proceeds of said
7 refunding bonds shall be deposited in a bank or trust company
8 within the state, which depository shall give a surety bond,
9 or other such bonds as are authorized by law to be accepted
10 for securing county and city funds, satisfactory to the
11 Department of Financial Services ~~Banking and Finance~~ for the
12 full amount of money so deposited, and the funds so deposited
13 shall only be withdrawn with the approval of the department,
14 for the purpose of paying the obligations to refund which said
15 bonds were issued.

16 Section 148. Section 137.09, Florida Statutes, is
17 amended to read:

18 137.09 Justification and approval of bonds.--Each
19 surety upon every bond of any county officer shall make
20 affidavit that he or she is a resident of the county for which
21 the officer is to be commissioned, and that he or she has
22 sufficient visible property therein unencumbered and not
23 exempt from sale under legal process to make good his or her
24 bond. Every such bond shall be approved by the board of
25 county commissioners and by the Department of Financial
26 Services ~~Banking and Finance~~ when they and it are satisfied in
27 their judgment that the same is legal, sufficient, and proper
28 to be approved.

29 Section 149. Section 145.141, Florida Statutes, is
30 amended to read:

31

1 145.141 Deficiency to be paid by board of county
2 commissioners.--Should any county officer have insufficient
3 revenue from the income of his or her office, after paying
4 office personnel and expenses, to pay his or her total annual
5 salary, the board of county commissioners shall pay any
6 deficiency in salary from the general revenue fund and notify
7 the Department of Financial Services ~~Banking and Finance~~. The
8 deficiency shall be listed in the comptroller's annual report
9 of county finances and county fee officers.

10 Section 150. Subsections (1) and (2) of section
11 154.02, Florida Statutes, are amended to read:

12 154.02 County Health Department Trust Fund.--

13 (1) To enable counties to provide public health
14 services and maintain public health equipment and facilities,
15 each county in the state with a population exceeding 100,000,
16 according to the last state census, may levy an annual tax not
17 exceeding 0.5 mill; each county in the state with a population
18 exceeding 40,000 and not exceeding 100,000, according to the
19 last state census, may levy an annual tax not exceeding 1
20 mill; and each county in the state with a population not
21 exceeding 40,000, according to the last state census, may levy
22 an annual tax not exceeding 2 mills, on the dollar on all
23 taxable property in such county, the proceeds of which tax, if
24 so contracted with the state, shall be paid to the Chief
25 Financial Officer ~~Treasurer~~. However, the board of county
26 commissioners may elect to pay in 12 equal monthly
27 installments. Such funds in the hands of the Chief Financial
28 Officer ~~Treasurer~~ shall be placed in the county health
29 department trust funds of the county by which such funds were
30 raised, and such funds shall be expended by the Department of
31

1 Health solely for the purpose of carrying out the intent and
2 object of the public health contract.

3 (2) The Chief Financial Officer ~~Treasurer~~ shall
4 maintain a full-time County Health Department Trust Fund which
5 shall contain all state and local funds to be expended by
6 county health departments. Such funds shall be expended by
7 the Department of Health solely for the purposes of carrying
8 out the intent and purpose of this part. Federal funds may be
9 deposited in the trust fund.

10 Section 151. Subsection (1) of section 154.03, Florida
11 Statutes, is amended to read:

12 154.03 Cooperation with Department of Health and
13 United States Government.--

14 (1) The county commissioners of any county may agree
15 with the Department of Health upon the expenditure by the
16 department in such county of any funds allotted for that
17 purpose by the department or received by it for such purposes
18 from private contributions or other sources, and such funds
19 shall be paid to the Chief Financial Officer ~~Treasurer~~ and
20 shall form a part of the full-time county health department
21 trust fund of such county; and such funds shall be expended by
22 the department solely for the purposes of this chapter. The
23 department is further authorized to arrange and agree with the
24 United States Government, through its duly authorized
25 officials, for the allocation and expenditure by the United
26 States of funds of the United States in the study of causes of
27 disease and prevention thereof in such full-time county health
28 departments when and where established by the department under
29 this part.

30 Section 152. Section 154.05, Florida Statutes, is
31 amended to read:

1 154.05 Cooperation and agreements between
2 counties.--Two or more counties may combine in the
3 establishment and maintenance of a single full-time county
4 health department for the counties which combine for that
5 purpose; and, pursuant to such combination or agreement, such
6 counties may cooperate with one another and the Department of
7 Health and contribute to a joint fund in carrying out the
8 purpose and intent of this chapter. The duration and nature
9 of such agreement shall be evidenced by resolutions of the
10 boards of county commissioners of such counties and shall be
11 submitted to and approved by the department. In the event of
12 any such agreement, a full-time county health department shall
13 be established and maintained by the department in and for the
14 benefit of the counties which have entered into such an
15 agreement; and, in such case, the funds raised by taxation
16 pursuant to this chapter by each such county shall be paid to
17 the Chief Financial Officer ~~Treasurer~~ for the account of the
18 department and shall be known as the full-time county health
19 department trust fund of the counties so cooperating. Such
20 trust funds shall be used and expended by the department for
21 the purposes specified in this chapter in each county which
22 has entered into such agreement. In case such an agreement is
23 entered into between two or more counties, the work
24 contemplated by this chapter shall be done by a single
25 full-time county health department in the counties so
26 cooperating; and the nature, extent, and location of such work
27 shall be under the control and direction of the department.

28 Section 153. Subsection (2) of section 154.06, Florida
29 Statutes, is amended to read:

30 154.06 Fees and services rendered; authority.--
31

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

18 Section 154. Paragraphs (d) and (e) of subsection (17)
19 of section 154.209, Florida Statutes, are amended to read:

20 154.209 Powers of authority.--The purpose of the
21 authority shall be to assist health facilities in the
22 acquisition, construction, financing, and refinancing of
23 projects in any incorporated or unincorporated area within the
24 geographical limits of the local agency. For this purpose,
25 the authority is authorized and empowered:

26 (17) To issue special obligation revenue bonds for the
27 purpose of establishing and maintaining the self-insurance
28 pool and to provide reserve funds in connection therewith,
29 such bonds to be payable from funds available in the pool from
30 time to time or from assessments against participating health
31 facilities for the purpose of providing required contributions

1 to the fund. With respect to the issuance of such bonds or
2 notes the following provisions shall apply:

3 (d) Any self-insurance pool funded pursuant to this
4 section shall maintain excess insurance which provides
5 specific and aggregate limits and a retention level determined
6 in accordance with sound actuarial principles. The Office of
7 Insurance Regulation of the Financial Services Commission
8 ~~Department of Insurance~~ may waive this requirement if the fund
9 demonstrates that its operation is and will be actuarially
10 sound without obtaining excess insurance.

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

22 Section 155. Section 154.314, Florida Statutes, is
23 amended to read:

24 154.314 Certification of the State of Florida.--

25 (1) In the event payment for the costs of services
26 rendered by a participating hospital or a regional referral
27 hospital is not received from the responsible county within 90
28 days of receipt of a statement for services rendered to a
29 qualified indigent who is a certified resident of the county,
30 or if the payment is disputed and said payment is not received
31 from the county determined to be responsible within 60 days of

1 the date of exhaustion of all administrative and legal
2 remedies, the hospital shall certify to the Chief Financial
3 Officer ~~Comptroller~~ the amount owed by the county.

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

16 Section 156. Paragraph (e) of subsection (7) of
17 section 163.01, Florida Statutes, is amended to read:

18 163.01 Florida Interlocal Cooperation Act of 1969.--

19 (7)

20 (e)1. Notwithstanding the provisions of paragraph (c),
21 any separate legal entity, created pursuant to the provisions
22 of this section and controlled by counties or municipalities
23 of this state, the membership of which consists or is to
24 consist only of public agencies of this state, may, for the
25 purpose of financing acquisition of liability coverage
26 contracts from one or more local government liability pools to
27 provide liability coverage for counties, municipalities, or
28 other public agencies of this state, exercise all powers in
29 connection with the authorization, issuance, and sale of
30 bonds. All of the privileges, benefits, powers, and terms of
31 s. 125.01 relating to counties and s. 166.021 relating to

1 municipalities shall be fully applicable to such entity and
2 such entity shall be considered a unit of local government for
3 all of the privileges, benefits, powers, and terms of part I
4 of chapter 159. Bonds issued by such entity shall be deemed
5 issued on behalf of counties, municipalities, or public
6 agencies which enter into loan agreements with such entity as
7 provided in this paragraph. Proceeds of bonds issued by such
8 entity may be loaned to counties, municipalities, or other
9 public agencies of this state, whether or not such counties,
10 municipalities, or other public agencies are also members of
11 the entity issuing the bonds, and such counties,
12 municipalities, or other public agencies may in turn deposit
13 such loan proceeds with a separate local government liability
14 pool for purposes of acquiring liability coverage contracts.

15 2. Counties or municipalities of this state are
16 authorized pursuant to this section, in addition to the
17 authority provided by s. 125.01, part II of chapter 166, and
18 other applicable law, to issue bonds for the purpose of
19 acquiring liability coverage contracts from a local government
20 liability pool. Any individual county or municipality may, by
21 entering into interlocal agreements with other counties,
22 municipalities, or public agencies of this state, issue bonds
23 on behalf of itself and other counties, municipalities, or
24 other public agencies, for purposes of acquiring a liability
25 coverage contract or contracts from a local government
26 liability pool. Counties, municipalities, or other public
27 agencies are also authorized to enter into loan agreements
28 with any entity created pursuant to subparagraph 1., or with
29 any county or municipality issuing bonds pursuant to this
30 subparagraph, for the purpose of obtaining bond proceeds with
31 which to acquire liability coverage contracts from a local

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

23 3. Any entity created pursuant to this section or any
24 county or municipality may also issue bond anticipation notes,
25 as provided by s. 215.431, in connection with the
26 authorization, issuance, and sale of such bonds. In addition,
27 the governing body of such legal entity or the governing body
28 of such county or municipality may also authorize bonds to be
29 issued and sold from time to time and may delegate, to such
30 officer, official, or agent of such legal entity as the
31 governing body of such legal entity may select, the power to

1 determine the time; manner of sale, public or private;
2 maturities; rate or rates of interest, which may be fixed or
3 may vary at such time or times and in accordance with a
4 specified formula or method of determination; and other terms
5 and conditions as may be deemed appropriate by the officer,
6 official, or agent so designated by the governing body of such
7 legal entity. However, the amounts and maturities of such
8 bonds and the interest rate or rates of such bonds shall be
9 within the limits prescribed by the governing body of such
10 legal entity and its resolution delegating to such officer,
11 official, or agent the power to authorize the issuance and
12 sale of such bonds. Any series of bonds issued pursuant to
13 this paragraph shall mature no later than 7 years following
14 the date of issuance thereof.

15 4. Bonds issued pursuant to subparagraph 1. may be
16 validated as provided in chapter 75. The complaint in any
17 action to validate such bonds shall be filed only in the
18 Circuit Court for Leon County. The notice required to be
19 published by s. 75.06 shall be published in Leon County and in
20 each county which is an owner of the entity issuing the bonds,
21 or in which a member of the entity is located, and the
22 complaint and order of the circuit court shall be served only
23 on the State Attorney of the Second Judicial Circuit and on
24 the state attorney of each circuit in each county or
25 municipality which is an owner of the entity issuing the bonds
26 or in which a member of the entity is located.

27 5. Bonds issued pursuant to subparagraph 2. may be
28 validated as provided in chapter 75. The complaint in any
29 action to validate such bonds shall be filed in the circuit
30 court of the county or municipality which will issue the
31 bonds. The notice required to be published by s. 75.06 shall

1 be published only in the county where the complaint is filed,
2 and the complaint and order of the circuit court shall be
3 served only on the state attorney of the circuit in the county
4 or municipality which will issue the bonds.

5 6. The participation by any county, municipality, or
6 other public agency of this state in a local government
7 liability pool shall not be deemed a waiver of immunity to the
8 extent of liability coverage, nor shall any contract entered
9 regarding such a local government liability pool be required
10 to contain any provision for waiver.

11 Section 157. Subsections (4), (5), (6), (7), (8), and
12 (9) of section 163.055, Florida Statutes, are amended to read:

13 163.055 Local Government Financial Technical
14 Assistance Program.--

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

17 (a) Be a public agency or private, nonprofit
18 corporation, association, or entity.

19 (b) Use existing resources, services, and information
20 that are available from state or local agencies, universities,
21 or the private sector.

22 (c) Seek and accept funding from any public or private
23 source.

24 (d) Annually submit information to assist the
25 Legislative Committee on Intergovernmental Relations in
26 preparing a performance review that will include an analysis
27 of the effectiveness of the program.

28 (e) Assist municipalities and independent special
29 districts in developing alternative revenue sources.

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

1 (g) Provide assistance to municipalities and special
2 districts in the areas of financial management, accounting,
3 investing, budgeting, and debt issuance.

4 (h) Develop a needs assessment to determine where
5 assistance should be targeted, and to establish a priority
6 system to deliver assistance to those jurisdictions most in
7 need through the most economical means available.

8 (i) Provide financial emergency assistance upon
9 direction from the Executive Office of the Governor pursuant
10 to s. 218.503.

11 (5)(a) The Chief Financial Officer ~~Comptroller~~ shall
12 issue a request for proposals to provide assistance to
13 municipalities and special districts. At the request of the
14 Chief Financial Officer ~~Comptroller~~, the Legislative Committee
15 on Intergovernmental Relations shall assist in the preparation
16 of the request for proposals.

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

19 (c) The Legislative Committee on Intergovernmental
20 Relations shall review each contract proposal and submit to
21 the Chief Financial Officer ~~Comptroller~~, in writing, advisory
22 comments and recommendations, citing with specificity the
23 reasons for its recommendations.

24 (d) The Chief Financial Officer ~~Comptroller~~ and the
25 Legislative Committee on Intergovernmental Relations shall
26 consider the following factors in reviewing contract
27 proposals:

28 1. The demonstrated capacity of the provider to
29 conduct needs assessments and implement the program as
30 proposed.

31

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

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

5 4. The short-term and long-term benefits of the
6 assistance to municipalities and special districts.

7 5. The form and extent to which existing resources,
8 services, and information that are available from state and
9 local agencies, universities, and the private sector will be
10 used by the provider under the contract.

11 (6) A decision of the Chief Financial Officer
12 ~~Comptroller~~ to award a contract under this section is final
13 and shall be in writing with a copy provided to the
14 Legislative Committee on Intergovernmental Relations.

15 (7) The Chief Financial Officer ~~Comptroller~~ may enter
16 into contracts and agreements with other state and local
17 agencies and with any person, association, corporation, or
18 entity other than the program providers, for the purpose of
19 administering this section.

20 (8) The Chief Financial Officer ~~Comptroller~~ shall
21 provide fiscal oversight to ensure that funds expended for the
22 program are used in accordance with the contracts entered into
23 pursuant to subsection (4).

24 (9) The Legislative Committee on Intergovernmental
25 Relations shall annually conduct a performance review of the
26 program. The findings of the review shall be presented in a
27 report submitted to the Governor, the President of the Senate,
28 the Speaker of the House of Representatives, and the Chief
29 Financial Officer ~~Comptroller~~ by January 15 of each year.

30 Section 158. Subsection (6) of section 163.3167,
31 Florida Statutes, is amended to read:

1 163.3167 Scope of act.--

2 (6) When a regional planning agency is required to
3 prepare or amend a comprehensive plan, or element or portion
4 thereof, pursuant to subsections (3) and (4), the regional
5 planning agency and the local government may agree to a method
6 of compensating the regional planning agency for any
7 verifiable, direct costs incurred. If an agreement is not
8 reached within 6 months after the date the regional planning
9 agency assumes planning responsibilities for the local
10 government pursuant to subsections (3) and (4) or by the time
11 the plan or element, or portion thereof, is completed,
12 whichever is earlier, the regional planning agency shall file
13 invoices for verifiable, direct costs involved with the
14 governing body. Upon the failure of the local government to
15 pay such invoices within 90 days, the regional planning agency
16 may, upon filing proper vouchers with the Chief Financial
17 Officer ~~State Comptroller~~, request payment by the Chief
18 Financial Officer ~~State Comptroller~~ from unencumbered revenue
19 or other tax sharing funds due such local government from the
20 state for work actually performed, and the Chief Financial
21 Officer ~~State Comptroller~~ shall pay such vouchers; however,
22 the amount of such payment shall not exceed 50 percent of such
23 funds due such local government in any one year.

24 Section 159. Section 166.111, Florida Statutes, is
25 amended to read:

26 166.111 Authority to borrow.--

27 (1) The governing body of every municipality may
28 borrow money, contract loans, and issue bonds as defined in s.
29 166.101 from time to time to finance the undertaking of any
30 capital or other project for the purposes permitted by the
31 State Constitution and may pledge the funds, credit, property,

1 and taxing power of the municipality for the payment of such
2 debts and bonds.

3 ~~(2)(a) The Legislature finds:~~

4 1. ~~The widespread and massive damage to persons and~~
5 ~~property caused by the August 24, 1992, storm known as~~
6 ~~Hurricane Andrew has generated insurance claims of such a~~
7 ~~nature as to render numerous insurers operating within this~~
8 ~~state insolvent, and therefore unable to satisfy covered~~
9 ~~claims.~~

10 2. ~~The inability of insureds within this state to~~
11 ~~receive payment of covered claims or to receive such payment~~
12 ~~on a timely basis creates financial and other hardships for~~
13 ~~such insureds and places undue burdens on the state, the~~
14 ~~affected units of local government, and the community at~~
15 ~~large.~~

16 3. ~~In addition, the failure of insurers to pay covered~~
17 ~~claims or to pay such claims on a timely basis due to the~~
18 ~~insolvency of such insurers can undermine the public's~~
19 ~~confidence in insurers operating within this state, thereby~~
20 ~~adversely affecting the stability of the insurance industry in~~
21 ~~this state.~~

22 4. ~~The state has previously taken action to address~~
23 ~~these problems by adopting the Florida Insurance Guaranty~~
24 ~~Association Act, which, among other things, provides a~~
25 ~~mechanism for the payment of covered claims under certain~~
26 ~~insurance policies to avoid excessive delay in payment and to~~
27 ~~avoid financial loss to claimants or policyholders because of~~
28 ~~the insolvency of an insurer.~~

29 5. ~~In the wake of the unprecedented destruction caused~~
30 ~~by Hurricane Andrew, the resultant covered claims, and the~~
31 ~~number of insurers rendered insolvent thereby, it is evident~~

1 ~~that alternative programs must be developed to allow the~~
2 ~~Florida Insurance Guaranty Association to more expeditiously~~
3 ~~and effectively provide for the payment of covered claims.~~

4 ~~6. It is therefore determined to be in the best~~
5 ~~interests of, and necessary for, the protection of the public~~
6 ~~health, safety, and general welfare of the residents of this~~
7 ~~state, and for the protection and preservation of the economic~~
8 ~~stability of insurers operating in this state, and it is~~
9 ~~hereby declared to be an essential public purpose, to permit~~
10 ~~certain municipalities to take such actions as will provide~~
11 ~~relief to claimants and policyholders having covered claims~~
12 ~~against insolvent insurers operating in this state, by~~
13 ~~expediting the handling and payment of covered claims.~~

14 ~~7. To achieve the foregoing purposes, it is proper to~~
15 ~~authorize municipalities of this state substantially affected~~
16 ~~by Hurricane Andrew to issue bonds to assist the Florida~~
17 ~~Insurance Guaranty Association in expediting the handling and~~
18 ~~payment of covered claims against insolvent insurers operating~~
19 ~~in this state.~~

20 ~~8. In order to avoid the needless and indiscriminate~~
21 ~~proliferation, duplication, and fragmentation of such~~
22 ~~assistance programs, it is proper to authorize a municipality~~
23 ~~severely affected by Hurricane Andrew to provide for the~~
24 ~~payment of covered claims beyond its territorial limits in the~~
25 ~~implementation of such programs.~~

26 ~~(b) The governing body of any municipality the~~
27 ~~residents of which have been substantially affected by the~~
28 ~~August 24, 1992, storm known as Hurricane Andrew, or any~~
29 ~~county as defined in s. 125.011(1), may issue no more than~~
30 ~~\$500 million, in aggregate principal amount, of bonds as~~
31 ~~defined in s. 166.101 from time to time to fund an assistance~~

1 ~~program, in conjunction with the Florida Insurance Guaranty~~
2 ~~Association, for the purpose of paying to claimants or~~
3 ~~policyholders covered claims, as such term is defined in s.~~
4 ~~631.54(3), arising through the insolvency of an insurer~~
5 ~~occurring on or before March 31, 1993, which insolvency is~~
6 ~~determined by the Florida Insurance Guaranty Association to~~
7 ~~have been a result of Hurricane Andrew, regardless of whether~~
8 ~~such claimants or policyholders are residents of such~~
9 ~~municipality or the property to which such claim relates is~~
10 ~~located within or outside of the territorial jurisdiction of~~
11 ~~such municipality. A municipality issuing bonds for this~~
12 ~~purpose shall enter into such contracts with the Florida~~
13 ~~Insurance Guaranty Association or any entity acting on behalf~~
14 ~~of the Florida Insurance Guaranty Association as are necessary~~
15 ~~to implement the assistance program. Any bonds issued by a~~
16 ~~municipality under this subsection shall be payable from and~~
17 ~~secured by moneys received by or on behalf of the municipality~~
18 ~~from assessments levied under s. 631.57(3)(e), and assigned~~
19 ~~and pledged under s. 631.57(3)(e) to or on behalf of the~~
20 ~~municipality for the benefit of the holders of such bonds in~~
21 ~~connection with such assistance program. The funds, credit,~~
22 ~~property, and taxing power of the municipality shall not be~~
23 ~~pledged for the payment of such bonds.~~

24 ~~(c) The governing body of the municipality issuing~~
25 ~~bonds authorized by paragraph (b) shall require all firms,~~
26 ~~including, but not limited to, the financial advisers, legal~~
27 ~~counsel, and underwriters, providing professional services in~~
28 ~~the issuance of such bonds to include minority firms in the~~
29 ~~provision of such services. To meet such participation~~
30 ~~requirement, the minority firm must have full-time employees~~
31 ~~located in this state and a permanent place of business~~

1 ~~located in this state, and must be a firm which is at least 51~~
2 ~~percent owned by minority persons as defined by s. 288.703(3),~~
3 ~~or any combination thereof, and whose management and daily~~
4 ~~operations are controlled by such persons. Minority firms must~~
5 ~~be offered participation in not less than 20 percent of the~~
6 ~~respective contracts for professional services.~~

7 Section 160. Paragraph (a) of subsection (8) of
8 section 175.032, Florida Statutes, is amended to read:

9 175.032 Definitions.--For any municipality, special
10 fire control district, chapter plan, local law municipality,
11 local law special fire control district, or local law plan
12 under this chapter, the following words and phrases have the
13 following meanings:

14 (8)(a) "Firefighter" means any person employed solely
15 by a constituted fire department of any municipality or
16 special fire control district who is certified as a
17 firefighter as a condition of employment in accordance with
18 the provisions of s. 633.35 and whose duty it is to extinguish
19 fires, to protect life, or to protect property. However, for
20 purposes of this chapter only, "firefighter" also includes
21 public safety officers who are responsible for performing both
22 police and fire services, who are certified as police officers
23 or firefighters, and who are certified by their employers to
24 the Chief Financial Officer ~~Insurance Commissioner and~~
25 ~~Treasurer~~ as participating in this chapter prior to October 1,
26 1979. Effective October 1, 1979, public safety officers who
27 have not been certified as participating in this chapter shall
28 be considered police officers for retirement purposes and
29 shall be eligible to participate in chapter 185. Any plan may
30 provide that the fire chief shall have an option to
31 participate, or not, in that plan.

1 Section 161. Subsection (1) of section 175.101,
2 Florida Statutes, is amended to read:

3 175.101 State excise tax on property insurance
4 premiums authorized; procedure.--For any municipality, special
5 fire control district, chapter plan, local law municipality,
6 local law special fire control district, or local law plan
7 under this chapter:

8 (1) Each municipality or special fire control district
9 in this state described and classified in s. 175.041, having a
10 lawfully established firefighters' pension trust fund or
11 municipal fund or special fire control district fund, by
12 whatever name known, providing pension benefits to
13 firefighters as provided under this chapter, may assess and
14 impose on every insurance company, corporation, or other
15 insurer now engaged in or carrying on, or who shall
16 hereinafter engage in or carry on, the business of property
17 insurance as shown by the records of the Office of Insurance
18 Regulation of the Financial Services Commission ~~Department of~~
19 ~~Insurance~~ an excise tax in addition to any lawful license or
20 excise tax now levied by each of the municipalities or special
21 fire control districts, respectively, amounting to 1.85
22 percent of the gross amount of receipts of premiums from
23 policyholders on all premiums collected on property insurance
24 policies covering property within the corporate limits of such
25 municipalities or within the legally defined boundaries of
26 special fire control districts, respectively. Whenever the
27 boundaries of a special fire control district that has
28 lawfully established a firefighters' pension trust fund
29 encompass a portion of the corporate territory of a
30 municipality that has also lawfully established a
31 firefighters' pension trust fund, that portion of the tax

1 receipts attributable to insurance policies covering property
2 situated both within the municipality and the special fire
3 control district shall be given to the fire service provider.
4 The agent shall identify the fire service provider on the
5 property owner's application for insurance. Remaining
6 revenues collected pursuant to this chapter shall be
7 distributed to the municipality or special fire control
8 district according to the location of the insured property.
9

10 This section also applies to any municipality consisting of a
11 single consolidated government which is made up of a former
12 county and one or more municipalities, consolidated pursuant
13 to the authority in s. 3 or s. 6(e), Art. VIII of the State
14 Constitution, and to property insurance policies covering
15 property within the boundaries of the consolidated government,
16 regardless of whether the properties are located within one or
17 more separately incorporated areas within the consolidated
18 government, provided the properties are being provided fire
19 protection services by the consolidated government.

20 Section 162. Subsection (2) of section 175.121,
21 Florida Statutes, is amended to read:

22 175.121 Department of Revenue and Division of
23 Retirement to keep accounts of deposits; disbursements.--For
24 any municipality or special fire control district having a
25 chapter or local law plan established pursuant to this
26 chapter:

27 (2) The Chief Financial Officer ~~Comptroller~~ shall, on
28 or before July 1 of each year, and at such other times as
29 authorized by the division, draw his or her warrants on the
30 full net amount of money then on deposit in the Police and
31 Firefighters' Premium Tax Trust Fund pursuant to this chapter,

1 specifying the municipalities and special fire control
2 districts to which the moneys must be paid and the net amount
3 collected for and to be paid to each municipality or special
4 fire control district, respectively, subject to the limitation
5 on disbursement under s. 175.122. The sum payable to each
6 municipality or special fire control district is appropriated
7 annually out of the Police and Firefighters' Premium Tax Trust
8 Fund. The warrants of the Chief Financial Officer ~~Comptroller~~
9 shall be payable to the respective municipalities and special
10 fire control districts entitled to receive them and shall be
11 remitted annually by the division to the respective
12 municipalities and special fire control districts. In lieu
13 thereof, the municipality or special fire control district may
14 provide authorization to the division for the direct payment
15 of the premium tax to the board of trustees. In order for a
16 municipality or special fire control district and its pension
17 fund to participate in the distribution of premium tax moneys
18 under this chapter, all the provisions shall be complied with
19 annually, including state acceptance pursuant to part VII of
20 chapter 112.

21 Section 163. Section 175.151, Florida Statutes, is
22 amended to read:

23 175.151 Penalty for failure of insurers to comply with
24 this act.--If ~~Should~~ any insurance company, corporation or
25 other insurer fails ~~fail~~ to comply with the provisions of this
26 act, on or before March 1 of each year as herein provided, the
27 certificate of authority issued to said insurance company,
28 corporation or other insurer to transact business in this
29 state may be canceled and revoked by the Office of Insurance
30 Regulation of the Financial Services Commission ~~Department of~~
31 ~~Insurance~~, and it is unlawful for any such insurance company,

1 corporation, or other insurer to transact business thereafter
2 in this state unless such insurance company, corporation, or
3 other insurer shall be granted a new certificate of authority
4 to transact any business in this state, in compliance with
5 provisions of law authorizing such certificate of authority to
6 be issued. The division is responsible for notifying the
7 Office of Insurance Regulation ~~Department of Insurance~~
8 regarding any such failure to comply.

9 Section 164. Subsection (1) of section 185.08, Florida
10 Statutes, is amended to read:

11 185.08 State excise tax on casualty insurance premiums
12 authorized; procedure.--For any municipality, chapter plan,
13 local law municipality, or local law plan under this chapter:

14 (1) Each incorporated municipality in this state
15 described and classified in s. 185.03, as well as each other
16 city or town of this state which on July 31, 1953, had a
17 lawfully established municipal police officers' retirement
18 trust fund or city fund, by whatever name known, providing
19 pension or relief benefits to police officers as provided
20 under this chapter, may assess and impose on every insurance
21 company, corporation, or other insurer now engaged in or
22 carrying on, or who shall hereafter engage in or carry on, the
23 business of casualty insurance as shown by records of the
24 Office of Insurance Regulation of the Financial Services
25 Commission ~~Department of Insurance~~, an excise tax in addition
26 to any lawful license or excise tax now levied by each of the
27 said municipalities, respectively, amounting to .85 percent of
28 the gross amount of receipts of premiums from policyholders on
29 all premiums collected on casualty insurance policies covering
30 property within the corporate limits of such municipalities,
31 respectively.

1 Section 165. Subsection (2) of section 185.10, Florida
2 Statutes, is amended to read:

3 185.10 Department of Revenue and Division of
4 Retirement to keep accounts of deposits; disbursements.--For
5 any municipality having a chapter plan or local law plan under
6 this chapter:

7 (2) The Chief Financial Officer ~~Comptroller~~ shall, on
8 or before July 1 of each year, and at such other times as
9 authorized by the division, draw his or her warrants on the
10 full net amount of money then on deposit pursuant to this
11 chapter in the Police and Firefighters' Premium Tax Trust
12 Fund, specifying the municipalities to which the moneys must
13 be paid and the net amount collected for and to be paid to
14 each municipality, respectively. The sum payable to each
15 municipality is appropriated annually out of the Police and
16 Firefighters' Premium Tax Trust Fund. The warrants of the
17 Chief Financial Officer ~~Comptroller~~ shall be payable to the
18 respective municipalities entitled to receive them and shall
19 be remitted annually by the division to the respective
20 municipalities. In lieu thereof, the municipality may provide
21 authorization to the division for the direct payment of the
22 premium tax to the board of trustees. In order for a
23 municipality and its retirement fund to participate in the
24 distribution of premium tax moneys under this chapter, all the
25 provisions shall be complied with annually, including state
26 acceptance pursuant to part VII of chapter 112.

27 Section 166. Section 185.13, Florida Statutes, is
28 amended to read:

29 185.13 Failure of insurer to comply with chapter;
30 penalty.--~~If Should~~ any insurance company, corporation or
31 other insurer fails ~~fail~~ to comply with the provisions of this

1 chapter, on or before March 1 in each year as herein provided,
2 the certificate of authority issued to said insurance company,
3 corporation or other insurer to transact business in this
4 state may be canceled and revoked by the Office of Insurance
5 Regulation of the Financial Services Commission ~~Department of~~
6 ~~Insurance~~, and it is unlawful for any such insurance company,
7 corporation or other insurer to transact any business
8 thereafter in this state unless such insurance company,
9 corporation or other insurer shall be granted a new
10 certificate of authority to transact business in this state,
11 in compliance with provisions of law authorizing such
12 certificate of authority to be issued. The division shall be
13 responsible for notifying the Office of Insurance Regulation
14 ~~Department of Insurance~~ regarding any such failure to comply.

15 Section 167. Subsections (2), (3), and (5) of section
16 189.4035, Florida Statutes, are amended to read:

17 189.4035 Preparation of official list of special
18 districts.--

19 (2) The official list shall be produced by the
20 department after the department has notified each special
21 district that is currently reporting to the department, the
22 Department of Financial Services ~~Banking and Finance~~ pursuant
23 to s. 218.32, or the Auditor General pursuant to s. 218.39.
24 Upon notification, each special district shall submit, within
25 60 days, its determination of its status. The determination
26 submitted by a special district shall be consistent with the
27 status reported in the most recent local government audit of
28 district activities submitted to the Auditor General pursuant
29 to s. 218.39.

30 (3) The Department of Financial Services ~~Banking and~~
31 ~~Finance~~ shall provide the department with a list of dependent

1 special districts reporting pursuant to s. 218.32 for
2 inclusion on the official list of special districts.

3 (5) The official list of special districts shall be
4 distributed by the department on October 1 of each year to the
5 President of the Senate, the Speaker of the House of
6 Representatives, the Auditor General, the Department of
7 Revenue, the Department of Financial Services ~~Banking and~~
8 ~~Finance~~, the Department of Management Services, the State
9 Board of Administration, counties, municipalities, county
10 property appraisers, tax collectors, and supervisors of
11 elections and to all interested parties who request the list.

12 Section 168. Subsection (1) of section 189.412,
13 Florida Statutes, is amended to read:

14 189.412 Special District Information Program; duties
15 and responsibilities.--The Special District Information
16 Program of the Department of Community Affairs is created and
17 has the following special duties:

18 (1) The collection and maintenance of special district
19 compliance status reports from the Auditor General, the
20 Department of Financial Services ~~Banking and Finance~~, the
21 Division of Bond Finance of the State Board of Administration,
22 the Department of Management Services, the Department of
23 Revenue, and the Commission on Ethics for the reporting
24 required in ss. 112.3144, 112.3145, 112.3148, 112.3149,
25 112.63, 200.068, 218.32, 218.38, 218.39, and 280.17 and
26 chapter 121 and from state agencies administering programs
27 that distribute money to special districts. The special
28 district compliance status reports must consist of a list of
29 special districts used in that state agency and a list of
30 which special districts did not comply with the reporting
31 statutorily required by that agency.

1 Section 169. Section 189.427, Florida Statutes, is
2 amended to read:

3 189.427 Fee schedule; Operating Trust Fund.--The
4 Department of Community Affairs, by rule, shall establish a
5 schedule of fees to pay one-half of the costs incurred by the
6 department in administering this act, except that the fee may
7 not exceed \$175 per district per year. The fees collected
8 under this section shall be deposited in the Operating Trust
9 Fund, which shall be administered by the Department of
10 Community Affairs. Any fee rule must consider factors such as
11 the dependent and independent status of the district and
12 district revenues for the most recent fiscal year as reported
13 to the Department of Financial Services ~~Banking and Finance~~.
14 The department may assess fines of not more than \$25, with an
15 aggregate total not to exceed \$50, as penalties against
16 special districts that fail to remit required fees to the
17 department. It is the intent of the Legislature that general
18 revenue funds will be made available to the department to pay
19 one-half of the cost of administering this act.

20 Section 170. Subsection (3) of section 190.007,
21 Florida Statutes, is amended to read:

22 190.007 Board of supervisors; general duties.--

23 (3) The board is authorized to select as a depository
24 for its funds any qualified public depository as defined in s.
25 280.02 which meets all the requirements of chapter 280 and has
26 been designated by the Chief Financial Officer ~~Treasurer~~ as a
27 qualified public depository, upon such terms and conditions as
28 to the payment of interest by such depository upon the funds
29 so deposited as the board may deem just and reasonable.

30 Section 171. Subsection (16) of section 191.006,
31 Florida Statutes, is amended to read:

1 191.006 General powers.--The district shall have, and
2 the board may exercise by majority vote, the following powers:

3 (16) To select as a depository for its funds any
4 qualified public depository as defined in s. 280.02 which
5 meets all the requirements of chapter 280 and has been
6 designated by the Chief Financial Officer ~~State Treasurer~~ as a
7 qualified public depository, upon such terms and conditions as
8 to the payment of interest upon the funds deposited as the
9 board deems just and reasonable.

10 Section 172. Subsection (4) of section 192.091,
11 Florida Statutes, is amended to read:

12 192.091 Commissions of property appraisers and tax
13 collectors.--

14 (4) The commissions for collecting taxes assessed for
15 or levied by the state shall be audited, and allowed, ~~by the~~
16 ~~Comptroller~~ and ~~shall be~~ paid by the Chief Financial Officer
17 ~~Treasurer~~ as other ~~Comptroller's~~ warrants are paid; and
18 commissions for collecting the county taxes shall be audited
19 and paid by the boards of county commissioners of the several
20 counties of this state. The commissions for collecting all
21 special school district taxes shall be audited by the school
22 board of each respective district and taken out of the funds
23 of the respective special school district under its control
24 and allowed and paid to the tax collectors for collecting such
25 taxes; and the commissions for collecting all other district
26 taxes, whether special or not, shall be audited and paid by
27 the governing board or commission having charge of the
28 financial obligations of such district. All commissions for
29 collecting special tax district taxes shall be paid at the
30 time and in the manner now, or as may hereafter be, provided
31 for the payment of the commissions for the collection of

1 county taxes. All amounts paid as compensation to any tax
2 collector under the provisions of this or any other law shall
3 be a part of the general income or compensation of such
4 officer for the year in which received, and nothing contained
5 in this section shall be held or construed to affect or
6 increase the maximum salary as now provided by law for any
7 such officer.

8 Section 173. Subsection (3) of section 192.102,
9 Florida Statutes, is amended to read:

10 192.102 Payment of property appraisers' and
11 collectors' commissions.--

12 (3) The Chief Financial Officer ~~Comptroller of the~~
13 ~~state~~ shall issue to each of the county property appraisers
14 and collectors of taxes, on the first Monday of January,
15 April, July, and October, on demand of such county property
16 appraisers and collectors of taxes after approval by the
17 Department of Revenue, and shall pay, his or her warrant,
18 ~~which shall be paid by the Treasurer of the state,~~ for an
19 amount equal to one-fourth of four-fifths of the total amount
20 of commissions received by such county property appraisers and
21 collectors of taxes or their predecessors in office from the
22 state during and for the preceding year, and the balance of
23 the commissions earned by such county property appraiser and
24 collector of taxes, respectively, during each year, over and
25 above the amount of such installment payments herein provided
26 for, shall be payable when a report of errors and double
27 assessments is approved by the county commissioners and a copy
28 thereof filed with the Department of Revenue.

29 Section 174. Subsection (1) of section 193.092,
30 Florida Statutes, is amended to read:

31 193.092 Assessment of property for back taxes.--

1 (1) When it shall appear that any ad valorem tax might
2 have been lawfully assessed or collected upon any property in
3 the state, but that such tax was not lawfully assessed or
4 levied, and has not been collected for any year within a
5 period of 3 years next preceding the year in which it is
6 ascertained that such tax has not been assessed, or levied, or
7 collected, then the officers authorized shall make the
8 assessment of taxes upon such property in addition to the
9 assessment of such property for the current year, and shall
10 assess the same separately for such property as may have
11 escaped taxation at and upon the basis of valuation applied to
12 such property for the year or years in which it escaped
13 taxation, noting distinctly the year when such property
14 escaped taxation and such assessment shall have the same force
15 and effect as it would have had if it had been made in the
16 year in which the property shall have escaped taxation, and
17 taxes shall be levied and collected thereon in like manner and
18 together with taxes for the current year in which the
19 assessment is made. But no property shall be assessed for
20 more than 3 years' arrears of taxation, and all property so
21 escaping taxation shall be subject to such taxation to be
22 assessed in whomsoever's hands or possession the same may be
23 found, except that property acquired by a bona fide purchaser
24 who was without knowledge of the escaped taxation shall not be
25 subject to assessment for taxes for any time prior to the time
26 of such purchase, but it is the duty of the property appraiser
27 making such assessment to serve upon the previous owner a
28 notice of intent to record in the public records of the county
29 a notice of tax lien against any property owned by that person
30 in the county. Any property owned by such previous owner which
31 is situated in this state is subject to the lien of such

1 assessment in the same manner as a recorded judgment. Before
2 any such lien may be recorded, the owner so notified must be
3 given 30 days to pay the taxes, penalties, and interest. Once
4 recorded, such lien may be recorded in any county in this
5 state and shall constitute a lien on any property of such
6 person in such county in the same manner as a recorded
7 judgment, and may be enforced by the tax collector using all
8 remedies pertaining to same; provided, that the county
9 property appraiser shall not assess any lot or parcel of land
10 certified or sold to the state for any previous years unless
11 such lot or parcel of lands so certified or sold shall be
12 included in the list furnished by the Chief Financial Officer
13 ~~Comptroller~~ to the county property appraiser as provided by
14 law; provided, if real or personal property be assessed for
15 taxes, and because of litigation delay ensues and the
16 assessment be held invalid the taxing authorities, may
17 reassess such property within the time herein provided after
18 the termination of such litigation; provided further, that
19 personal property acquired in good faith by purchase shall not
20 be subject to assessment for taxes for any time prior to the
21 time of such purchase, but the individual or corporation
22 liable for any such assessment shall continue personally
23 liable for same. As used in this subsection, the term "bona
24 fide purchaser" means a purchaser for value, in good faith,
25 before certification of such assessment of back taxes to the
26 tax collector for collection.

27 Section 175. Section 195.101, Florida Statutes, is
28 amended to read:

29 195.101 Withholding of state funds.--

30 (1) The Department of Revenue is hereby directed to
31 determine each year whether the several counties of this state

1 are assessing the real and tangible personal property within
2 their jurisdiction in accordance with law. If the Department
3 of Revenue determines that any county is assessing property at
4 less than that prescribed by law, the Chief Financial Officer
5 ~~Comptroller~~ shall withhold from such county a portion of any
6 state funds to which the county may be entitled equal to the
7 difference of the amount assessed and the amount required to
8 be assessed by law.

9 (2) The Department of Revenue is hereby directed to
10 determine each year whether the several municipalities of this
11 state are assessing the real and tangible personal property
12 within their jurisdiction in accordance with law. If the
13 Department of Revenue determines that any municipality is
14 assessing property at less than that prescribed by law, the
15 Chief Financial Officer ~~Comptroller~~ shall withhold from such
16 municipality a portion of any state funds to which that
17 municipality may be entitled equal to the difference of the
18 amount assessed and the amount required to be assessed by law.

19 Section 176. Subsection (1) of section 198.29, Florida
20 Statutes, is amended to read:

21 198.29 Refunds of excess tax paid.--

22 (1) Whenever it appears, upon the examination of any
23 return made under this chapter or upon proof submitted to the
24 department by the personal representative, that an amount of
25 estate tax has been paid in excess of the tax legally due
26 under this chapter, the amount of such overpayment, together
27 with any overpayment of interest thereon shall be refunded to
28 the personal representative and paid by ~~upon the warrant of~~
29 the Chief Financial Officer ~~Comptroller~~, ~~drawn upon the~~
30 ~~Treasurer who shall honor and pay the same~~; such refund shall
31 be made by the department as a matter of course regardless of

1 whether or not the personal representative has filed a written
2 claim therefor, except that upon request of the department,
3 the personal representative shall file with the department a
4 conformed copy of any written claim for refund of federal
5 estate tax which has theretofore been filed with the United
6 States.

7 Section 177. Paragraph (a) of subsection (7) of
8 section 199.232, Florida Statutes, is amended to read:

9 199.232 Powers of department.--

10 (7)(a) If it appears, upon examination of an
11 intangible tax return made under this chapter or upon proof
12 submitted to the department by the taxpayer, that an amount of
13 intangible personal property tax has been paid in excess of
14 the amount due, the department shall refund the amount of the
15 overpayment to the taxpayer by a warrant of the Chief
16 Financial Officer ~~Comptroller, drawn upon the Treasurer~~. The
17 department shall refund the overpayment without regard to
18 whether the taxpayer has filed a written claim for a refund;
19 however, the department may request that the taxpayer file a
20 statement affirming that the taxpayer made the overpayment.

21 Section 178. Paragraph (a) of subsection (1) of
22 section 203.01, Florida Statutes, is amended to read:

23 203.01 Tax on gross receipts for utility and
24 communications services.--

25 (1)(a)1. Every person that receives payment for any
26 utility service shall report by the last day of each month to
27 the Department of Revenue, under oath of the secretary or some
28 other officer of such person, the total amount of gross
29 receipts derived from business done within this state, or
30 between points within this state, for the preceding month and,
31 at the same time, shall pay into the State Treasury an amount

1 equal to a percentage of such gross receipts at the rate set
2 forth in paragraph (b). Such collections shall be certified
3 by the Chief Financial Officer ~~Comptroller~~ upon the request of
4 the State Board of Education.

5 2. A tax is levied on communications services as
6 defined in s. 202.11(3). Such tax shall be applied to the same
7 services and transactions as are subject to taxation under
8 chapter 202, and to communications services that are subject
9 to the exemption provided in s. 202.125(1). Such tax shall be
10 applied to the sales price of communications services when
11 sold at retail and to the actual cost of operating substitute
12 communications systems, as such terms are defined in s.
13 202.11, shall be due and payable at the same time as the taxes
14 imposed pursuant to chapter 202, and shall be administered and
15 collected pursuant to the provisions of chapter 202.

16 Section 179. Subsection (1) of section 206.46, Florida
17 Statutes, is amended to read:

18 206.46 State Transportation Trust Fund.--

19 (1) All moneys in the State Transportation Trust Fund,
20 which is hereby created, shall be used for transportation
21 purposes, as provided by law, under the direction of the
22 Department of Transportation, which department may from time
23 to time make requisition on the Chief Financial Officer
24 ~~Comptroller~~ for such funds. Moneys from such fund shall be
25 drawn by the Chief Financial Officer ~~Comptroller~~ by warrant
26 upon the State Treasury pursuant to vouchers and shall be paid
27 in like manner as other state warrants are paid out of the
28 appropriated fund against which the warrants are drawn. All
29 sums of money necessary to provide for the payment of the
30 warrants by the Chief Financial Officer ~~Comptroller~~ drawn upon
31

1 such fund are appropriated annually out of the fund for the
2 purpose of making such payments from time to time.

3 Section 180. Subsection (4) of section 210.16, Florida
4 Statutes, is amended to read:

5 210.16 Revocation or suspension of permit.--

6 (4) In lieu of the suspension or revocation of
7 permits, the division may impose civil penalties against
8 holders of permits for violations of this part or rules and
9 regulations relating thereto. No civil penalty so imposed
10 shall exceed \$1,000 for each offense, and all amounts
11 collected shall be deposited with the Chief Financial Officer
12 ~~State Treasurer~~ to the credit of the General Revenue Fund. If
13 the holder of the permit fails to pay the civil penalty, his
14 or her permit shall be suspended for such period of time as
15 the division may specify.

16 Section 181. Subsection (2) of section 210.20, Florida
17 Statutes, is amended to read:

18 210.20 Employees and assistants; distribution of
19 funds.--

20 (2) As collections are received by the division from
21 such cigarette taxes, it shall pay the same into a trust fund
22 in the State Treasury designated "Cigarette Tax Collection
23 Trust Fund" which shall be paid and distributed as follows:

24 (a) The division shall from month to month certify to
25 the Chief Financial Officer ~~Comptroller~~ the amount derived
26 from the cigarette tax imposed by s. 210.02, less the service
27 charges provided for in s. 215.20 and less 0.9 percent of the
28 amount derived from the cigarette tax imposed by s. 210.02,
29 which shall be deposited into the Alcoholic Beverage and
30 Tobacco Trust Fund, specifying the amounts to be transferred
31 from the Cigarette Tax Collection Trust Fund and credited on

1 the basis of 2.9 percent of the net collections to the Revenue
2 Sharing Trust Fund for Counties and 29.3 percent of the net
3 collections for the funding of indigent health care to the
4 Public Medical Assistance Trust Fund.

5 (b)1. Beginning January 1, 1999, and continuing for 10
6 years thereafter, the division shall from month to month
7 certify to the Chief Financial Officer ~~Comptroller~~ the amount
8 derived from the cigarette tax imposed by s. 210.02, less the
9 service charges provided for in s. 215.20 and less 0.9 percent
10 of the amount derived from the cigarette tax imposed by s.
11 210.02, which shall be deposited into the Alcoholic Beverage
12 and Tobacco Trust Fund, specifying an amount equal to 2.59
13 percent of the net collections, and that amount shall be paid
14 to the Board of Directors of the H. Lee Moffitt Cancer Center
15 and Research Institute, established under s. 1004.43, by
16 warrant drawn by the Chief Financial Officer ~~Comptroller~~ upon
17 the State Treasury. These funds are hereby appropriated
18 monthly out of the Cigarette Tax Collection Trust Fund, to be
19 used for the purpose of constructing, furnishing, and
20 equipping a cancer research facility at the University of
21 South Florida adjacent to the H. Lee Moffitt Cancer Center and
22 Research Institute. In fiscal years 1999-2000 and thereafter
23 with the exception of fiscal year 2008-2009, the appropriation
24 to the H. Lee Moffitt Cancer Center and Research Institute
25 authorized by this subparagraph shall not be less than the
26 amount that would have been paid to the H. Lee Moffitt Cancer
27 Center and Research Institute for fiscal year 1998-1999 had
28 payments been made for the entire fiscal year rather than for
29 a 6-month period thereof.

30 2. Beginning July 1, 2002, and continuing through June
31 30, 2004, the division shall, in addition to the distribution

1 authorized in subparagraph 1., from month to month certify to
2 the Chief Financial Officer ~~Comptroller~~ the amount derived
3 from the cigarette tax imposed by s. 210.02, less the service
4 charges provided for in s. 215.20 and less 0.9 percent of the
5 amount derived from the cigarette tax imposed by s. 210.02,
6 which shall be deposited into the Alcoholic Beverage and
7 Tobacco Trust Fund, specifying an amount equal to 0.2632
8 percent of the net collections, and that amount shall be paid
9 to the Board of Directors of the H. Lee Moffitt Cancer Center
10 and Research Institute, established under s. 1004.43, by
11 warrant drawn by the Chief Financial Officer ~~Comptroller~~.
12 Beginning July 1, 2004, and continuing through June 30, 2016,
13 the division shall, in addition to the distribution authorized
14 in subparagraph 1., from month to month certify to the Chief
15 Financial Officer ~~Comptroller~~ the amount derived from the
16 cigarette tax imposed by s. 210.02, less the service charges
17 provided for in s. 215.20 and less 0.9 percent of the amount
18 derived from the cigarette tax imposed by s. 210.02, which
19 shall be deposited into the Alcoholic Beverage and Tobacco
20 Trust Fund, specifying an amount equal to 1.47 percent of the
21 net collections, and that amount shall be paid to the Board of
22 Directors of the H. Lee Moffitt Cancer Center and Research
23 Institute, established under s. 1004.43, by warrant drawn by
24 the Chief Financial Officer ~~Comptroller~~. These funds are
25 appropriated monthly out of the Cigarette Tax Collection Trust
26 Fund, to be used for the purpose of constructing, furnishing,
27 and equipping a cancer research facility at the University of
28 South Florida adjacent to the H. Lee Moffitt Cancer Center and
29 Research Institute. In fiscal years 2004-2005 and thereafter,
30 the appropriation to the H. Lee Moffitt Cancer Center and
31 Research Institute authorized by this subparagraph shall not

1 be less than the amount that would have been paid to the H.
2 Lee Moffitt Cancer Center and Research Institute in fiscal
3 year 2001-2002, had this subparagraph been in effect.

4 Section 182. Subsection (4) of section 210.50, Florida
5 Statutes, is amended to read:

6 210.50 Revocation or suspension of license.--

7 (4) In lieu of the suspension or revocation of
8 licenses, the division may impose civil penalties against
9 holders of licenses for violations of this part or rules
10 relating thereto. No civil penalty so imposed shall exceed
11 \$1,000 for each offense, and all amounts collected shall be
12 deposited with the Chief Financial Officer ~~State Treasurer~~ to
13 the credit of the General Revenue Fund. If the holder of the
14 license fails to pay the civil penalty, his or her license
15 shall be suspended for such period of time as the division may
16 specify.

17 Section 183. Subsection (1) of section 211.06, Florida
18 Statutes, is amended to read:

19 211.06 Oil and Gas Tax Trust Fund; distribution of tax
20 proceeds.--All taxes, interest, and penalties imposed under
21 this part shall be collected by the department and placed in a
22 special fund designated the "Oil and Gas Tax Trust Fund."

23 (1) There is hereby annually appropriated a sufficient
24 amount from the Oil and Gas Tax Trust Fund for the Chief
25 Financial Officer ~~Comptroller~~ to refund any overpayments that
26 ~~which~~ have been properly approved.

27 Section 184. Subsection (3) of section 211.31, Florida
28 Statutes, is amended to read:

29 211.31 Levy of tax on severance of certain solid
30 minerals; rate, basis, and distribution of tax.--

31

1 (3) Interest earned on funds within any trust fund
2 created under this part shall be invested and reinvested to
3 the credit of such trust fund in accordance with s. 17.61 ~~s.~~
4 ~~18.125~~.

5 Section 185. Paragraph (d) of subsection (1) of
6 section 211.32, Florida Statutes, is amended to read:

7 211.32 Tax on solid minerals; Land Reclamation Trust
8 Fund; refund for restoration and reclamation.--

9 (1)

10 (d) The Chief Financial Officer ~~Comptroller~~ shall,
11 upon written verification of compliance with paragraph (a),
12 paragraph (b), or paragraph (c) by the Department of
13 Environmental Protection, and upon verification of the cost of
14 the restoration and reclamation program or, if paragraph (c)
15 is elected, the fair market value of the land, grant refunds,
16 to be paid from the Land Reclamation Trust Fund, of the taxes
17 paid under this part, in an amount equal to 100 percent of the
18 costs incurred in complying with paragraph (a) or paragraph
19 (b), or 100 percent of the fair market value of the land
20 transferred in complying with paragraph (c), subject to the
21 following limitations:

22 1. A taxpayer shall not be entitled to refunds in
23 excess of the amount of taxes paid by the taxpayer under this
24 part which are deposited in the Land Reclamation Trust Fund.

25 2. A taxpayer shall not be entitled to the payment of
26 a refund for costs incurred in connection with a particular
27 restoration and reclamation program unless and until the
28 taxpayer is accomplishing the program in reasonable compliance
29 with the criteria established by the Department of
30 Environmental Protection.

31

1 Section 186. Paragraph (m) of subsection (5) of
2 section 212.08, Florida Statutes, is amended to read:

3 212.08 Sales, rental, use, consumption, distribution,
4 and storage tax; specified exemptions.--The sale at retail,
5 the rental, the use, the consumption, the distribution, and
6 the storage to be used or consumed in this state of the
7 following are hereby specifically exempt from the tax imposed
8 by this chapter.

9 (5) EXEMPTIONS; ACCOUNT OF USE.--

10 (m) Educational materials purchased by certain child
11 care facilities.--Educational materials, such as glue, paper,
12 paints, crayons, unique craft items, scissors, books, and
13 educational toys, purchased by a child care facility that
14 meets the standards delineated in s. 402.305, is licensed
15 under s. 402.308, holds a current Gold Seal Quality Care
16 designation pursuant to s. 402.281, and provides basic health
17 insurance to all employees are exempt from the taxes imposed
18 by this chapter. For purposes of this paragraph, the term
19 "basic health insurance" shall be defined and promulgated in
20 rules developed jointly by the Department of Children and
21 Family Services, the Agency for Health Care Administration,
22 and the Financial Services Commission ~~Department of Insurance~~.

23 Section 187. Paragraph (c) of subsection (6) of
24 section 212.12, Florida Statutes, is amended to read:

25 212.12 Dealer's credit for collecting tax; penalties
26 for noncompliance; powers of Department of Revenue in dealing
27 with delinquents; brackets applicable to taxable transactions;
28 records required.--

29 (6)

30 (c)1. If the records of a dealer are adequate but
31 voluminous in nature and substance, the department may sample

1 such records, except for fixed assets, and project the audit
2 findings derived therefrom over the entire audit period to
3 determine the proportion that taxable retail sales bear to
4 total retail sales or the proportion that taxable purchases
5 bear to total purchases. In order to conduct such a sample,
6 the department must first make a good faith effort to reach an
7 agreement with the dealer, which agreement provides for the
8 means and methods to be used in the sampling process. In the
9 event that no agreement is reached, the dealer is entitled to
10 a review by the executive director.

11 2. For the purposes of sampling pursuant to
12 subparagraph 1., the department shall project any deficiencies
13 and overpayments derived therefrom over the entire audit
14 period. In determining the dealer's compliance, the department
15 shall reduce any tax deficiency as derived from the sample by
16 the amount of any overpayment derived from the sample. In the
17 event the department determines from the sample results that
18 the dealer has a net tax overpayment, the department shall
19 provide the findings of this overpayment to the Chief
20 Financial Officer ~~Comptroller~~ for repayment of funds paid into
21 the State Treasury through error pursuant to s. 215.26.

22 3.a. A taxpayer is entitled, both in connection with
23 an audit and in connection with an application for refund
24 filed independently of any audit, to establish the amount of
25 any refund or deficiency through statistical sampling when the
26 taxpayer's records, other than those regarding fixed assets,
27 are adequate but voluminous. Alternatively, a taxpayer is
28 entitled to establish any refund or deficiency through any
29 other sampling method agreed upon by the taxpayer and the
30 department when the taxpayer's records, other than those
31 regarding fixed assets, are adequate but voluminous. Whether

1 done through statistical sampling or any other sampling method
2 agreed upon by the taxpayer and the department, the completed
3 sample must reflect both overpayments and underpayments of
4 taxes due. The sample shall be conducted through:

5 (I) A taxpayer request to perform the sampling through
6 the certified audit program pursuant to s. 213.285;

7 (II) Attestation by a certified public accountant as
8 to the adequacy of the sampling method utilized and the
9 results reached using such sampling method; or

10 (III) A sampling method that has been submitted by the
11 taxpayer and approved by the department before a refund claim
12 is submitted. This sub-sub-subparagraph does not prohibit a
13 taxpayer from filing a refund claim prior to approval by the
14 department of the sampling method; however, a refund claim
15 submitted before the sampling method has been approved by the
16 department cannot be a complete refund application pursuant to
17 s. 213.255 until the sampling method has been approved by the
18 department.

19 b. The department shall prescribe by rule the
20 procedures to be followed under each method of sampling. Such
21 procedures shall follow generally accepted auditing procedures
22 for sampling. The rule shall also set forth other criteria
23 regarding the use of sampling, including, but not limited to,
24 training requirements that must be met before a sampling
25 method may be utilized and the steps necessary for the
26 department and the taxpayer to reach agreement on a sampling
27 method submitted by the taxpayer for approval by the
28 department.

29 Section 188. Subsection (1) of section 212.20, Florida
30 Statutes, is amended to read:

31

1 212.20 Funds collected, disposition; additional powers
2 of department; operational expense; refund of taxes
3 adjudicated unconstitutionally collected.--

4 (1) The department shall pay over to the Chief
5 Financial Officer ~~Treasurer~~ of the state all funds received
6 and collected by it under the provisions of this chapter, to
7 be credited to the account of the General Revenue Fund of the
8 state.

9 Section 189. Subsections (4) and (6), paragraph (e) of
10 subsection (7) and subsection (13) of section 213.053, Florida
11 Statutes, are amended to read:

12 213.053 Confidentiality and information sharing.--

13 (4) Nothing contained in this section shall prevent
14 the department from publishing statistics so classified as to
15 prevent the identification of particular accounts, reports,
16 declarations, or returns or prevent the department from
17 disclosing to the Chief Financial Officer ~~Comptroller~~ the
18 names and addresses of those taxpayers who have claimed an
19 exemption pursuant to s. 199.185(1)(i) or a deduction pursuant
20 to s. 220.63(5).

21 (6) Any information received by the Department of
22 Revenue in connection with the administration of taxes,
23 including, but not limited to, information contained in
24 returns, reports, accounts, or declarations filed by persons
25 subject to tax, shall be made available by the department to
26 the Auditor General or his or her authorized agent, the
27 director of the Office of Program Policy Analysis and
28 Government Accountability or his or her authorized agent, the
29 Chief Financial Officer ~~Comptroller~~ or his or her authorized
30 agent, the Director of the Office of Insurance Regulation of
31 the Financial Services Commission ~~Insurance Commissioner~~ or

1 his or her authorized agent, ~~the Treasurer or his or her~~
2 ~~authorized agent~~, or a property appraiser or tax collector or
3 their authorized agents pursuant to s. 195.084(1), in the
4 performance of their official duties, or to designated
5 employees of the Department of Education solely for
6 determination of each school district's price level index
7 pursuant to s. 1011.62(2); however, no information shall be
8 disclosed to the Auditor General or his or her authorized
9 agent, the director of the Office of Program Policy Analysis
10 and Government Accountability or his or her authorized agent,
11 the Chief Financial Officer ~~Comptroller~~ or his or her
12 authorized agent, the Director of the Office of Insurance
13 Regulation ~~Insurance Commissioner~~ or his or her authorized
14 agent, ~~the Treasurer or his or her authorized agent~~, or to a
15 property appraiser or tax collector or their authorized
16 agents, or to designated employees of the Department of
17 Education if such disclosure is prohibited by federal law. The
18 Auditor General or his or her authorized agent, the director
19 of the Office of Program Policy Analysis and Government
20 Accountability or his or her authorized agent, the Chief
21 Financial Officer ~~Comptroller~~ or his or her authorized agent,
22 the Director of the Office of Insurance Regulation ~~Treasurer~~
23 or his or her authorized agent, and the property appraiser or
24 tax collector and their authorized agents, or designated
25 employees of the Department of Education shall be subject to
26 the same requirements of confidentiality and the same
27 penalties for violation of the requirements as the department.
28 For the purpose of this subsection, "designated employees of
29 the Department of Education" means only those employees
30 directly responsible for calculation of price level indices
31 pursuant to s. 1011.62(2). It does not include the supervisors

1 of such employees or any other employees or elected officials
2 within the Department of Education.

3 (7) Notwithstanding any other provision of this
4 section, the department may provide:

5 (e) Names, addresses, taxpayer identification numbers,
6 and outstanding tax liabilities to the Department of the
7 Lottery and the Office of Financial Regulation of the
8 Financial Services Commission ~~Department of Banking and~~
9 ~~Finance~~ in the conduct of their official duties.

10

11 Disclosure of information under this subsection shall be
12 pursuant to a written agreement between the executive director
13 and the agency. Such agencies, governmental or
14 nongovernmental, shall be bound by the same requirements of
15 confidentiality as the Department of Revenue. Breach of
16 confidentiality is a misdemeanor of the first degree,
17 punishable as provided by s. 775.082 or s. 775.083.

18 (13) Notwithstanding the provisions of s. 896.102(2),
19 the department may allow full access to the information and
20 documents required to be filed with it under s. 896.102(1) to
21 federal, state, and local law enforcement and prosecutorial
22 agencies, and to the Office of Financial Regulation of the
23 Financial Services Commission ~~Department of Banking and~~
24 ~~Finance~~, and any of those agencies may use the information and
25 documents in any civil or criminal investigation and in any
26 court proceedings.

27 Section 190. Section 213.054, Florida Statutes, is
28 amended to read:

29 213.054 Persons claiming tax exemptions or deductions;
30 annual report.--The Department of Revenue shall be responsible
31 for monitoring the utilization of tax exemptions and tax

1 deductions authorized pursuant to chapter 81-179, Laws of
2 Florida. On or before September 1 of each year, the
3 department shall report to the Chief Financial Officer
4 ~~Comptroller~~ the names and addresses of all persons who have
5 claimed an exemption pursuant to s. 199.185(1)(i) or a
6 deduction pursuant to s. 220.63(5).

7 Section 191. Subsection (6) of section 213.255,
8 Florida Statutes, is amended to read:

9 213.255 Interest.--Interest shall be paid on
10 overpayments of taxes, payment of taxes not due, or taxes paid
11 in error, subject to the following conditions:

12 (6) Interest shall be paid until a date determined by
13 the department which shall be no more than 7 days prior to the
14 date of the issuance of the refund warrant by the Chief
15 Financial Officer ~~Comptroller~~.

16 Section 192. Subsection (9) of section 213.67, Florida
17 Statutes, is amended to read:

18 213.67 Garnishment.--

19 (9) The department shall provide notice to the Chief
20 Financial Officer ~~Comptroller~~, in electronic or other form
21 specified by the Chief Financial Officer ~~Comptroller~~, listing
22 the taxpayers for which tax warrants are outstanding. Pursuant
23 to subsection (1), the Chief Financial Officer ~~Comptroller~~
24 shall, upon notice from the department, withhold all payments
25 to any person or business, as defined in s. 212.02, which
26 provides commodities or services to the state, leases real
27 property to the state, or constructs a public building or
28 public work for the state. The department may levy upon the
29 withheld payments in accordance with subsection (3). The
30 provisions of s. 215.422 do not apply from the date the notice
31 is filed with the Chief Financial Officer ~~Comptroller~~ until

1 the date the department notifies the Chief Financial Officer
2 ~~Comptroller~~ of its consent to make payment to the person or 60
3 days after receipt of the department's notice in accordance
4 with subsection (1), whichever occurs earlier.

5 Section 193. Subsection (4) of section 213.75, Florida
6 Statutes, is amended to read:

7 213.75 Application of payments.--

8 (4) Any surplus proceeds remaining after the
9 application of subsection (3) shall, upon application and
10 satisfactory proof thereof, be refunded by the Chief Financial
11 Officer ~~Comptroller~~ to the person or persons legally entitled
12 thereto pursuant to s. 215.26.

13 Section 194. Section 215.02, Florida Statutes, is
14 amended to read:

15 215.02 Manner of paying money into the
16 Treasury.--Whenever any officer of this state or other person
17 desires to pay any money into the Treasury of the state on
18 account of his or her indebtedness to the state, the person
19 shall first go to ~~into~~ the Department of Financial Services
20 ~~Banking and Finance~~, and there ascertain from the department's
21 books the amount of his or her indebtedness to the state, and
22 thereupon the department shall give that person a memorandum
23 or certificate of the amount of such indebtedness, and on what
24 account. ~~Second, the person shall take said certificate with~~
25 ~~him or her to the Department of Insurance and deliver the same~~
26 ~~and pay over to the~~ Chief Financial Officer ~~Insurance~~
27 ~~Commissioner and Treasurer~~ the amount ascertained ~~called for~~
28 ~~in said certificate.~~ ~~Third,~~The Chief Financial Officer
29 ~~Insurance Commissioner and Treasurer~~ shall receive the money,
30 make a proper entry thereof, ~~file the certificate of the~~
31 ~~Department of Banking and Finance,~~and give a certificate to

1 the party paying over the money, ~~acknowledging the receipt of~~
2 ~~the money, and on what account; which certificate thus~~
3 ~~received, the party shall return to the Department of Banking~~
4 ~~and Finance, on receipt of which the department shall give the~~
5 ~~party a receipt for the amount, and enter a credit on the~~
6 ~~party's account in his or her books for the amount thus paid~~
7 ~~by him or her to the Insurance Commissioner and Treasurer, and~~
8 ~~file the certificate received from the Insurance Commissioner~~
9 ~~and Treasurer.~~

10 Section 195. Section 215.03, Florida Statutes, is
11 amended to read:

12 215.03 Party to be reimbursed on reversal of judgment
13 for state.--Whenever upon appeal in civil cases, any judgment
14 in favor of the state has been or shall be reversed and set
15 aside, which may have been paid in part by the appellant, the
16 Chief Financial Officer ~~Comptroller~~ shall issue his or her
17 warrant ~~upon the Treasurer~~ to reimburse the appellant for all
18 sums paid in discharge of such judgment and cost, provided the
19 appellant shall adduce satisfactory evidence to the Chief
20 Financial Officer ~~Comptroller~~ of the sums paid as aforesaid.

21 Section 196. Section 215.04, Florida Statutes, is
22 amended to read:

23 215.04 Department of Financial Services ~~Banking and~~
24 ~~Finance~~ to report delinquents.--The Department of Financial
25 Services ~~Banking and Finance~~ shall report to the state
26 attorney of the proper circuit the name of any delinquent
27 officer whose delinquency concerns the department, so soon as
28 such delinquency shall occur; and the state attorney shall
29 proceed forthwith against such delinquent.

30 Section 197. Section 215.05, Florida Statutes, is
31 amended to read:

1 215.05 Department of Financial Services ~~Banking and~~
2 ~~Finance~~ to certify accounts of delinquents.--When any revenue
3 officer or other person accountable for public money shall
4 neglect or refuse to pay into the treasury the sum or balance
5 reported to be due to the state, upon the adjustment of that
6 person's account, the Department of Financial Services ~~Banking~~
7 ~~and Finance~~ shall immediately hand over to the state attorney
8 of the proper circuit the statement of the sum or balance
9 certified under its seal of office, so due; and the state
10 attorney shall institute suit for the recovery of the same,
11 adding to the sum or balance stated to be due on such account
12 the commissions of the delinquent, which shall be forfeited in
13 every instance where suit is commenced and judgment is
14 obtained thereon, and an interest of 8 percent per annum from
15 the time of the delinquent's receiving the money until it
16 shall be paid into the State Treasury.

17 Section 198. Section 215.11, Florida Statutes, is
18 amended to read:

19 215.11 Defaulting officers; Department of Financial
20 Services ~~Banking and Finance~~ to report to clerk.--The
21 Department of Financial Services ~~Banking and Finance~~ shall,
22 within 90 days after the expiration of the term of office of
23 any tax collector, sheriff, clerk of the circuit or county
24 court, treasurer, or any other officer of any county who has
25 the collection, custody, and control of any state funds, who
26 shall be in arrears in his or her accounts with the state,
27 make up and forward to the clerk of the circuit court of such
28 county a statement of his or her accounts with the state.

29 Section 199. Paragraphs (d), (n), and (o) of
30 subsection (4) of section 215.20, Florida Statutes, are
31 amended, and paragraphs (p) through (y) of that subsection are

1 renumbered as paragraphs (o) through (x), respectively, to
2 read:

3 215.20 Certain income and certain trust funds to
4 contribute to the General Revenue Fund.--

5 (4) The income of a revenue nature deposited in the
6 following described trust funds, by whatever name designated,
7 is that from which the appropriations authorized by subsection
8 (3) shall be made:

9 (d) Within the Office of Financial Regulation of the
10 Financial Services Commission ~~Department of Banking and~~
11 ~~Finance~~:

- 12 1. The Administrative Trust Fund.
- 13 2. The Anti-Fraud Trust Fund.
- 14 3. The Financial Institutions' Regulatory Trust Fund.
- 15 4. The Mortgage Brokerage Guaranty Fund.
- 16 5. The Regulatory Trust Fund.

17 (n) Within the Department of Financial Services
18 ~~Insurance~~:

- 19 1. The Agents and Solicitors County Tax Trust Fund.
- 20 2. The Insurance ~~Commissioner's~~ Regulatory Trust Fund.

21 ~~(o) Within the Department of Labor and Employment~~
22 ~~Security or, if such department is terminated, within the~~
23 ~~agency or department to which the named trust fund has been~~
24 ~~transferred:~~

25 ~~3.1.~~ The Special Disability Trust Fund.

26 ~~4.2.~~ The Special Employment Security Administration
27 Trust Fund.

28 ~~5.3.~~ The Workers' Compensation Administration Trust
29 Fund.

30 ~~(o)(p)~~ Within the Department of Legal Affairs, the
31 Crimes Compensation Trust Fund.

- 1 (p)~~(q)~~ Within the Department of Management Services:
- 2 1. The Administrative Trust Fund.
- 3 2. The Architects Incidental Trust Fund.
- 4 3. The Bureau of Aircraft Trust Fund.
- 5 4. The Florida Facilities Pool Working Capital Trust
- 6 Fund.
- 7 5. The Grants and Donations Trust Fund.
- 8 6. The Motor Vehicle Operating Trust Fund.
- 9 7. The Police and Firefighters' Premium Tax Trust
- 10 Fund.
- 11 8. The Public Employees Relations Commission Trust
- 12 Fund.
- 13 9. The State Personnel System Trust Fund.
- 14 10. The Supervision Trust Fund.
- 15 11. The Working Capital Trust Fund.
- 16 (q)~~(r)~~ Within the Department of Revenue:
- 17 1. The Additional Court Cost Clearing Trust Fund.
- 18 2. The Administrative Trust Fund.
- 19 3. The Apalachicola Bay Oyster Surcharge Clearing
- 20 Trust Fund.
- 21 4. The Certification Program Trust Fund.
- 22 5. The Fuel Tax Collection Trust Fund.
- 23 6. The Land Reclamation Trust Fund.
- 24 7. The Local Alternative Fuel User Fee Clearing Trust
- 25 Fund.
- 26 8. The Local Option Fuel Tax Trust Fund.
- 27 9. The Motor Vehicle Rental Surcharge Clearing Trust
- 28 Fund.
- 29 10. The Motor Vehicle Warranty Trust Fund.
- 30 11. The Oil and Gas Tax Trust Fund.
- 31

- 1 12. The Secondhand Dealer and Secondary Metals
2 Recycler Clearing Trust Fund.
- 3 13. The Severance Tax Solid Mineral Trust Fund.
- 4 14. The State Alternative Fuel User Fee Clearing Trust
5 Fund.
- 6 15. All taxes levied on motor fuels other than
7 gasoline levied pursuant to the provisions of s. 206.87(1)(a).
8 (r)~~(s)~~ Within the Department of State:
- 9 1. The Division of Licensing Trust Fund.
- 10 2. The Records Management Trust Fund.
- 11 3. The trust funds administered by the Division of
12 Historical Resources.
- 13 (s)~~(t)~~ Within the Department of Transportation, all
14 income derived from outdoor advertising and overweight
15 violations which is deposited in the State Transportation
16 Trust Fund.
- 17 (t)~~(u)~~ Within the Department of Veterans' Affairs:
- 18 1. The Grants and Donations Trust Fund.
- 19 2. The Operations and Maintenance Trust Fund.
- 20 3. The State Homes for Veterans Trust Fund.
- 21 (u)~~(v)~~ Within the Division of Administrative Hearings,
22 the Administrative Trust Fund.
- 23 (v)~~(w)~~ Within the Fish and Wildlife Conservation
24 Commission:
- 25 1. The Conservation and Recreation Lands Program Trust
26 Fund.
- 27 2. The Florida Panther Research and Management Trust
28 Fund.
- 29 3. The Land Acquisition Trust Fund.
- 30
- 31

1 4. The Marine Resources Conservation Trust Fund, with
2 the exception of those fees collected for recreational
3 saltwater fishing licenses as provided in s. 372.57.

4 (w)~~(x)~~ Within the Florida Public Service Commission,
5 the Florida Public Service Regulatory Trust Fund.

6 (x)~~(y)~~ Within the Justice Administrative Commission,
7 the Indigent Criminal Defense Trust Fund.

8
9 The enumeration of the foregoing moneys or trust funds shall
10 not prohibit the applicability thereto of s. 215.24 should the
11 Governor determine that for the reasons mentioned in s. 215.24
12 the money or trust funds should be exempt herefrom, as it is
13 the purpose of this law to exempt income from its force and
14 effect when, by the operation of this law, federal matching
15 funds or contributions or private grants to any trust fund
16 would be lost to the state.

17 Section 200. Effective July 1, 2003, paragraph (cc) of
18 subsection (4) of section 215.20, Florida Statutes, is amended
19 to read:

20 215.20 Certain income and certain trust funds to
21 contribute to the General Revenue Fund.--

22 (4) The income of a revenue nature deposited in the
23 following described trust funds, by whatever name designated,
24 is that from which the deductions authorized by subsection (3)
25 shall be made:

26 (cc) The Insurance ~~Commissioner's~~ Regulatory Trust
27 Fund created by s. 624.523.

28
29 The enumeration of the foregoing moneys or trust funds shall
30 not prohibit the applicability thereto of s. 215.24 should the
31 Governor determine that for the reasons mentioned in s. 215.24

1 the money or trust funds should be exempt herefrom, as it is
2 the purpose of this law to exempt income from its force and
3 effect when, by the operation of this law, federal matching
4 funds or contributions or private grants to any trust fund
5 would be lost to the state.

6 Section 201. Paragraphs (e) and (g) of subsection (1)
7 of section 215.22, Florida Statutes, are amended to read:

8 215.22 Certain income and certain trust funds
9 exempt.--

10 (1) The following income of a revenue nature or the
11 following trust funds shall be exempt from the appropriation
12 required by s. 215.20(1):

13 (e) State, agency, or political subdivision
14 investments by the Chief Financial Officer ~~Treasurer~~.

15 (g) Self-insurance programs administered by the Chief
16 Financial Officer ~~Treasurer~~.

17 Section 202. Effective July 1, 2003, paragraphs (e)
18 and (g) of subsection (1) of section 215.22, Florida Statutes,
19 are amended to read:

20 215.22 Certain income and certain trust funds
21 exempt.--

22 (1) The following income of a revenue nature or the
23 following trust funds shall be exempt from the deduction
24 required by s. 215.20(1):

25 (e) State, agency, or political subdivision
26 investments by the Chief Financial Officer ~~Treasurer~~.

27 (g) Self-insurance programs administered by the Chief
28 Financial Officer ~~Treasurer~~.

29 Section 203. Section 215.23, Florida Statutes, is
30 amended to read:

31

1 215.23 When contributions to be made.--The deductions
2 required by s. 215.20 shall be paid into the appropriate fund
3 ~~by the Department of Banking and Finance or by the Chief~~
4 ~~Financial Officer State Treasurer, as the case may be, for~~
5 quarterly periods ending March 31, June 30, September 30, and
6 December 31 of each year, and when so paid shall thereupon
7 become a part of that fund to be accounted for and disbursed
8 as provided by law.

9 Section 204. Section 215.24, Florida Statutes, is
10 amended to read:

11 215.24 Exemptions where federal contributions or
12 private grants.--

13 (1) Should any state fund be the recipient of federal
14 contributions or private grants, either by the matching of
15 state funds or by a general donation to state funds, and the
16 payment of moneys into the General Revenue Fund under s.
17 215.20 should cause such fund to lose federal or private
18 assistance, the Governor shall certify to the Chief Financial
19 Officer ~~Department of Banking and Finance and to the State~~
20 ~~Treasurer~~ that said income is for that reason exempt from the
21 force and effect of s. 215.20.

22 (2) Should it be determined by the Governor that by
23 reason of payments already made into the General Revenue Fund
24 by any fund under this law, such fund is subject to the loss
25 of federal or private assistance, then the Governor shall
26 certify to the Chief Financial Officer ~~Department of Banking~~
27 ~~and Finance and to the State Treasurer~~ that the income from
28 such assistance is exempt from the provisions of this law, and
29 the Chief Financial Officer ~~Department of Banking and Finance~~
30 ~~or the State Treasurer, as the case may be, shall thereupon~~

31

1 refund and pay over to such fund any amount previously paid
2 into the General Revenue Fund from such income.

3 Section 205. Section 215.25, Florida Statutes, is
4 amended to read:

5 215.25 Manner of contributions; rules and
6 regulations.--The Chief Financial Officer is ~~Department of~~
7 ~~Banking and Finance and the State Treasurer~~ are hereby
8 authorized to ascertain and determine the manner in which the
9 required amounts shall be deducted and paid and to adopt and
10 effectuate such rules and procedure as may be necessary for
11 carrying out the provisions of this law. Such rules and
12 procedure shall be approved by the Executive Office of the
13 Governor.

14 Section 206. Subsections (1), (2), and (5) of section
15 215.26, Florida Statutes, are amended to read:

16 215.26 Repayment of funds paid into State Treasury
17 through error.--

18 (1) The Chief Financial Officer ~~Comptroller of the~~
19 ~~state~~ may refund to the person who paid same, or his or her
20 heirs, personal representatives, or assigns, any moneys paid
21 into the State Treasury which constitute:

22 (a) An overpayment of any tax, license, or account
23 due;

24 (b) A payment where no tax, license, or account is
25 due; and

26 (c) Any payment made into the State Treasury in error;

27
28 and if any such payment has been credited to an appropriation,
29 such appropriation shall at the time of making any such
30 refund, be charged therewith. There are appropriated from the
31

1 proper respective funds from time to time such sums as may be
2 necessary for such refunds.

3 (2) Application for refunds as provided by this
4 section must be filed with the Chief Financial Officer
5 ~~Comptroller~~, except as otherwise provided in this subsection,
6 within 3 years after the right to the refund has accrued or
7 else the right is barred. Except as provided in chapter 198
8 and s. 220.23, an application for a refund of a tax enumerated
9 in s. 72.011, which tax was paid after September 30, 1994, and
10 before July 1, 1999, must be filed with the Chief Financial
11 Officer ~~Comptroller~~ within 5 years after the date the tax is
12 paid, and within 3 years after the date the tax was paid for
13 taxes paid on or after July 1, 1999. The Chief Financial
14 Officer ~~Comptroller~~ may delegate the authority to accept an
15 application for refund to any state agency, or the judicial
16 branch, vested by law with the responsibility for the
17 collection of any tax, license, or account due. The
18 application for refund must be on a form approved by the Chief
19 Financial Officer ~~Comptroller~~ and must be supplemented with
20 additional proof the Chief Financial Officer ~~Comptroller~~ deems
21 necessary to establish the claim; provided, the claim is not
22 otherwise barred under the laws of this state. Upon receipt of
23 an application for refund, the judicial branch or the state
24 agency to which the funds were paid shall make a determination
25 of the amount due. If an application for refund is denied, in
26 whole or in part, the judicial branch or such state agency
27 shall notify the applicant stating the reasons therefor. Upon
28 approval of an application for refund, the judicial branch or
29 such state agency shall furnish the Chief Financial Officer
30 ~~Comptroller~~ with a properly executed voucher authorizing
31 payment.

1 (5) When a taxpayer has pursued administrative
2 remedies before the Department of Revenue pursuant to s.
3 213.21 and has failed to comply with the time limitations and
4 conditions provided in ss. 72.011 and 120.80(14)(b), a claim
5 of refund under subsection (1) shall be denied by the Chief
6 Financial Officer ~~Comptroller~~. However, the Chief Financial
7 Officer ~~Comptroller~~ may entertain a claim for refund under
8 this subsection when the taxpayer demonstrates that his or her
9 failure to pursue remedies under chapter 72 was not due to
10 neglect or for the purpose of delaying payment of lawfully
11 imposed taxes and can demonstrate reasonable cause for such
12 failure.

13 Section 207. Section 215.29, Florida Statutes, is
14 amended to read:

15 215.29 Classification of Chief Financial Officer's
16 ~~Comptroller's~~ warrants; report.--All disbursements made by the
17 state upon Chief Financial Officer's ~~Comptroller's~~ warrants
18 shall be classified according to officers, offices, bureaus,
19 divisions, boards, commissions, institutions, other agencies
20 and undertakings, or the judicial branch, and shall be further
21 classified according to personal services, contractual
22 services, commodities, current charges, current obligations,
23 capital outlays, debt payments, or investments or such
24 additional classifications as may be prescribed or authorized
25 by law. Such detail classifications shall be printed in the
26 Chief Financial Officer's ~~Comptroller's~~ annual reports.

27 Section 208. Section 215.31, Florida Statutes, is
28 amended to read:

29 215.31 State funds; deposit in State
30 Treasury.--Revenue, including licenses, fees, imposts, or
31 exactions collected or received under the authority of the

1 laws of the state by each and every state official, office,
2 employee, bureau, division, board, commission, institution,
3 agency, or undertaking of the state or the judicial branch
4 shall be promptly deposited in the State Treasury, and
5 immediately credited to the appropriate fund as herein
6 provided, properly accounted for by the Department of
7 Financial Services ~~Banking and Finance~~ as to source and no
8 money shall be paid from the State Treasury except as
9 appropriated and provided by the annual General Appropriations
10 Act, or as otherwise provided by law.

11 Section 209. Section 215.32, Florida Statutes, is
12 amended to read:

13 215.32 State funds; segregation.--

14 (1) All moneys received by the state shall be
15 deposited in the State Treasury unless specifically provided
16 otherwise by law and shall be deposited in and accounted for
17 by the Chief Financial Officer ~~Treasurer and the Department of~~
18 ~~Banking and Finance~~ within the following funds, which funds
19 are hereby created and established:

20 (a) General Revenue Fund.

21 (b) Trust funds.

22 (c) Working Capital Fund.

23 (d) Budget Stabilization Fund.

24 (2) The source and use of each of these funds shall be
25 as follows:

26 (a) The General Revenue Fund shall consist of all
27 moneys received by the state from every source whatsoever,
28 except as provided in paragraphs (b) and (c). Such moneys
29 shall be expended pursuant to General Revenue Fund
30 appropriations acts or transferred as provided in paragraph
31 (c). Annually, at least 5 percent of the estimated increase

1 in General Revenue Fund receipts for the upcoming fiscal year
2 over the current year General Revenue Fund effective
3 appropriations shall be appropriated for state-level capital
4 outlay, including infrastructure improvement and general
5 renovation, maintenance, and repairs.

6 (b)1. The trust funds shall consist of moneys received
7 by the state which under law or under trust agreement are
8 segregated for a purpose authorized by law. The state agency
9 or branch of state government receiving or collecting such
10 moneys shall be responsible for their proper expenditure as
11 provided by law. Upon the request of the state agency or
12 branch of state government responsible for the administration
13 of the trust fund, the Chief Financial Officer ~~Comptroller~~ may
14 establish accounts within the trust fund at a level considered
15 necessary for proper accountability. Once an account is
16 established within a trust fund, the Chief Financial Officer
17 ~~Comptroller~~ may authorize payment from that account only upon
18 determining that there is sufficient cash and releases at the
19 level of the account.

20 2. In order to maintain a minimum number of trust
21 funds in the State Treasury, each state agency or the judicial
22 branch may consolidate, if permitted under the terms and
23 conditions of their receipt, the trust funds administered by
24 it; provided, however, the agency or judicial branch employs
25 effectively a uniform system of accounts sufficient to
26 preserve the integrity of such trust funds; and provided,
27 further, that consolidation of trust funds is approved by the
28 Governor or the Chief Justice.

29 3. All such moneys are hereby appropriated to be
30 expended in accordance with the law or trust agreement under
31 which they were received, subject always to the provisions of

1 chapter 216 relating to the appropriation of funds and to the
2 applicable laws relating to the deposit or expenditure of
3 moneys in the State Treasury.

4 4.a. Notwithstanding any provision of law restricting
5 the use of trust funds to specific purposes, unappropriated
6 cash balances from selected trust funds may be authorized by
7 the Legislature for transfer to the Budget Stabilization Fund
8 and Working Capital Fund in the General Appropriations Act.

9 b. This subparagraph does not apply to trust funds
10 required by federal programs or mandates; trust funds
11 established for bond covenants, indentures, or resolutions
12 whose revenues are legally pledged by the state or public body
13 to meet debt service or other financial requirements of any
14 debt obligations of the state or any public body; the State
15 Transportation Trust Fund; the trust fund containing the net
16 annual proceeds from the Florida Education Lotteries; the
17 Florida Retirement System Trust Fund; trust funds under the
18 management of the Board of Regents, where such trust funds are
19 for auxiliary enterprises, self-insurance, and contracts,
20 grants, and donations, as those terms are defined by general
21 law; trust funds that serve as clearing funds or accounts for
22 the Chief Financial Officer ~~Comptroller~~ or state agencies;
23 trust funds that account for assets held by the state in a
24 trustee capacity as an agent or fiduciary for individuals,
25 private organizations, or other governmental units; and other
26 trust funds authorized by the State Constitution.

27 (c)1. The Budget Stabilization Fund shall consist of
28 amounts equal to at least 5 percent of net revenue collections
29 for the General Revenue Fund during the last completed fiscal
30 year. The Budget Stabilization Fund's principal balance shall
31 not exceed an amount equal to 10 percent of the last completed

1 fiscal year's net revenue collections for the General Revenue
2 Fund. As used in this paragraph, the term "last completed
3 fiscal year" means the most recently completed fiscal year
4 prior to the regular legislative session at which the
5 Legislature considers the General Appropriations Act for the
6 year in which the transfer to the Budget Stabilization Fund
7 must be made under this paragraph.

8 2. By September 15 of each year, the Governor shall
9 authorize the Chief Financial Officer ~~Comptroller~~ to transfer,
10 and the Chief Financial Officer ~~Comptroller~~ shall transfer
11 pursuant to appropriations made by law, to the Budget
12 Stabilization Fund the amount of money needed for the balance
13 of that fund to equal the amount specified in subparagraph 1.,
14 less any amounts expended and not restored. The moneys needed
15 for this transfer may be appropriated by the Legislature from
16 any funds.

17 3. Unless otherwise provided in this subparagraph, an
18 expenditure from the Budget Stabilization Fund must be
19 restored pursuant to a restoration schedule that provides for
20 making five equal annual transfers from the General Revenue
21 Fund, beginning in the fiscal year following that in which the
22 expenditure was made. For any Budget Stabilization Fund
23 expenditure, the Legislature may establish by law a different
24 restoration schedule and such change may be made at any time
25 during the restoration period. Moneys are hereby appropriated
26 for transfers pursuant to this subparagraph.

27 4. The Budget Stabilization Fund and the Working
28 Capital Fund may be used as revolving funds for transfers as
29 provided in s. 17.61 ~~s. 18.125~~; however, any interest earned
30 must be deposited in the General Revenue Fund.

31

1 5. The Chief Financial Officer ~~Comptroller~~ and the
2 Department of Management Services shall transfer funds to
3 water management districts to pay eligible water management
4 district employees for all benefits due under s. 373.6065, as
5 long as funds remain available for the program described under
6 s. 100.152.

7 (d) The Working Capital Fund shall consist of moneys
8 in the General Revenue Fund which are in excess of the amount
9 needed to meet General Revenue Fund appropriations for the
10 current fiscal year. Each year, no later than the publishing
11 date of the annual financial statements for the state by the
12 Chief Financial Officer ~~Comptroller~~ under s. 216.102, funds
13 shall be transferred between the Working Capital Fund and the
14 General Revenue Fund to establish the balance of the Working
15 Capital Fund for that fiscal year at the amount determined
16 pursuant to this paragraph.

17 Section 210. Subsections (2) and (3) of section
18 215.3206, Florida Statutes, are amended to read:

19 215.3206 Trust funds; termination or re-creation.--

20 (2) If the trust fund is terminated and not
21 immediately re-created, all cash balances and income of the
22 trust fund shall be deposited into the General Revenue Fund.
23 The agency or Chief Justice shall pay any outstanding debts of
24 the trust fund as soon as practicable, and the Chief Financial
25 Officer ~~Comptroller~~ shall close out and remove the trust fund
26 from the various state accounting systems, using generally
27 accepted accounting practices concerning warrants outstanding,
28 assets, and liabilities. No appropriation or budget amendment
29 shall be construed to authorize any encumbrance of funds from
30 a trust fund after the date on which the trust fund is
31 terminated or is judicially determined to be invalid.

1 (3) On or before September 1 of each year, the Chief
2 Financial Officer ~~Comptroller~~ shall submit to the Executive
3 Office of the Governor, the President of the Senate, and the
4 Speaker of the House of Representatives a list of trust funds
5 that are scheduled to terminate within 12 months after that
6 date and also, beginning September 1, 1996, a list of all
7 trust funds that are exempt from automatic termination
8 pursuant to the provisions of s. 19(f)(3), Art. III of the
9 State Constitution, listing revenues of the trust funds by
10 major revenue category for each of the last 4 fiscal years.

11 Section 211. Paragraph (a) of subsection (2) of
12 section 215.3208, Florida Statutes, is amended to read:

13 215.3208 Trust funds; legislative review.--

14 (2)(a) When the Legislature terminates a trust fund,
15 the agency or branch of state government that administers the
16 trust fund shall pay any outstanding debts or obligations of
17 the trust fund as soon as practicable, and the Chief Financial
18 Officer ~~Comptroller~~ shall close out and remove the trust fund
19 from the various state accounting systems, using generally
20 accepted accounting principles concerning assets, liabilities,
21 and warrants outstanding.

22 Section 212. Subsections (2), (3), and (4) of section
23 215.322, Florida Statutes, are amended to read:

24 215.322 Acceptance of credit cards, charge cards, or
25 debit cards by state agencies, units of local government, and
26 the judicial branch.--

27 (2) A state agency as defined in s. 216.011, or the
28 judicial branch, may accept credit cards, charge cards, or
29 debit cards in payment for goods and services with the prior
30 approval of the Chief Financial Officer ~~Treasurer~~. When the
31 Internet or other related electronic methods are to be used as

1 the collection medium, the State Technology Office shall
2 review and recommend to the Chief Financial Officer ~~Treasurer~~
3 whether to approve the request with regard to the process or
4 procedure to be used.

5 (3) The Chief Financial Officer ~~Treasurer~~ shall adopt
6 rules governing the establishment and acceptance of credit
7 cards, charge cards, or debit cards by state agencies or the
8 judicial branch, including, but not limited to, the following:

9 (a) Utilization of a standardized contract between the
10 financial institution or other appropriate intermediaries and
11 the agency or judicial branch which shall be developed by the
12 Chief Financial Officer ~~Treasurer~~ or approval by the Chief
13 Financial Officer ~~Treasurer~~ of a substitute agreement.

14 (b) Procedures which permit an agency or officer
15 accepting payment by credit card, charge card, or debit card
16 to impose a convenience fee upon the person making the
17 payment. However, the total amount of such convenience fees
18 shall not exceed the total cost to the state agency. A
19 convenience fee is not refundable to the payor.
20 Notwithstanding the foregoing, this section shall not be
21 construed to permit surcharges on any other credit card
22 purchase in violation of s. 501.0117.

23 (c) All service fees payable pursuant to this section
24 when practicable shall be invoiced and paid by state warrant
25 or such other manner that is satisfactory to the Chief
26 Financial Officer ~~Comptroller~~ in accordance with the time
27 periods specified in s. 215.422.

28 (d) Submission of information to the Chief Financial
29 Officer ~~Treasurer~~ concerning the acceptance of credit cards,
30 charge cards, or debit cards by all state agencies or the
31 judicial branch.

1 (e) A methodology for agencies to use when completing
2 the cost-benefit analysis referred to in subsection (1). The
3 methodology must consider all quantifiable cost reductions,
4 other benefits to the agency, and potential impact on general
5 revenue. The methodology must also consider nonquantifiable
6 benefits such as the convenience to individuals and businesses
7 that would benefit from the ability to pay for state goods and
8 services through the use of credit cards, charge cards, and
9 debit cards.

10 (4) The Chief Financial Officer may ~~Treasurer is~~
11 ~~authorized to~~ establish contracts with one or more financial
12 institutions, credit card companies, or other entities which
13 may lawfully provide such services, in a manner consistent
14 with chapter 287, for processing credit card, charge card, or
15 debit card collections for deposit into the State Treasury or
16 another qualified public depository. Any state agency, or the
17 judicial branch, which accepts payment by credit card, charge
18 card, or debit card shall use at least one of the contractors
19 established by the Chief Financial Officer ~~Treasurer~~ unless
20 the state agency or judicial branch obtains authorization from
21 the Chief Financial Officer ~~Treasurer~~ to use another
22 contractor which is more advantageous to such state agency or
23 the judicial branch. Such contracts may authorize a unit of
24 local government to use the services upon the same terms and
25 conditions for deposit of credit card, charge card, or debit
26 card transactions into its qualified public depositories.

27 Section 213. Subsections (1) and (2) of section
28 215.34, Florida Statutes, are amended to read:

29 215.34 State funds; noncollectible items; procedure.--

30 (1) Any check, draft, or other order for the payment
31 of money in payment of any licenses, fees, taxes, commissions,

1 or charges of any sort authorized to be made under the laws of
2 the state and deposited in the State Treasury as provided
3 herein, which may be returned for any reason by the bank or
4 other payor upon which same shall have been drawn shall be
5 forthwith returned by the Chief Financial Officer ~~State~~
6 ~~Treasurer~~ for collection to the state officer, the state
7 agency, or the entity of the judicial branch making the
8 deposit. In such case, the Chief Financial Officer may
9 ~~Treasurer is hereby authorized to~~ issue a debit memorandum
10 charging an account of the agency, officer, or entity of the
11 judicial branch which originally received the payment. The
12 original of the debit memorandum shall state the reason for
13 the return of the check, draft, or other order and shall
14 accompany the item being returned to the officer, agency, or
15 entity of the judicial branch being charged, ~~and a copy of the~~
16 ~~debit memorandum shall be sent to the Comptroller.~~ The
17 officer, agency, or entity of the judicial branch receiving
18 the charged-back item shall prepare a journal transfer which
19 shall debit the charge against the fund or account to which
20 the same shall have been originally credited. Such procedure
21 for handling noncollectible items shall not be construed as
22 paying funds out of the State Treasury without an
23 appropriation, but shall be considered as an administrative
24 procedure for the efficient handling of state records and
25 accounts.

26 (2) Whenever a check, draft, or other order for the
27 payment of money is returned by the Chief Financial Officer
28 ~~State Treasurer~~, or by a qualified public depository as
29 defined in s. 280.02, to a state officer, a state agency, or
30 the judicial branch for collection, the officer, agency, or
31 judicial branch shall add to the amount due a service fee of

1 \$15 or 5 percent of the face amount of the check, draft, or
2 order, whichever is greater. An agency or the judicial branch
3 may adopt a rule which prescribes a lesser maximum service
4 fee, which shall be added to the amount due for the dishonored
5 check, draft, or other order tendered for a particular
6 service, license, tax, fee, or other charge, but in no event
7 shall the fee be less than \$15. The service fee shall be in
8 addition to all other penalties imposed by law, except that
9 when other charges or penalties are imposed by an agency
10 related to a noncollectible item, the amount of the service
11 fee shall not exceed \$150. Proceeds from this fee shall be
12 deposited in the same fund as the collected item. Nothing in
13 this section shall be construed as authorization to deposit
14 moneys outside the State Treasury unless specifically
15 authorized by law.

16 Section 214. Section 215.35, Florida Statutes, is
17 amended to read:

18 215.35 State funds; warrants and their issuance.--All
19 warrants issued by the Chief Financial Officer ~~Comptroller~~
20 shall be numbered in chronological order commencing with
21 number one in each fiscal year and each warrant shall refer to
22 the Chief Financial Officer's ~~Comptroller's~~ voucher by the
23 number thereof, which voucher shall also be numbered as above
24 set forth. Each warrant shall state the name of the payee
25 thereof and the amount allowed, and said warrant shall be
26 stated in words at length. No warrant shall issue until same
27 has been authorized by an appropriation made by law but such
28 warrant need not state or set forth such authorization. The
29 Chief Financial Officer ~~Comptroller~~ shall register and
30 maintain a record of each warrant in his or her office. The
31 record shall show the funds, accounts, purposes, and

1 departments involved in the issuance of each warrant. In
2 those instances where the expenditure of funds of regulatory
3 boards or commissions has been provided for by laws other than
4 the annual appropriations bill, warrants shall be issued upon
5 requisition to the Chief Financial Officer ~~State Comptroller~~
6 by the governing body of such board or commission.

7 Section 215. Section 215.405, Florida Statutes, is
8 amended to read:

9 215.405 State agencies and the judicial branch
10 authorized to collect costs of fingerprinting.--Any state
11 agency, or the judicial branch, exercising regulatory
12 authority and authorized to take fingerprints of persons
13 within or seeking to come within such agency's or the judicial
14 branch's regulatory power may collect from the person or
15 entity on whose behalf the fingerprints were submitted the
16 actual costs of processing such fingerprints including, but
17 not limited to, any charges imposed by the Department of Law
18 Enforcement or any agency or branch of the United States
19 Government. This provision shall constitute express authority
20 for state agencies and the judicial branch to collect the
21 actual costs of processing the fingerprints either prior to or
22 subsequent to the actual processing and shall supersede any
23 other law to the contrary. To administer the provisions of
24 this section, a state agency, or the judicial branch, electing
25 to collect the cost of fingerprinting is empowered to
26 promulgate and adopt rules to establish the amounts and the
27 methods of payment needed to collect such costs. Collections
28 made under these provisions shall be deposited with the Chief
29 Financial Officer ~~Treasurer~~ to an appropriate trust fund
30 account to be designated by the Executive Office of the
31 Governor.

1 Section 216. Section 215.42, Florida Statutes, is
2 amended to read:

3 215.42 Purchases from appropriations, proof of
4 delivery.--The Chief Financial Officer ~~State Comptroller~~ may
5 require proof, as he or she deems necessary, of delivery and
6 receipt of purchases before honoring any voucher for payment
7 from appropriations made in the General Appropriations Act or
8 otherwise provided by law.

9 Section 217. Section 215.422, Florida Statutes, is
10 amended to read:

11 215.422 Warrants, vouchers, and invoices; processing
12 time limits; dispute resolution; agency or judicial branch
13 compliance.--

14 (1) The voucher authorizing payment of an invoice
15 submitted to an agency of the state or the judicial branch,
16 required by law to be filed with the Chief Financial Officer
17 ~~Comptroller~~, shall be filed with the Chief Financial Officer
18 ~~Comptroller~~ not later than 20 days after receipt of the
19 invoice and receipt, inspection, and approval of the goods or
20 services, except that in the case of a bona fide dispute the
21 voucher shall contain a statement of the dispute and authorize
22 payment only in the amount not disputed. The Chief Financial
23 Officer ~~Comptroller~~ may establish dollar thresholds and other
24 criteria for all invoices and may delegate to a state agency
25 or the judicial branch responsibility for maintaining the
26 official vouchers and documents for invoices which do not
27 exceed the thresholds or which meet the established criteria.
28 Such records shall be maintained in accordance with the
29 requirements established by the Secretary of State. The
30 electronic payment request transmission to the Chief Financial
31 Officer ~~Comptroller~~ shall constitute filing of a voucher for

1 payment of invoices for which the Chief Financial Officer
2 ~~Comptroller~~ has delegated to an agency custody of official
3 records. Approval and inspection of goods or services shall
4 take no longer than 5 working days unless the bid
5 specifications, purchase order, or contract specifies
6 otherwise. If a voucher filed within the 20-day period is
7 returned by the Department of Financial Services ~~Banking and~~
8 ~~Finance~~ because of an error, it shall nevertheless be deemed
9 timely filed. The 20-day filing requirement may be waived in
10 whole or in part by the Department of Financial Services
11 ~~Banking and Finance~~ on a showing of exceptional circumstances
12 in accordance with rules and regulations of the department.
13 For the purposes of determining the receipt of invoice date,
14 the agency or the judicial branch is deemed to receive an
15 invoice on the date on which a proper invoice is first
16 received at the place designated by the agency or the judicial
17 branch. The agency or the judicial branch is deemed to
18 receive an invoice on the date of the invoice if the agency or
19 the judicial branch has failed to annotate the invoice with
20 the date of receipt at the time the agency or the judicial
21 branch actually received the invoice or failed at the time the
22 order is placed or contract made to designate a specific
23 location to which the invoice must be delivered.

24 (2) The warrant in payment of an invoice submitted to
25 an agency of the state or the judicial branch shall be issued
26 not later than 10 days after filing of the voucher authorizing
27 payment. However, this requirement may be waived in whole or
28 in part by the Department of Financial Services ~~Banking and~~
29 ~~Finance~~ on a showing of exceptional circumstances in
30 accordance with rules and regulations of the department. If
31 the 10-day period contains fewer than 6 working days, the

1 Department of Financial Services ~~Banking and Finance~~ shall be
2 deemed in compliance with this subsection if the warrant is
3 issued within 6 working days without regard to the actual
4 number of calendar days. For purposes of this section, a
5 payment is deemed to be issued on the first working day that
6 payment is available for delivery or mailing to the vendor.

7 (3)(a) Each agency of the state or the judicial branch
8 which is required by law to file vouchers with the Chief
9 Financial Officer ~~Comptroller~~ shall keep a record of the date
10 of receipt of the invoice; dates of receipt, inspection, and
11 approval of the goods or services; date of filing of the
12 voucher; and date of issuance of the warrant in payment
13 thereof. If the voucher is not filed or the warrant is not
14 issued within the time required, an explanation in writing by
15 the agency head or the Chief Justice shall be submitted to the
16 Department of Financial Services ~~Banking and Finance~~ in a
17 manner prescribed by it. Agencies and the judicial branch
18 shall continue to deliver or mail state payments promptly.

19 (b) If a warrant in payment of an invoice is not
20 issued within 40 days after receipt of the invoice and
21 receipt, inspection, and approval of the goods and services,
22 the agency or judicial branch shall pay to the vendor, in
23 addition to the amount of the invoice, interest at a rate as
24 established pursuant to s. 55.03(1) on the unpaid balance from
25 the expiration of such 40-day period until such time as the
26 warrant is issued to the vendor. Such interest shall be added
27 to the invoice at the time of submission to the Chief
28 Financial Officer ~~Comptroller~~ for payment whenever possible.
29 If addition of the interest penalty is not possible, the
30 agency or judicial branch shall pay the interest penalty
31 payment within 15 days after issuing the warrant. The

1 provisions of this paragraph apply only to undisputed amounts
2 for which payment has been authorized. Disputes shall be
3 resolved in accordance with rules developed and adopted by the
4 Chief Justice for the judicial branch, and rules adopted by
5 the Department of Financial Services ~~Banking and Finance~~ or in
6 a formal administrative proceeding before an administrative
7 law judge of the Division of Administrative Hearings for state
8 agencies, provided that, for the purposes of ss. 120.569 and
9 120.57(1), no party to a dispute involving less than \$1,000 in
10 interest penalties shall be deemed to be substantially
11 affected by the dispute or to have a substantial interest in
12 the decision resolving the dispute. In the case of an error on
13 the part of the vendor, the 40-day period shall begin to run
14 upon receipt by the agency or the judicial branch of a
15 corrected invoice or other remedy of the error. The provisions
16 of this paragraph do not apply when the filing requirement
17 under subsection (1) or subsection (2) has been waived in
18 whole by the Department of Financial Services ~~Banking and~~
19 ~~Finance~~. The various state agencies and the judicial branch
20 shall be responsible for initiating the penalty payments
21 required by this subsection and shall use this subsection as
22 authority to make such payments. The budget request submitted
23 to the Legislature shall specifically disclose the amount of
24 any interest paid by any agency or the judicial branch
25 pursuant to this subsection. The temporary unavailability of
26 funds to make a timely payment due for goods or services does
27 not relieve an agency or the judicial branch from the
28 obligation to pay interest penalties under this section.

29 (c) An agency or the judicial branch may make partial
30 payments to a contractor upon partial delivery of goods or
31 services or upon partial completion of construction when a

1 request for such partial payment is made by the contractor and
2 approved by the agency. Provisions of this section and rules
3 of the Department of Financial Services ~~Banking and Finance~~
4 shall apply to partial payments in the same manner as they
5 apply to full payments.

6 (4) If the terms of the invoice provide a discount for
7 payment in less than 30 days, agencies of the state and the
8 judicial branch shall preferentially process it and use all
9 diligence to obtain the saving by compliance with the invoice
10 terms.

11 (5) All purchasing agreements between a state agency
12 or the judicial branch and a vendor, applicable to this
13 section, shall include a statement of the vendor's rights and
14 the state's responsibilities under this section. The vendor's
15 rights shall include being provided with the telephone number
16 of the vendor ombudsman within the Department of Financial
17 Services ~~Banking and Finance~~, which information shall also be
18 placed on all agency or judicial branch purchase orders.

19 (6) The Department of Financial Services ~~Banking and~~
20 ~~Finance~~ shall monitor each agency's and the judicial branch's
21 compliance with the time limits and interest penalty
22 provisions of this section. The department shall provide a
23 report to an agency or to the judicial branch if the
24 department determines that the agency or the judicial branch
25 has failed to maintain an acceptable rate of compliance with
26 the time limits and interest penalty provisions of this
27 section. The department shall establish criteria for
28 determining acceptable rates of compliance. The report shall
29 also include a list of late vouchers or payments, the amount
30 of interest owed or paid, and any corrective actions
31 recommended. The department shall perform monitoring

1 responsibilities, pursuant to this section, using the
2 Management Services and Purchasing Subsystem or the Florida
3 Accounting Information Resource Subsystem provided in s.
4 215.94. Each agency and the judicial branch shall be
5 responsible for the accuracy of information entered into the
6 Management Services and Purchasing Subsystem and the Florida
7 Accounting Information Resource Subsystem for use in this
8 monitoring.

9 (7) There is created a vendor ombudsman within the
10 Department of Financial Services ~~Banking and Finance~~ who shall
11 be responsible for the following functions:

12 (a) Performing the duties of the department pursuant
13 to subsection (6).

14 (b) Reviewing requests for waivers due to exceptional
15 circumstances.

16 (c) Disseminating information relative to the prompt
17 payment policies of this state and assisting vendors in
18 receiving their payments in a timely manner.

19 (d) Performing such other duties as determined by the
20 department.

21 (8) The Department of Financial Services ~~Banking and~~
22 ~~Finance~~ is authorized and directed to adopt and promulgate
23 rules and regulations to implement this section and for
24 resolution of disputes involving amounts of less than \$1,000
25 in interest penalties for state agencies. No agency or the
26 judicial branch shall adopt any rule or policy that is
27 inconsistent with this section or the Department of Financial
28 Services ~~Banking and Finance's~~ rules or policies.

29 (9) Each agency and the judicial branch shall include
30 in the official position description of every officer or
31 employee who is responsible for the approval or processing of

1 vendors' invoices or distribution of warrants to vendors that
2 the requirements of this section are mandatory.

3 (10) Persistent failure to comply with this section by
4 any agency of the state or the judicial branch shall
5 constitute good cause for discharge of employees duly found
6 responsible, or predominantly responsible, for failure to
7 comply.

8 (11) Travel and other reimbursements to state officers
9 and employees must be the same as payments to vendors under
10 this section, except payment of Class C travel subsistence.
11 Class C travel subsistence shall be paid in accordance with
12 the schedule established by the Chief Financial Officer
13 ~~Comptroller~~ pursuant to s. 112.061(5)(b). This section does
14 not apply to payments made to state agencies, the judicial
15 branch, or the legislative branch.

16 (12) In the event that a state agency or the judicial
17 branch contracts with a third party, uses a revolving fund, or
18 pays from a local bank account to process and pay invoices for
19 goods or services, all requirements for financial obligations
20 and time processing set forth in this section shall be
21 applicable and the state agency or the judicial branch shall
22 be responsible for paying vendors the interest assessed for
23 untimely payment. The state agency or the judicial branch may,
24 through its contract with a third party, require the third
25 party to pay interest from the third party's funds.

26 (13) Notwithstanding the provisions of subsections (3)
27 and (12), in order to alleviate any hardship that may be
28 caused to a health care provider as a result of delay in
29 receiving reimbursement for services, any payment or payments
30 for hospital, medical, or other health care services which are
31 to be reimbursed by a state agency or the judicial branch,

1 either directly or indirectly, shall be made to the health
2 care provider not more than 35 days from the date eligibility
3 for payment of such claim is determined. If payment is not
4 issued to a health care provider within 35 days after the date
5 eligibility for payment of the claim is determined, the state
6 agency or the judicial branch shall pay the health care
7 provider interest at a rate of 1 percent per month calculated
8 on a calendar day basis on the unpaid balance from the
9 expiration of such 35-day period until such time as payment is
10 made to the health care provider, unless a waiver in whole has
11 been granted by the Department of Financial Services ~~Banking~~
12 ~~and Finance~~ pursuant to subsection (1) or subsection (2).

13 (14) The Chief Financial Officer ~~Comptroller~~ may adopt
14 rules to authorize advance payments for goods and services,
15 including, but not limited to, maintenance agreements and
16 subscriptions. Such rules shall provide objective criteria
17 for determining when it is in the best interest of the state
18 to make payments in advance and shall also provide for
19 adequate protection to ensure that such goods or services will
20 be provided.

21 (15) Nothing contained in this section shall be
22 construed to be an appropriation. Any interest which becomes
23 due and owing pursuant to this section shall only be payable
24 from the appropriation charged for such goods or services.

25 (16) Notwithstanding the provisions of s. 24.120(3),
26 applicable to warrants issued for payment of invoices
27 submitted by the Department of the Lottery, the Chief
28 Financial Officer ~~Comptroller~~ may, by written agreement with
29 the Department of the Lottery, establish a shorter time
30 requirement than the 10 days provided in subsection (2) for
31 warrants issued for payment. Pursuant to such written

1 agreement, the Department of the Lottery shall reimburse the
2 Chief Financial Officer ~~Comptroller~~ for costs associated with
3 processing invoices under the agreement.

4 Section 218. Section 215.50, Florida Statutes, is
5 amended to read:

6 215.50 Custody of securities purchased; income.--

7 (1) All securities purchased or held may, with the
8 approval of the board, be in the custody of the Chief
9 Financial Officer ~~Treasurer~~ or the Chief Financial Officer
10 ~~Treasurer~~ as treasurer ex officio of the board, or be
11 deposited with a bank or trust company to be held in
12 safekeeping by such bank or trust company for the collection
13 of principal and interest or of the proceeds of the sale
14 thereof.

15 (2) It shall be the duty of the board or of the Chief
16 Financial Officer ~~Treasurer~~, as custodian of the securities of
17 the board, to collect the interest or other income on, and the
18 principal of, such securities in their custody as the sums
19 become due and payable and to pay the same, when so collected,
20 into the investment account of the fund to which the
21 investments belong.

22 (3) The Chief Financial Officer ~~Treasurer~~, as
23 custodian of securities owned by the Florida Retirement System
24 Trust Fund and the Florida Survivor Benefit Trust Fund, shall
25 collect the interest, dividends, prepayments, maturities,
26 proceeds from sales, and other income accruing from such
27 assets. As such income is collected by the Chief Financial
28 Officer ~~Treasurer~~, it shall be deposited directly into a
29 commercial bank to the credit of the State Board of
30 Administration. Such bank accounts as may be required for
31 this purpose shall offer satisfactory collateral security as

1 provided by chapter 280. In the event funds so deposited
2 according to the provisions of this section are required for
3 the purpose of paying benefits or other operational needs, the
4 State Board of Administration shall remit to the Florida
5 Retirement System Trust Fund in the State Treasury such
6 amounts as may be requested by the Department of Management
7 Services.

8 (4) Securities that the board selects to use for
9 options operations under s. 215.45 or for lending under s.
10 215.47(16) shall be registered by the Chief Financial Officer
11 ~~Treasurer~~ in the name of a third-party nominee in order to
12 facilitate such operations.

13 Section 219. Section 215.551, Florida Statutes, is
14 amended to read:

15 215.551 Federal Use of State Lands Trust Fund; county
16 distribution.--

17 (1) The Chief Financial Officer ~~Comptroller~~ may make
18 distribution of the Federal Use of State Lands Trust Fund,
19 when so requested by the counties in interest, of such amounts
20 as may be accumulated in that fund.

21 (2) The Chief Financial Officer ~~Comptroller~~ shall
22 ascertain, from the records of the General Land Office or
23 other departments in Washington, D.C., the number of acres of
24 land situated in the several counties in which the
25 Apalachicola, Choctawhatchee, Ocala, and Osceola Forest
26 Reserves are located, the number of acres of land of such
27 forest reserve embraced in each of the counties in each of the
28 reserves, and, also, the amount of money received by the
29 United States Government from each of the reserves,
30 respectively. The Chief Financial Officer ~~Comptroller~~ shall
31 apportion the money on hand to each county in each reserve,

1 respectively and separately; such distribution shall be based
2 upon the number of acres of land embraced in the Apalachicola
3 Forest, Choctawhatchee Forest, Ocala Forest, and Osceola
4 Forest, respectively, in each county and shall be further
5 based upon the amount collected by the United States from each
6 of such forests, so that such distribution, when made, will
7 include for each county the amount due each county, based upon
8 the receipts for the particular forest and the acreage in the
9 particular county in which such forest is located. The Chief
10 Financial Officer ~~Comptroller~~ shall issue two warrants ~~on the~~
11 ~~Treasurer~~ in each case, the sum of which shall be the amount
12 due each of such counties from the fund. One warrant shall be
13 payable to the county for the county general road fund, and
14 one warrant, of equal amount, shall be payable to such
15 county's district school board for the district school fund.

16 (3) In the event that actual figures of receipts from
17 different reserves cannot be obtained by counties, so as to
18 fully comply with subsections (1) and (2), the Chief Financial
19 Officer ~~Comptroller~~ may adjust the matter according to the
20 United States statutes, or as may appear to him or her to be
21 just and fair, and with the approval of all counties in
22 interest.

23 (4) The moneys that may be received and credited to
24 the Federal Use of State Lands Trust Fund are appropriated for
25 the payment of the warrants of the Chief Financial Officer
26 ~~Comptroller drawn on the Treasurer~~ in pursuance of this
27 section.

28 Section 220. Section 215.552, Florida Statutes, is
29 amended to read:

30 215.552 Federal Use of State Lands Trust Fund; land
31 within military installations; county distribution.--The Chief

1 Financial Officer ~~Comptroller~~ shall distribute moneys from the
2 Federal Use of State Lands Trust Fund when so requested by the
3 counties so affected. The Chief Financial Officer ~~Comptroller~~
4 shall apportion the money on hand equal to the percentage of
5 land in each county within each military installation, and the
6 amount so apportioned to each county shall be applied by such
7 counties equally divided between the district school fund and
8 the general road fund of such counties.

9 Section 221. Paragraph (c) of subsection (2),
10 paragraph (d) of subsection (4), and paragraphs (a), (b), and
11 (c) of subsection (6) of section 215.555, Florida Statutes,
12 are amended to read:

13 215.555 Florida Hurricane Catastrophe Fund.--

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

15 (c) "Covered policy" means any insurance policy
16 covering residential property in this state, including, but
17 not limited to, any homeowner's, mobile home owner's, farm
18 owner's, condominium association, condominium unit owner's,
19 tenant's, or apartment building policy, or any other policy
20 covering a residential structure or its contents issued by any
21 authorized insurer, including the Citizens Property Insurance
22 Corporation and any joint underwriting association or similar
23 entity created pursuant to law. The term "covered policy"
24 includes any collateral protection insurance policy covering
25 personal residences which protects both the borrower's and the
26 lender's financial interests, in an amount at least equal to
27 the coverage for the dwelling in place under the lapsed
28 homeowner's policy, if such policy can be accurately reported
29 as required in subsection (5). Additionally, covered policies
30 include policies covering the peril of wind removed from the
31 Florida Residential Property and Casualty Joint Underwriting

1 Association or from the Citizens Property Insurance
2 Corporation, created pursuant to s. 627.351(6), or from the
3 Florida Windstorm Underwriting Association, created pursuant
4 to s. 627.351(2), by an authorized insurer under the terms and
5 conditions of an executed assumption agreement between the
6 authorized insurer and ~~either~~ such association. Each
7 assumption agreement between the ~~either~~ association and such
8 authorized insurer must be approved by the Florida Department
9 of Insurance or the Office of Insurance Regulation prior to
10 the effective date of the assumption, and the Department of
11 Insurance or the Office of Insurance Regulation must provide
12 written notification to the board within 15 working days after
13 such approval. "Covered policy" does not include any policy
14 that excludes wind coverage or hurricane coverage or any
15 reinsurance agreement and does not include any policy
16 otherwise meeting this definition which is issued by a surplus
17 lines insurer or a reinsurer.

18 (4) REIMBURSEMENT CONTRACTS.--

19 (d)1. For purposes of determining potential liability
20 and to aid in the sound administration of the fund, the
21 contract shall require each insurer to report such insurer's
22 losses from each covered event on an interim basis, as
23 directed by the board. The contract shall require the insurer
24 to report to the board no later than December 31 of each year,
25 and quarterly thereafter, its reimbursable losses from covered
26 events for the year. The contract shall require the board to
27 determine and pay, as soon as practicable after receiving
28 these reports of reimbursable losses, the initial amount of
29 reimbursement due and adjustments to this amount based on
30 later loss information. The adjustments to reimbursement
31 amounts shall require the board to pay, or the insurer to

1 return, amounts reflecting the most recent calculation of
2 losses.

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

5 a. First reimburse insurers writing covered policies,
6 which insurers are in full compliance with this section and
7 have petitioned the Office of Insurance Regulation ~~Department~~
8 ~~of Insurance~~ and qualified as limited apportionment companies
9 under s. 627.351(2)(b)3. The amount of such reimbursement
10 shall be the lesser of \$10 million or an amount equal to 10
11 times the insurer's reimbursement premium for the current
12 year. The amount of reimbursement paid under this
13 sub-subparagraph may not exceed the full amount of
14 reimbursement promised in the reimbursement contract. This
15 sub-subparagraph does not apply with respect to any contract
16 year in which the year-end projected cash balance of the fund,
17 exclusive of any bonding capacity of the fund, exceeds \$2
18 billion. Only one member of any insurer group may receive
19 reimbursement under this sub-subparagraph.

20 b. Next pay to each insurer such insurer's projected
21 payout, which is the amount of reimbursement it is owed, up to
22 an amount equal to the insurer's share of the actual premium
23 paid for that contract year, multiplied by the actual
24 claims-paying capacity available for that contract year;
25 provided, entities created pursuant to s. 627.351 shall be
26 further reimbursed in accordance with sub-subparagraph c.

27 c. Thereafter, establish, based on reimbursable
28 losses, the prorated reimbursement level at the highest level
29 for which any remaining fund balance or bond proceeds are
30 sufficient to reimburse entities created pursuant to s.

31

1 627.351 for losses exceeding the amounts payable pursuant to
2 sub-subparagraph b. for the current contract year.

3 (6) REVENUE BONDS.--

4 (a) General provisions.--

5 1. Upon the occurrence of a hurricane and a
6 determination that the moneys in the fund are or will be
7 insufficient to pay reimbursement at the levels promised in
8 the reimbursement contracts, the board may take the necessary
9 steps under paragraph (b) or paragraph (c) for the issuance of
10 revenue bonds for the benefit of the fund. The proceeds of
11 such revenue bonds may be used to make reimbursement payments
12 under reimbursement contracts; to refinance or replace
13 previously existing borrowings or financial arrangements; to
14 pay interest on bonds; to fund reserves for the bonds; to pay
15 expenses incident to the issuance or sale of any bond issued
16 under this section, including costs of validating, printing,
17 and delivering the bonds, costs of printing the official
18 statement, costs of publishing notices of sale of the bonds,
19 and related administrative expenses; or for such other
20 purposes related to the financial obligations of the fund as
21 the board may determine. The term of the bonds may not exceed
22 30 years. The board may pledge or authorize the corporation to
23 pledge all or a portion of all revenues under subsection (5)
24 and under subparagraph 3. to secure such revenue bonds and the
25 board may execute such agreements between the board and the
26 issuer of any revenue bonds and providers of other financing
27 arrangements under paragraph (7)(b) as the board deems
28 necessary to evidence, secure, preserve, and protect such
29 pledge. If reimbursement premiums received under subsection
30 (5) or earnings on such premiums are used to pay debt service
31 on revenue bonds, such premiums and earnings shall be used

1 only after the use of the moneys derived from assessments
2 under subparagraph 3. The funds, credit, property, or taxing
3 power of the state or political subdivisions of the state
4 shall not be pledged for the payment of such bonds. The board
5 may also enter into agreements under paragraph (b) or
6 paragraph (c) for the purpose of issuing revenue bonds in the
7 absence of a hurricane upon a determination that such action
8 would maximize the ability of the fund to meet future
9 obligations.

10 2. The Legislature finds and declares that the
11 issuance of bonds under this subsection is for the public
12 purpose of paying the proceeds of the bonds to insurers,
13 thereby enabling insurers to pay the claims of policyholders
14 to assure that policyholders are able to pay the cost of
15 construction, reconstruction, repair, restoration, and other
16 costs associated with damage to property of policyholders of
17 covered policies after the occurrence of a hurricane. Revenue
18 bonds may not be issued under this subsection until validated
19 under chapter 75. The validation of at least the first
20 obligations incurred pursuant to this subsection shall be
21 appealed to the Supreme Court, to be handled on an expedited
22 basis.

23 3. If the board determines that the amount of revenue
24 produced under subsection (5) is insufficient to fund the
25 obligations, costs, and expenses of the fund and the
26 corporation, including repayment of revenue bonds, the board
27 shall direct the Office of Insurance Regulation ~~Department of~~
28 ~~Insurance~~ to levy an emergency assessment on each insurer
29 writing property and casualty business in this state. Pursuant
30 to the emergency assessment, each such insurer shall pay to
31 the corporation by July 1 of each year an amount set by the

1 board not exceeding 2 percent of its gross direct written
2 premium for the prior year from all property and casualty
3 business in this state except for workers' compensation,
4 except that, if the Governor has declared a state of emergency
5 under s. 252.36 due to the occurrence of a covered event, the
6 amount of the assessment for the contract year may be
7 increased to an amount not exceeding 4 percent of such
8 premium. Any assessment authority not used for the contract
9 year may be used for a subsequent contract year. If, for a
10 subsequent contract year, the board determines that the amount
11 of revenue produced under subsection (5) is insufficient to
12 fund the obligations, costs, and expenses of the fund and the
13 corporation, including repayment of revenue bonds for that
14 contract year, the board shall direct the Office of Insurance
15 Regulation ~~Department of Insurance~~ to levy an emergency
16 assessment up to an amount not exceeding the amount of unused
17 assessment authority from a previous contract year or years,
18 plus an additional 2 percent if the Governor has declared a
19 state of emergency under s. 252.36 due to the occurrence of a
20 covered event. Any assessment authority not used for the
21 contract year may be used for a subsequent contract year. As
22 used in this subsection, the term "property and casualty
23 business" includes all lines of business identified on Form 2,
24 Exhibit of Premiums and Losses, in the annual statement
25 required by s. 624.424 and any rules adopted under such
26 section, except for those lines identified as accident and
27 health insurance. The annual assessments under this
28 subparagraph shall continue as long as the revenue bonds
29 issued with respect to which the assessment was imposed are
30 outstanding, unless adequate provision has been made for the
31 payment of such bonds pursuant to the documents authorizing

1 issuance of the bonds. An insurer shall not at any time be
2 subject to aggregate annual assessments under this
3 subparagraph of more than 2 percent of premium, except that in
4 the case of a declared emergency, an insurer shall not at any
5 time be subject to aggregate annual assessments under this
6 subparagraph of more than 6 percent of premium; provided, no
7 more than 4 percent may be assessed for any one contract year.
8 Any rate filing or portion of a rate filing reflecting a rate
9 change attributable entirely to the assessment levied under
10 this subparagraph shall be deemed approved when made, subject
11 to the authority of the Office of Insurance Regulation
12 ~~Department of Insurance~~ to require actuarial justification as
13 to the adequacy of any rate at any time. If the rate filing
14 reflects only a rate change attributable to the assessment
15 under this paragraph, the filing may consist of a
16 certification so stating. The assessments otherwise payable to
17 the corporation pursuant to this subparagraph shall be paid
18 instead to the fund unless and until the Office of Insurance
19 Regulation ~~Department of Insurance~~ has received from the
20 corporation and the fund a notice, which shall be conclusive
21 and upon which the Office of Insurance Regulation ~~Department~~
22 ~~of Insurance~~ may rely without further inquiry, that the
23 corporation has issued bonds and the fund has no agreements in
24 effect with local governments pursuant to paragraph (b). On
25 or after the date of such notice and until such date as the
26 corporation has no bonds outstanding, the fund shall have no
27 right, title, or interest in or to the assessments, except as
28 provided in the fund's agreements with the corporation.

29 (b) Revenue bond issuance through counties or
30 municipalities.--

31

1 1. If the board elects to enter into agreements with
2 local governments for the issuance of revenue bonds for the
3 benefit of the fund, the board shall enter into such contracts
4 with one or more local governments, including agreements
5 providing for the pledge of revenues, as are necessary to
6 effect such issuance. The governing body of a county or
7 municipality is authorized to issue bonds as defined in s.
8 125.013 or s. 166.101 from time to time to fund an assistance
9 program, in conjunction with the Florida Hurricane Catastrophe
10 Fund, for the purposes set forth in this section or for the
11 purpose of paying the costs of construction, reconstruction,
12 repair, restoration, and other costs associated with damage to
13 properties of policyholders of covered policies due to the
14 occurrence of a hurricane by assuring that policyholders
15 located in this state are able to recover claims under
16 property insurance policies after a covered event.

17 2. In order to avoid needless and indiscriminate
18 proliferation, duplication, and fragmentation of such
19 assistance programs, any local government may provide for the
20 payment of fund reimbursements, regardless of whether or not
21 the losses for which reimbursement is made occurred within or
22 outside of the territorial jurisdiction of the local
23 government.

24 3. The state hereby covenants with holders of bonds
25 issued under this paragraph that the state will not repeal or
26 abrogate the power of the board to direct the Office of
27 Insurance Regulation ~~Department of Insurance~~ to levy the
28 assessments and to collect the proceeds of the revenues
29 pledged to the payment of such bonds as long as any such bonds
30 remain outstanding unless adequate provision has been made for
31

1 the payment of such bonds pursuant to the documents
2 authorizing the issuance of such bonds.

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

8 (c) Florida Hurricane Catastrophe Fund Finance
9 Corporation.--

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

12 a. The public benefits corporation created under this
13 paragraph will provide a mechanism necessary for the
14 cost-effective and efficient issuance of bonds. This mechanism
15 will eliminate unnecessary costs in the bond issuance process,
16 thereby increasing the amounts available to pay reimbursement
17 for losses to property sustained as a result of hurricane
18 damage.

19 b. The purpose of such bonds is to fund reimbursements
20 through the Florida Hurricane Catastrophe Fund to pay for the
21 costs of construction, reconstruction, repair, restoration,
22 and other costs associated with damage to properties of
23 policyholders of covered policies due to the occurrence of a
24 hurricane.

25 c. The efficacy of the financing mechanism will be
26 enhanced by the corporation's ownership of the assessments, by
27 the insulation of the assessments from possible bankruptcy
28 proceedings, and by covenants of the state with the
29 corporation's bondholders.

30
31

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

4 b. The corporation shall operate under a five-member
5 board of directors consisting of the Governor or a designee,
6 the Chief Financial Officer ~~Comptroller~~ or a designee, the
7 Attorney General ~~Treasurer~~ or a designee, the director of the
8 Division of Bond Finance of the State Board of Administration,
9 and the senior employee of the State Board of Administration
10 responsible for operations ~~chief operating officer~~ of the
11 Florida Hurricane Catastrophe Fund.

12 c. The corporation has all of the powers of
13 corporations under chapter 607 and under chapter 617, subject
14 only to the provisions of this subsection.

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

18 e. The corporation may invest in any of the
19 investments authorized under s. 215.47.

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

24 3.a. In actions under chapter 75 to validate any bonds
25 issued by the corporation, the notice required by s. 75.06
26 shall be published only in Leon County and in two newspapers
27 of general circulation in the state, and the complaint and
28 order of the court shall be served only on the State Attorney
29 of the Second Judicial Circuit.

30 b. The state hereby covenants with holders of bonds of
31 the corporation that the state will not repeal or abrogate the

1 power of the board to direct the Office of Insurance
2 Regulation Department of Insurance to levy the assessments and
3 to collect the proceeds of the revenues pledged to the payment
4 of such bonds as long as any such bonds remain outstanding
5 unless adequate provision has been made for the payment of
6 such bonds pursuant to the documents authorizing the issuance
7 of such bonds.

8 4. The bonds of the corporation are not a debt of the
9 state or of any political subdivision, and neither the state
10 nor any political subdivision is liable on such bonds. The
11 corporation does not have the power to pledge the credit, the
12 revenues, or the taxing power of the state or of any political
13 subdivision. The credit, revenues, or taxing power of the
14 state or of any political subdivision shall not be deemed to
15 be pledged to the payment of any bonds of the corporation.

16 5.a. The property, revenues, and other assets of the
17 corporation; the transactions and operations of the
18 corporation and the income from such transactions and
19 operations; and all bonds issued under this paragraph and
20 interest on such bonds are exempt from taxation by the state
21 and any political subdivision, including the intangibles tax
22 under chapter 199 and the income tax under chapter 220. This
23 exemption does not apply to any tax imposed by chapter 220 on
24 interest, income, or profits on debt obligations owned by
25 corporations other than the Florida Hurricane Catastrophe Fund
26 Finance Corporation.

27 b. All bonds of the corporation shall be and
28 constitute legal investments without limitation for all public
29 bodies of this state; for all banks, trust companies, savings
30 banks, savings associations, savings and loan associations,
31 and investment companies; for all administrators, executors,

1 trustees, and other fiduciaries; for all insurance companies
2 and associations and other persons carrying on an insurance
3 business; and for all other persons who are now or may
4 hereafter be authorized to invest in bonds or other
5 obligations of the state and shall be and constitute eligible
6 securities to be deposited as collateral for the security of
7 any state, county, municipal, or other public funds. This
8 sub-subparagraph shall be considered as additional and
9 supplemental authority and shall not be limited without
10 specific reference to this sub-subparagraph.

11 6. The corporation and its corporate existence shall
12 continue until terminated by law; however, no such law shall
13 take effect as long as the corporation has bonds outstanding
14 unless adequate provision has been made for the payment of
15 such bonds pursuant to the documents authorizing the issuance
16 of such bonds. Upon termination of the existence of the
17 corporation, all of its rights and properties in excess of its
18 obligations shall pass to and be vested in the state.

19 Section 222. Subsection (5) of section 215.559,
20 Florida Statutes, is amended to read:

21 215.559 Hurricane Loss Mitigation Program.--

22 (5) Except for the program set forth in subsection
23 (3), the Department of Community Affairs shall develop the
24 programs set forth in this section in consultation with an
25 advisory council consisting of a representative designated by
26 the Chief Financial Officer ~~Department of Insurance~~, a
27 representative designated by the Florida Home Builders
28 Association, a representative designated by the Florida
29 Insurance Council, a representative designated by the
30 Federation of Manufactured Home Owners, a representative
31 designated by the Florida Association of Counties, and a

1 representative designated by the Florida Manufactured Housing
2 Association.

3 Section 223. Paragraph (c) of subsection (1),
4 paragraph (b) of subsection (2), and paragraph (a) of
5 subsection (3) of section 215.56005, Florida Statutes, are
6 amended to read:

7 215.56005 Tobacco Settlement Financing Corporation.--

8 (1) DEFINITIONS.--As used in this section:

9 (c) "Department" means the Department of Financial
10 Services ~~Banking and Finance~~ or its successor.

11 (2) CORPORATION CREATION AND AUTHORITY.--

12 (b) The corporation shall be governed by a board of
13 directors consisting of the Governor, the Chief Financial
14 Officer or the Chief Financial Officer's designee ~~Treasurer,~~
15 ~~the Comptroller~~, the Attorney General, two directors appointed
16 from the membership of the Senate by the President of the
17 Senate, and two directors appointed from the membership of the
18 House of Representatives by the Speaker of the House of
19 Representatives. ~~On January 7, 2003, the board shall include~~
20 ~~the Chief Financial Officer or the Chief Financial Officer's~~
21 ~~designee, in place of the Treasurer and the Comptroller or~~
22 ~~their designees.~~The executive director of the State Board of
23 Administration shall be the chief executive officer of the
24 corporation and shall direct and supervise the administrative
25 affairs and operation of the corporation. The corporation
26 shall also have such other officers as may be determined by
27 the board of directors.

28 (3) POWERS OF THE DEPARTMENT.--

29 (a) The department is authorized, on behalf of the
30 state, to do all things necessary or desirable to assist the
31 corporation in the execution of the corporation's

1 responsibilities, including, but not limited to, processing
2 budget amendments against the Department of Financial Services
3 ~~Banking and Finance~~ Tobacco Settlement Clearing Trust Fund,
4 subject to the requirements of s. 216.177, for the costs and
5 expenses of administration of the corporation in an amount not
6 to exceed \$500,000; entering into one or more purchase
7 agreements to sell to the corporation any or all of the
8 state's right, title, and interest in and to the tobacco
9 settlement agreement; executing any administrative agreements
10 with the corporation to fund the administration, operation,
11 and expenses of the corporation from moneys appropriated for
12 such purpose; and executing and delivering any and all other
13 documents and agreements necessary or desirable in connection
14 with the sale of any or all of the state's right, title, and
15 interest in and to the tobacco settlement agreement to the
16 corporation or the issuance of the bonds by the corporation.
17 The department's authority to sell any or all of the state's
18 right, title, and interest in and to the tobacco settlement
19 agreement is subject to approval by the Legislature in a
20 regular, extended, or special session.

21 Section 224. Subsection (3) and paragraph (a) of
22 subsection (5) of section 215.5601, Florida Statutes, are
23 amended to read:

24 215.5601 Lawton Chiles Endowment Fund.--

25 (3) LAWTON CHILES ENDOWMENT FUND; CREATION;
26 PRINCIPAL.--

27 (a) There is created the Lawton Chiles Endowment Fund,
28 to be administered by the State Board of Administration. The
29 endowment shall serve as a clearing trust fund, not subject to
30 termination under s. 19(f), Art. III of the State

31

1 Constitution. The endowment fund shall be exempt from the
2 service charges imposed by s. 215.20.

3 (b) The endowment shall receive moneys from the sale
4 of the state's right, title, and interest in and to the
5 tobacco settlement agreement as defined in s. 215.56005,
6 including the right to receive payments under such agreement,
7 and from accounts transferred from the Department of Financial
8 Services ~~Banking and Finance~~ Tobacco Settlement Clearing Trust
9 Fund established under s. 17.41. Amounts to be transferred
10 from the Department of Financial Services ~~Banking and Finance~~
11 Tobacco Settlement Clearing Trust Fund to the endowment shall
12 be in the following amounts for the following fiscal years:

- 13 1. For fiscal year 1999-2000, \$1.1 billion;
- 14 2. For fiscal year 2000-2001, \$200 million;
- 15 3. For fiscal year 2001-2002, \$200 million;
- 16 4. For fiscal year 2002-2003, \$200 million; and

17 (c) Amounts to be transferred under subparagraphs
18 (b)2., 3., and 4. may be reduced by an amount equal to the
19 lesser of \$200 million or the amount the endowment receives in
20 that fiscal year from the sale of the state's right, title,
21 and interest in and to the tobacco settlement agreement.

22 (d) For fiscal year 2001-2002, \$150 million of the
23 existing principal in the endowment shall be reserved and
24 accounted for within the endowment, the income from which
25 shall be used solely for the funding for biomedical research
26 activities as provided in s. 215.5602. The income from the
27 remaining principal shall be used solely as the source of
28 funding for health and human services programs for children
29 and elders as provided in subsection (5). The separate account
30 for biomedical research shall be dissolved and the entire
31 principal in the endowment shall be used exclusively for

1 health and human services programs when cures have been found
2 for tobacco-related cancer, heart, and lung disease.

3 (5) AVAILABILITY OF FUNDS; USES.--

4 (a) Funds from the endowment which are available for
5 legislative appropriation shall be transferred by the board to
6 the Department of Financial Services ~~Banking and Finance~~
7 Tobacco Settlement Clearing Trust Fund, created in s. 17.41,
8 and disbursed in accordance with the legislative
9 appropriation.

10 1. Appropriations by the Legislature to the Department
11 of Health from endowment earnings from the principal set aside
12 for biomedical research shall be from a category called the
13 Florida Biomedical Research Program and shall be deposited
14 into the Biomedical Research Trust Fund in the Department of
15 Health established in s. 20.435.

16 2. Appropriations by the Legislature to the Department
17 of Children and Family Services, the Department of Health, or
18 the Department of Elderly Affairs for health and human
19 services programs shall be from a category called the Lawton
20 Chiles Endowment Fund Programs and shall be deposited into
21 each department's respective Tobacco Settlement Trust Fund as
22 appropriated.

23 Section 225. Section 215.58, Florida Statutes, is
24 amended to read:

25 215.58 Definitions relating to State Bond Act.--The
26 following words or terms when used in this act shall have the
27 following meanings:

28 (1) "Governor" means ~~shall mean~~ the Governor of the
29 state or any Acting Governor or other person then exercising
30 the duties of the office of Governor.

31

1 ~~(2) "Treasurer" shall mean the Insurance Commissioner~~
2 ~~and Treasurer.~~

3 ~~(3) "Comptroller" shall mean the State Comptroller.~~

4 (2)(4) "State" means ~~shall mean~~ the State of Florida.

5 ~~(3)(5)~~ "Division" means ~~shall mean~~ the Division of
6 Bond Finance.

7 (4)(6) "Board" means ~~shall mean~~ the governing board of
8 ~~the said~~ division, which shall be composed of the Governor and
9 Cabinet.

10 ~~(5)(7)~~ "Director" means ~~shall mean~~ the chief
11 administrator of the division, who shall act on behalf of the
12 division when authorized by the board, as provided by this
13 act.

14 ~~(6)(8)~~ "State agency" means ~~shall mean~~ any board,
15 commission, authority, or other state agency heretofore or
16 hereafter created by the constitution or statutes of the
17 state.

18 ~~(7)(9)~~ "Bonds" means ~~shall mean~~ state bonds, or any
19 revenue bonds, certificates or other obligations heretofore or
20 hereafter authorized to be issued by said division or by any
21 state agency.

22 ~~(8)(10)~~ "State bonds" means ~~shall mean~~ bonds pledging
23 the full faith and credit of the State of Florida.

24 ~~(9)(11)~~ "Legislature" means ~~shall mean~~ the State
25 Legislature.

26 ~~(10)(12)~~ "Constitution" means ~~shall mean~~ the existing
27 constitution of the state, or any constitution hereafter
28 adopted by the people of the state, together with all
29 amendments thereof.

30

31

1 (11)~~(13)~~ "Original issue discount" means the amount by
2 which the par value of a bond exceeds its public offering
3 price at the time it is originally offered to an investor.

4 (12)~~(14)~~ "Governmental agency" means ~~shall mean~~:

5 (a) The state or any department, commission, agency,
6 or other instrumentality thereof.

7 (b) Any county or municipality or any department,
8 commission, agency, or other instrumentality thereof.

9 (c) Any school board or special district, authority,
10 or governmental entity.

11 Section 226. Subsections (2), (3), (4), (5), and (8)
12 of section 215.684, Florida Statutes, are amended to read:

13 215.684 Limitation on engaging services of securities
14 broker or bond underwriter convicted of fraud.--

15 (2) Upon notification under chapter 517 that a person
16 or firm has been convicted or has pleaded as provided in
17 subsection (1), the Chief Financial Officer ~~Comptroller~~ shall
18 issue a notice of intent to take action to disqualify such
19 person or firm, which notice must state that:

20 (a) Such person or firm is considered a disqualified
21 securities broker or bond underwriter;

22 (b) A state agency may not enter into a contract with
23 such person or firm as a securities broker or bond underwriter
24 for any new business for a period of 2 years;

25 (c) The substantial rights of such person or firm as a
26 securities broker or bond underwriter are being affected and
27 the person or firm has the rights accorded pursuant to ss.
28 120.569 and 120.57; and

29 (d) Such person or firm may petition to mitigate the
30 duration of his or her disqualification, based on the criteria
31 established in subsection (3) and may request that such

1 mitigation be considered as part of any hearing under ss.
2 120.569 and 120.57.

3 (3) The Chief Financial Officer ~~Comptroller~~ shall
4 decide, based on the following criteria, whether or not to
5 mitigate the duration of the disqualification:

6 (a) The nature and details of the crime;

7 (b) The degree of culpability of the person or firm
8 proposed to be requalified;

9 (c) Prompt or voluntary payment of any damages or
10 penalty as a result of the conviction and disassociation from
11 any other person or firm involved in the crimes of fraud;

12 (d) Cooperation with state or federal investigation or
13 prosecution of the crime of fraud;

14 (e) Prior or future self-policing by the person or
15 firm to prevent crimes of fraud; and

16 (f) Reinstatement or clemency in any jurisdiction in
17 relation to the crime at issue in the proceeding.

18 (4) If the Chief Financial Officer ~~Comptroller~~ in his
19 or her sole discretion decides to mitigate the duration of the
20 disqualification based on the foregoing, the duration of
21 disqualification shall be for any period the Chief Financial
22 Officer ~~Comptroller~~ specifies up to 2 years from the date of
23 the person's or firm's conviction or plea. If the Chief
24 Financial Officer ~~Comptroller~~ refuses to mitigate the duration
25 of the disqualification, such person or firm may again file
26 for mitigation no sooner than 9 months after denial by the
27 Chief Financial Officer ~~Comptroller~~.

28 (5) Notwithstanding subsection (4), a firm or person
29 at any time may petition the Chief Financial Officer
30 ~~Comptroller~~ for termination of the disqualification based upon
31

1 a reversal of the conviction of the firm or person by an
2 appellate court or a pardon.

3 (8) Except when otherwise provided by law for crimes
4 of fraud with respect to the transaction of business with any
5 public entity or with an agency or political subdivision of
6 any other state or with the United States, this act
7 constitutes the sole authorization for determining when a
8 person or firm convicted or having pleaded guilty or nolo
9 contendere to the crime of fraud may not be engaged to provide
10 services as a securities broker or bond underwriter with the
11 state. Nothing in this act shall be construed to affect the
12 authority granted the Chief Financial Officer ~~Comptroller~~
13 under chapter 517 to revoke or suspend the license of such
14 securities dealer or bond underwriter.

15 Section 227. Subsection (4) of section 215.70, Florida
16 Statutes, is amended to read:

17 215.70 State Board of Administration to act in case of
18 defaults.--

19 (4) Whenever it becomes necessary for state funds to
20 be appropriated for the payment of principal or interest on
21 bonds which have been issued by the Division of Bond Finance
22 on behalf of any local government or authority and for which
23 the full faith and credit of the state has been pledged, any
24 state shared revenues otherwise earmarked for the local
25 government or authority shall be used by the Chief Financial
26 Officer ~~Comptroller~~ to reimburse the state, until the local
27 government or authority has reimbursed the state in full.

28 Section 228. Subsection (4) of section 215.91, Florida
29 Statutes, is amended to read:

30 215.91 Florida Financial Management Information
31 System; board; council.--

1 (4) The council shall provide ongoing counsel to the
2 board and act to resolve problems among or between the
3 functional owner subsystems. The board, through the
4 coordinating council, shall direct and manage the development,
5 implementation, and operation of the information subsystems
6 that together are the Florida Financial Management Information
7 System. The coordinating council shall approve the
8 information subsystems' designs prior to the development,
9 implementation, and operation of the subsystems and shall
10 approve subsequent proposed design modifications to the
11 information subsystems subject to the guidelines issued by the
12 council. The coordinating council shall ensure that the
13 information subsystems' operations support the exchange of
14 unified and coordinated data between information subsystems.
15 The coordinating council shall establish the common data codes
16 for financial management, and it shall require and ensure the
17 use of common data codes by the information subsystems that
18 together constitute the Florida Financial Management
19 Information System. The Chief Financial Officer ~~Comptroller~~
20 shall adopt a chart of accounts consistent with the common
21 financial management data codes established by the
22 coordinating council. The board, through the coordinating
23 council, shall establish the financial management policies and
24 procedures for the executive branch of state government. The
25 coordinating council shall notify in writing the chairs of the
26 legislative fiscal committees and the Chief Justice of the
27 Supreme Court regarding the adoption of, or modification to, a
28 proposed financial management policy or procedure. The notice
29 shall solicit comments from the chairs of the legislative
30 fiscal committees and the Chief Justice of the Supreme Court
31

1 at least 14 consecutive days before the final action by the
2 coordinating council.

3 Section 229. Subsection (5) of section 215.92, Florida
4 Statutes, is amended to read:

5 215.92 Definitions relating to Florida Financial
6 Management Information System Act.--For the purposes of ss.
7 215.90-215.96:

8 (5) "Design and coordination staff" means the
9 personnel responsible for providing administrative and
10 clerical support to the board, coordinating council, and
11 secretary to the board. The design and coordination staff
12 shall function as the agency clerk for the board and the
13 coordinating council. For administrative purposes, the design
14 and coordination staff are assigned to the Department of
15 Financial Services ~~Banking and Finance~~ but they are
16 functionally assigned to the board.

17 Section 230. Subsection (3) of section 215.93, Florida
18 Statutes, is amended to read:

19 215.93 Florida Financial Management Information
20 System.--

21 (3) The Florida Financial Management Information
22 System shall include financial management data and utilize the
23 chart of accounts approved by the Chief Financial Officer
24 ~~Comptroller~~. Common financial management data shall include,
25 but not be limited to, data codes, titles, and definitions
26 used by one or more of the functional owner subsystems. The
27 Florida Financial Management Information System shall utilize
28 common financial management data codes. The council shall
29 recommend and the board shall adopt policies regarding the
30 approval and publication of the financial management data.
31 The Chief Financial Officer ~~Comptroller~~ shall adopt policies

1 regarding the approval and publication of the chart of
2 accounts. The Chief Financial Officer's ~~Comptroller's~~ chart
3 of accounts shall be consistent with the common financial
4 management data codes established by the coordinating council.
5 Further, all systems not a part of the Florida Financial
6 Management Information System which provide information to the
7 system shall use the common data codes from the Florida
8 Financial Management Information System and the Chief
9 Financial Officer's ~~Comptroller's~~ chart of accounts. Data
10 codes that cannot be supplied by the Florida Financial
11 Management Information System and the Chief Financial
12 Officer's ~~Comptroller's~~ chart of accounts and that are
13 required for use by the information subsystems shall be
14 approved by the board upon recommendation of the coordinating
15 council. However, board approval shall not be required for
16 those data codes specified by the Auditor General under the
17 provisions of s. 215.94(6)(c).

18 Section 231. Subsections (2) and (3) and paragraph (a)
19 of subsection (5) of section 215.94, Florida Statutes, are
20 amended to read:

21 215.94 Designation, duties, and responsibilities of
22 functional owners.--

23 (2) The Department of Financial Services ~~Banking and~~
24 ~~Finance~~ shall be the functional owner of the Florida
25 Accounting Information Resource Subsystem established pursuant
26 to ss. 17.03, 215.86, 216.141, and 216.151 and further
27 developed in accordance with the provisions of ss.
28 215.90-215.96. The subsystem shall include, but shall not be
29 limited to, the following functions:

30
31

1 (a) Accounting and reporting so as to provide timely
2 data for producing financial statements for the state in
3 accordance with generally accepted accounting principles.

4 (b) Auditing and settling claims against the state.

5 (3) The Chief Financial Officer ~~Treasurer~~ shall be the
6 functional owner of the Cash Management Subsystem. The Chief
7 Financial Officer ~~Treasurer~~ shall design, implement, and
8 operate the subsystem in accordance with the provisions of ss.
9 215.90-215.96. The subsystem shall include, but shall not be
10 limited to, functions for:

11 (a) Recording and reconciling credits and debits to
12 treasury fund accounts.

13 (b) Monitoring cash levels and activities in state
14 bank accounts.

15 (c) Monitoring short-term investments of idle cash.

16 (d) Administering the provisions of the Federal Cash
17 Management Improvement Act of 1990.

18 (5) The Department of Management Services shall be the
19 functional owner of the Cooperative Personnel Employment
20 Subsystem. The department shall design, implement, and
21 operate the subsystem in accordance with the provisions of ss.
22 110.116 and 215.90-215.96. The subsystem shall include, but
23 shall not be limited to, functions for:

24 (a) Maintenance of employee and position data,
25 including funding sources and percentages and salary lapse.
26 The employee data shall include, but not be limited to,
27 information to meet the payroll system requirements of the
28 Department of Financial Services ~~Banking and Finance~~ and to
29 meet the employee benefit system requirements of the
30 Department of Management Services.

31

1 Section 232. Section 215.965, Florida Statutes, is
2 amended to read:

3 215.965 Disbursement of state moneys.--Except as
4 provided in s. 17.076, s. 253.025(14), s. 259.041(18), s.
5 717.124(5), s. 732.107(5), or s. 733.816(5), all moneys in the
6 State Treasury shall be disbursed by state warrant, drawn by
7 the Chief Financial Officer ~~Comptroller~~ upon the State
8 Treasury and payable to the ultimate beneficiary. This
9 authorization shall include electronic disbursement.

10 Section 233. Paragraphs (a), (c), (j), (n), (p), and
11 (s) of subsection (2), subsections (3) and (4), paragraphs (a)
12 and (b) of subsection (5), paragraphs (a) and (d) of
13 subsection (6), paragraphs (a) and (c) of subsection (7),
14 paragraphs (e) and (g) of subsection (8), paragraph (e) of
15 subsection (9), and paragraphs (d) and (f) of subsection (10)
16 of section 215.97, Florida Statutes, are amended to read:

17 215.97 Florida Single Audit Act.--

18 (2) Definitions; as used in this section, the term:

19 (a) "Audit threshold" means the amount to use in
20 determining when a state single audit of a nonstate entity
21 shall be conducted in accordance with this section. Each
22 nonstate entity that expends a total amount of state financial
23 assistance equal to or in excess of \$300,000 in any fiscal
24 year of such nonstate entity shall be required to have a state
25 single audit for such fiscal year in accordance with the
26 requirements of this section. Every 2 years the Auditor
27 General, after consulting with the Executive Office of the
28 Governor, the Chief Financial Officer ~~Comptroller~~, and all
29 state agencies that provide state financial assistance to
30 nonstate entities, shall review the amount for requiring

31

1 audits under this section and may adjust such dollar amount
2 consistent with the purpose of this section.

3 (c) "Catalog of State Financial Assistance" means a
4 comprehensive listing of state projects. The Catalog of State
5 Financial Assistance shall be issued by the Executive Office
6 of the Governor after conferring with the Chief Financial
7 Officer ~~Comptroller~~ and all state agencies that provide state
8 financial assistance to nonstate entities. The Catalog of
9 State Financial Assistance shall include for each listed state
10 project: the responsible state agency; standard state project
11 number identifier; official title; legal authorization; and
12 description of the state project, including objectives,
13 restrictions, application and awarding procedures, and other
14 relevant information determined necessary.

15 (j) "Major state project" means any state project
16 meeting the criteria as stated in the rules of the Executive
17 Office of the Governor. Such criteria shall be established
18 after consultation with the Chief Financial Officer
19 ~~Comptroller~~ and appropriate state agencies that provide state
20 financial assistance and shall consider the amount of state
21 project expenditures or expenses or inherent risks. Each major
22 state project shall be audited in accordance with the
23 requirements of this section.

24 (n) "Schedule of State Financial Assistance" means a
25 document prepared in accordance with the rules of the Chief
26 Financial Officer ~~Comptroller~~ and included in each financial
27 reporting package required by this section.

28 (p) "State financial assistance" means financial
29 assistance from state resources, not including federal
30 financial assistance and state matching, provided to nonstate
31 entities to carry out a state project. "State financial

1 assistance" includes all types of state assistance as stated
2 in the rules of the Executive Office of the Governor
3 established in consultation with the Chief Financial Officer
4 ~~Comptroller~~ and appropriate state agencies that provide state
5 financial assistance. It includes state financial assistance
6 provided directly by state awarding agencies or indirectly by
7 recipients of state awards or subrecipients. It does not
8 include procurement contracts used to buy goods or services
9 from vendors. Audits of such procurement contracts with
10 vendors are outside of the scope of this section. Also, audits
11 of contracts to operate state-government-owned and
12 contractor-operated facilities are excluded from the audit
13 requirements of this section.

14 (s) "State Projects Compliance Supplement" means a
15 document issued by the Executive Office of the Governor, in
16 consultation with the Chief Financial Officer ~~Comptroller~~ and
17 all state agencies that provide state financial assistance.
18 The State Projects Compliance Supplement shall identify state
19 projects, the significant compliance requirements, eligibility
20 requirements, matching requirements, suggested audit
21 procedures, and other relevant information determined
22 necessary.

23 (3) The Executive Office of the Governor shall:

24 (a) Upon conferring with the Chief Financial Officer
25 ~~Comptroller~~ and all state awarding agencies, adopt rules
26 necessary to provide appropriate guidance to state awarding
27 agencies, recipients and subrecipients, and independent
28 auditors of state financial assistance relating to the
29 requirements of this section, including:

30 1. The types or classes of financial assistance
31 considered to be state financial assistance which would be

1 subject to the requirements of this section. This would
2 include guidance to assist in identifying when the state
3 agency or recipient has contracted with a vendor rather than
4 with a recipient or subrecipient.

5 2. The criteria for identifying a major state project.

6 3. The criteria for selecting state projects for
7 audits based on inherent risk.

8 (b) Be responsible for coordinating the initial
9 preparation and subsequent revisions of the Catalog of State
10 Financial Assistance after consultation with the Chief
11 Financial Officer ~~Comptroller~~ and all state awarding agencies.

12 (c) Be responsible for coordinating the initial
13 preparation and subsequent revisions of the State Projects
14 Compliance Supplement, after consultation with the Chief
15 Financial Officer ~~Comptroller~~ and all state awarding agencies.

16 (4) The Chief Financial Officer ~~Comptroller~~ shall:

17 (a) Make enhancements to the state's accounting system
18 to provide for the:

19 1. Recording of state financial assistance and federal
20 financial assistance appropriations and expenditures within
21 the state awarding agencies' operating funds.

22 2. Recording of state project number identifiers, as
23 provided in the Catalog of State Financial Assistance, for
24 state financial assistance.

25 3. Establishment and recording of an identification
26 code for each financial transaction, including state agencies'
27 disbursements of state financial assistance and federal
28 financial assistance, as to the corresponding type or
29 organization that is party to the transaction (e.g., other
30 governmental agencies, nonprofit organizations, and for-profit
31 organizations), and disbursements of federal financial

1 assistance, as to whether the party to the transaction is or
2 is not a recipient or subrecipient.

3 (b) Upon conferring with the Executive Office of the
4 Governor and all state awarding agencies, adopt rules
5 necessary to provide appropriate guidance to state awarding
6 agencies, recipients and subrecipients, and independent
7 auditors of state financial assistance relating to the format
8 for the Schedule of State Financial Assistance.

9 (c) Perform any inspections, reviews, investigations,
10 or audits of state financial assistance considered necessary
11 in carrying out the Chief Financial Officer's ~~Comptroller's~~
12 legal responsibilities for state financial assistance or to
13 comply with the requirements of this section.

14 (5) Each state awarding agency shall:

15 (a) Provide to a recipient information needed by the
16 recipient to comply with the requirements of this section,
17 including:

18 1. The audit and accountability requirements for state
19 projects as stated in this section and applicable rules of the
20 Executive Office of the Governor, rules of the Chief Financial
21 Officer ~~Comptroller~~, and rules of the Auditor General.

22 2. Information from the Catalog of State Financial
23 Assistance, including the standard state project number
24 identifier; official title; legal authorization; and
25 description of the state project including objectives,
26 restrictions, and other relevant information determined
27 necessary.

28 3. Information from the State Projects Compliance
29 Supplement, including the significant compliance requirements,
30 eligibility requirements, matching requirements, suggested
31

1 audit procedures, and other relevant information determined
2 necessary.

3 (b) Require the recipient, as a condition of receiving
4 state financial assistance, to allow the state awarding
5 agency, the Chief Financial Officer ~~Comptroller~~, and the
6 Auditor General access to the recipient's records and the
7 recipient's independent auditor's working papers as necessary
8 for complying with the requirements of this section.

9 (6) As a condition of receiving state financial
10 assistance, each recipient that provides state financial
11 assistance to a subrecipient shall:

12 (a) Provide to a subrecipient information needed by
13 the subrecipient to comply with the requirements of this
14 section, including:

15 1. Identification of the state awarding agency.

16 2. The audit and accountability requirements for state
17 projects as stated in this section and applicable rules of the
18 Executive Office of the Governor, rules of the Chief Financial
19 Officer ~~Comptroller~~, and rules of the Auditor General.

20 3. Information from the Catalog of State Financial
21 Assistance, including the standard state project number
22 identifier; official title; legal authorization; and
23 description of the state project, including objectives,
24 restrictions, and other relevant information.

25 4. Information from the State Projects Compliance
26 Supplement including the significant compliance requirements,
27 eligibility requirements, matching requirements, and suggested
28 audit procedures, and other relevant information determined
29 necessary.

30 (d) Require subrecipients, as a condition of receiving
31 state financial assistance, to permit the independent auditor

1 of the recipient, the state awarding agency, the Chief
2 Financial Officer ~~Comptroller~~, and the Auditor General access
3 to the subrecipient's records and the subrecipient's
4 independent auditor's working papers as necessary to comply
5 with the requirements of this section.

6 (7) Each recipient or subrecipient of state financial
7 assistance shall comply with the following:

8 (a) Each nonstate entity that receives state financial
9 assistance and meets audit threshold requirements, in any
10 fiscal year of the nonstate entity, as stated in the rules of
11 the Auditor General, shall have a state single audit conducted
12 for such fiscal year in accordance with the requirements of
13 this act and with additional requirements established in rules
14 of the Executive Office of the Governor, rules of the Chief
15 Financial Officer ~~Comptroller~~, and rules of the Auditor
16 General. If only one state project is involved in a nonstate
17 entity's fiscal year, the nonstate entity may elect to have
18 only a state project-specific audit of the state project for
19 that fiscal year.

20 (c) Regardless of the amount of the state financial
21 assistance, the provisions of this section do not exempt a
22 nonstate entity from compliance with provisions of law
23 relating to maintaining records concerning state financial
24 assistance to such nonstate entity or allowing access and
25 examination of those records by the state awarding agency, the
26 Chief Financial Officer ~~Comptroller~~, or the Auditor General.

27 (8) The independent auditor when conducting a state
28 single audit of recipients or subrecipients shall:

29 (e) Report on the results of any audit conducted
30 pursuant to this section in accordance with the rules of the
31 Executive Office of the Governor, rules of the Chief Financial

1 Officer Comptroller, and rules of the Auditor General. Audit
2 reports shall include summaries of the auditor's results
3 regarding the nonstate entity's financial statements; Schedule
4 of State Financial Assistance; internal controls; and
5 compliance with laws, rules, and guidelines.

6 (g) Upon notification by the nonstate entity, make
7 available the working papers relating to the audit conducted
8 pursuant to the requirements of this section to the state
9 awarding agency, the Chief Financial Officer Comptroller, or
10 the Auditor General for review or copying.

11 (9) The independent auditor, when conducting a state
12 project-specific audit of recipients or subrecipients, shall:

13 (e) Upon notification by the nonstate entity, make
14 available the working papers relating to the audit conducted
15 pursuant to the requirements of this section to the state
16 awarding agency, the Chief Financial Officer Comptroller, or
17 the Auditor General for review or copying.

18 (10) The Auditor General shall:

19 (d) Provide technical advice upon request of the Chief
20 Financial Officer Comptroller, Executive Office of the
21 Governor, and state agencies relating to financial reporting
22 and audit responsibilities contained in this section.

23 (f) Perform ongoing reviews of a sample of financial
24 reporting packages filed pursuant to the requirements of this
25 section to determine compliance with the reporting
26 requirements of this section and applicable rules of the
27 Executive Office of the Governor, rules of the Chief Financial
28 Officer Comptroller, and rules of the Auditor General.

29 Section 234. Paragraph (a) of subsection (2) of
30 section 216.0442, Florida Statutes, is amended to read:

31

1 216.0442 Truth in bonding; definitions; summary of
2 state debt; statement of proposed financing; truth-in-bonding
3 statement.--

4 (2) When required by statute to support the proposed
5 debt financing of fixed capital outlay projects or operating
6 capital outlay requests or to explain the issuance of a debt
7 or obligation, one or more of the following documents shall be
8 developed:

9 (a) A summary of outstanding state debt as furnished
10 by the Chief Financial Officer ~~Comptroller~~ pursuant to s.
11 216.102.

12 Section 235. Section 216.102, Florida Statutes, is
13 amended to read:

14 216.102 Filing of financial information; handling by
15 Chief Financial Officer ~~Comptroller~~; penalty for
16 noncompliance.--

17 (1) By September 30 of each year, each agency
18 supported by any form of taxation, licenses, fees, imposts, or
19 exactions, the judicial branch, and, for financial reporting
20 purposes, each component unit of the state as determined by
21 the Chief Financial Officer ~~Comptroller~~ shall prepare, using
22 generally accepted accounting principles, and file with the
23 Chief Financial Officer ~~Comptroller~~ the financial and other
24 information necessary for the preparation of annual financial
25 statements for the State of Florida as of June 30. In
26 addition, each such agency and the judicial branch shall
27 prepare financial statements showing the financial position
28 and results of agency or branch operations as of June 30 for
29 internal management purposes.

30 (a) Each state agency and the judicial branch shall
31 record the receipt and disbursement of funds from federal

1 sources in a form and format prescribed by the Chief Financial
2 Officer ~~Comptroller~~. The access to federal funds by the
3 administering agencies or the judicial branch may not be
4 authorized until:

5 1. The deposit has been recorded in the Florida
6 Accounting Information Resource Subsystem using proper,
7 consistent codes that designate deposits as federal funds.

8 2. The deposit and appropriate recording required by
9 this paragraph have been verified by the Office of the Chief
10 Financial Officer ~~Treasurer~~.

11 (b) The Chief Financial Officer ~~Comptroller~~ shall
12 publish a statewide policy detailing the requirements for
13 recording receipt and disbursement of federal funds into the
14 Florida Accounting Information Resource Subsystem and provide
15 technical assistance to the agencies and the judicial branch
16 to implement the policy.

17 (2) Financial information must be contained within the
18 Florida Accounting Information Resource Subsystem. Other
19 information must be submitted in the form and format
20 prescribed by the Chief Financial Officer ~~Comptroller~~.

21 (a) Each component unit shall file financial
22 information and other information necessary for the
23 preparation of annual financial statements with the agency or
24 branch designated by the Chief Financial Officer ~~Comptroller~~
25 by the date specified by the Chief Financial Officer
26 ~~Comptroller~~.

27 (b) The state agency or branch designated by the Chief
28 Financial Officer ~~Comptroller~~ to receive financial information
29 and other information from component units shall include the
30 financial information in the Florida Accounting Information
31 Resource Subsystem and shall include the component units'

1 other information in its submission to the Chief Financial
2 Officer ~~Comptroller~~.

3 (3) The Chief Financial Officer ~~Comptroller~~ shall:

4 (a) Prepare and furnish to the Auditor General annual
5 financial statements for the state on or before December 31 of
6 each year, using generally accepted accounting principles.

7 (b) Prepare and publish a comprehensive annual
8 financial report for the state in accordance with generally
9 accepted accounting principles on or before February 28 of
10 each year.

11 (c) Furnish the Governor, the President of the Senate,
12 and the Speaker of the House of Representatives with a copy of
13 the comprehensive annual financial report prepared pursuant to
14 paragraph (b).

15 (d) Notify each agency and the judicial branch of the
16 data that is required to be recorded to enhance accountability
17 for tracking federal financial assistance.

18 (e) Provide reports, as requested, to executive or
19 judicial branch entities, the President of the Senate, the
20 Speaker of the House of Representatives, and the members of
21 the Florida Congressional Delegation, detailing the federal
22 financial assistance received and disbursed by state agencies
23 and the judicial branch.

24 (f) Consult with and elicit comments from the
25 Executive Office of the Governor on changes to the Florida
26 Accounting Information Resource Subsystem which clearly affect
27 the accounting of federal funds, so as to ensure consistency
28 of information entered into the Federal Aid Tracking System by
29 state executive and judicial branch entities. While efforts
30 shall be made to ensure the compatibility of the Florida
31 Accounting Information Resource Subsystem and the Federal Aid

1 Tracking System, any successive systems serving identical or
2 similar functions shall preserve such compatibility.

3
4 The Chief Financial Officer ~~Comptroller~~ may furnish and
5 publish in electronic form the financial statements and the
6 comprehensive annual financial report required under
7 paragraphs (a), (b), and (c).

8 (4) If any agency or the judicial branch fails to
9 comply with subsection (1) or subsection (2), the Chief
10 Financial Officer ~~Comptroller~~ may refuse to honor salary
11 claims for agency or branch fiscal and executive staff until
12 the agency or branch corrects its deficiency.

13 (5) The Chief Financial Officer ~~Comptroller~~ may
14 withhold any funds payable to a component unit that does not
15 comply with subsection (1) or subsection (2) until the
16 component unit corrects its deficiency.

17 (6) The Chief Financial Officer ~~Comptroller~~ may adopt
18 rules to administer this section.

19 Section 236. Subsections (1) and (3) of section
20 216.141, Florida Statutes, are amended to read:

21 216.141 Budget system procedures; planning and
22 programming by state agencies.--

23 (1) The Executive Office of the Governor, in
24 consultation with the appropriations committees of the Senate
25 and House of Representatives, and by utilizing the Florida
26 Financial Management Information System management data and
27 the Chief Financial Officer's ~~Comptroller's~~ chart of accounts,
28 shall prescribe a planning and budgeting system, pursuant to
29 s. 215.94(1), to provide for continuous planning and
30 programming and for effective management practices for the
31 efficient operations of all state agencies and the judicial

1 branch. The Legislature may contract with the Executive Office
2 of the Governor to develop the planning and budgeting system
3 and to provide services to the Legislature for the support and
4 use of the legislative appropriations system. The contract
5 shall include the policies and procedures for combining the
6 legislative appropriations system with the planning and
7 budgeting information system established pursuant to s.
8 215.94(1). At a minimum, the contract shall require the use of
9 common data codes. The combined legislative appropriations and
10 planning and budgeting information subsystem shall support the
11 legislative appropriations and legislative oversight functions
12 without data code conversion or modification.

13 (3) The Chief Financial Officer ~~Comptroller~~, as chief
14 fiscal officer, shall use the Florida Accounting Information
15 Resource Subsystem developed pursuant to s. 215.94(2) for
16 account purposes in the performance of and accounting for all
17 of his or her constitutional and statutory duties and
18 responsibilities. However, state agencies and the judicial
19 branch continue to be responsible for maintaining accounting
20 records necessary for effective management of their programs
21 and functions.

22 Section 237. Subsection (1) of section 216.177,
23 Florida Statutes, is amended to read:

24 216.177 Appropriations acts, statement of intent,
25 violation, notice, review and objection procedures.--

26 (1) When an appropriations act is delivered to the
27 Governor after the Legislature has adjourned sine die, as soon
28 as practicable, but no later than the 10th day before the end
29 of the period allowed by law for veto consideration in any
30 year in which an appropriation is made, the chairs of the
31 legislative appropriations committees shall jointly transmit:

1 (a) The official list of General Revenue Fund
2 appropriations determined in consultation with the Executive
3 Office of the Governor to be nonrecurring; and

4 (b) The documents set forth in s. 216.0442(2)(a) and
5 (c),

6
7 to the Executive Office of the Governor, the Chief Financial
8 Officer ~~Comptroller~~, the Auditor General, the director of the
9 Office of Program Policy Analysis and Government
10 Accountability, the Chief Justice of the Supreme Court, and
11 each state agency. A request for additional explanation and
12 direction regarding the legislative intent of the General
13 Appropriations Act during the fiscal year may be made to the
14 chair and vice chair of the Legislative Budget Commission or
15 the President of the Senate and the Speaker of the House of
16 Representatives only by and through the Executive Office of
17 the Governor for state agencies, and by and through the Chief
18 Justice of the Supreme Court for the judicial branch, as is
19 deemed necessary. However, the Chief Financial Officer
20 ~~Comptroller~~ may also request further clarification of
21 legislative intent pursuant to the Chief Financial Officer's
22 ~~Comptroller's~~ responsibilities related to his or her preaudit
23 function of expenditures.

24 Section 238. Subsections (6), (12), and (14) and
25 paragraph (b) of subsection (16) of section 216.181, Florida
26 Statutes, are amended to read:

27 216.181 Approved budgets for operations and fixed
28 capital outlay.--

29 (6)(a) The Executive Office of the Governor or the
30 Chief Justice of the Supreme Court may require the submission
31 of a detailed plan from the agency or entity of the judicial

1 branch affected, consistent with the General Appropriations
2 Act, special appropriations acts, and the statement of intent
3 before transferring and releasing the balance of a lump-sum
4 appropriation. The provisions of this paragraph are subject to
5 the notice and review procedures set forth in s. 216.177.

6 (b) The Executive Office of the Governor and the Chief
7 Justice of the Supreme Court may amend, without approval of
8 the Legislative Budget Commission, state agency and judicial
9 branch entity budgets, respectively, to reflect the
10 transferred funds based on the approved plans for lump-sum
11 appropriations.

12
13 The Executive Office of the Governor shall transmit to each
14 state agency and the Chief Financial Officer ~~Comptroller~~, and
15 the Chief Justice shall transmit to each judicial branch
16 component and the Chief Financial Officer ~~Comptroller~~, any
17 approved amendments to the approved operating budgets.

18 (12) There is appropriated nonoperating budget for
19 refunds, payments to the United States Treasury, payments of
20 the service charge to the General Revenue Fund, and transfers
21 of funds specifically required by law. Such authorized budget,
22 together with related releases, shall be transmitted by the
23 state agency or by the judicial branch to the Chief Financial
24 Officer ~~Comptroller~~ for entry in his or her ~~the Comptroller's~~
25 records in the manner and format prescribed by the Executive
26 Office of the Governor in consultation with the Chief
27 Financial Officer ~~Comptroller~~. A copy of such authorized
28 budgets shall be furnished to the Executive Office of the
29 Governor or the Chief Justice, the chairs of the legislative
30 committees responsible for developing the general
31 appropriations acts, and the Auditor General. The Governor may

1 withhold approval of nonoperating investment authority for
2 certain trust funds when deemed in the best interest of the
3 state. The Governor for the executive branch, and the Chief
4 Justice for the judicial branch, may establish nonoperating
5 budgets for transfers, purchase of investments, special
6 expenses, distributions, and any other nonoperating budget
7 categories they deem necessary and in the best interest of the
8 state and consistent with legislative intent and policy. The
9 provisions of this subsection are subject to the notice,
10 review, and objection procedures set forth in s. 216.177. For
11 purposes of this section, the term "nonoperating budgets"
12 means nonoperating disbursement authority for purchase of
13 investments, refunds, payments to the United States Treasury,
14 transfers of funds specifically required by law, distributions
15 of assets held by the state in a trustee capacity as an agent
16 of fiduciary, special expenses, and other nonoperating budget
17 categories as determined necessary by the Executive Office of
18 the Governor, not otherwise appropriated in the General
19 Appropriations Act.

20 (14) The Executive Office of the Governor and the
21 Chief Justice of the Supreme Court shall certify the amounts
22 approved for operations and fixed capital outlay, together
23 with any relevant supplementary materials or information, to
24 the Chief Financial Officer ~~Comptroller~~; and such
25 certification shall be the Chief Financial Officer's
26 ~~Comptroller's~~ guide with reference to the expenditures of each
27 state agency pursuant to s. 216.192.

28 (16)

29 (b) Any agency, or the judicial branch, that has been
30 authorized by the General Appropriations Act or expressly
31 authorized by other law to make advances for program startup

1 or advances for contracted services, in total or periodically,
2 shall limit such disbursements to other governmental entities
3 and not-for-profit corporations. The amount which may be
4 advanced shall not exceed the expected cash needs of the
5 contractor or recipient within the initial 3 months.
6 Thereafter, disbursements shall only be made on a
7 reimbursement basis. Any agreement that provides for
8 advancements may contain a clause that permits the contractor
9 or recipient to temporarily invest the proceeds, provided that
10 any interest income shall either be returned to the agency or
11 be applied against the agency's obligation to pay the contract
12 amount. This paragraph does not constitute lawful authority
13 to make any advance payment not otherwise authorized by laws
14 relating to a particular agency or general laws relating to
15 the expenditure or disbursement of public funds. The Chief
16 Financial Officer ~~Comptroller~~ may, after consultation with the
17 legislative appropriations committees, advance funds beyond a
18 3-month requirement if it is determined to be consistent with
19 the intent of the approved operating budget.

20 Section 239. Section 216.183, Florida Statutes, is
21 amended to read:

22 216.183 Entities using performance-based program
23 budgets; chart of accounts.--State agencies and the judicial
24 branch for which a performance-based program budget has been
25 appropriated shall utilize the chart of accounts used by the
26 Florida Accounting Information Resource Subsystem in the
27 manner described in s. 215.93(3). The chart of accounts for
28 state agencies and the judicial branch for which a
29 performance-based program budget has been appropriated shall
30 be developed and amended, if necessary, in consultation with
31 the Department of Financial Services ~~Banking and Finance~~, the

1 Executive Office of the Governor, and the chairs of the
2 Legislative Budget Commission.

3 Section 240. Subsections (1) and (4) of section
4 216.192, Florida Statutes, are amended to read:

5 216.192 Release of appropriations; revision of
6 budgets.--

7 (1) Unless otherwise provided in the General
8 Appropriations Act, on July 1 of each fiscal year, up to 25
9 percent of the original approved operating budget of each
10 agency and of the judicial branch may be released until such
11 time as annual plans for quarterly releases for all
12 appropriations have been developed, approved, and furnished to
13 the Chief Financial Officer ~~Comptroller~~ by the Executive
14 Office of the Governor for state agencies and by the Chief
15 Justice of the Supreme Court for the judicial branch. The
16 plans, including appropriate plans of releases for fixed
17 capital outlay projects that correspond with each project
18 schedule, shall attempt to maximize the use of trust funds and
19 shall be transmitted to the Chief Financial Officer
20 ~~Comptroller~~ by August 1 of each fiscal year. Such releases
21 shall at no time exceed the total appropriations available to
22 a state agency or to the judicial branch, or the approved
23 budget for such agency or the judicial branch if less. The
24 Chief Financial Officer ~~Comptroller~~ shall enter such releases
25 in his or her records in accordance with the release plans
26 prescribed by the Executive Office of the Governor and the
27 Chief Justice, unless otherwise amended as provided by law.
28 The Executive Office of the Governor and the Chief Justice
29 shall transmit a copy of the approved annual releases to the
30 head of the state agency, the chair and vice chair of the
31 Legislative Budget Commission, and the Auditor General. The

1 Chief Financial Officer ~~Comptroller~~ shall authorize all
2 expenditures to be made from the appropriations on the basis
3 of such releases and in accordance with the approved budget,
4 and not otherwise. Expenditures shall be authorized only in
5 accordance with legislative authorizations. Nothing herein
6 precludes periodic reexamination and revision by the Executive
7 Office of the Governor or by the Chief Justice of the annual
8 plans for release of appropriations and the notifications of
9 the parties of all such revisions.

10 (4) The legislative appropriations committees may
11 advise the Chief Financial Officer ~~Comptroller~~, the Executive
12 Office of the Governor, or the Chief Justice relative to the
13 release of any funds under this section.

14 Section 241. Subsection (1) of section 216.212,
15 Florida Statutes, is amended to read:

16 216.212 Budgets for federal funds; restrictions on
17 expenditure of federal funds.--

18 (1) The Executive Office of the Governor and ~~the~~
19 office of the Chief Financial Officer ~~Comptroller~~, ~~and the~~
20 ~~office of the Treasurer~~ shall develop and implement procedures
21 for accelerating the drawdown of, and minimizing the payment
22 of interest on, federal funds. The Executive Office of the
23 Governor shall establish a clearinghouse for federal programs
24 and activities. The clearinghouse shall develop the capacity
25 to respond to federal grant opportunities and to coordinate
26 the use of federal funds in the state.

27 (a) Every state agency, when making a request or
28 preparing a budget to be submitted to the Federal Government
29 for funds, equipment, material, or services, shall submit such
30 request or budget to the Executive Office of the Governor for
31 review before submitting it to the proper federal authority.

1 However, the Executive Office of the Governor may specifically
2 authorize any agency to submit specific types of grant
3 proposals directly to the Federal Government.

4 (b) Every office or court of the judicial branch, when
5 making a request or preparing a budget to be submitted to the
6 Federal Government for funds, equipment, material, or
7 services, shall submit such request or budget to the Chief
8 Justice of the Supreme Court for approval before submitting it
9 to the proper federal authority. However, the Chief Justice
10 may specifically authorize any court to submit specific types
11 of grant proposals directly to the Federal Government.

12 Section 242. Subsections (8), (9), and (10) of section
13 216.221, Florida Statutes, are amended to read:

14 216.221 Appropriations as maximum appropriations;
15 adjustment of budgets to avoid or eliminate deficits.--

16 (8) The Chief Financial Officer ~~Comptroller~~ also has
17 the duty to ensure that revenues being collected will be
18 sufficient to meet the appropriations and that no deficit
19 occurs in any fund of the state.

20 (9) If, in the opinion of the Chief Financial Officer
21 ~~Comptroller~~, after consultation with the Revenue Estimating
22 Conference, a deficit will occur, he or she ~~the Comptroller~~
23 shall report his or her opinion to the Governor in writing. In
24 the event the Governor does not certify a deficit within 10
25 days after the Chief Financial Officer's ~~Comptroller's~~ report,
26 the Chief Financial Officer ~~Comptroller~~ shall report his or
27 her findings and opinion to the commission and the Chief
28 Justice of the Supreme Court.

29 (10) When advised by the Revenue Estimating
30 Conference, the Chief Financial Officer ~~Comptroller~~, or any
31 agency responsible for a trust fund that a deficit will occur

1 with respect to the appropriations from a specific trust fund
2 in the current fiscal year, the Governor for the executive
3 branch, or the Chief Justice for the judicial branch, shall
4 develop a plan of action to eliminate the deficit. Before
5 implementing the plan of action, the Governor or the Chief
6 Justice must comply with the provisions of s. 216.177(2). In
7 developing the plan of action, the Governor or the Chief
8 Justice shall, to the extent possible, preserve legislative
9 policy and intent, and, absent any specific directions to the
10 contrary in the General Appropriations Act, any reductions in
11 appropriations from the trust fund for the fiscal year shall
12 be prorated among the specific appropriations made from the
13 trust fund for the current fiscal year.

14 Section 243. Subsection (1) of section 216.222,
15 Florida Statutes, is amended to read:

16 216.222 Budget Stabilization Fund; criteria for
17 withdrawing moneys.--Moneys in the Budget Stabilization Fund
18 may be transferred to the General Revenue Fund for:

19 (1)(a) Offsetting a deficit in the General Revenue
20 Fund. A deficit is deemed to occur when the official estimate
21 of funds available in the General Revenue Fund for a fiscal
22 year falls below the total amount appropriated from the
23 General Revenue Fund for that fiscal year. Such a transfer
24 must be made pursuant to s. 216.221, or pursuant to an
25 appropriation by law.

26 (b) Notwithstanding the requirements of s. 216.221,
27 if, after consultation with the Revenue Estimating Conference,
28 the Chief Financial Officer ~~Comptroller~~ believes that a
29 deficit will occur in the General Revenue Fund and if:

30 1. Fewer than 30 but more than 4 days are left in the
31 fiscal year, the Legislature is not in session, and neither

1 the Legislature nor the Legislative Budget Commission is
2 scheduled to meet before the end of the fiscal year, or
3 2. Fewer than 5 days are left in the fiscal year and
4 the Governor and the Chief Justice, the Legislature, or the
5 Legislative Budget Commission have not implemented measures to
6 resolve the deficit,

7
8 the Chief Financial Officer ~~Comptroller~~ shall certify the
9 deficit to the Governor, the Chief Justice, the President of
10 the Senate, and the Speaker of the House of Representatives,
11 and may thereafter withdraw funds from the Budget
12 Stabilization Fund to offset the projected deficit in the
13 General Revenue Fund. The Chief Financial Officer ~~Comptroller~~
14 shall consult with the Governor and the chair and vice chair
15 of the Legislative Budget Commission before any funds may be
16 withdrawn from the Budget Stabilization Fund. At the
17 beginning of the next fiscal year, the Chief Financial Officer
18 ~~Comptroller~~ shall promptly determine the General Revenue Fund
19 balance to be carried forward. The Chief Financial Officer
20 ~~Comptroller~~ shall immediately repay the Budget Stabilization
21 Fund for the withdrawn amount, up to the amount of the
22 balance. If the General Revenue Fund balance carried forward
23 is not sufficient to fully repay the Budget Stabilization
24 Fund, the repayment of the remainder of the withdrawn funds
25 shall be as provided in s. 215.32(2)(c)3.

26 Section 244. Paragraph (d) of subsection (4) of
27 section 216.235, Florida Statutes, is amended to read:

28 216.235 Innovation Investment Program.--

29 (4) There is hereby created the State Innovation
30 Committee, which shall have final approval authority as to
31 which innovative investment projects submitted under this

1 section shall be funded. Such committee shall be comprised of
2 seven members. Appointed members shall serve terms of 1 year
3 and may be reappointed. The committee shall include:

4 (d) The Chief Financial Officer ~~Comptroller~~.

5 Section 245. Section 216.237, Florida Statutes, is
6 amended to read:

7 216.237 Availability of any remaining funds; agency
8 maintenance of accounting records.--Any remaining funds from
9 the General Revenue Fund and trust fund spending authority not
10 awarded to agencies pursuant to s. 216.236 shall be available
11 to agencies for innovative projects which generate a cost
12 savings, increase revenue, or improve service delivery.
13 Innovative projects which generate a cost savings shall
14 receive greater consideration when awarding innovation
15 investment funds. Any trust fund authority granted under this
16 program shall be utilized in a manner consistent with the
17 statutory authority for the use of said trust fund. Any
18 savings realized as a result of implementing the innovative
19 project shall be used by the agency to establish an internal
20 innovations fund. State agencies which are awarded funds for
21 innovative projects shall utilize the chart of accounts used
22 by the Florida Accounting Information Resource Subsystem in
23 the manner described in s. 215.93(3). Such chart of accounts
24 shall be developed and amended in consultation with the
25 Department of Financial Services ~~Banking and Finance~~ and the
26 Executive Office of the Governor to separate and account for
27 the savings that result from the implementation of the
28 innovative projects and to keep track of how the innovative
29 funds are reinvested by the state agency to fund additional
30 innovative projects, which may include, but not be limited to,
31 expenditures for training and information technology

1 resources. Guidelines for the establishment of such internal
2 innovations fund shall be provided by the Department of
3 Management Services. Any agency awarded funds under this
4 section shall maintain detailed accounting records showing all
5 expenses, loan transfers, savings, or other financial actions
6 concerning the project. Any savings realized as a result of
7 implementing the innovative project shall be quantified,
8 validated, and verified by the agency. A final report of the
9 results of the implementation of each innovative project shall
10 be submitted by each participating agency to the Governor's
11 Office of Planning and Budgeting and the legislative
12 appropriations committees by June 30 of the fiscal year in
13 which the funds were received and ensuing fiscal years for the
14 life of the project.

15 Section 246. Paragraph (b) of subsection (2) of
16 section 216.251, Florida Statutes, is amended to read:

17 216.251 Salary appropriations; limitations.--

18 (2)

19 (b) Salary payments shall be made only to employees
20 filling established positions included in the agency's or in
21 the judicial branch's approved budgets and amendments thereto
22 as may be provided by law; provided, however:

23 1. Reclassification of established positions may be
24 accomplished when justified in accordance with the established
25 procedures for reclassifying positions; or

26 2. When the Division of Risk Management of the
27 Department of Financial Services ~~Insurance~~ has determined that
28 an employee is entitled to receive a temporary partial
29 disability benefit or a temporary total disability benefit
30 pursuant to the provisions of s. 440.15 and there is medical
31 certification that the employee cannot perform the duties of

1 the employee's regular position, but the employee can perform
2 some type of work beneficial to the agency, the agency may
3 return the employee to the payroll, at his or her regular rate
4 of pay, to perform such duties as the employee is capable of
5 performing, even if there is not an established position in
6 which the employee can be placed. Nothing in this
7 subparagraph shall abrogate an employee's rights under chapter
8 440 or chapter 447, nor shall it adversely affect the
9 retirement credit of a member of the Florida Retirement System
10 in the membership class he or she was in at the time of, and
11 during, the member's disability.

12 Section 247. Section 216.271, Florida Statutes, is
13 amended to read:

14 216.271 Revolving funds.--

15 (1) No revolving fund may be established or increased
16 in amount pursuant to s. 17.58(2)~~s. 18.101(2)~~, unless
17 approved by the Chief Financial Officer ~~Comptroller~~. The
18 purpose and uses of a revolving fund may not be changed
19 without the prior approval of the Chief Financial Officer
20 ~~Comptroller~~. As used in this section, the term "revolving
21 fund" means a cash fund maintained within or outside the State
22 Treasury and established from an appropriation, to be used by
23 an agency or the judicial branch in making authorized
24 expenditures.

25 (2) When the Chief Financial Officer ~~Comptroller~~
26 approves a revolving or petty cash fund for making refunds or
27 other payments, such fund shall be established from an account
28 within the appropriate fund to be known as "payments for
29 revolving funds from funds not otherwise appropriated."
30 Reimbursements made from revolving or petty cash funds shall
31 be made in strict accordance with the provisions of s.

1 215.26(2). The Chief Financial Officer ~~Comptroller~~ may
2 restrict the types of uses of any revolving fund established
3 pursuant to this section.

4 (3) Vouchers for reimbursement of expenditures from
5 revolving funds established under this section shall be
6 presented in a routine manner to the Chief Financial Officer
7 ~~Comptroller~~ for approval and payment, the proceeds of which
8 shall be returned to the revolving or petty cash fund
9 involved.

10 (4) The revolving or petty cash fund authorized herein
11 shall be properly maintained and accounted for by the agency
12 or by the judicial branch requesting the fund and, upon the
13 expiration of the need therefor, shall be returned in the
14 amount originally established to the appropriate fund for
15 credit to the payments for revolving funds account therein.

16 (5) Reimbursement to the revolving fund for uninsured
17 losses and theft may be made from the fund in which the
18 responsible operating department is budgeted. Such
19 reimbursement shall be submitted consistent with procedures
20 specified by the Chief Financial Officer ~~Comptroller~~.

21 Section 248. Section 216.275, Florida Statutes, is
22 amended to read:

23 216.275 Clearing accounts.--No clearing account may be
24 established outside the State Treasury pursuant to s. 17.58(2)
25 ~~s. 18.101(1)~~ unless approved by the Chief Financial Officer
26 ~~Treasurer~~ during the fiscal year. Each agency, or the judicial
27 branch, desiring to maintain a clearing account outside the
28 State Treasury shall submit a written request to do so to the
29 Chief Financial Officer ~~Treasurer~~ in accordance with the
30 format and manner prescribed by the Chief Financial Officer
31 ~~Treasurer~~. The Chief Financial Officer ~~Treasurer~~ shall

1 maintain a listing of all clearing accounts approved during
2 the fiscal year.

3 Section 249. Subsections (2), (3), (6), (8), (9), and
4 (10) of section 216.292, Florida Statutes, are amended to
5 read:

6 216.292 Appropriations nontransferable; exceptions.--
7 (2) A lump sum appropriated for a performance-based
8 program must be distributed by the Governor for state agencies
9 or the Chief Justice for the judicial branch into the
10 traditional expenditure categories in accordance with s.
11 216.181(6)(b). At any time during the year, the agency head
12 or Chief Justice may transfer funds between those categories
13 with no limit on the amount of the transfer. Authorized
14 revisions of the original approved operating budget, together
15 with related changes, if any, must be transmitted by the state
16 agency or by the judicial branch to the Executive Office of
17 the Governor or the Chief Justice, the chair and vice chair of
18 the Legislative Budget Commission, the Office of Program
19 Policy Analysis and Government Accountability, and the Auditor
20 General. Such authorized revisions shall be consistent with
21 the intent of the approved operating budget, shall be
22 consistent with legislative policy and intent, and shall not
23 conflict with specific spending policies specified in the
24 General Appropriations Act. The Executive Office of the
25 Governor shall forward a copy of the revisions within 7
26 working days to the Chief Financial Officer ~~Comptroller~~ for
27 entry in his or her records in the manner and format
28 prescribed by the Executive Office of the Governor in
29 consultation with the Chief Financial Officer ~~Comptroller~~.
30 Such authorized revisions shall be consistent with the intent
31 of the approved operating budget, shall be consistent with

1 legislative policy and intent, and shall not conflict with
2 specific spending policies specified in the General
3 Appropriations Act.

4 (3) The head of each department or the Chief Justice
5 of the Supreme Court, whenever it is deemed necessary by
6 reason of changed conditions, may transfer appropriations
7 funded from identical funding sources, except appropriations
8 for fixed capital outlay, and transfer the amounts included
9 within the total original approved budget and releases as
10 furnished pursuant to ss. 216.181 and 216.192, as follows:

11 (a) Between categories of appropriations within a
12 budget entity, if no category of appropriation is increased or
13 decreased by more than 5 percent of the original approved
14 budget or \$150,000, whichever is greater, by all action taken
15 under this subsection.

16 (b) Additionally, between budget entities within
17 identical categories of appropriations, if no category of
18 appropriation is increased or decreased by more than 5 percent
19 of the original approved budget or \$150,000, whichever is
20 greater, by all action taken under this subsection.

21 (c) Such authorized revisions must be consistent with
22 the intent of the approved operating budget, must be
23 consistent with legislative policy and intent, and must not
24 conflict with specific spending policies specified in the
25 General Appropriations Act.

26
27 Such authorized revisions, together with related changes, if
28 any, in the plan for release of appropriations, shall be
29 transmitted by the state agency or by the judicial branch to
30 the Chief Financial Officer ~~Comptroller~~ for entry in the Chief
31 Financial Officer's ~~Comptroller's~~ records in the manner and

1 format prescribed by the Executive Office of the Governor in
2 consultation with the Chief Financial Officer ~~Comptroller~~. A
3 copy of such revision shall be furnished to the Executive
4 Office of the Governor or the Chief Justice, the chair and
5 vice chair of the Legislative Budget Commission, the Auditor
6 General, and the director of the Office of Program Policy
7 Analysis and Government Accountability.

8 (6) Upon request of a department to, and approval by,
9 the Chief Financial officer ~~Comptroller~~, funds appropriated
10 may be transferred to accounts established for disbursement
11 purposes upon release of such appropriation. Such transfer
12 may only be made to the same appropriation category and the
13 same funding source from which the funds are transferred.

14 (8)(a) Should any state agency or the judicial branch
15 become more than 90 days delinquent on reimbursements due to
16 the Unemployment Compensation Trust Fund, the Department of
17 Labor and Employment Security shall certify to the Chief
18 Financial Officer ~~Comptroller~~ the amount due; and the Chief
19 Financial Officer ~~Comptroller~~ shall transfer the amount due to
20 the Unemployment Compensation Trust Fund from any funds of the
21 agency available.

22 (b) Should any state agency or the judicial branch
23 become more than 90 days delinquent in paying the Division of
24 Risk Management of the Department of Financial Services
25 ~~Insurance~~ for insurance coverage, the division ~~Department of~~
26 ~~Insurance~~ may certify to the Chief Financial Officer
27 ~~Comptroller~~ the amount due; and the Chief Financial Officer
28 ~~Comptroller~~ shall transfer the amount due to the Division of
29 Risk Management from any funds of the agency or the judicial
30 branch available.

31

1 (9) Moneys appropriated in the General Appropriations
2 Act for the purpose of paying for services provided by the
3 state communications system in the Department of Management
4 Services shall be paid by the user agencies, or the judicial
5 branch, within 45 days after the billing date. Billed amounts
6 not paid by the user agencies, or by the judicial branch,
7 shall be transferred by the Chief Financial Officer
8 ~~Comptroller~~ from the user agencies to the Communications
9 Working Capital Trust Fund.

10 (10) The Chief Financial Officer ~~Comptroller~~ shall
11 report all such transfers and the reasons for such transfers
12 to the legislative appropriations committees and the Executive
13 Office of the Governor.

14 Section 250. Paragraph (a) of subsection (1),
15 paragraph (a) of subsection (2), and subsection (3) of section
16 216.301, Florida Statutes, are amended to read:

17 216.301 Appropriations; undisbursed balances.--

18 (1)(a) Any balance of any appropriation, except an
19 appropriation for fixed capital outlay, which is not disbursed
20 but which is expended or contracted to be expended shall, at
21 the end of each fiscal year, be certified by the head of the
22 affected state agency or the judicial or legislative branches,
23 on or before August 1 of each year, to the Executive Office of
24 the Governor, showing in detail the obligees to whom obligated
25 and the amounts of such obligations. On or before September 1
26 of each year, the Executive Office of the Governor shall
27 review and approve or disapprove, consistent with legislative
28 policy and intent, any or all of the items and amounts
29 certified by the head of the affected state agency and shall
30 approve all items and amounts certified by the Chief Justice
31 of the Supreme Court for the judicial branch and by the

1 legislative branch and shall furnish the Chief Financial
2 Officer ~~Comptroller~~, the legislative appropriations
3 committees, and the Auditor General a detailed listing of the
4 items and amounts approved as legal encumbrances against the
5 undisbursed balance of such appropriation. The review shall
6 assure that trust funds have been fully maximized. Any such
7 encumbered balance remaining undisbursed on December 31 of the
8 same calendar year in which such certification was made shall
9 revert to the fund from which appropriated and shall be
10 available for reappropriation by the Legislature. In the
11 event such certification is not made and an obligation is
12 proven to be legal, due, and unpaid, then the obligation shall
13 be paid and charged to the appropriation for the current
14 fiscal year of the state agency or the legislative or judicial
15 branch affected.

16 (2)(a) Any balance of any appropriation for fixed
17 capital outlay not disbursed but expended or contracted or
18 committed to be expended shall, at the end of each fiscal
19 year, be certified by the head of the affected state agency or
20 the legislative or judicial branch, on or before August 1 of
21 each year, to the Executive Office of the Governor, showing in
22 detail the commitment or to whom obligated and the amount of
23 such commitment or obligation. On or before September 1 of
24 each year, the Executive Office of the Governor shall review
25 and approve or disapprove, consistent with legislative policy
26 and intent, any or all of the items and amounts certified by
27 the head of the affected state agency and shall approve all
28 items and amounts certified by the Chief Justice of the
29 Supreme Court and by the legislative branch and shall furnish
30 the Chief Financial Officer ~~Comptroller~~, the legislative
31 appropriations committees, and the Auditor General a detailed

1 listing of the items and amounts approved as legal
2 encumbrances against the undisbursed balances of such
3 appropriations. In the event such certification is not made
4 and the balance of the appropriation has reverted and the
5 obligation is proven to be legal, due, and unpaid, then the
6 same shall be presented to the Legislature for its
7 consideration.

8 (3) Notwithstanding the provisions of subsection (2),
9 the unexpended balance of any appropriation for fixed capital
10 outlay subject to but not under the terms of a binding
11 contract or a general construction contract prior to February
12 1 of the second fiscal year, or the third fiscal year if it is
13 for an educational facility as defined in chapter 1013 or a
14 construction project of a state university, of the
15 appropriation shall revert on February 1 of such year to the
16 fund from which appropriated and shall be available for
17 reappropriation. The Executive Office of the Governor shall,
18 not later than February 20 of each year, furnish the Chief
19 Financial Officer ~~Comptroller~~, the legislative appropriations
20 committees, and the Auditor General a report listing in detail
21 the items and amounts reverting under the authority of this
22 subsection, including the fund to which reverted and the
23 agency affected.

24 Section 251. Section 217.07, Florida Statutes, is
25 amended to read:

26 217.07 Transfer of surplus property assets to
27 department.--The Chief Financial Officer ~~State Treasurer~~ is
28 authorized to transfer to the department any funds unexpended
29 in the Surplus Property Revolving Trust Fund account in the
30 State Treasury. This revolving fund shall remain in existence
31 as a separate trust fund as long as the surplus property

1 program exists. Upon termination of the program any remaining
2 funds shall be disposed of as provided by federal law.

3 Section 252. Section 218.06, Florida Statutes, is
4 amended to read:

5 218.06 Transfer of funds by county commissioners with
6 relation to public works grants.--

7 (1) Boards of county commissioners of the several
8 counties of the state, whenever it may be necessary to meet
9 the requirements of the United States Government with
10 reference to obtaining grants of federal funds in connection
11 with the program of the Public Works Administration, may by
12 resolution of such board, transfer and expend such sums of
13 money as may be necessary to obtain said grant, from any fund
14 to such other fund as may be necessary to meet said
15 requirements and carry out the intent and purposes of the said
16 transfer; provided, however, that no such transfer may be made
17 by any county of the state without first having obtained the
18 approval of the Department of Financial Services ~~Banking and~~
19 ~~Finance~~ thereto, and in the counties of the state where there
20 is provision for a budget commission, without first having
21 also obtained the approval of said budget commission to said
22 transfer.

23 (2) The Department of Financial Services ~~Banking and~~
24 ~~Finance~~ and the budget commissions of the several counties of
25 the state in which there are provisions for such budget
26 commissions, may approve such transfers whenever in their
27 opinion such transfers are necessary and proper.

28 Section 253. Paragraph (a) of subsection (1) of
29 section 218.23, Florida Statutes, is amended to read:

30 218.23 Revenue sharing with units of local
31 government.--

1 (1) To be eligible to participate in revenue sharing
2 beyond the minimum entitlement in any fiscal year, a unit of
3 local government is required to have:

4 (a) Reported its finances for its most recently
5 completed fiscal year to the Department of Financial Services
6 ~~Banking and Finance~~, pursuant to s. 218.32.

7
8 Additionally, to receive its share of revenue sharing funds, a
9 unit of local government shall certify to the Department of
10 Revenue that the requirements of s. 200.065, if applicable,
11 were met. The certification shall be made annually within 30
12 days of adoption of an ordinance or resolution establishing a
13 final property tax levy or, if no property tax is levied, not
14 later than November 1. The portion of revenue sharing funds
15 which, pursuant to this part, would otherwise be distributed
16 to a unit of local government which has not certified
17 compliance or has otherwise failed to meet the requirements of
18 s. 200.065 shall be deposited in the General Revenue Fund for
19 the 12 months following a determination of noncompliance by
20 the department.

21 Section 254. Subsection (4) of section 218.31, Florida
22 Statutes, is amended to read:

23 218.31 Definitions.--As used in this part, except
24 where the context clearly indicates a different meaning:

25 (4) "Department" means the Department of Financial
26 Services ~~Banking and Finance~~.

27 Section 255. Subsections (1) and (4) of section
28 218.321, Florida Statutes, are amended to read:

29 218.321 Annual financial statements; local
30 governmental entities.--

31

1 (1) Each local governmental entity shall complete its
2 financial statements for the previous fiscal year in
3 compliance with generally accepted accounting principles and
4 the uniform chart of accounts prescribed by the department of
5 ~~Banking and Finance~~.

6 (4) The failure by any local governmental entity to
7 complete its annual financial statements shall, in addition to
8 any other penalties provided by law, authorize the department
9 to employ personnel or send department personnel to such local
10 governmental entity in order to complete such annual financial
11 statements. The expenses related to the completion of the
12 annual financial statements shall be charged to the local
13 governmental entity. Upon failure by the local governmental
14 entity to pay the charge within 15 days after billing, the
15 department shall so certify to the Chief Financial Officer
16 ~~Comptroller~~, who shall forward the amount so certified to the
17 department from any funds due to the local governmental entity
18 under any revenue-sharing or tax-sharing fund established by
19 the state, except as otherwise provided by the State
20 Constitution.

21 Section 256. Section 218.325, Florida Statutes, is
22 amended to read:

23 218.325 Uniform chart of accounts and financial
24 reporting for court and justice system costs and revenues.--

25 (1)(a) The Uniform Chart of Accounts Development
26 Committee is hereby created to develop and implement a uniform
27 chart of accounts. The committee shall work with the
28 representatives of the designated end-user groups identified
29 in subsection (3) in order to determine the specific financial
30 data related to the operations of the circuit and county
31 courts and justice-related agencies of the executive branch

1 which must be accounted for and reported. The committee shall
2 then work with the department of ~~Banking and Finance~~ to
3 develop the necessary rules required to implement the uniform
4 chart of accounts. The committee shall include:

5 1. The Chief Financial Officer ~~Comptroller~~ or his or
6 her ~~the Comptroller's~~ designee.

7 2. Three clerks of the circuit court or deputy clerks,
8 appointed by the president of the Florida Association of Court
9 Clerks.

10 3. Three elected county commissioners or county
11 finance staff, appointed by the Florida Association of
12 Counties.

13 4. Three elected sheriffs or their designees,
14 appointed by the president of the Florida Sheriffs
15 Association.

16 (b) The Chief Financial Officer ~~Comptroller~~ or his or
17 her ~~the Comptroller's~~ designee shall serve as chairperson of
18 the committee. The committee shall use the staff of the
19 Department of Financial Services ~~Banking and Finance~~ for staff
20 support and may also appoint technical support staff as
21 designated by the Florida Association of Court Clerks, the
22 Florida Association of Counties, and the Florida Sheriffs
23 Association as needed for technical assistance and support.
24 ~~Members of the committee must be appointed within 30 days~~
25 ~~after June 18, 1995. Within 60 days after the appointment of~~
26 ~~the membership, the committee shall meet to establish~~
27 ~~procedures for the conduct of its business.~~

28 (c) Members of the committee shall serve without
29 compensation.

30 (2) The Uniform Chart of Accounts Development
31 Committee shall make an analysis of the requirements for

1 implementing a detailed, uniform chart of accounts and
2 financial reporting system for court and justice-related
3 agency expenditures and revenues. The Chief Financial Officer
4 ~~Comptroller~~ shall make a report to the Chief Justice of the
5 Florida Supreme Court, the Governor, the Speaker of the House
6 of Representatives, and the President of the Senate on such
7 requirements, including a timetable for implementation and an
8 assessment of fiscal impact, by January 1, 1996. The proposed
9 uniform chart of accounts and financial reporting system must
10 provide that all revenues received and expenditures incurred
11 by county governments, clerks of court, the courts or other
12 judicial entities that are related to the operations of the
13 circuit courts and county courts, and other components of the
14 justice system can be accounted for in sufficient detail to
15 permit reporting for both discrete functions and
16 organizational units.

17 (3) For purposes of this section, the collection of
18 representatives of end-user groups, which shall assist the
19 Uniform Chart of Accounts Development Committee on the process
20 and procedures for implementing new accounting and reporting
21 requirements and provide oversight and guidance for
22 implementing activities, shall be formed by one representative
23 each from the Office of the Governor, the Speaker of the House
24 of Representatives, the President of the Senate, the Office of
25 the Chief Financial Officer ~~Comptroller~~, the Office of the
26 State Courts Administrator, the Florida Prosecuting Attorneys
27 Association, the Florida Public Defenders Association, the
28 Legislative Committee on Intergovernmental Relations, the
29 Information Resource Committee, and The Florida Bar.

30 Section 257. Paragraph (a) of subsection (1) of
31 section 220.151, Florida Statutes, is amended to read:

1 220.151 Apportionment; methods for special
2 industries.--

3 (1)(a) Except as provided in paragraph (b), the tax
4 base of an insurance company for a taxable year or period
5 shall be apportioned to this state by multiplying such base by
6 a fraction the numerator of which is the direct premiums
7 written for insurance upon properties and risks in this state
8 and the denominator of which is the direct premiums written
9 for insurance upon properties and risks everywhere. For
10 purposes of this paragraph, the term "direct premiums written"
11 means the total amount of direct premiums written,
12 assessments, and annuity considerations, as reported for the
13 taxable year or period on the annual statement filed by the
14 company with the Office of Insurance Regulation of the
15 Financial Services Commission ~~commissioner of insurance~~ in the
16 form approved by the National Convention of Insurance
17 Commissioners or such other form as may be prescribed in lieu
18 thereof.

19 Section 258. Subsection (7) of section 220.187,
20 Florida Statutes, is amended to read:

21 220.187 Credits for contributions to nonprofit
22 scholarship-funding organizations.--

23 (7) DEPOSITS OF ELIGIBLE CONTRIBUTIONS.--All eligible
24 contributions received by an eligible nonprofit
25 scholarship-funding organization shall be deposited in a
26 manner consistent with s. 17.57(2)~~s. 18.10(2)~~.

27 Section 259. Subsection (3) of section 220.62, Florida
28 Statutes, is amended to read:

29 220.62 Definitions.--For purposes of this part:

30 (3) The term "international banking facility" means a
31 set of asset and liability accounts segregated on the books

1 and records of a banking organization that includes only
2 international banking facility deposits, borrowings, and
3 extensions of credit, as those terms are defined by the
4 Financial Services Commission ~~Department of Banking and~~
5 ~~Finance~~, taking into account all transactions in which
6 international banking facilities are permitted to engage by
7 regulations of the Board of Governors of the Federal Reserve
8 System, as from time to time amended. When providing such
9 definitions, the Financial Services Commission ~~Department of~~
10 ~~Banking and Finance~~ shall also consider the public interest,
11 including the need to maintain a sound and competitive banking
12 system, as well as the purpose of this act, which is to create
13 an environment conducive to the conduct of an international
14 banking business in the state.

15 Section 260. Subsection (2) of section 220.723,
16 Florida Statutes, is amended to read:

17 220.723 Overpayments; interest.--

18 (2) Interest shall accrue from the date upon which the
19 taxpayer files a written notice advising the department of the
20 overpayment. Interest shall be paid until such date as
21 determined by the department, which shall be no more than 7
22 days prior to the date of the issuance by the Chief Financial
23 Officer ~~Comptroller~~ of the refund warrant.

24 Section 261. Paragraph (b) of subsection (1) and
25 paragraph (b) of subsection (2) of section 238.11, Florida
26 Statutes, are amended to read:

27 238.11 Collection of contributions.--

28 (1) The collection of contributions shall be as
29 follows:

30 (b) Each employer shall transmit monthly to the
31 Department of Management Services a warrant for the total

1 amount of such deductions. Each employer shall also transmit
2 monthly to the department a warrant for such employer
3 contribution set aside as provided for in paragraph (a) of
4 this subsection. The department, after making records of all
5 such warrants, shall transmit them to the Department of
6 Financial Services ~~Banking and Finance~~ for delivery to the
7 Chief Financial Officer, ~~Treasurer of the state~~ who shall
8 collect them.

9 (2) The collection of the state contribution shall be
10 made as follows:

11 (b) The Department of Management Services shall
12 certify one-fourth of the amount so ascertained for each year
13 to the Chief Financial Officer ~~Comptroller~~ on or before the
14 last day of July, October, January, and April of each year.
15 The Chief Financial Officer ~~Comptroller~~ shall, on or before
16 the first day of August, November, February, and May of each
17 year, ~~draw his or her warrant or warrants on the Treasurer for~~
18 ~~the respective amounts due the several funds of the retirement~~
19 ~~system. On the receipt of the warrant or warrants of the~~
20 ~~Comptroller, the Treasurer shall~~ immediately transfer to the
21 several funds of the retirement system the amounts due.

22 Section 262. Section 238.15, Florida Statutes, is
23 amended to read:

24 238.15 Exemption of funds from taxation, execution,
25 and assignment.--The pensions, annuities or any other benefits
26 accrued or accruing to any person under the provisions of this
27 chapter and the accumulated contributions and cash securities
28 in the funds created under this chapter are exempted from any
29 state, county or municipal tax of the state, and shall not be
30 subject to execution or attachment or to any legal process
31 whatsoever, and shall be unassignable, except:

1 (1) That any teacher who has retired shall have the
2 right and power to authorize in writing the Department of
3 Management Services to deduct from his or her monthly
4 retirement allowance money for the payment of the premiums on
5 group insurance for hospital, medical and surgical benefits,
6 under a plan or plans for such benefits approved in writing by
7 the Chief Financial Officer ~~Insurance Commissioner and~~
8 ~~Treasurer of the state~~, and upon receipt of such request the
9 department shall make the monthly payments as directed; and

10 (2) As may be otherwise specifically provided for in
11 this chapter.

12 Section 263. Section 238.172, Florida Statutes, is
13 amended to read:

14 238.172 Proof required.--For any person to obtain the
15 allowance as set forth in s. 238.171 the ~~said~~ person shall
16 make such proof of the facts and conditions entitling him or
17 her to the ~~said~~ allowance as shall reasonably be required by
18 the state board, and when such proof has been submitted to the
19 satisfaction of the state board, the Chief Financial Officer
20 ~~State Treasurer~~ shall pay to such person the monthly allowance
21 herein provided for ~~on warrants drawn by the Comptroller~~.

22 Section 264. Section 238.173, Florida Statutes, is
23 amended to read:

24 238.173 Monthly allowance to widows or widowers of
25 pensioners.--When any teacher, drawing pension under s.
26 238.171, shall die leaving surviving a widow or widower to
27 whom such pensioner has been married for a continuous period
28 of at least 10 years immediately prior to his or her death,
29 and from whom no dissolution of marriage is obtained, such
30 widow or widower, upon proof of marriage to and continuation
31 of marriage for the minimum period with, and death of, said

1 pensioner, shall be granted a pension payable from the date of
2 the death of said pensioner, and at the same time and rate as
3 other pensions paid under s. 238.171. The Chief Financial
4 Officer ~~Comptroller~~ is hereby authorized and directed to draw
5 his or her warrants in payment of such pensions so long as
6 such widow or widower shall remain unmarried and continue to
7 be a resident of the state; provided, however, that nothing
8 herein contained shall be so construed as to allow such
9 pension to be paid to any widow or widower where such widow or
10 widower of a deceased pensioner under this section receives a
11 like pension in his or her own right as a retired school
12 teacher.

13 Section 265. Subsection (3) of section 250.22, Florida
14 Statutes, is amended to read:

15 250.22 Retirement.--

16 (3) Sufficient money to meet the requirements of this
17 section is hereby appropriated out of any moneys in the State
18 Treasury not otherwise appropriated, and payments under this
19 section will be made to those eligible to receive the same on
20 the first day of each calendar month from the General Revenue
21 Fund by the Chief Financial Officer ~~Comptroller~~ upon
22 prescribed pay vouchers certified to by the Adjutant General
23 of the state.

24 Section 266. Subsections (3), (4), and (5) of section
25 250.24, Florida Statutes, are amended to read:

26 250.24 Pay and expenses; appropriation; procedures.--

27 (3) Notwithstanding the provision of s. 216.271,
28 moneys for pay and allowances of the troops ordered out in
29 active service of the state shall be deposited in a separate
30 revolving fund, which shall be approved by the Chief Financial
31 Officer ~~Comptroller~~ and shall be subject to the provisions of

1 ~~s. 17.58(2)~~~~s. 18.101(2)~~. The Department of Military Affairs
2 shall administer the fund. Frequency of payments to such
3 troops shall be at the discretion of the Adjutant General. The
4 Department of Military Affairs shall present to the Chief
5 Financial Officer ~~Comptroller~~ audit documentation of such
6 payments. The Department of Military Affairs shall maintain
7 all employee records relating to payments made pursuant to
8 this subsection and shall furnish to the Chief Financial
9 Officer ~~Comptroller~~ the information necessary to update the
10 payroll master record of each employee.

11 (4) The fund balance remaining in this separate
12 revolving fund after a final accounting of all expenditures
13 for pay and allowances of the troops shall be returned for
14 deposit to the State Treasury within 45 days after the
15 termination of active duty of the troops, except that an
16 operating balance in an amount mutually agreed upon by the
17 Chief Financial Officer ~~Comptroller~~ and the Department of
18 Military Affairs shall be retained in the fund.

19 (5) Vouchers for expenditures other than such pay and
20 allowances shall be presented to the Chief Financial Officer
21 ~~Comptroller~~ for approval and payment as prescribed by law.

22 Section 267. Section 250.25, Florida Statutes, is
23 amended to read:

24 250.25 Governor and Chief Financial Officer
25 ~~Comptroller~~ authorized to borrow money.--When there is no
26 state appropriation available for the pay and expenses of
27 troops called out in active service to preserve the peace or
28 in aid of civil authorities, and funds are not immediately
29 available for this purpose, the Governor and Chief Financial
30 Officer ~~Comptroller~~ may borrow money to make such payments, in
31 such sum or sums as may from time to time be required, and any

1 such loans, so obtained, shall be promptly repaid out of the
2 first funds that become available for such use.

3 Section 268. Section 250.26, Florida Statutes, is
4 amended to read:

5 250.26 Transfer of funds.--Where the available funds
6 are not sufficient for the purposes specified in ss. 250.23,
7 250.24, and 250.34, the Governor and Chief Financial Officer
8 ~~Comptroller~~ may transfer from any available fund in the State
9 Treasury, such sum as may be necessary to meet such emergency,
10 and the said moneys, so transferred, shall be repaid to the
11 fund from which transferred when moneys become available for
12 that purpose by legislative appropriation or otherwise.

13 Section 269. Subsection (3) of section 250.34, Florida
14 Statutes, is amended to read:

15 250.34 Injury or death in active service.--

16 (3) After the expiration of 1 year from the date of
17 injury or disability, such individual shall be provided
18 hospitalization, medical services and supplies, and
19 compensation for wages and compensation for disability based
20 on the average weekly wages of such injured individual on pay
21 status in the active service of the state or in his or her
22 civilian occupation or employment, whichever is greater, in
23 amounts provided under chapter 440 [F. S. 1973], as if such
24 individual were covered under the Workers' Compensation Law,
25 except that payments made during the first year after such
26 injury shall not be duplicated after the expiration of that
27 year. The Division of Risk Management of the Department of
28 Financial Services Insurance ~~Insurance~~ is responsible for processing all
29 claims for benefits under this subsection.

30 Section 270. Section 252.62, Florida Statutes, is
31 amended to read:

1 252.62 Director of Office of Financial Regulation
2 ~~Comptroller's~~ powers in a state of emergency.--
3 (1) It is the purpose and intent of this section to
4 provide the Director of the Office of Financial Regulation of
5 the Financial Services Commission ~~Comptroller, as head of the~~
6 ~~Department of Banking and Finance,~~ the authority to make
7 temporary modifications to or suspensions of the financial
8 institutions codes in order to expedite the recovery of
9 communities affected by a disaster or other emergency and in
10 order to encourage financial institutions to meet the credit,
11 deposit, and other financial needs of such communities.
12 (2)(a) When the Governor declares a state of emergency
13 pursuant to s. 252.36, the Director of the Office of Financial
14 Regulation ~~Comptroller~~ may issue:
15 1. One or more general orders applicable to all
16 financial institutions that are subject to the financial
17 institutions codes and that serve any portion of the area of
18 the state under the state of emergency; or
19 2. One or more specific orders to particular financial
20 institutions that are subject to the financial institution
21 codes and that normally derive more than 60 percent of their
22 deposits from persons in the area of the state under the state
23 of emergency,
24
25 which orders may modify or suspend, as to those institutions,
26 all or any part of the financial institutions codes, as
27 defined in s. 655.005, or any applicable rule, consistent with
28 the stated purposes of the financial institutions codes and
29 with maintaining the safety and soundness of the financial
30 institutions system in this state.
31

1 (b) An order issued by the director ~~Comptroller~~ under
2 this section becomes effective upon issuance and continues for
3 120 days unless it is terminated by the director ~~Comptroller~~.
4 The director ~~Comptroller~~ may extend an order for one
5 additional period of 120 days if he or she ~~the Comptroller~~
6 determines that the emergency conditions that gave rise to the
7 ~~Comptroller's~~ initial order still exist. The Legislature, by
8 concurrent resolution, may terminate any order issued under
9 this section.

10 (3) The director ~~Comptroller~~ shall publish, in the
11 next available publication of the Florida Administrative
12 Weekly, a copy of the text of any order issued under this
13 section, together with a statement describing the modification
14 or suspension and explaining how the modification or
15 suspension will facilitate recovery from the emergency and
16 maintain the safety and soundness of financial institutions in
17 this state.

18 Section 271. Subsection (7) of section 252.87, Florida
19 Statutes, is amended to read:

20 252.87 Supplemental state reporting requirements.--

21 (7) The department shall avoid duplicative reporting
22 requirements by utilizing the reporting requirements of other
23 state agencies that regulate hazardous materials to the extent
24 feasible and shall request the information authorized under
25 EPCRA. With the advice and consent of the State Emergency
26 Response Commission for Hazardous Materials, the department
27 may require by rule that the maximum daily amount entry on the
28 chemical inventory report required under s. 312 of EPCRA
29 provide for reporting in estimated actual amounts. The
30 department may also require by rule an entry for the Federal
31 Employer Identification Number on this report. To the extent

1 feasible, the department shall encourage and accept required
2 information in a form initiated through electronic data
3 interchange and shall describe by rule the format, manner of
4 execution, and method of electronic transmission necessary for
5 using such form. To the extent feasible, the Department of
6 Financial Services ~~Insurance~~, the Department of Agriculture
7 and Consumer Services, the Department of Environmental
8 Protection, the Public Service Commission, the Department of
9 Revenue, the Department of Labor and Employment Security, and
10 other state agencies which regulate hazardous materials shall
11 coordinate with the department in order to avoid duplicative
12 requirements contained in each agency's respective reporting
13 or registration forms. The other state agencies that inspect
14 facilities storing hazardous materials and suppliers and
15 distributors of covered substances shall assist the department
16 in informing the facility owner or operator of the
17 requirements of this part. The department shall provide the
18 other state agencies with the necessary information and
19 materials to inform the owners and operators of the
20 requirements of this part to ensure that the budgets of these
21 agencies are not adversely affected.

22 Section 272. Subsection (14) of section 253.025,
23 Florida Statutes, is amended to read:

24 253.025 Acquisition of state lands for purposes other
25 than preservation, conservation, and recreation.--

26 (14) Any agency that acquires land on behalf of the
27 board of trustees is authorized to request disbursement of
28 payments for real estate closings in accordance with a written
29 authorization from an ultimate beneficiary to allow a third
30 party authorized by law to receive such payment provided the
31 Chief Financial Officer ~~Comptroller~~ determines that such

1 disbursement is consistent with good business practices and
2 can be completed in a manner minimizing costs and risks to the
3 state.

4 Section 273. Subsection (1) of section 255.03, Florida
5 Statutes, is amended to read:

6 255.03 Proceeds of insurance to be paid into State
7 Treasury; disbursement of funds.--

8 (1) The proceeds from the insurance of any state
9 building or state property covered by insurance which may be
10 destroyed in whole or in part by fire, or other damage, shall
11 be paid into the State Treasury and constitute a fund for the
12 rebuilding or replacing of such property, and the Chief
13 Financial Officer ~~Comptroller~~ may draw his or her warrant ~~on~~
14 ~~the State Treasurer~~ for such amounts, not to exceed the
15 proceeds so paid in, as may be approved by the board or
16 persons having the direct supervision and control of such
17 buildings or property for the purpose of rebuilding or
18 replacing the same.

19 Section 274. Subsections (1) and (2) of section
20 255.052, Florida Statutes, are amended to read:

21 255.052 Substitution of securities for amounts
22 retained on public contracts.--

23 (1) Under any contract made or awarded by the state or
24 any county, city, or political subdivision thereof, or other
25 public authority, the contractor may, from time to time,
26 withdraw the whole or any portion of the amount retained for
27 payments to the contractor pursuant to the terms of the
28 contract, upon depositing with the Chief Financial Officer
29 ~~State Treasurer~~:

30
31

1 (a) United States Treasury bonds, United States
2 Treasury notes, United States Treasury certificates of
3 indebtedness, or United States Treasury bills;

4 (b) Bonds or notes of the State of Florida; or

5 (c) Bonds of any political subdivision in the state;
6 or

7 (d) Cash delivered to the State Treasury for the
8 Treasury Cash Deposit Trust Fund; or

9 (e) Certificates of deposit from state or national
10 banks or state or federal savings and loan associations in the
11 state. Certificates of deposit shall possess the eligibility
12 characteristics defined in s. 625.52.

13

14 No amount shall be withdrawn in excess of the market value of
15 the securities listed in paragraphs (a), (b), and (c) at the
16 time of withdrawal or of the par value of such securities,
17 whichever is lower.

18 (2) The Chief Financial Officer ~~Treasurer~~ shall
19 regularly, ~~on a regular basis~~, collect all interest or income
20 on the obligations so deposited, and shall pay the same, when
21 and as collected, to the contractor who deposited the
22 obligations. If the deposit is in the form of coupon bonds,
23 the Chief Financial Officer ~~Treasurer~~ shall deliver each
24 coupon as it matures to the contractor.

25

26 Nothing in this section shall be construed to require the
27 state or any county, city, or political subdivision thereof,
28 or other public authority, to allow the contractor to withdraw
29 the whole or any portion of the amount retained for payments
30 to the contractor except pursuant to the terms of the
31 contract.

1 Section 275. Subsection (2) of section 255.258,
2 Florida Statutes, is amended to read:

3 255.258 Shared savings financing of energy
4 conservation in state-owned buildings.--

5 (2) Except as noted in subsection (4), state agency
6 shared savings contracts shall be developed in accordance with
7 a model contract to be developed by the department in
8 cooperation with the Attorney General, the Chief Financial
9 Officer ~~Comptroller~~, and the Department of Community Affairs.

10 The model contract shall include the methodology for
11 calculating base line energy costs, a procedure for revising
12 these costs should the state institute additional energy
13 conservation features or building use change, a requirement
14 for a performance bond guaranteeing that the facility will be
15 restored to the original condition in the event of default, a
16 provision for early buy-out, a clause specifying who will be
17 responsible for maintaining the equipment, and a provision
18 allowing the disposal of equipment at the end of the contract.
19 No agency shall substantially alter the provisions described
20 in the model without the permission of the department.

21 Section 276. Subsection (8) of section 255.503,
22 Florida Statutes, is amended to read:

23 255.503 Powers of the Department of Management
24 Services.--The Department of Management Services shall have
25 all the authority necessary to carry out and effectuate the
26 purposes and provisions of this act, including, but not
27 limited to, the authority to:

28 (8) Create and establish funds and accounts for the
29 purpose of debt service reserves, for the matching of the
30 timing and the amount of available funds and debt service
31 charges, for sinking funds, for capital depreciation reserves,

1 for operating reserves, for capitalized interest and moneys
2 not required for immediate disbursement to acquire all or a
3 portion of any facility, and for any other reserves, funds, or
4 accounts reasonably necessary to carry out the provisions of
5 this act and to invest in authorized investments any moneys
6 held in such funds and accounts, provided such investments
7 will be made on behalf of the Department of Management
8 Services by the State Board of Administration or the Chief
9 Financial Officer ~~Treasurer~~, as appropriate.

10 Section 277. Section 255.521, Florida Statutes, is
11 amended to read:

12 255.521 Failure of payment.--Should an agency fail to
13 make a timely payment of the pool pledged rentals or charges
14 as required by this act, the Chief Financial Officer
15 ~~Comptroller~~ shall withhold general revenues of the agency in
16 an amount sufficient to pay the rentals and charges due and
17 unpaid from such agency. The Chief Financial Officer
18 ~~Comptroller~~ shall forward such ~~said~~ general revenue amounts to
19 the Department of Management Services in payment of such
20 rents.

21 Section 278. Section 257.22, Florida Statutes, is
22 amended to read:

23 257.22 Division of Library and Information Services;
24 allocation of funds.--Any moneys that may be appropriated for
25 use by a county, a municipality, a special district, or a
26 special tax district for the maintenance of a library or
27 library service shall be administered and allocated by the
28 Division of Library and Information Services in the manner
29 prescribed by law. On or before December 1 of each year, the
30 division shall certify to the Chief Financial Officer
31 ~~Comptroller~~ the amount to be paid to each county,

1 municipality, special district, or special tax district, and
2 the Chief Financial Officer ~~Comptroller~~ shall issue warrants
3 to the respective boards of county commissioners or chief
4 municipal executive authorities for the amount so allocated.

5 Section 279. Subsection (2) of section 258.014,
6 Florida Statutes, is amended to read:

7 258.014 Fees for use of state parks.--

8 (2) Any moneys received in trust by the division by
9 gift, devise, appropriation, or otherwise shall, subject to
10 the terms of such trust, be deposited with the Chief Financial
11 Officer ~~State Treasurer~~ in a fund to be known as the "State
12 Park Trust Fund," and shall be subject to withdrawal upon
13 application of such ~~said~~ division for expenditure or
14 investment in accordance with the terms of the ~~said~~ trust.
15 Unless prohibited by the terms of the trust by which the ~~said~~
16 moneys are derived, all of such moneys may be invested as
17 provided by law.

18 Section 280. Subsection (6) and paragraph (e) of
19 subsection (12) of section 259.032, Florida Statutes, are
20 amended to read:

21 259.032 Conservation and Recreation Lands Trust Fund;
22 purpose.--

23 (6) Moneys in the fund not needed to meet obligations
24 incurred under this section shall be deposited with the Chief
25 Financial Officer ~~Treasurer~~ to the credit of the fund and may
26 be invested in the manner provided by law. Interest received
27 on such investments shall be credited to the Conservation and
28 Recreation Lands Trust Fund.

29 (12)

30 (e) Payment in lieu of taxes pursuant to this
31 subsection shall be made annually to qualifying counties and

1 local governments after certification by the Department of
2 Revenue that the amounts applied for are reasonably
3 appropriate, based on the amount of actual taxes paid on the
4 eligible property, and after the Department of Environmental
5 Protection has provided supporting documents to the Chief
6 Financial Officer ~~Comptroller~~ and has requested that payment
7 be made in accordance with the requirements of this section.

8
9 For the purposes of this subsection, "local government"
10 includes municipalities, the county school board, mosquito
11 control districts, and any other local government entity which
12 levies ad valorem taxes, with the exception of a water
13 management district.

14 Section 281. Subsection (18) of section 259.041,
15 Florida Statutes, is amended to read:

16 259.041 Acquisition of state-owned lands for
17 preservation, conservation, and recreation purposes.--

18 (18) Any agency authorized to acquire lands on behalf
19 of the board of trustees is authorized to request disbursement
20 of payments for real estate closings in accordance with a
21 written authorization from an ultimate beneficiary to allow a
22 third party authorized by law to receive such payment provided
23 the Chief Financial Officer ~~Comptroller~~ determines that such
24 disbursement is consistent with good business practices and
25 can be completed in a manner minimizing costs and risks to the
26 state.

27 Section 282. Subsection (2) of section 265.53, Florida
28 Statutes, is amended to read:

29 265.53 Application for indemnity agreement.--

30 (2) The Department of Financial Services ~~Insurance~~
31 shall determine whether applicants qualify for indemnity

1 coverage under ss. 265.51-265.56. Qualification criteria,
2 which shall be set by rule, shall include factors such as:

3 (a) Physical security of an applicant's exhibition
4 facilities and of the means of transportation of the eligible
5 items from the borrower to the lender.

6 (b) Experience and qualifications of an applicant's
7 director, curator, registrar, or other staff.

8 (c) Eligibility of an applicant's exhibition
9 facilities for commercial insurance coverage of works of art
10 displayed there.

11 (d) Availability of proper equipment to protect works
12 of art from damage from extremes of temperature or humidity or
13 exposure to glare, dust, or corrosion.

14

15 The department may consult with such private insurance and art
16 experts as reasonably necessary to carry out the intent of
17 this subsection.

18 Section 283. Subsections (1) and (3) of section
19 265.55, Florida Statutes, are amended to read:

20 265.55 Claims.--

21 (1) The Division of Risk Management of the Department
22 of Financial Services ~~Insurance~~ may prescribe rules providing
23 for prompt adjustment of valid claims for losses which are
24 covered by an indemnity agreement made pursuant to the
25 provisions of ss. 265.51-265.56, including rules providing for
26 the employment of consultants and for the arbitration of
27 issues relating to the dollar value of damages involving less
28 than total loss or destruction of such covered objects.

29 (3) The authorization for payment delineated in
30 subsection (2) shall be forwarded to the Chief Financial
31 Officer ~~Comptroller~~. The Chief Financial Officer ~~Comptroller~~

1 shall take appropriate action to execute authorized payment of
2 the claim from the Working Capital Fund, as defined in s.
3 215.32.

4 Section 284. Paragraph (d) of subsection (3) of
5 section 267.075, Florida Statutes, is amended to read:

6 267.075 The Grove Advisory Council; creation;
7 membership; purposes.--

8 (3)

9 (d) Members of the council shall serve without
10 compensation or honorarium but shall be entitled to receive
11 reimbursement for per diem and travel expenses as provided in
12 s. 112.061. All expenses of the council shall be paid from
13 appropriations to be made by the Legislature to the Department
14 of State. All vouchers shall be approved by the Division of
15 Historical Resources before being submitted to the Chief
16 Financial Officer ~~Comptroller~~ for payment.

17 Section 285. Paragraph (c) of subsection (2) of
18 section 272.18, Florida Statutes, is amended to read:

19 272.18 Governor's Mansion Commission.--

20 (2)

21 (c) Members of the commission shall serve without
22 compensation or honorarium but shall be entitled to receive
23 reimbursement for per diem and travel expenses as provided in
24 s. 112.061. All expenses of the commission shall be paid from
25 appropriations to be made by the Legislature to the Department
26 of Management Services for that purpose. The commission shall
27 submit its budgetary requests to the Department of Management
28 Services for approval and inclusion in the legislative budget
29 request of the department. All vouchers shall be approved by
30 the secretary of the Department of Management Services before
31

1 being submitted to the Chief Financial Officer ~~Comptroller~~ for
2 payment.

3 Section 286. Subsections (9), (11), (17), (18), (19),
4 and (24), paragraph (f) of subsection (26), and subsections
5 (29), (30), and (31) of section 280.02, Florida Statutes, are
6 amended to read:

7 280.02 Definitions.--As used in this chapter, the
8 term:

9 (9) "Custodian" means the Chief Financial Officer
10 ~~Treasurer~~ or any bank, savings association, or trust company
11 that:

12 (a) Is organized and existing under the laws of this
13 state, any other state, or the United States;

14 (b) Has executed all forms required under this chapter
15 or any rule adopted hereunder;

16 (c) Agrees to be subject to the jurisdiction of the
17 courts of this state, or of courts of the United States which
18 are located within this state, for the purpose of any
19 litigation arising out of this chapter; and

20 (d) Has been approved by the Chief Financial Officer
21 ~~Treasurer~~ to act as a custodian.

22 (11) "Effective date of notice of withdrawal or order
23 of discontinuance" pursuant to s. 280.11(3) means that date
24 which is set out as such in any notice of withdrawal or order
25 of discontinuance from the Chief Financial Officer ~~Treasurer~~.

26 (17) "Operating subsidiary" means the qualified public
27 depository's 100-percent owned corporation that has ownership
28 of pledged collateral. The operating subsidiary may have no
29 powers beyond those that its parent qualified public
30 depository may itself exercise. The use of an operating
31 subsidiary is at the discretion of the qualified public

1 depository and must meet the Chief Financial Officer's
2 ~~Treasurer's~~ requirements.

3 (18) "Oversight board" means the qualified public
4 depository oversight board created in s. 280.071 for the
5 purpose of safeguarding the integrity of the public deposits
6 program and preventing the realization of loss assessments
7 through standards, policies, and recommendations for actions
8 to the Chief Financial Officer ~~Treasurer~~.

9 (19) "Pledged collateral" means securities or cash
10 held separately and distinctly by an eligible custodian for
11 the benefit of the Chief Financial Officer ~~Treasurer~~ to be
12 used as security for Florida public deposits. This includes
13 maturity and call proceeds.

14 (24) "Public depositor" means the official custodian
15 of funds for a governmental unit who is ~~Treasurer or other~~
16 ~~Chief Financial Officer or designee~~ responsible for handling
17 public deposits.

18 (26) "Qualified public depository" means any bank,
19 savings bank, or savings association that:

20 (f) Has been designated by the Chief Financial Officer
21 ~~Treasurer~~ as a qualified public depository.

22 ~~(29) "Treasurer" means the Treasurer of the State of~~
23 ~~Florida.~~

24 ~~(29)~~⁽³⁰⁾ "Chief Financial Officer's" ~~Treasurer's~~
25 custody" is a collateral arrangement governed by a contract
26 between a designated Chief Financial Officer's ~~Treasurer's~~
27 custodian and the Chief Financial Officer ~~Treasurer~~. This
28 arrangement requires collateral to be in the Chief Financial
29 Officer's ~~Treasurer's~~ name in order to perfect the security
30 interest.

31

1 ~~(30)(31)~~ "Triggering events" are events set out in s.
2 280.041 which give the Chief Financial Officer ~~Treasurer~~ the
3 right to:

4 (a) Instruct the custodian to transfer securities
5 pledged, interest payments, and other proceeds of pledged
6 collateral not previously credited to the pledgor.

7 (b) Demand payment under letters of credit.

8 Section 287. Subsections (1), (2), (5), (6), (7), and
9 (9) of section 280.04, Florida Statutes, are amended to read:

10 280.04 Collateral for public deposits; general
11 provisions.--

12 (1) The Chief Financial Officer ~~Treasurer~~ shall
13 determine the collateral requirements and collateral pledging
14 level for each qualified public depository following
15 procedures established by rule. These procedures shall include
16 numerical parameters for 25-percent, 50-percent, 125-percent,
17 and 200-percent pledge levels based on nationally recognized
18 financial rating services information and established
19 financial performance guidelines.

20 (2) A qualified public depository may not accept or
21 retain any public deposit which is required to be secured
22 unless it has deposited with the Chief Financial Officer
23 ~~Treasurer~~ eligible collateral at least equal to the greater
24 of:

25 (a) The average daily balance of public deposits that
26 does not exceed the lesser of its capital account or 20
27 percent of the pool figure multiplied by the depository's
28 collateral-pledging level, plus the greater of:

29 1. One hundred twenty-five percent of the average
30 daily balance of public deposits in excess of capital
31 accounts; or

1 2. One hundred twenty-five percent of the average
2 daily balance of public deposits in excess of 20 percent of
3 the pool figure.

4 (b) Twenty-five percent of the average monthly balance
5 of public deposits.

6 (c) One hundred twenty-five percent of the average
7 daily balance of public deposits if the qualified public
8 depository:

9 1. Has been established for less than 3 years;

10 2. Has experienced material decreases in its capital
11 accounts; or

12 3. Has an overall financial condition that is
13 materially deteriorating.

14 (d) Two hundred percent of an established maximum
15 amount of public deposits that has been mutually agreed upon
16 by and between the Chief Financial Officer ~~Treasurer~~ and the
17 qualified public depository.

18 (e) Minimum required collateral of \$100,000.

19 (f) An amount as required in special instructions from
20 the Chief Financial Officer ~~Treasurer~~ to protect the integrity
21 of the public deposits program.

22 (5) Additional collateral of 20 percent of required
23 collateral is necessary if a valuation date other than the
24 close of business as described below has been approved for the
25 qualified public depository and the required collateral is
26 found to be insufficient based on the Chief Financial
27 Officer's ~~Treasurer's~~ valuation.

28 (6) Each qualified public depository shall value its
29 collateral in the following manner; it must:

30 (a) Use a nationally recognized source.

31

1 (b) Use market price, quality ratings, and pay-down
2 factors as of the close of business on the last banking day in
3 the reported month, or as of a date approved by the Chief
4 Financial Officer ~~Treasurer~~.

5 (c) Report any material decline in value that occurs
6 before the date of mailing the monthly report, required in s.
7 280.16, to the Chief Financial Officer ~~Treasurer~~.

8 (d) Use 100 percent of the maximum amount available
9 under Federal Home Loan Bank letters of credit as market
10 value.

11 (7) A qualified public depository shall pledge,
12 deposit, or issue additional eligible collateral between
13 filing periods of the monthly report required in s. 280.16
14 when notified by the Chief Financial Officer ~~Treasurer~~ that
15 current market value of collateral does not meet required
16 collateral. The pledge, deposit, or issuance of such
17 additional collateral shall be made within 2 business days
18 after the Chief Financial Officer's ~~Treasurer's~~ notification.

19 (9) The Chief Financial Officer ~~Treasurer~~ shall adopt
20 rules for the establishment of collateral requirements,
21 collateral pledging levels, required collateral calculations,
22 and market value and clarifying terms.

23 Section 288. Section 280.041, Florida Statutes, is
24 amended to read:

25 280.041 Collateral arrangements; agreements,
26 provisions, and triggering events.--

27 (1) Eligible collateral listed in s. 280.13 may be
28 pledged, deposited, or issued using the following collateral
29 arrangements as approved by the Chief Financial Officer
30 ~~Treasurer~~ for a qualified public depository or operating
31 subsidiary, if one is used, to meet required collateral:

1 (a) Regular custody arrangement for collateral pledged
2 to the Chief Financial Officer ~~Treasurer~~ pursuant to
3 subsection (2).

4 (b) Federal Reserve Bank custody arrangement for
5 collateral pledged to the Chief Financial Officer ~~Treasurer~~
6 pursuant to subsection (3).

7 (c) Chief Financial Officer's ~~Treasurer's~~ custody
8 arrangement for collateral deposited in the Chief Financial
9 Officer's ~~Treasurer's~~ name pursuant to subsection (4).

10 (d) Federal Home Loan Bank letter of credit
11 arrangement for collateral issued with the Chief Financial
12 Officer ~~Treasurer~~ as beneficiary pursuant to subsection (5).

13 (e) Cash arrangement for collateral held by the Chief
14 Financial Officer ~~Treasurer~~ or a custodian.

15 (2) With the approval of the Chief Financial Officer
16 ~~Treasurer~~, a qualified public depository or operating
17 subsidiary, as pledgor, may deposit eligible collateral with a
18 custodian. A qualified public depository shall not act as its
19 own custodian. Except in the case of using a Federal Reserve
20 Bank as custodian, the following are necessary for the Chief
21 Financial Officer's ~~Treasurer's~~ approval:

22 (a) A completed collateral agreement in a form
23 prescribed by the Chief Financial Officer ~~Treasurer~~ in which
24 the pledgor agrees to the following provisions:

25 1. The pledgor shall own the pledged collateral and
26 acknowledge that the Chief Financial Officer ~~Treasurer~~ has a
27 perfected security interest. The pledged collateral shall be
28 eligible collateral and shall be at least equal to the amount
29 of required collateral.

30 2. The pledgor shall grant to the Chief Financial
31 Officer ~~Treasurer~~ an interest in pledged collateral for the

1 purposes of this section. The pledgor shall not enter into or
2 execute any other agreement related to the pledged collateral
3 that would create an interest in or lien on that collateral in
4 any manner in favor of any third party without the written
5 consent of the Chief Financial Officer ~~Treasurer~~.

6 3. The pledgor shall not grant the custodian any lien
7 that attaches to the collateral in favor of the custodian that
8 is superior or equal to the security interest of the Chief
9 Financial Officer ~~Treasurer~~.

10 4. The pledgor shall agree that the Chief Financial
11 Officer ~~Treasurer~~ may, without notice to or consent by the
12 pledgor, require the custodian to comply with and perform any
13 and all requests and orders directly from the Chief Financial
14 Officer ~~Treasurer~~. These include, but are not limited to,
15 liquidating all collateral and submitting the proceeds
16 directly to the Chief Financial Officer ~~Treasurer~~ in the name
17 of the Chief Financial Officer ~~Treasurer~~ only or transferring
18 all collateral into an account designated solely by the Chief
19 Financial Officer ~~Treasurer~~.

20 5. The pledgor shall acknowledge that the Chief
21 Financial Officer ~~Treasurer~~ may, without notice to or consent
22 by the pledgor, require the custodian to hold principal
23 payments and income for the benefit of the Chief Financial
24 Officer ~~Treasurer~~.

25 6. The pledgor shall initiate collateral transactions
26 on forms prescribed by the Chief Financial Officer ~~Treasurer~~
27 in the following manner:

28 a. A deposit transaction of eligible collateral may be
29 made without prior approval from the Chief Financial Officer
30 ~~Treasurer~~ provided: security types that have restrictions have
31 been approved in advance of the transaction by the Chief

1 Financial Officer ~~Treasurer~~ and simultaneous notification is
2 given to the Chief Financial Officer ~~Treasurer~~; and the
3 custodian has not received notice from the Chief Financial
4 Officer ~~Treasurer~~ prohibiting deposits without prior approval.

5 b. A substitution transaction of eligible collateral
6 may be made without prior approval from the Chief Financial
7 Officer ~~Treasurer~~ provided: security types that have
8 restrictions have been approved in advance of the transaction
9 by the Chief Financial Officer ~~Treasurer~~; the market value of
10 the securities to be substituted is at least equal to the
11 amount withdrawn; simultaneous notification is given to the
12 Chief Financial Officer ~~Treasurer~~; and the custodian has not
13 received notice from the Chief Financial Officer ~~Treasurer~~
14 prohibiting substitution.

15 c. A transfer of collateral between accounts at a
16 custodian requires the Chief Financial Officer's ~~Treasurer's~~
17 prior approval. The collateral shall be released subject to
18 redeposit in the new account with a pledge to the Chief
19 Financial Officer ~~Treasurer~~ intact.

20 d. A transfer of collateral from a custodian to
21 another custodian requires the Chief Financial Officer's
22 ~~Treasurer's~~ prior approval and a valid collateral agreement
23 with the new custodian. The collateral shall be released
24 subject to redeposit at the new custodian with a pledge to the
25 Chief Financial Officer ~~Treasurer~~ intact.

26 e. A withdrawal transaction requires the Chief
27 Financial Officer's ~~Treasurer's~~ prior approval. The market
28 value of eligible collateral remaining after the withdrawal
29 shall be at least equal to the amount of required collateral.
30 A withdrawal transaction shall be executed for any release of
31 collateral including maturity or call proceeds.

1 f. Written notice shall be sent to the Chief Financial
2 Officer ~~Treasurer~~ to remove from the inventory of pledged
3 collateral a pay-down security that has paid out with zero
4 principal remaining.

5 7. If pledged collateral includes definitive
6 (physical) securities in registered form which are in the name
7 of the pledgor or a nominee, the pledgor shall deliver the
8 following documents when requested by the Chief Financial
9 Officer ~~Treasurer~~:

10 a. A separate certified power of attorney in a form
11 prescribed by the Chief Financial Officer ~~Treasurer~~ for each
12 issue of securities.

13 b. Separate bond assignment forms as required by the
14 bond agent or trustee.

15 c. Certified copies of resolutions adopted by the
16 pledgor's governing body authorizing execution of these
17 documents.

18 8. The pledgor shall be responsible for all costs
19 necessary to the functioning of the collateral agreement or
20 associated with confirmation of pledged collateral to the
21 Chief Financial Officer ~~Treasurer~~ and acknowledges that these
22 costs shall not be a charge against the Chief Financial
23 Officer ~~Treasurer~~ or his or her interests in the pledged
24 collateral.

25 9. The pledgor, if notified by the Chief Financial
26 Officer ~~Treasurer~~, shall not be allowed to use a custodian if
27 that custodian fails to complete the collateral agreement,
28 releases pledged collateral without the Chief Financial
29 Officer's ~~Treasurer's~~ approval, fails to properly complete
30 confirmations of pledged collateral, fails to honor a request
31 for examination of definitive pledged collateral and records

1 of book-entry securities, or fails to provide requested
2 documents on definitive securities. The period for disallowing
3 the use of a custodian shall be 1 year.

4 10. The pledgor shall be subject to the jurisdiction
5 of the courts of the State of Florida, or of courts of the
6 United States located within the State of Florida, for the
7 purpose of any litigation arising out of the act.

8 11. The pledgor is responsible and liable to the Chief
9 Financial Officer ~~Treasurer~~ for any action of agents the
10 pledgor uses to execute collateral transactions or submit
11 reports to the Chief Financial Officer ~~Treasurer~~.

12 12. The pledgor shall agree that any information,
13 forms, or reports electronically transmitted to the Chief
14 Financial Officer ~~Treasurer~~ shall have the same enforceability
15 as a signed writing.

16 13. The pledgor shall submit proof that authorized
17 individuals executed the collateral agreement on behalf of the
18 pledgor.

19 14. The pledgor shall agree by resolution of the board
20 of directors that collateral agreements entered into for
21 purposes of this section have been formally accepted and
22 constitute official records of the pledgor.

23 15. The pledgor shall be bound by any other provisions
24 found necessary for a perfected security interest in
25 collateral under the Uniform Commercial Code.

26 (b) A completed collateral agreement in a form
27 prescribed by the Chief Financial Officer ~~Treasurer~~ in which
28 the custodian agrees to the following provisions:

29 1. The custodian shall have no responsibility to
30 ascertain whether the pledged securities are at least equal to
31

1 the amount of required collateral nor whether the pledged
2 securities are eligible collateral.

3 2. The custodian shall hold pledged collateral in a
4 custody account for the Chief Financial Officer ~~Treasurer~~ for
5 purposes of this section. The custodian shall not enter into
6 or execute any other agreement related to the collateral that
7 would create an interest in or lien on that collateral in any
8 manner in favor of any third party without the written consent
9 of the Chief Financial Officer ~~Treasurer~~.

10 3. The custodian shall agree that any lien that
11 attaches to the collateral in favor of the custodian shall not
12 be superior or equal to the security interest of the Chief
13 Financial Officer ~~Treasurer~~.

14 4. The custodian shall, without notice to or consent
15 by the pledgor, comply with and perform any and all requests
16 and orders directly from the Chief Financial Officer
17 ~~Treasurer~~. These include, but are not limited to, liquidating
18 all collateral and submitting the proceeds directly to the
19 Chief Financial Officer ~~Treasurer~~ in the name of the Chief
20 Financial Officer ~~Treasurer~~ only or transferring all
21 collateral into an account designated solely by the Chief
22 Financial Officer ~~Treasurer~~.

23 5. The custodian shall consider principal payments on
24 pay-down securities and income paid on pledged collateral as
25 the property of the pledgor and shall pay thereto provided the
26 custodian has not received written notice from the Chief
27 Financial Officer ~~Treasurer~~ to hold such principal payments
28 and income for the benefit of the Chief Financial Officer
29 ~~Treasurer~~.

30
31

1 6. The custodian shall process collateral transactions
2 on forms prescribed by the Chief Financial Officer ~~Treasurer~~
3 in the following manner:

4 a. A deposit transaction of eligible collateral may be
5 made without prior approval from the Chief Financial Officer
6 ~~Treasurer~~ unless the custodian has received notice from the
7 Chief Financial Officer ~~Treasurer~~ requiring the Chief
8 Financial Officer's ~~Treasurer's~~ prior approval.

9 b. A substitution transaction of eligible collateral
10 may be made without prior approval from the Chief Financial
11 Officer ~~Treasurer~~ provided the pledgor certifies the market
12 value of the securities to be substituted is at least equal to
13 the market value amount of the securities to be withdrawn and
14 the custodian has not received notice from the Chief Financial
15 Officer ~~Treasurer~~ prohibiting substitution.

16 c. A transfer of collateral between accounts at a
17 custodian requires the Chief Financial Officer's ~~Treasurer's~~
18 prior approval. The collateral shall be released subject to
19 redeposit in the new account with a pledge to the Chief
20 Financial Officer ~~Treasurer~~ intact. Confirmation from the
21 custodian to the Chief Financial Officer ~~Treasurer~~ must be
22 received within 5 business days of the redeposit.

23 d. A transfer of collateral from a custodian to
24 another custodian requires the Chief Financial Officer's
25 ~~Treasurer's~~ prior approval. The collateral shall be released
26 subject to redeposit at the new custodian with a pledge to the
27 Chief Financial Officer ~~Treasurer~~ intact. Confirmation from
28 the new custodian to the Chief Financial Officer ~~Treasurer~~
29 must be received within 5 business days of the redeposit.

30 e. A withdrawal transaction requires the Chief
31 Financial Officer's ~~Treasurer's~~ prior approval. A withdrawal

1 transaction shall be executed for the release of any pledged
2 collateral including maturity or call proceeds.

3 7. If pledged collateral includes definitive
4 (physical) securities in registered form, which are in the
5 name of the custodian or a nominee, the custodian shall
6 deliver the following documents when requested by the Chief
7 Financial Officer ~~Treasurer~~:

8 a. A separate certified power of attorney in a form
9 prescribed by the Chief Financial Officer ~~Treasurer~~ for each
10 issue of securities.

11 b. Separate bond assignment forms as required by the
12 bond agent or trustee.

13 c. Certified copies of resolutions adopted by the
14 custodian's governing body authorizing execution of these
15 documents.

16 8. The custodian shall acknowledge that the pledgor is
17 responsible for all costs necessary to the functioning of the
18 collateral agreement or associated with confirmation of
19 securities pledged to the Chief Financial Officer ~~Treasurer~~
20 and that these costs shall not be a charge against the Chief
21 Financial Officer ~~Treasurer~~ or his or her interests in the
22 pledged collateral.

23 9. The custodian shall agree to provide confirmation
24 of pledged collateral upon request from the Chief Financial
25 Officer ~~Treasurer~~. This confirmation shall be provided within
26 15 working days after the request, in a format prescribed by
27 the Chief Financial Officer ~~Treasurer~~, and shall require no
28 identification other than the pledgor name and location,
29 unless the special identification is provided in the
30 collateral agreement.

31

1 10. The custodian shall be subject to the jurisdiction
2 of the courts of the State of Florida, or of courts of the
3 United States located within the State of Florida, for the
4 purpose of any litigation arising out of the act.

5 11. The custodian shall be responsible and liable to
6 the Chief Financial Officer ~~Treasurer~~ for any action of agents
7 the custodian uses to hold and service collateral pledged to
8 the Chief Financial Officer ~~Treasurer~~.

9 12. The custodian shall agree that any information,
10 forms, or reports electronically transmitted to the Chief
11 Financial Officer ~~Treasurer~~ shall have the same enforceability
12 as a signed writing.

13 13. The Chief Financial Officer ~~Treasurer~~ shall have
14 the right to examine definitive pledged collateral and records
15 of book-entry securities during the regular business hours of
16 the custodian without cost to the Chief Financial Officer
17 ~~Treasurer~~.

18 14. The responsibilities of the custodian for the
19 safekeeping of the pledged collateral shall be limited to the
20 diligence and care usually exercised by a banking or trust
21 institution toward its own property.

22 15. If there is any change in the Uniform Commercial
23 Code, as adopted by law in this state, which affects the
24 requirements for a perfected security interest in collateral,
25 the Chief Financial Officer ~~Treasurer~~ shall notify the
26 custodian of such change. The custodian shall have a period of
27 180 calendar days after such notice to withdraw as custodian
28 if the custodian cannot provide the required custodial
29 services.

30 (3) With the approval of the Chief Financial Officer
31 ~~Treasurer~~, a pledgor may deposit eligible collateral pursuant

1 to an agreement with a Federal Reserve Bank. The Federal
2 Reserve Bank agreement may require terms not consistent with
3 subsection (2) but may not subject the Chief Financial Officer
4 ~~Treasurer~~ to any costs or indemnification requirements.

5 (4) The Chief Financial Officer ~~Treasurer~~ may require
6 deposit or transfer of collateral into a custodial account
7 established in the Chief Financial Officer's ~~Treasurer's~~ name
8 at a designated custodian. This requirement for Chief
9 Financial Officer's ~~Treasurer's~~ custody shall have the
10 following characteristics:

11 (a) One or more triggering events must have occurred.

12 (b) The custodian used must be a Chief Financial
13 Officer's ~~Treasurer's~~ approved custodian that must:

14 1. Meet the definition of custodian.

15 2. Not be an affiliate of the qualified public
16 depository.

17 3. Be bound under a distinct Chief Financial Officer's
18 ~~Treasurer's~~ custodial contract.

19 (c) All deposit transactions require the approval of
20 the Chief Financial Officer ~~Treasurer~~.

21 (d) All collateral must be in book-entry form.

22 (e) The qualified public depository shall be
23 responsible for all costs necessary to the functioning of the
24 contract or associated with the confirmation of securities in
25 the name of the Chief Financial Officer ~~Treasurer~~ and
26 acknowledges that these costs shall not be a charge against
27 the Chief Financial Officer ~~Treasurer~~ and may be deducted from
28 the collateral or income earned if unpaid.

29 (5) With the approval of the Chief Financial Officer
30 ~~Treasurer~~, a qualified public depository may use Federal Home
31 Loan Bank letters of credit to meet collateral requirements.

1 A completed agreement that includes the following provisions
2 is necessary for the Chief Financial Officer's ~~Treasurer's~~
3 approval:

4 (a) The letter of credit shall meet the definition of
5 eligible collateral.

6 (b) The qualified public depository shall agree that
7 the Chief Financial Officer ~~Treasurer~~, as beneficiary, may,
8 without notice to or consent by the qualified public
9 depository, demand payment under the letter of credit if any
10 of the triggering events listed in this section occur.

11 (c) The qualified public depository shall agree that
12 funds received by the Chief Financial Officer ~~Treasurer~~ due to
13 the occurrence of one or more triggering events may be
14 deposited in the Treasury Cash Deposit Trust Fund for purposes
15 of eligible collateral.

16 (d) The qualified public depository shall arrange for
17 the issue of letters of credit which meet the requirements of
18 s. 280.13 and delivery to the Chief Financial Officer
19 ~~Treasurer~~. All transactions involving letters of credit
20 require the Chief Financial Officer's ~~Treasurer's~~ approval.

21 (e) The qualified public depository shall be
22 responsible for all costs necessary in the use or confirmation
23 of letters of credit issued on behalf of the Chief Financial
24 Officer ~~Treasurer~~ and acknowledges that these costs shall not
25 be a charge against the Chief Financial Officer ~~Treasurer~~.

26 (f) The qualified public depository shall be subject
27 to the jurisdiction of the courts of this state, or of courts
28 of the United States which are located within this state, for
29 the purpose of any litigation arising out of the act.

30 (g) The qualified public depository shall agree that
31 any information, form, or report electronically transmitted to

1 the Chief Financial Officer ~~Treasurer~~ shall have the same
2 enforceability as a signed writing.

3 (h) The qualified public depository shall submit proof
4 that authorized individuals executed the letters of credit
5 agreement on its behalf.

6 (i) The qualified public depository shall agree by
7 resolution of the board of directors that the letters of
8 credit agreements entered into for purposes of this section
9 have been formally accepted and constitute official records of
10 the qualified public depository.

11 (6) The Chief Financial Officer ~~Treasurer~~ may demand
12 payment under a letter of credit or direct a custodian to
13 deposit or transfer collateral and proceeds of securities not
14 previously credited upon the occurrence of one or more
15 triggering events provided that, to the extent not
16 incompatible with the protection of public deposits, as
17 determined in the Chief Financial Officer's ~~Treasurer's~~ sole
18 and absolute discretion, the Chief Financial Officer ~~Treasurer~~
19 shall provide a custodian and the qualified public depository
20 with 48 hours' advance notice before directing such deposit or
21 transfer. These events include:

22 (a) The Chief Financial Officer ~~Treasurer~~ determines
23 that an immediate danger to the public health, safety, or
24 welfare exists.

25 (b) The qualified public depository fails to have
26 adequate procedures and practices for the accurate
27 identification, classification, reporting, and
28 collateralization of public deposits.

29 (c) The custodian fails to provide or allow inspection
30 and verification of documents, reports, records, or other
31

1 information dealing with the pledged collateral or financial
2 information.

3 (d) The qualified public depository or its operating
4 subsidiary fails to provide or allow inspection and
5 verification of documents, reports, records, or other
6 information dealing with Florida public deposits, pledged
7 collateral, or financial information.

8 (e) The custodian fails to hold income and principal
9 payments made on securities held as collateral or fails to
10 deposit or transfer such payments pursuant to the Chief
11 Financial Officer's ~~Treasurer's~~ instructions.

12 (f) The qualified public depository defaults or
13 becomes insolvent.

14 (g) The qualified public depository fails to pay an
15 assessment.

16 (h) The qualified public depository fails to pay an
17 administrative penalty.

18 (i) The qualified public depository fails to meet
19 financial condition standards.

20 (j) The qualified public depository charges a
21 withdrawal penalty to public depositors when the qualified
22 public depository is suspended, disqualified, or withdrawn
23 from the public deposits program.

24 (k) The qualified public depository does not provide,
25 as required, the public depositor with annual confirmation
26 information on all open Florida public deposit accounts.

27 (l) The qualified public depository pledges, deposits,
28 or has issued insufficient or unacceptable collateral to meet
29 required collateral within the required time.

30
31

1 (m) Collateral, other than a proper substitution, is
2 released without the prior approval of the Chief Financial
3 Officer ~~Treasurer~~.

4 (n) The qualified public depository, custodian,
5 operating subsidiary, or agent violates any provision of the
6 act and the Chief Financial Officer ~~Treasurer~~ determines that
7 such violation may be remedied by a move of collateral.

8 (o) The qualified public depository, custodian,
9 operating subsidiary, or agent fails to timely cooperate in
10 resolving problems by the date established in written
11 communication from the Chief Financial Officer ~~Treasurer~~.

12 (p) The custodian fails to provide sufficient
13 confirmation information.

14 (q) The Federal Home Loan Bank or the qualified public
15 depository gives notification that a letter of credit will not
16 be extended or renewed and other eligible collateral equal to
17 required collateral has not been deposited within 30 days
18 after the notice or 30 days before expiration of the letter of
19 credit.

20 (r) The qualified public depository, if involved in a
21 merger, acquisition, consolidation, or other organizational
22 change, fails to notify the Chief Financial Officer ~~Treasurer~~
23 or ensure that required collateral is properly maintained by
24 the depository holding the Florida public deposits.

25 (s) Events that would bring about an administrative or
26 legal action by the Chief Financial Officer ~~Treasurer~~.

27 (7) The Chief Financial Officer ~~Treasurer~~ shall adopt
28 rules to identify forms and establish procedures for
29 collateral agreements and transactions, furnish confirmation
30 requirements, establish procedures for using an operating
31 subsidiary and agents, and clarify terms.

1 Section 289. Section 280.05, Florida Statutes, is
2 amended to read:

3 280.05 Powers and duties of the Chief Financial
4 Officer ~~Treasurer~~.--In fulfilling the requirements of this
5 act, the Chief Financial Officer ~~Treasurer~~ has the power to
6 take the following actions he or she deems necessary to
7 protect the integrity of the public deposits program:

8 (1) Identify representative qualified public
9 depositories and furnish notification for the qualified public
10 depository oversight board selection pursuant to s. 280.071.

11 (2) Provide data for the qualified public depository
12 oversight board duties pursuant to s. 280.071 regarding:

13 (a) Establishing standards for qualified public
14 depositories and custodians.

15 (b) Evaluating requests for exceptions to standards
16 and alternative participation agreements.

17 (c) Reviewing and recommending action for qualified
18 public depository or custodian violations.

19 (3) Review, implement, monitor, evaluate, and modify
20 all or any part of the standards, policies, or recommendations
21 of the qualified public depository oversight board.

22 (4) Perform financial analysis of any qualified public
23 depositories.

24 (5) Require collateral, or increase the
25 collateral-pledging level, of any qualified public depository.

26 (6) Decline to accept, or reduce the reported value
27 of, collateral in order to ensure the pledging or depositing
28 of sufficient marketable collateral and acceptable letters of
29 credit.

30 (7) Maintain perpetual inventory of collateral and
31 perform monthly market valuations and quality ratings.

1 (8) Monitor and confirm collateral with custodians and
2 letter of credit issuers.

3 (9) Move collateral into an account established in the
4 Chief Financial Officer's ~~Treasurer's~~ name upon the occurrence
5 of one or more triggering events.

6 (10) Issue notice to a qualified public depository
7 that use of a custodian will be disallowed when the custodian
8 has failed to follow collateral agreement terms.

9 (11) Furnish written notice to custodians of
10 collateral to hold interest and principal payments made on
11 securities held as collateral and to deposit or transfer such
12 payments pursuant to the Chief Financial Officer's ~~Treasurer's~~
13 instructions.

14 (12) Release collateral held in the Chief Financial
15 Officer's ~~Treasurer's~~ name, subject to sale and transfer of
16 funds directly from the custodian to public depositors of a
17 withdrawing depository.

18 (13) Demand payment under letters of credit for any of
19 the triggering events listed in s. 280.041 and deposit the
20 funds in:

21 (a) The Public Deposits Trust Fund for purposes of
22 paying losses to public depositors.

23 (b) The Treasury ~~Treasurer's~~ Administrative and
24 Investment Trust Fund for receiving payment of administrative
25 penalties.

26 (c) The Treasury Cash Deposit Trust Fund for purposes
27 of eligible collateral.

28 (14) Sell securities for the purpose of paying losses
29 to public depositors not covered by deposit insurance.

30
31

1 (15) Transfer funds directly from the custodian to
2 public depositors or the receiver in order to facilitate
3 prompt payment of claims.

4 (16) Require the filing of the following reports which
5 the Chief Financial Officer ~~Treasurer~~ shall process as
6 provided:

7 (a) Qualified public depository monthly reports and
8 schedules. The Chief Financial Officer ~~Treasurer~~ shall review
9 the reports of each qualified public depository for material
10 changes in capital accounts or changes in name, address, or
11 type of institution; record the average daily balances of
12 public deposits held; and monitor the collateral-pledging
13 levels and required collateral.

14 (b) Quarterly regulatory reports from qualified public
15 depositories. The Chief Financial Officer ~~Treasurer~~ shall
16 analyze qualified public depositories ranked in the lowest
17 category based on established financial condition criteria.

18 (c) Qualified public depository annual reports and
19 public depositor annual reports. The Chief Financial Officer
20 ~~Treasurer~~ shall compare public deposit information reported by
21 qualified public depositories and public depositors. Such
22 comparison shall be conducted for qualified public
23 depositories which are ranked in the lowest category based on
24 established financial condition criteria of record on
25 September 30. Additional comparison processes may be performed
26 as public deposits program resources permit.

27 (d) Any related documents, reports, records, or other
28 information deemed necessary by the Chief Financial Officer
29 ~~Treasurer~~ in order to ascertain compliance with this chapter.
30
31

1 (17) Verify the reports of any qualified public
2 depository relating to public deposits it holds when necessary
3 to protect the integrity of the public deposits program.

4 (18) Confirm public deposits, to the extent possible
5 under current law, when needed.

6 (19) Require at his or her discretion the filing of
7 any information or forms required under this chapter to be by
8 electronic data transmission. Such filings of information or
9 forms shall have the same enforceability as a signed writing.

10 (20) Suspend or disqualify or disqualify after
11 suspension any qualified public depository that has violated
12 any of the provisions of this chapter or of rules adopted
13 hereunder.

14 (a) Any qualified public depository that is suspended
15 or disqualified pursuant to this subsection is subject to the
16 provisions of s. 280.11(2) governing withdrawal from the
17 public deposits program and return of pledged collateral. Any
18 suspension shall not exceed a period of 6 months. Any
19 qualified public depository which has been disqualified may
20 not reapply for qualification until after the expiration of 1
21 year from the date of the final order of disqualification or
22 the final disposition of any appeal taken therefrom.

23 (b) In lieu of suspension or disqualification, impose
24 an administrative penalty upon the qualified public depository
25 as provided in s. 280.054.

26 (c) If the Chief Financial Officer ~~Treasurer~~ has
27 reason to believe that any qualified public depository or any
28 other financial institution holding public deposits is or has
29 been violating any of the provisions of this chapter or of
30 rules adopted hereunder, he or she may issue to the qualified
31 public depository or other financial institution an order to

1 cease and desist from the violation or to correct the
2 condition giving rise to or resulting from the violation. If
3 any qualified public depository or other financial institution
4 violates a cease-and-desist or corrective order, the Chief
5 Financial Officer ~~Treasurer~~ may impose an administrative
6 penalty upon the qualified public depository or other
7 financial institution as provided in s. 280.054 or s. 280.055.
8 In addition to the administrative penalty, the Chief Financial
9 Officer ~~Treasurer~~ may suspend or disqualify any qualified
10 public depository for violation of any order issued pursuant
11 to this paragraph.

12 Section 290. Section 280.051, Florida Statutes, is
13 amended to read:

14 280.051 Grounds for suspension or disqualification of
15 a qualified public depository.--A qualified public depository
16 may be suspended or disqualified or both if the Chief
17 Financial Officer ~~Treasurer~~ determines that the qualified
18 public depository has:

19 (1) Violated any of the provisions of this chapter or
20 any rule adopted by the Chief Financial Officer ~~Treasurer~~
21 pursuant to this chapter.

22 (2) Submitted reports containing inaccurate or
23 incomplete information regarding public deposits or collateral
24 for such deposits, capital accounts, or the calculation of
25 required collateral.

26 (3) Failed to maintain required collateral.

27 (4) Grossly misstated the market value of the
28 securities pledged as collateral.

29 (5) Failed to pay any administrative penalty.

30 (6) Failed to furnish the Chief Financial Officer
31 ~~Treasurer~~ with prompt and accurate information, or failed to

1 allow inspection and verification of any information, dealing
2 with public deposits or dealing with the exact status of its
3 capital accounts, or any other financial information that the
4 Chief Financial Officer ~~Treasurer~~ determines necessary to
5 verify compliance with this chapter or any rule adopted
6 pursuant to this chapter.

7 (7) Failed to furnish the Chief Financial Officer
8 ~~Treasurer~~, when the Chief Financial Officer ~~Treasurer~~
9 requested, with a power of attorney or bond power or other
10 bond assignment form required by the bond agent, bond trustee,
11 or other transferor for each issue of registered certificated
12 securities pledged.

13 (8) Failed to furnish any agreement, report, form, or
14 other information required to be filed pursuant to s. 280.16,
15 or when requested by the Chief Financial Officer ~~Treasurer~~.

16 (9) Submitted reports signed by an unauthorized
17 individual.

18 (10) Submitted reports without a certified or verified
19 signature, or both, if required by law.

20 (11) Released a security without notice or approval.

21 (12) Failed to execute or have the custodian execute a
22 public depository pledge agreement prior to using a custodian.

23 (13) Failed to give notification as required by s.
24 280.10.

25 Section 291. Section 280.052, Florida Statutes, is
26 amended to read:

27 280.052 Order of suspension or disqualification;
28 procedure.--

29 (1) The suspension or disqualification of a bank or
30 savings association as a qualified public depository must be
31 by order of the Chief Financial Officer ~~Treasurer~~ and must be

1 mailed to the qualified public depository by registered or
2 certified mail.

3 (2) The Chief Financial Officer ~~Treasurer~~ shall
4 notify, by first-class mail, all public depositories that have
5 complied with s. 280.17 of any such disqualification or
6 suspension.

7 (3) The procedures for suspension or disqualification
8 shall be as set forth in chapter 120 and in the rules of the
9 Chief Financial Officer ~~Treasurer~~ adopted pursuant to this
10 section.

11 (4) Whenever the Chief Financial Officer ~~Treasurer~~
12 determines that an immediate danger to the public health,
13 safety, or welfare exists, the Chief Financial Officer
14 ~~Treasurer~~ may take any appropriate action available to her or
15 him under the provisions of chapter 120.

16 Section 292. Paragraphs (a) and (c) of subsection (1)
17 and paragraph (c) of subsection (2) of section 280.053,
18 Florida Statutes, is amended to read:

19 280.053 Period of suspension or disqualification;
20 obligations during period; reinstatement.--

21 (1)(a) The Chief Financial Officer ~~Treasurer~~ may
22 suspend a qualified public depository for any period that is
23 fixed in the order of suspension, not exceeding 6 months. For
24 the purposes of this section and ss. 280.051 and 280.052, the
25 effective date of suspension or disqualification is that date
26 which is set out as such in any order of suspension or
27 disqualification.

28 (c) Upon expiration of the suspension period, the bank
29 or savings association may, by order of the Chief Financial
30 Officer ~~Treasurer~~, be reinstated as a qualified public
31 depository, unless the cause of the suspension has not been

1 corrected or the bank or savings association is otherwise not
2 in compliance with this chapter or any rule adopted pursuant
3 to this chapter.

4 (2)

5 (c) Upon expiration of the disqualification period,
6 the bank or savings association may reapply for qualification
7 as a qualified public depository. If a disqualified bank or
8 savings association is purchased or otherwise acquired by new
9 owners, it may reapply to the Chief Financial Officer
10 ~~Treasurer~~ to be a qualified public depository prior to the
11 expiration date of the disqualification period. Redesignation
12 as a qualified public depository may occur only after the
13 Chief Financial Officer ~~Treasurer~~ has determined that all
14 requirements for holding public deposits under the law have
15 been met.

16 Section 293. Section 280.054, Florida Statutes, is
17 amended to read:

18 280.054 Administrative penalty in lieu of suspension
19 or disqualification.--

20 (1) If the Chief Financial Officer ~~Treasurer~~ finds
21 that one or more grounds exist for the suspension or
22 disqualification of a qualified public depository, the Chief
23 Financial Officer ~~Treasurer~~ may, in lieu of suspension or
24 disqualification, impose an administrative penalty upon the
25 qualified public depository.

26 (a) With respect to any nonwillful violation, such
27 penalty may not exceed \$250 for each violation, exclusive of
28 any restitution found to be due. If a qualified public
29 depository discovers a nonwillful violation, the qualified
30 public depository shall correct the violation; and, if
31 restitution is due, the qualified public depository shall make

1 restitution upon the order of the Chief Financial Officer
2 ~~Treasurer~~ and shall pay interest on such amount at the legal
3 rate from the date of the violation. Each day a violation
4 continues constitutes a separate violation.

5 (b) With respect to any knowing and willful violation
6 of a lawful order or rule, the Chief Financial Officer
7 ~~Treasurer~~ may impose a penalty upon the qualified public
8 depository in an amount not exceeding \$1,000 for each
9 violation. If restitution is due, the qualified public
10 depository shall make restitution upon the order of the Chief
11 Financial Officer ~~Treasurer~~ and shall pay interest on such
12 amount at the legal rate. Each day a violation continues
13 constitutes a separate violation.

14 (2) The failure of a qualified public depository to
15 make restitution when due as required under this section
16 constitutes a willful violation of this chapter. However, if
17 a qualified public depository in good faith is uncertain
18 whether any restitution is due or as to the amount of
19 restitution due, it shall promptly notify the Chief Financial
20 Officer ~~Treasurer~~ of the circumstances. The failure to make
21 restitution pending a determination of whether restitution is
22 due or the amount of restitution due does not constitute a
23 violation of this chapter.

24 (3) A qualified public depository is subject to an
25 administrative penalty in an amount not exceeding the greater
26 of \$1,000 or 10 percent of the amount of withdrawal, not
27 exceeding \$10,000, if the depository fails to provide required
28 collateral using eligible collateral and prescribed collateral
29 agreements or withdraws collateral without the Chief Financial
30 Officer's ~~Treasurer's~~ approval.

31

1 Section 294. Section 280.055, Florida Statutes, is
2 amended to read:

3 280.055 Cease and desist order; corrective order;
4 administrative penalty.--

5 (1) The Chief Financial Officer ~~Treasurer~~ may issue a
6 cease and desist order and a corrective order upon determining
7 that:

8 (a) A qualified public depository has requested and
9 obtained a release of pledged collateral without approval of
10 the Chief Financial Officer ~~Treasurer~~;

11 (b) A bank, savings association, or other financial
12 institution is holding public deposits without a certificate
13 of qualification issued by the Chief Financial Officer
14 ~~Treasurer~~;

15 (c) A qualified public depository pledges, deposits,
16 or arranges for the issuance of unacceptable collateral;

17 (d) A custodian has released pledged collateral
18 without approval of the Chief Financial Officer ~~Treasurer~~;

19 (e) A qualified public depository or a custodian has
20 not furnished to the Chief Financial Officer ~~Treasurer~~, when
21 the Chief Financial Officer ~~Treasurer~~ requested, a power of
22 attorney or bond power or bond assignment form required by the
23 bond agent or bond trustee for each issue of registered
24 certificated securities pledged and registered in the name, or
25 nominee name, of the qualified public depository or custodian;
26 or

27 (f) A qualified public depository; a bank, savings
28 association, or other financial institution; or a custodian
29 has committed any other violation of this chapter or any rule
30 adopted pursuant to this chapter that the Chief Financial
31

1 Officer ~~Treasurer~~ determines may be remedied by a cease and
2 desist order or corrective order.

3 (2) Any qualified public depository or other bank,
4 savings association, or financial institution or custodian
5 that violates a cease and desist order or corrective order of
6 the Chief Financial Officer ~~Treasurer~~ is subject to an
7 administrative penalty not exceeding \$1,000 for each violation
8 of the order. Each day the violation of the order continues
9 constitutes a separate violation.

10 Section 295. Subsections (1) and (2) of section
11 280.06, Florida Statutes, are amended to read:

12 280.06 Penalty for violation of law, rule, or order to
13 cease and desist or other lawful order.--

14 (1) The violation of any provision of this chapter, or
15 any order or rule of the Chief Financial Officer ~~Treasurer~~, or
16 any order to cease and desist or other lawful order is a
17 misdemeanor of the second degree, punishable as provided in s.
18 775.082 or s. 775.083.

19 (2) It is a felony of the third degree, punishable as
20 provided in s. 775.082 or s. 775.083, to knowingly and
21 willfully give false information on any form made under oath
22 and filed pursuant to this chapter with the intent to mislead
23 the Chief Financial Officer ~~Treasurer~~ in the administration or
24 enforcement of this chapter.

25 Section 296. Section 280.07, Florida Statutes, is
26 amended to read:

27 280.07 Mutual responsibility and contingent
28 liability.--Any bank or savings association that is designated
29 as a qualified public depository and that is not insolvent
30 shall guarantee public depositors against loss caused by the
31 default or insolvency of other qualified public depositories.

1 Each qualified public depository shall execute a form
2 prescribed by the Chief Financial Officer ~~Treasurer~~ for such
3 guarantee which shall be approved by the board of directors
4 and shall become an official record of the institution.

5 Section 297. Subsections (1), (2), (3), and (5),
6 paragraph (e) of subsection (9), paragraphs (b), (c), (d), and
7 (e) of subsection (10), paragraphs (a) and (b) of subsection
8 (11), and subsection (12) of section 280.071, Florida
9 Statutes, are amended to read:

10 280.071 Qualified Public Depository Oversight Board;
11 purpose; identifying representative qualified public
12 depositories; member selection; responsibilities.--A Qualified
13 Public Depository Oversight Board is created comprised of six
14 members and six alternate members who represent the interests
15 of all qualified public depositories in safeguarding the
16 integrity of the public deposits program and preventing the
17 realization of loss assessments.

18 (1) On July 31 of each year and as vacancies occur,
19 the Chief Financial Officer ~~Treasurer~~ shall initiate the
20 selection of oversight board representation in the following
21 manner:

22 (a) Categorize eligible qualified public depositories
23 into three groups according to average asset size. Eligible
24 qualified public depositories must be in compliance with all
25 requirements and shall not be suspended, disqualified,
26 withdrawn, or under an alternative participation agreement in
27 the public deposits program.

28 (b) Identify the two qualified public depositories in
29 each of the three groups that have the greatest shares of
30 contingent liability based on the average monthly balances of
31 public deposits reported pursuant to s. 280.16.

1 (c) Send notification to the six qualified public
2 depositories that have been identified.

3 (2) Each of the six representative qualified public
4 depositories shall select a member and alternate member for
5 the oversight board and give the Chief Financial Officer
6 ~~Treasurer~~ written information on the selections within 30
7 calendar days of the Chief Financial Officer's ~~Treasurer's~~
8 notice.

9 (3) If an identified qualified public depository
10 declines to select a member, does not respond within 30
11 calendar days, or becomes ineligible, the Chief Financial
12 Officer ~~Treasurer~~ shall furnish notice to the Florida Bankers
13 Association which shall select a member and alternate member
14 to represent that average asset category within 30 calendar
15 days.

16 (5) The oversight board members and alternate members
17 shall be subject to the Chief Financial Officer's ~~Treasurer's~~
18 approval.

19 (9) The oversight board shall organize, communicate,
20 and conduct meetings as follows:

21 (e) Take no official action in the absence of a
22 quorum.

23 1. A quorum shall consist of the majority of voting
24 members of the oversight board.

25 2. Each member shall have one vote.

26 3. A member shall not vote on issues directly related
27 to the qualified public depository he or she represents.

28 4. The Chief Financial Officer ~~Treasurer~~ or his or her
29 representative shall vote as a member of the oversight board
30 in the absence of a quorum.

31

1 (10) The oversight board has the power and
2 responsibility to safeguard the integrity of the public
3 deposits program and prevent the realization of loss
4 assessments by:

5 (b) Recommending approval or rejection to the Chief
6 Financial Officer ~~Treasurer~~ for exceptions that do not meet
7 established standards. These requests for exceptions may be:

8 1. Referred by the Chief Financial Officer ~~Treasurer~~;
9 or

10 2. Submitted directly by the qualified public
11 depository seeking exception.

12 (c) Issuing approvals or rejections for alternative
13 participation agreements referred by the Chief Financial
14 Officer ~~Treasurer~~.

15 (d) Reviewing program violations and recommending that
16 the Chief Financial Officer ~~Treasurer~~ impose penalties and
17 fines or issue corrective actions and administrative orders.

18 (e) Studying public deposit program areas referred by
19 the Chief Financial Officer ~~Treasurer~~.

20 (11) Official actions of the oversight board regarding
21 the establishment of standards, exception and alternate
22 participation agreement decisions, and recommendations
23 concerning violations shall be:

24 (a) Communicated to the Chief Financial Officer
25 ~~Treasurer~~ in writing.

26 (b) Subject to approval of the Chief Financial Officer
27 ~~Treasurer~~.

28 (12) The Chief Financial Officer ~~Treasurer~~ may adopt
29 rules to establish procedures and forms for oversight board
30 member and alternate member selection and oversight board
31 functions.

1 Section 298. Section 280.08, Florida Statutes, is
2 amended to read:

3 280.08 Procedure for payment of losses.--When the
4 Chief Financial Officer ~~Treasurer~~ determines that a default or
5 insolvency has occurred, he or she shall provide notice as
6 required in s. 280.085 and implement the following procedures:

7 (1) The Division of Treasury ~~Treasurer~~, in cooperation
8 with the Office of Financial Regulation of the Financial
9 Services Commission ~~Department of Banking and Finance~~ or the
10 receiver of the qualified public depository in default, shall
11 ascertain the amount of funds of each public depositor on
12 deposit at such depository and the amount of deposit insurance
13 applicable to such deposits.

14 (2) The potential loss to public depositors shall be
15 calculated by compiling claims received from such depositors.
16 The Chief Financial Officer ~~Treasurer~~ shall validate claims on
17 public deposit accounts which meet the requirements of s.
18 280.17 and are confirmed as provided in subsection (1).

19 (3)(a) The loss to public depositors shall be
20 satisfied, insofar as possible, first through any applicable
21 deposit insurance and then through demanding payment under
22 letters of credit or the sale of collateral pledged or
23 deposited by the defaulting depository. The Chief Financial
24 Officer ~~Treasurer~~ may assess qualified public depositories as
25 provided in paragraph (b) for the total loss if the demand for
26 payment or sale of collateral cannot be accomplished within 7
27 business days.

28 (b) The Chief Financial Officer ~~Treasurer~~ shall
29 provide coverage of any remaining loss by assessment against
30 the other qualified public depositories. The Chief Financial
31 Officer ~~Treasurer~~ shall determine such assessment for each

1 qualified public depository by multiplying the total amount of
2 any remaining loss to all public depositors by a percentage
3 which represents the average monthly balance of public
4 deposits held by each qualified public depository during the
5 previous 12 months divided by the total average monthly
6 balances of public deposits held by all qualified public
7 depositories, excluding the defaulting depository, during the
8 same period. The assessment calculation shall be computed to
9 six decimal places.

10 (4) Each qualified public depository shall pay its
11 assessment to the Chief Financial Officer ~~Treasurer~~ within 7
12 business days after it receives notice of the assessment. If a
13 depository fails to pay its assessment when due, the Chief
14 Financial Officer ~~Treasurer~~ shall satisfy the assessment by
15 demanding payment under letters of credit or selling
16 collateral pledged or deposited by that depository.

17 (5) The Chief Financial Officer ~~Treasurer~~ shall
18 distribute the funds to the public depositors of the qualified
19 public depository in default according to their validated
20 claims. The Chief Financial Officer ~~Treasurer~~, at his or her
21 discretion, may make partial payments to public depositors
22 that have experienced a loss of public funds which payments
23 are critical to the immediate operations of the public entity.
24 The public depositor requesting partial payment of a claim
25 shall provide the Chief Financial Officer ~~Treasurer~~ with
26 written documentation justifying the need for partial payment.

27 (6) Public depositors receiving payment under the
28 provisions of this section shall assign to the Chief Financial
29 Officer ~~Treasurer~~ any interest they may have in funds that may
30 subsequently be made available to the qualified public
31 depository in default. If the qualified public depository in

1 default or its receiver provides the funds to the Chief
2 Financial Officer ~~Treasurer~~, the Chief Financial Officer
3 ~~Treasurer~~ shall distribute the funds, plus all accrued
4 interest which has accumulated from the investment of the
5 funds, if any, to the depositories which paid assessments on
6 the same pro rata basis as the assessments were paid.

7 (7) Expenses incurred by the Chief Financial Officer
8 ~~Treasurer~~ in connection with a default or insolvency which are
9 not normally incurred by the Chief Financial Officer ~~Treasurer~~
10 in the administration of this act must be paid out of the
11 amount paid under letters of credit or proceeds from the sale
12 of collateral.

13 Section 299. Subsection (1) of section 280.085,
14 Florida Statutes, is amended to read:

15 280.085 Notice to claimants.--

16 (1) Upon determining the default or insolvency of a
17 qualified public depository, the Chief Financial Officer
18 ~~Treasurer~~ shall notify, by first-class mail, all public
19 depositories that have complied with s. 280.17 of such default
20 or insolvency. The notice shall direct all public depositories
21 having claims or demands against the Public Deposits Trust
22 Fund occasioned by the default or insolvency to file their
23 claims with the Chief Financial Officer ~~Treasurer~~ within 30
24 days after the date of the notice.

25 Section 300. Section 280.09, Florida Statutes, is
26 amended to read:

27 280.09 Public Deposits Trust Fund.--

28 (1) In order to facilitate the administration of this
29 chapter, there is created the Public Deposits Trust Fund,
30 hereafter in this section designated "the fund." The proceeds
31 from the sale of securities or draw on letters of credit held

1 as collateral or from any assessment pursuant to s. 280.08
2 shall be deposited into the fund. Any administrative penalty
3 collected pursuant to this chapter shall be deposited into the
4 Treasury ~~Treasurer's~~ Administrative and Investment Trust Fund.

5 (2) The Chief Financial Officer ~~Treasurer~~ is
6 authorized to pay any losses to public depositors from the
7 fund, and there are hereby appropriated from the fund such
8 sums as may be necessary from time to time to pay the losses.
9 The term "losses," for purposes of this chapter, shall also
10 include losses of interest or other accumulations to the
11 public depositor as a result of penalties for early withdrawal
12 required by Depository Institution Deregulatory Commission
13 Regulations or applicable successor federal laws or
14 regulations because of suspension or disqualification of a
15 qualified public depository by the Chief Financial Officer
16 ~~Treasurer~~ pursuant to s. 280.05 or because of withdrawal from
17 the public deposits program pursuant to s. 280.11. In that
18 event, the Chief Financial Officer ~~Treasurer~~ is authorized to
19 assess against the suspended, disqualified, or withdrawing
20 public depository, in addition to any amount authorized by any
21 other provision of this chapter, an administrative penalty
22 equal to the amount of the early withdrawal penalty and to pay
23 that amount over to the public depositor as reimbursement for
24 such loss. Any money in the fund estimated not to be needed
25 for immediate cash requirements shall be invested pursuant to
26 s. 17.61 ~~s. 18.125~~.

27 Section 301. Paragraphs (d) and (e) of subsection (1)
28 and subsections (2), (3), (4), (5), and (6) of section 280.10,
29 Florida Statutes, are amended to read:

30 280.10 Effect of merger, acquisition, or
31 consolidation; change of name or address.--

1 (1) When a qualified public depository is merged into,
2 acquired by, or consolidated with a bank, savings bank, or
3 savings association that is not a qualified public depository:

4 (d) The resulting institution shall, within 90
5 calendar days after the effective date of the merger,
6 acquisition, or consolidation, deliver to the Chief Financial
7 Officer ~~Treasurer~~:

8 1. Documentation in its name as required for
9 participation in the public deposits program; or

10 2. Written notice of intent to withdraw from the
11 program as provided in s. 280.11 and a proposed effective date
12 of withdrawal which shall be within 180 days after the
13 effective date of the acquisition, merger, or consolidation of
14 the former institution.

15 (e) If the resulting institution does not meet
16 qualifications to become a qualified public depository or does
17 not submit required documentation within 90 calendar days
18 after the effective date of the merger, acquisition, or
19 consolidation, the Chief Financial Officer ~~Treasurer~~ shall
20 initiate mandatory withdrawal actions as provided in s. 280.11
21 and shall set an effective date of withdrawal that is within
22 180 days after the effective date of the acquisition, merger,
23 or consolidation of the former institution.

24 (2) When a qualified public depository disposes of any
25 of its Florida public deposits or collateral securing such
26 deposits in a manner not covered by subsection (1), the
27 qualified public depository originally holding the public
28 deposits shall be responsible for:

29 (a) Ensuring the institution receiving such public
30 deposits becomes a qualified public depository and meets
31

1 collateral requirements with the Chief Financial Officer
2 ~~Treasurer~~ as part of the transaction.

3 (b) Notifying the Chief Financial Officer ~~Treasurer~~
4 within 30 calendar days after the final approval by the
5 appropriate regulator.

6
7 A qualified public depository that fails to meet such
8 responsibilities shall continue to collateralize and report
9 such public deposits until the receiving institution becomes a
10 qualified public depository and collateralizes the deposits or
11 the deposits are returned to the governmental unit.

12 (3) The qualified public depository shall notify the
13 Chief Financial Officer ~~Treasurer~~ of any acquisition or merger
14 within 30 calendar days after the final approval of the
15 acquisition or merger by its appropriate regulator.

16 (4) Collateral subject to a collateral agreement may
17 not be released by the Chief Financial Officer ~~Treasurer~~ or
18 the custodian until the assumed liability is evidenced by the
19 deposit of collateral pursuant to the collateral agreement of
20 the successor entity. The reporting requirement and pledge of
21 collateral will remain in force until the Chief Financial
22 Officer ~~Treasurer~~ determines that the liability no longer
23 exists. The surviving or new qualified public depository
24 shall be responsible and liable for all of the liabilities and
25 obligations of each qualified public depository merged with or
26 acquired by it.

27 (5) Each qualified public depository shall report any
28 change of name and address to the Chief Financial Officer
29 ~~Treasurer~~ on a form provided by the Chief Financial Officer
30 ~~Treasurer~~ regardless of whether the name change is a result of
31 an acquisition, merger, or consolidation. Notification of such

1 change must be made within 30 calendar days after the
2 effective date of the change.

3 (6) The Chief Financial Officer ~~Treasurer~~ shall adopt
4 rules establishing procedures for mergers, acquisitions,
5 consolidations, and changes in name and address, providing
6 forms, and clarifying terms.

7 Section 302. Section 280.11, Florida Statutes, is
8 amended to read:

9 280.11 Withdrawal from public deposits program; return
10 of pledged collateral.--

11 (1) A qualified public depository may withdraw from
12 the public deposits program by giving written notice to the
13 Chief Financial Officer ~~Treasurer~~. The contingent liability,
14 required collateral, and reporting requirements of the
15 depository withdrawing from the program shall continue for a
16 period of 12 months after the effective date of the
17 withdrawal, except that the filing of reports may no longer be
18 required when the average monthly balance of public deposits
19 is equal to zero. Notice of withdrawal shall be mailed or
20 delivered in sufficient time to be received by the Chief
21 Financial Officer ~~Treasurer~~ at least 30 days before the
22 effective date of withdrawal. The Chief Financial Officer
23 ~~Treasurer~~ shall timely publish the withdrawal notice in the
24 Florida Administrative Weekly which shall constitute notice to
25 all depositors. The withdrawing depository shall not receive
26 or retain public deposits after the effective date of the
27 withdrawal until such time as it again becomes a qualified
28 public depository. The Chief Financial Officer ~~Treasurer~~
29 shall, upon request, return to the depository that portion of
30 the collateral pledged that is in excess of the required
31 collateral as reported on the current public depository

1 monthly report. Losses of interest or other accumulations, if
2 any, because of withdrawal under this section shall be
3 assessed and paid as provided in s. 280.09.

4 (2) A qualified public depository which has been
5 disqualified pursuant to s. 280.051 shall not receive or
6 retain public deposits after the effective date of the
7 disqualification. Notice of and procedures for
8 disqualification shall be made in accordance with ss. 280.052
9 and 280.053. The Chief Financial Officer ~~Treasurer~~ shall, upon
10 request, return to the depository that portion of the
11 collateral pledged that is in excess of the required
12 collateral as reported on the current public depository
13 monthly report. Losses of interest or other accumulation, if
14 any, because of disqualification shall be paid as provided in
15 s. 280.09(2).

16 (3) A qualified public depository which is required to
17 withdraw from the public deposits program pursuant to s.
18 280.05(1)(b) shall not receive or retain public deposits after
19 the effective date of withdrawal. The contingent liability,
20 required collateral, and reporting requirements of the
21 withdrawing depository shall continue until the effective date
22 of withdrawal. Notice of withdrawal (order of discontinuance)
23 from the Chief Financial Officer ~~Treasurer~~ shall be mailed to
24 the qualified public depository by registered or certified
25 mail. Penalties incurred because of withdrawal from the public
26 deposits program shall be the responsibility of the
27 withdrawing depository.

28 Section 303. Subsection (2), paragraphs (a), (b), (d),
29 and (f) of subsection (5), and subsections (6), (7), and (8)
30 of section 280.13, Florida Statutes, are amended to read:

31 280.13 Eligible collateral.--

1 (2) In addition to the securities listed in subsection
2 (1), the Chief Financial Officer ~~Treasurer~~ may, in his or her
3 discretion, allow the pledge of the following types of
4 securities. The Chief Financial Officer ~~Treasurer~~ shall, by
5 rule, define any restrictions, specific criteria, or
6 circumstances for which these instruments will be acceptable.

7 (a) Securities of, or other interests in, any open-end
8 management investment company registered under the Investment
9 Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended
10 from time to time, provided the portfolio of such investment
11 company is limited to direct obligations of the United States
12 Government and to repurchase agreements fully collateralized
13 by such direct obligations of the United States Government and
14 provided such investment company takes delivery of such
15 collateral either directly or through an authorized custodian.

16 (b) Collateralized Mortgage Obligations.

17 (c) Real Estate Mortgage Investment Conduits.

18 (5) Letters of credit issued by a Federal Home Loan
19 Bank are eligible as collateral under this section provided
20 that:

21 (a) The letter of credit has been delivered to the
22 Chief Financial Officer ~~Treasurer~~ in the standard format
23 approved by the Chief Financial Officer ~~Treasurer~~.

24 (b) The letter of credit meets required conditions of:

25 1. Being irrevocable.

26 2. Being clean and unconditional and containing a
27 statement that it is not subject to any agreement, condition,
28 or qualification outside of the letter of credit and providing
29 that a beneficiary need only present the original letter of
30 credit with any amendments and the demand form to promptly
31 obtain funds, and that no other document need be presented.

1 3. Being issued, presentable, and payable at a Federal
2 Home Loan Bank in United States dollars. Presentation may be
3 made by the beneficiary submitting the original letter of
4 credit, including any amendments, and the demand in writing,
5 by overnight delivery.

6 4. Containing a statement that identifies and defines
7 the Chief Financial Officer ~~Treasurer~~ as beneficiary.

8 5. Containing an issue date and a date of expiration.

9 6. Containing a term of at least 1 year and an
10 evergreen clause that provides at least 60 days written notice
11 to the beneficiary prior to expiration date for nonrenewal.

12 7. Containing a statement that it is subject to and
13 governed by the laws of the State of Florida and that, in the
14 event of any conflict with other laws, the laws of the State
15 of Florida will control.

16 8. Containing a statement that the letter of credit is
17 an obligation of the Federal Home Loan Bank and is in no way
18 contingent upon reimbursement.

19 9. Any other provision found necessary under the
20 Uniform Commercial Code--Letters of Credit.

21 (d) The Federal Home Loan Bank issuing the letter of
22 credit agrees to provide confirmation upon request from the
23 Chief Financial Officer ~~Treasurer~~. Such confirmation shall be
24 provided within 15 working days after the request, in a format
25 prescribed by the Chief Financial Officer ~~Treasurer~~, and shall
26 require no identification other than the qualified public
27 depository's name and location.

28 (f) The qualified public depository, if notified by
29 the Chief Financial Officer ~~Treasurer~~, shall not be allowed to
30 use letters of credit if the Federal Home Loan Bank fails to
31 pay a draw request as provided for in the letters of credit or

1 fails to properly complete a confirmation of such letters of
2 credit.

3 (6) Cash held by the Chief Financial Officer ~~Treasurer~~
4 in the Treasury Cash Deposit Trust Fund or by a custodian is
5 eligible as collateral under this section. Interest earned on
6 cash deposits that is in excess of required collateral shall
7 be paid to the qualified public depository upon request.

8 (7) The Chief Financial Officer ~~Treasurer~~ may
9 disapprove any security or letter of credit that does not meet
10 the requirements of this section or any rule adopted pursuant
11 to this section or any security for which no current market
12 price can be obtained from a nationally recognized source
13 deemed acceptable to the Chief Financial Officer ~~Treasurer~~ or
14 cannot be converted to cash.

15 (8) The Chief Financial Officer ~~Treasurer~~ shall adopt
16 rules defining restrictions and special requirements for
17 eligible collateral and clarifying terms.

18 Section 304. Paragraphs (a), (b), (d), and (e) of
19 subsection (1) and subsection (3) of section 280.16, Florida
20 Statutes, are amended to read:

21 280.16 Requirements of qualified public depositories;
22 confidentiality.--

23 (1) In addition to any other requirements specified in
24 this chapter, qualified public depositories shall:

25 (a) Take the following actions for each public deposit
26 account:

27 1. Identify the account as a "Florida public deposit"
28 on the deposit account record with the name of the public
29 depositor or provide a unique code for the account for such
30 designation.

31

1 2. When the form prescribed by the Chief Financial
2 Officer ~~Treasurer~~ for acknowledgment of receipt of each public
3 deposit account is presented to the qualified public
4 depository by the public depositor opening an account, the
5 qualified public depository shall execute and return the
6 completed form to the public depositor.

7 3. When the acknowledgment of receipt form is
8 presented to the qualified public depository by the public
9 depositor due to a change of account name, account number, or
10 qualified public depository name on an existing public deposit
11 account, the qualified public depository shall execute and
12 return the completed form to the public depositor within 45
13 calendar days after such presentation.

14 4. When the acknowledgment of receipt form is
15 presented to the qualified public depository by the public
16 depositor on an account existing before July 1, 1998, the
17 qualified public depository shall execute and return the
18 completed form to the public depositor within 45 calendar days
19 after such presentation.

20 (b) Within 15 days after the end of each calendar
21 month, or when requested by the Chief Financial Officer
22 ~~Treasurer~~, submit to the Chief Financial Officer ~~Treasurer~~ a
23 written report, under oath, indicating the average daily
24 balance of all public deposits held by it during the reported
25 month, required collateral, a detailed schedule of all
26 securities pledged as collateral, selected financial
27 information, and any other information that the Chief
28 Financial Officer ~~Treasurer~~ determines necessary to administer
29 this chapter.

30 (d) Submit to the Chief Financial Officer ~~Treasurer~~
31 annually, not later than November 30, a report of all public

1 deposits held for the credit of all public depositors at the
2 close of business on September 30. Such annual report shall
3 consist of public deposit information in a report format
4 prescribed by the Chief Financial Officer ~~Treasurer~~. The
5 manner of required filing may be as a signed writing or
6 electronic data transmission, at the discretion of the
7 Treasurer.

8 (e) Submit to the Chief Financial Officer ~~Treasurer~~
9 not later than the date required to be filed with the federal
10 agency:

11 1. A copy of the quarterly Consolidated Reports of
12 Condition and Income, and any amended reports, required by the
13 Federal Deposit Insurance Act, 12 U.S.C. ss. 1811 et seq., if
14 such depository is a bank; or

15 2. A copy of the Thrift Financial Report, and any
16 amended reports, required to be filed with the Office of
17 Thrift Supervision if such depository is a savings and loan
18 association.

19 (3) Any information contained in a report of a
20 qualified public depository required under this chapter or any
21 rule adopted under this chapter, together with any information
22 required of a financial institution that is not a qualified
23 public depository, shall, if made confidential by any law of
24 the United States or of this state, be considered confidential
25 and exempt from the provisions of s. 119.07(1) and not subject
26 to dissemination to anyone other than the Chief Financial
27 Officer ~~Treasurer~~ under the provisions of this chapter;
28 however, it is the responsibility of each qualified public
29 depository and each financial institution from which
30 information is required to inform the Chief Financial Officer
31 ~~Treasurer~~ of information that is confidential and the law

1 providing for the confidentiality of that information, and the
2 Chief Financial Officer ~~Treasurer~~ does not have a duty to
3 inquire into whether information is confidential.

4 Section 305. Paragraphs (b) and (c) of subsection (2),
5 subsections (3), (4), and (6), and paragraph (c) of subsection
6 (7) of section 280.17, Florida Statutes, are amended to read:

7 280.17 Requirements for public depositors; notice to
8 public depositors and governmental units; loss of
9 protection.--In addition to any other requirement specified in
10 this chapter, public depositors shall comply with the
11 following:

12 (2) Beginning July 1, 1998, each public depositor
13 shall take the following actions for each public deposit
14 account:

15 (b) Execute a form prescribed by the Chief Financial
16 Officer ~~Treasurer~~ for identification of each public deposit
17 account and obtain acknowledgment of receipt on the form from
18 the qualified public depository at the time of opening the
19 account. Such public deposit identification and acknowledgment
20 form shall be replaced with a current form as required in
21 subsection (3). A public deposit account existing before July
22 1, 1998, must have a form completed before September 30, 1998.

23 (c) Maintain the current public deposit identification
24 and acknowledgment form as a valuable record. Such form is
25 mandatory for filing a claim with the Chief Financial Officer
26 ~~Treasurer~~ upon default or insolvency of a qualified public
27 depository.

28 (3) Each public depositor shall review the Chief
29 Financial Officer's ~~Treasurer's~~ published list of qualified
30 public depositories and ascertain the status of depositories
31

1 used. A public depositor shall, for status changes of
2 depositories:

3 (a) Execute a replacement public deposit
4 identification and acknowledgment form, as described in
5 subsection (2), for each public deposit account when there is
6 a merger, acquisition, name change, or other event which
7 changes the account name, account number, or name of the
8 qualified public depository.

9 (b) Move and close public deposit accounts when an
10 institution is not included in the authorized list of
11 qualified public depositories or is shown as withdrawing.

12 (4) Whenever public deposits are in a qualified public
13 depository that has been declared to be in default or
14 insolvent, each public depositor shall:

15 (a) Notify the Chief Financial Officer ~~Treasurer~~
16 immediately by telecommunication after receiving notice of the
17 default or insolvency from the receiver of the depository with
18 subsequent written confirmation and a copy of the notice.

19 (b) Submit to the Chief Financial Officer ~~Treasurer~~
20 for each public deposit, within 30 days after the date of
21 official notification from the Chief Financial Officer
22 ~~Treasurer~~, the following:

23 1. A claim form and agreement, as prescribed by the
24 Chief Financial Officer ~~Treasurer~~, executed under oath,
25 accompanied by proof of authority to execute the form on
26 behalf of the public depositor.

27 2. A completed public deposit identification and
28 acknowledgment form, as described in subsection (2).

29 3. Evidence of the insurance afforded the deposit
30 pursuant to the Federal Deposit Insurance Act.

31

1 (6) Each public depositor shall submit, not later than
2 November 30, an annual report to the Chief Financial Officer
3 ~~Treasurer~~ which shall include:

4 (a) The official name, mailing address, and federal
5 employer identification number of the public depositor.

6 (b) Verification that confirmation of public deposit
7 information as of September 30, as described in subsection
8 (5), has been completed.

9 (c) Public deposit information in a report format
10 prescribed by the Chief Financial Officer ~~Treasurer~~. The
11 manner of required filing may be as a signed writing or
12 electronic data transmission, at the discretion of the Chief
13 Financial Officer ~~Treasurer~~.

14 (d) Confirmation that a current public deposit
15 identification and acknowledgment form, as described in
16 subsection (2), has been completed for each public deposit
17 account and is in the possession of the public depositor.

18 (7) Notices relating to the public deposits program
19 shall be mailed to public depositors and governmental units
20 from a list developed annually from:

21 (c) Governmental units established during the year
22 that filed an annual report as a new governmental unit or
23 otherwise furnished in writing to the Chief Financial Officer
24 ~~Treasurer~~ its official name, address, and federal employer
25 identification number.

26 Section 306. Subsection (2) of section 280.18, Florida
27 Statutes, is amended to read:

28 280.18 Protection of public depositors; liability of
29 the state.--

30 (2) The liability of the state, the Chief Financial
31 Officer ~~Treasurer~~, or any state agency, or any employee or

1 agent of the state, the Chief Financial Officer ~~Treasurer~~, or
2 a state agency, for any action taken in the performance of
3 their powers and duties under this chapter shall be limited to
4 that as a public depositor.

5 Section 307. Section 280.19, Florida Statutes, is
6 amended to read:

7 280.19 Rules.--The Chief Financial Officer ~~Treasurer~~
8 shall adopt rules pursuant to ss. 120.536(1) and 120.54 to
9 administer the provisions of this chapter.

10 Section 308. Paragraph (a) of subsection (2) of
11 section 282.1095, Florida Statutes, is amended to read:

12 282.1095 State agency law enforcement radio system.--

13 (2)(a) The Joint Task Force on State Agency Law
14 Enforcement Communications shall consist of eight members, as
15 follows:

16 1. A representative of the Division of Alcoholic
17 Beverages and Tobacco of the Department of Business and
18 Professional Regulation who shall be appointed by the
19 secretary of the department.

20 2. A representative of the Division of Florida Highway
21 Patrol of the Department of Highway Safety and Motor Vehicles
22 who shall be appointed by the executive director of the
23 department.

24 3. A representative of the Department of Law
25 Enforcement who shall be appointed by the executive director
26 of the department.

27 4. A representative of the Fish and Wildlife
28 Conservation Commission who shall be appointed by the
29 executive director of the commission.

30
31

1 5. A representative of the Division of Law Enforcement
2 of the Department of Environmental Protection who shall be
3 appointed by the secretary of the department.

4 6. A representative of the Department of Corrections
5 who shall be appointed by the secretary of the department.

6 7. A representative of the Division of State Fire
7 Marshal of the Department of Financial Services ~~Insurance~~ who
8 shall be appointed by the State Fire Marshal.

9 8. A representative of the Department of
10 Transportation who shall be appointed by the secretary of the
11 department.

12 Section 309. Subsections (2) and (3) of section
13 284.02, Florida Statutes, are amended to read:

14 284.02 Payment of premiums by each agency; handling of
15 funds; payment of losses and expenses.--

16 (2) All premiums paid into the fund and all moneys
17 received by the fund from investment or any other source
18 pursuant to said program shall be held by the Department of
19 Financial Services ~~Insurance~~ and used for the purpose of
20 paying losses, expenses incurred in adjustment of losses,
21 premiums for reinsurance, and operating expenses.

22 (3) The Department of Financial Services ~~Insurance~~ is
23 authorized to employ a director of the fund and necessary
24 administrative and clerical personnel, actuaries, consultants,
25 and adjusters to maintain, operate, and administer the fund
26 and to underwrite all certificates of insurance issued by the
27 fund. All salaries and expenses of administration and
28 operation shall be paid from the fund.

29 Section 310. Section 284.04, Florida Statutes, is
30 amended to read:

31

1 284.04 Notice and information required by Department
2 of Financial Services ~~Insurance~~ of all newly erected or
3 acquired state property subject to insurance.--The Department
4 of Management Services and all agencies in charge of state
5 property shall notify the Department of Financial Services
6 ~~Insurance~~ of all newly erected or acquired property subject to
7 coverage as soon as erected or acquired, giving its value,
8 type of construction, location, whether inside or outside of
9 corporate limits, occupancy, and any other information the
10 Department of Financial Services ~~Insurance~~ may require in
11 connection with such property. Such department or agency
12 shall also notify the Department of Financial Services
13 ~~Insurance~~ immediately of any change in value or occupancy of
14 any property covered by the fund. Unless the above data is
15 submitted in writing within a reasonable time following such
16 erection, acquisition, or change, the Department of Financial
17 Services ~~Insurance~~ shall provide insurance coverage to the
18 extent shown by the last notification in writing to the fund
19 or in accordance with the last valuation shown by fund
20 records. In case of disagreement between the Department of
21 Financial Services ~~Insurance~~ and the agency or person in
22 charge of any covered state property as to its true value, the
23 amount of the insurance to be carried thereon, the proper
24 premium rate or rates, or amount of loss settlement, the
25 matter in disagreement shall be determined by the Department
26 of Management Services.

27 Section 311. Section 284.05, Florida Statutes, is
28 amended to read:

29 284.05 Inspection of insured state property.--The
30 Department of Financial Services ~~Insurance~~ shall inspect all
31 permanent buildings insured by the State Risk Management Trust

1 Fund, and whenever conditions are found to exist which, in the
2 opinion of the Department of Financial Services Insurance, are
3 hazardous from the standpoint of destruction by fire or other
4 loss, the Department of Financial Services Insurance may order
5 the same repaired or remedied, and the agency, board, or
6 person in charge of such property is required to have such
7 dangerous conditions immediately repaired or remedied upon
8 written notice from the Department of Financial Services
9 ~~Insurance~~ of such hazardous conditions. Such amounts as may
10 be necessary to comply with such notice or notices shall be
11 paid by the Department of Management Services or by the
12 agency, board, or person in charge of such property out of any
13 moneys appropriated for the maintenance of the respective
14 agency or for the repairs or permanent improvement of such
15 properties or from any incidental or contingent funds they may
16 have on hand. In the event of a disagreement between the
17 Department of Financial Services Insurance and the agency,
18 board, or person having charge of such property as to the
19 necessity of the repairs or remedies ordered, the matter in
20 disagreement shall be determined by the Department of
21 Management Services.

22 Section 312. Section 284.06, Florida Statutes, is
23 amended to read:

24 284.06 Annual report to Governor.--The Department of
25 Financial Services Insurance shall report annually to the
26 Governor the investigations which have been made and the
27 actions which have been taken to decrease the fire hazard of
28 the various insurable properties of the state, together with
29 its recommendations as to further safeguards and improvements.

30 Section 313. Section 284.08, Florida Statutes, is
31 amended to read:

1 284.08 Reinsurance on excess coverage and approval by
2 Department of Management Services.--The Department of
3 Financial Services Insurance shall determine what excess
4 coverage is necessary and may purchase reinsurance thereon
5 upon approval by the Department of Management Services.

6 Section 314. Section 284.14, Florida Statutes, is
7 amended to read:

8 284.14 State Risk Management Trust Fund; leasehold
9 interest.--In the event the state or any department or agency
10 thereof has acquired or hereafter acquires a leasehold
11 interest in any improved real property and by the terms and
12 provisions of said lease it is obligated to insure such
13 premises against loss by fire or other hazard to such
14 premises, it shall insure such premises in the State Risk
15 Management Trust Fund as required by the terms of said lease
16 or as required by the provisions of this chapter. No state
17 agency shall enter into or acquire any such leasehold interest
18 until the coverages required to be maintained by the
19 provisions of the lease are approved in writing by the
20 Department of Financial Services Insurance.

21 Section 315. Section 284.17, Florida Statutes, is
22 amended to read:

23 284.17 Rules.--The Department of Financial Services
24 ~~Insurance~~ has authority to adopt rules pursuant to ss.
25 120.536(1) and 120.54 to implement the provisions of this
26 chapter.

27 Section 316. Section 284.30, Florida Statutes, is
28 amended to read:

29 284.30 State Risk Management Trust Fund; coverages to
30 be provided.--A state self-insurance fund, designated as the
31 "State Risk Management Trust Fund," is created to be set up by

1 the Department of Financial Services Insurance and
2 administered with a program of risk management, which fund is
3 to provide insurance, as authorized by s. 284.33, for workers'
4 compensation, general liability, fleet automotive liability,
5 federal civil rights actions under 42 U.S.C. s. 1983 or
6 similar federal statutes, and court-awarded attorney's fees in
7 other proceedings against the state except for such awards in
8 eminent domain or for inverse condemnation or for awards by
9 the Public Employees Relations Commission. A party to a suit
10 in any court, to be entitled to have his or her attorney's
11 fees paid by the state or any of its agencies, must serve a
12 copy of the pleading claiming the fees on the Department of
13 Financial Services Insurance; and thereafter the department
14 shall be entitled to participate with the agency in the
15 defense of the suit and any appeal thereof with respect to
16 such fees.

17 Section 317. Section 284.31, Florida Statutes, is
18 amended to read:

19 284.31 Scope and types of coverages; separate
20 accounts.--The Insurance Risk Management Trust Fund shall,
21 unless specifically excluded by the Department of Financial
22 Services Insurance, cover all departments of the State of
23 Florida and their employees, agents, and volunteers and shall
24 provide separate accounts for workers' compensation, general
25 liability, fleet automotive liability, federal civil rights
26 actions under 42 U.S.C. s. 1983 or similar federal statutes,
27 and court-awarded attorney's fees in other proceedings against
28 the state except for such awards in eminent domain or for
29 inverse condemnation or for awards by the Public Employees
30 Relations Commission. Unless specifically excluded by the
31 Department of Financial Services Insurance, the insurance risk

1 management trust fund shall provide fleet automotive liability
2 coverage to motor vehicles titled to the state, or to any
3 department of the state, when such motor vehicles are used by
4 community transportation coordinators performing, under
5 contract to the appropriate department of the state, services
6 for the transportation disadvantaged under part I of chapter
7 427. Such fleet automotive liability coverage shall be primary
8 and shall be subject to the provisions of s. 768.28 and parts
9 II and III of chapter 284, and applicable rules adopted
10 thereunder, and the terms and conditions of the certificate of
11 coverage issued by the Department of Financial Services
12 ~~Insurance~~.

13 Section 318. Section 284.32, Florida Statutes, is
14 amended to read:

15 284.32 Department of Financial Services ~~Insurance~~ to
16 implement and consolidate.--The Department of Financial
17 Services ~~Insurance~~ is hereby authorized to effect a
18 consolidation and combination of all insurance coverages
19 provided herein into one insurance program in accordance with
20 the provisions of part I of chapter 287.

21 Section 319. Subsection (1) of section 284.33, Florida
22 Statutes, is amended to read:

23 284.33 Purchase of insurance, reinsurance, and
24 services.--

25 (1) The Department of Financial Services ~~Insurance~~ is
26 authorized to provide insurance, specific excess insurance,
27 and aggregate excess insurance through the Department of
28 Management Services, pursuant to the provisions of part I of
29 chapter 287, as necessary to provide insurance coverages
30 authorized by this part, consistent with market availability.
31 However, the Department of Financial Services ~~Insurance~~ may

1 directly purchase annuities by using a structured settlement
2 insurance consulting firm selected by the department to assist
3 in the settlement of claims being handled by the Division of
4 Risk Management. The selection of the structured settlement
5 insurance services consultant shall be made by using
6 competitive sealed proposals. The consulting firm shall act as
7 an agent of record for the department in procuring the best
8 annuity products available to facilitate structured settlement
9 of claims, considering price, insurer financial strength, and
10 the best interests of the state risk management program.
11 Purchase of annuities by the department using a structured
12 settlement method is excepted from competitive sealed bidding
13 or proposal requirements. The Department of Financial Services
14 ~~Insurance~~ is further authorized to purchase such risk
15 management services, including, but not limited to, risk and
16 claims control; safety management; and legal, investigative,
17 and adjustment services, as may be required and pay claims.
18 The department may contract with a service organization for
19 such services and advance money to such service organization
20 for deposit in a special checking account for paying claims
21 made against the state under the provisions of this part. The
22 special checking account shall be maintained in this state in
23 a bank or savings association organized under the laws of this
24 state or of the United States. The department may replenish
25 such account as often as necessary upon the presentation by
26 the service organization of documentation for payments of
27 claims equal to the amount of the requested reimbursement.

28 Section 320. Section 284.34, Florida Statutes, is
29 amended to read:
30 284.34 Professional medical liability of the
31 university boards of trustees and nuclear energy liability

1 excluded.--Unless specifically authorized by the Department of
2 Financial Services Insurance, no coverages shall be provided
3 by this fund for professional medical liability insurance for
4 the university boards of trustees or the physicians, officers,
5 employees, or agents of any board or for liability related to
6 nuclear energy which is ordinarily subject to the standard
7 nuclear energy liability exclusion of conventional liability
8 insurance policies. This section does not affect the
9 self-insurance programs of the university boards of trustees
10 established pursuant to s. 1004.24.

11 Section 321. Section 284.35, Florida Statutes, is
12 amended to read:

13 284.35 Administrative personnel; expenses to be paid
14 from fund.--The Department of Financial Services Insurance is
15 hereby authorized, in accordance with current budget and
16 personnel requirements, to employ necessary administrative and
17 clerical personnel and actuarial consultants, as necessary to
18 maintain, operate, and administer the fund. All salaries and
19 expenses of administration and operation shall be paid from
20 the fund.

21 Section 322. Section 284.37, Florida Statutes, is
22 amended to read:

23 284.37 Premium and investment accruals used for fund
24 purposes.--All premiums paid into the fund and all moneys from
25 investments or any other source pursuant to said program shall
26 be held by the Department of Financial Services Insurance and
27 used for the purpose of paying losses, premiums for insurance,
28 risk and claims management services, and operating expenses.

29 Section 323. Section 284.385, Florida Statutes, is
30 amended to read:

31

1 284.385 Reporting and handling of claims.--All
2 departments covered by the State Risk Management Trust Fund
3 under this part shall immediately report all known or
4 potential claims to the Department of Financial Services
5 ~~Insurance~~ for handling, except employment complaints which
6 have not been filed with the Florida Human Relations
7 Commission, Equal Employment Opportunity Commission, or any
8 similar agency. When deemed necessary, the Department of
9 Financial Services ~~Insurance~~ shall assign or reassign the
10 claim to counsel. The assigned counsel shall report regularly
11 to the Department of Financial Services ~~Insurance~~ or to the
12 covered department on the status of any such claims or
13 litigation as required by the Department of Financial Services
14 ~~Insurance~~. No such claim shall be compromised or settled for
15 monetary compensation without the prior approval of the
16 Department of Financial Services ~~Insurance~~ and prior
17 notification to the covered department. All departments shall
18 cooperate with the Department of Financial Services ~~Insurance~~
19 in its handling of claims. The Department of Financial
20 Services and Insurance, the Department of Management Services,
21 ~~and the Department of Banking and Finance~~, with the
22 cooperation of the state attorneys and the clerks of the
23 courts, shall develop a system to coordinate the exchange of
24 information concerning claims for and against the state, its
25 agencies, and its subdivisions, to assist in collection of
26 amounts due to them. The covered department shall have the
27 responsibility for the settlement of any claim for injunctive
28 or affirmative relief under 42 U.S.C. s. 1983 or similar
29 federal or state statutes. The payment of a settlement or
30 judgment for any claim covered and reported under this part
31 shall be made only from the State Risk Management Trust Fund.

1 Section 324. Section 284.39, Florida Statutes, is
2 amended to read:

3 284.39 Adoption ~~Promulgation~~ of rules.--The Department
4 of Financial Services may adopt ~~Insurance is authorized to~~
5 ~~promulgate~~ rules ~~and regulations~~ for the proper management and
6 maintenance of the fund.

7 Section 325. Subsections (1) and (2) of section
8 284.40, Florida Statutes, are amended to read:

9 284.40 Division of Risk Management.--

10 (1) It shall be the responsibility of the Division of
11 Risk Management of the Department of Financial Services
12 ~~Insurance~~ to administer this part and the provisions of s.
13 287.131.

14 (2) The claim files maintained by the Division of Risk
15 Management shall be confidential, shall be only for the usage
16 by the Department of Financial Services ~~Insurance~~ in
17 fulfilling its duties and responsibilities under this part,
18 and shall be exempt from the provisions of s. 119.07(1).

19 Section 326. Subsection (1) of section 284.41, Florida
20 Statutes, is amended to read:

21 284.41 Transfer of personnel and funds to the Division
22 of Risk Management.--

23 (1) All personnel and funds otherwise allocated to the
24 Department of Financial Services ~~Insurance~~ for this purpose
25 are transferred to the Division of Risk Management.

26 Section 327. Subsection (1) of section 284.42, Florida
27 Statutes, is amended to read:

28 284.42 Reports on state insurance program.--

29 (1) The Department of Financial Services ~~Insurance~~,
30 with the Department of Management Services, shall make an
31

1 analysis of the state insurance program annually, which shall
2 include:

3 (a) Complete underwriting information as to the nature
4 of the risks accepted for self-insurance and those risks that
5 are transferred to the insurance market.

6 (b) The funds allocated to the Florida Casualty Risk
7 Management Trust Fund and premiums paid for insurance through
8 the market.

9 (c) The method of handling legal matters and the cost
10 allocated.

11 (d) The method and cost of handling inspection and
12 engineering of risks.

13 (e) The cost of risk management service purchased.

14 (f) The cost of managing the State Insurance Program
15 by the Department of Financial Services ~~Insurance~~ and the
16 Department of Management Services.

17 Section 328. Subsections (4) and (7) of section
18 284.44, Florida Statutes, are amended to read:

19 284.44 Salary indemnification costs of state
20 agencies.--

21 (4) For the purpose of administering this section, the
22 Division of Risk Management of the Department of Financial
23 Services ~~Insurance~~ shall continue to pay all claims, but shall
24 be periodically reimbursed from funds of state agencies for
25 initial salary indemnification costs for which they are
26 responsible.

27 (7) If a state agency fails to pay casualty increase
28 premiums or salary indemnification reimbursements within 30
29 days after being billed, the Division of Risk Management shall
30 advise the Chief Financial Officer ~~Comptroller~~. After
31 verifying the accuracy of the billing, the Chief Financial

1 Officer ~~Comptroller~~ shall transfer the appropriate amount from
2 any available funds of the delinquent state agency to the
3 State Risk Management Trust Fund.

4 Section 329. Subsection (1) of section 284.50, Florida
5 Statutes, is amended to read:

6 284.50 Loss prevention program; safety coordinators;
7 Interagency Advisory Council on Loss Prevention; employee
8 recognition program.--

9 (1) The head of each department of state government,
10 except the Legislature, shall designate a safety coordinator.
11 Such safety coordinator must be an employee of the department
12 and must hold a position which has responsibilities comparable
13 to those of an employee in the Senior Management System. The
14 Department of Financial Services ~~Insurance~~ shall provide
15 appropriate training to the safety coordinators to permit them
16 to effectively perform their duties within their respective
17 departments. Each safety coordinator shall, at the direction
18 of his or her department head:

19 (a) Develop and implement the loss prevention program,
20 a comprehensive departmental safety program which shall
21 include a statement of safety policy and responsibility.

22 (b) Provide for regular and periodic facility and
23 equipment inspections.

24 (c) Investigate job-related employee accidents of his
25 or her department.

26 (d) Establish a program to promote increased safety
27 awareness among employees.

28 Section 330. Subsection (8) and paragraph (c) of
29 subsection (15) of section 287.042, Florida Statutes, are
30 amended to read:

31

1 287.042 Powers, duties, and functions.--The department
2 shall have the following powers, duties, and functions:

3 (8) To provide any commodity and contractual service
4 purchasing rules to the Chief Financial Officer ~~Comptroller~~
5 and all agencies through an electronic medium or other means.
6 Agencies may not approve any account or request any payment of
7 any account for the purchase of any commodity or the
8 procurement of any contractual service covered by a purchasing
9 or contractual service rule except as authorized therein. The
10 department shall furnish copies of rules adopted by the
11 department to any county, municipality, or other local public
12 agency requesting them.

13 (15)

14 (c) Agencies that sign such joint agreements are
15 financially obligated for their portion of the agreed-upon
16 funds. If any agency becomes more than 90 days delinquent in
17 paying such funds, the department shall certify to the Chief
18 Financial Officer ~~Comptroller~~ the amount due, and the Chief
19 Financial Officer ~~Comptroller~~ shall transfer the amount due to
20 the Grants and Donations Trust Fund of the department from any
21 of the agency's available funds. The Chief Financial Officer
22 ~~Comptroller~~ shall report all such transfers and the reasons
23 for such transfers to the Executive Office of the Governor and
24 the legislative appropriations committees.

25 Section 331. Paragraph (a) of subsection (5) of
26 section 287.057, Florida Statutes, is amended to read:

27 287.057 Procurement of commodities or contractual
28 services.--

29 (5) When the purchase price of commodities or
30 contractual services exceeds the threshold amount provided in
31 s. 287.017 for CATEGORY TWO, no purchase of commodities or

1 contractual services may be made without receiving competitive
2 sealed bids, competitive sealed proposals, or competitive
3 sealed replies unless:

4 (a) The agency head determines in writing that an
5 immediate danger to the public health, safety, or welfare or
6 other substantial loss to the state requires emergency action.
7 After the agency head makes such a written determination, the
8 agency may proceed with the procurement of commodities or
9 contractual services necessitated by the immediate danger,
10 without receiving competitive sealed bids, competitive sealed
11 proposals, or competitive sealed replies. However, such
12 emergency procurement shall be made by obtaining pricing
13 information from at least two prospective vendors, which must
14 be retained in the contract file, unless the agency determines
15 in writing that the time required to obtain pricing
16 information will increase the immediate danger to the public
17 health, safety, or welfare or other substantial loss to the
18 state. The agency shall furnish copies of all written
19 determinations certified under oath and any other documents
20 relating to the emergency action to the department. A copy of
21 the statement shall be furnished to the Chief Financial
22 Officer ~~Comptroller~~ with the voucher authorizing payment. The
23 individual purchase of personal clothing, shelter, or supplies
24 which are needed on an emergency basis to avoid
25 institutionalization or placement in a more restrictive
26 setting is an emergency for the purposes of this paragraph,
27 and the filing with the department of such statement is not
28 required in such circumstances. In the case of the emergency
29 purchase of insurance, the period of coverage of such
30 insurance shall not exceed a period of 30 days, and all such
31 emergency purchases shall be reported to the department.

1 Section 332. Subsections (2) and (5) of section
2 287.058, Florida Statutes, are amended to read:

3 287.058 Contract document.--

4 (2) The written agreement shall be signed by the
5 agency head and the contractor prior to the rendering of any
6 contractual service the value of which is in excess of the
7 threshold amount provided in s. 287.017 for CATEGORY TWO,
8 except in the case of a valid emergency as certified by the
9 agency head. The certification of an emergency shall be
10 prepared within 30 days after the contractor begins rendering
11 the service and shall state the particular facts and
12 circumstances which precluded the execution of the written
13 agreement prior to the rendering of the service. If the
14 agency fails to have the contract signed by the agency head
15 and the contractor prior to rendering the contractual service,
16 and if an emergency does not exist, the agency head shall, no
17 later than 30 days after the contractor begins rendering the
18 service, certify the specific conditions and circumstances to
19 the department as well as describe actions taken to prevent
20 recurrence of such noncompliance. The agency head may delegate
21 the certification only to other senior management agency
22 personnel. A copy of the certification shall be furnished to
23 the Chief Financial Officer ~~Comptroller~~ with the voucher
24 authorizing payment. The department shall report repeated
25 instances of noncompliance by an agency to the Auditor
26 General. Nothing in this subsection shall be deemed to
27 authorize additional compensation prohibited by s. 215.425.
28 The procurement of contractual services shall not be divided
29 so as to avoid the provisions of this section.

30 (5) Unless otherwise provided in the General
31 Appropriations Act or the substantive bill implementing the

1 General Appropriations Act, the Chief Financial Officer
2 ~~Comptroller~~ may waive the requirements of this section for
3 services which are included in s. 287.057(5)(f).

4 Section 333. Paragraph (a) of subsection (2) of
5 section 287.059, Florida Statutes, is amended to read:

6 287.059 Private attorney services.--

7 (2) No agency shall contract for private attorney
8 services without the prior written approval of the Attorney
9 General, except that such written approval is not required for
10 private attorney services:

11 (a) Procured by the Executive Office of the Governor,
12 offices under the jurisdiction of the Financial Services
13 Commission, or any department under the exclusive jurisdiction
14 of a single Cabinet officer.

15 Section 334. Subsections (1) and (2) of section
16 287.063, Florida Statutes, are amended to read:

17 287.063 Deferred-payment commodity contracts; preaudit
18 review.--

19 (1)(a) When any commodity contract requires deferred
20 payments and the payment of interest, such contract shall be
21 submitted to the Chief Financial Officer ~~Comptroller~~ for the
22 purpose of preaudit review and approval prior to acceptance by
23 the state.

24 (b) Contracts executed pursuant to this subsection may
25 bear interest at a rate not to exceed an average net interest
26 cost rate which shall be computed by adding 150 basis points
27 to the 20 "bond buyer" average yield index published
28 immediately preceding the first day of the calendar month in
29 which the contract is submitted to the Chief Financial Officer
30 ~~Comptroller~~ for preaudit review and approval.

31

1 (2)(a) No funds appropriated shall be used to acquire
2 equipment through a lease or deferred-payment purchase
3 arrangement unless approved by the Chief Financial Officer
4 ~~Comptroller~~ as economically prudent and cost-effective.

5 (b) The Chief Financial Officer ~~Comptroller~~ shall
6 establish, by rule, criteria for approving purchases made
7 under deferred-payment contracts which require the payment of
8 interest. Criteria shall include, but not be limited to, the
9 following provisions:

10 1. No contract shall be approved in which interest
11 exceeds the statutory ceiling contained in this section.
12 However, the interest component of any master equipment
13 financing agreement entered into for the purpose of
14 consolidated financing of a deferred-payment, installment
15 sale, or lease-purchase shall be deemed to comply with the
16 interest rate limitation of this section so long as the
17 interest component of every interagency agreement under such
18 master equipment financing agreement complies with the
19 interest rate limitation of this section.

20 2. No deferred-payment purchase for less than \$30,000
21 shall be approved, unless it can be satisfactorily
22 demonstrated and documented to the Chief Financial Officer
23 ~~Comptroller~~ that failure to make such deferred-payment
24 purchase would adversely affect an agency in the performance
25 of its duties. However, the Chief Financial Officer
26 ~~Comptroller~~ may approve any deferred-payment purchase if the
27 Chief Financial Officer ~~Comptroller~~ determines that such
28 purchase is economically beneficial to the state.

29 3. No agency shall obligate an annualized amount of
30 payments for deferred-payment purchases in excess of current
31 operating capital outlay appropriations, unless specifically

1 authorized by law or unless it can be satisfactorily
2 demonstrated and documented to the Chief Financial Officer
3 ~~Comptroller~~ that failure to make such deferred-payment
4 purchase would adversely affect an agency in the performance
5 of its duties.

6 4. No contract shall be approved which extends payment
7 beyond 5 years, unless it can be satisfactorily demonstrated
8 and documented to the Chief Financial Officer ~~Comptroller~~ that
9 failure to make such deferred-payment purchase would adversely
10 affect an agency in the performance of its duties.

11 (c) The Chief Financial Officer ~~Comptroller~~ shall
12 require written justification based on need, usage, size of
13 the purchase, and financial benefit to the state for
14 deferred-payment purchases made pursuant to this subsection.

15 Section 335. Section 287.064, Florida Statutes, is
16 amended to read:

17 287.064 Consolidated financing of deferred-payment
18 purchases.--

19 (1) The Division of Bond Finance of the State Board of
20 Administration and the Chief Financial Officer ~~Comptroller~~
21 shall plan and coordinate deferred-payment purchases made by
22 or on behalf of the state or its agencies or by or on behalf
23 of state community colleges participating under this section
24 pursuant to s. 1001.64(26). The Division of Bond Finance shall
25 negotiate and the Chief Financial Officer ~~Comptroller~~ shall
26 execute agreements and contracts to establish master equipment
27 financing agreements for consolidated financing of
28 deferred-payment, installment sale, or lease purchases with a
29 financial institution or a consortium of financial
30 institutions. As used in this act, the term "deferred-payment"
31 includes installment sale and lease-purchase.

1 (a) The period during which equipment may be acquired
2 under any one master equipment financing agreement shall be
3 limited to not more than 3 years.

4 (b) Repayment of the whole or a part of the funds
5 drawn pursuant to the master equipment financing agreement may
6 continue beyond the period established pursuant to paragraph
7 (a).

8 (c) The interest rate component of any master
9 equipment financing agreement shall be deemed to comply with
10 the interest rate limitation imposed in s. 287.063 so long as
11 the interest rate component of every interagency or community
12 college agreement entered into under such master equipment
13 financing agreement complies with the interest rate limitation
14 imposed in s. 287.063. Such interest rate limitation does not
15 apply when the payment obligation under the master equipment
16 financing agreement is rated by a nationally recognized rating
17 service in any one of the three highest classifications, which
18 rating services and classifications are determined pursuant to
19 rules adopted by the Chief Financial Officer ~~Comptroller~~.

20 (2) Unless specifically exempted by the Chief
21 Financial Officer ~~Comptroller~~, all deferred-payment purchases,
22 including those made by a community college that is
23 participating under this section, shall be acquired by funding
24 through master equipment financing agreements. The Chief
25 Financial Officer ~~Comptroller~~ is authorized to exempt any
26 purchases from consolidated financing when, in his or her
27 judgment, alternative financing would be cost-effective or
28 otherwise beneficial to the state.

29 (3) The Chief Financial Officer ~~Comptroller~~ may
30 require agencies to enter into interagency agreements and may
31 require participating community colleges to enter into

1 systemwide agreements for the purpose of carrying out the
2 provisions of this act.

3 (a) The term of any interagency or systemwide
4 agreement shall expire on June 30 of each fiscal year but
5 shall automatically be renewed annually subject to
6 appropriations and deferred-payment schedules. The period of
7 any interagency or systemwide agreement shall not exceed the
8 useful life of the equipment for which the agreement was made
9 as determined by the Chief Financial Officer ~~Comptroller~~.

10 (b) The interagency or systemwide agreements may
11 include, but are not limited to, equipment costs, terms, and a
12 pro rata share of program and issuance expenses.

13 (4) Each community college may choose to have its
14 purchasing agreements involving administrative and
15 instructional materials consolidated under this section.

16 (5) The Chief Financial Officer ~~Comptroller~~ is
17 authorized to automatically debit each agency's funds and each
18 community college's portion of the Community College Program
19 Fund consistently with the deferred-payment schedules.

20 (6) There is created the Consolidated Payment Trust
21 Fund in the Chief Financial Officer's ~~Comptroller's~~ office for
22 the purpose of implementing the provisions of this act. All
23 funds debited from each agency and each community college may
24 be deposited in the trust fund and shall be used to meet the
25 financial obligations incurred pursuant to this act. Any
26 income from the investment of funds may be used to fund
27 administrative costs associated with this program.

28 (7) The Chief Financial Officer ~~Comptroller~~ may borrow
29 sufficient amounts from trust funds to pay issuance expenses
30 for the purposes of administering this section. Such amounts
31 shall be subject to approval of the Executive Office of the

1 Governor and subject to the notice, review, and objection
2 procedures of s. 216.177. The amounts approved pursuant to
3 this subsection are hereby appropriated for transfer to the
4 Consolidated Payment Trust Fund and appropriated from the
5 Consolidated Payment Trust Fund to pay issuance expenses.
6 Amounts loaned shall be repaid as soon as practicable not to
7 exceed the length of time obligations are issued to establish
8 the master equipment financing agreement.

9 (8) The State Board of Administration and the Chief
10 Financial Officer ~~Comptroller~~, individually, shall adopt rules
11 to implement their respective responsibilities under this
12 section.

13 (9) For purposes of this section, deferred-payment
14 commodity contracts for replacing the state accounting and
15 cash management systems may include equipment, accounting
16 software, and implementation and project management services.

17 Section 336. Paragraph (d) of subsection (4) of
18 section 287.09451, Florida Statutes, is amended to read:

19 287.09451 Office of Supplier Diversity; powers,
20 duties, and functions.--

21 (4) The Office of Supplier Diversity shall have the
22 following powers, duties, and functions:

23 (d) To monitor the degree to which agencies procure
24 services, commodities, and construction from minority business
25 enterprises in conjunction with the Department of Financial
26 Services ~~Banking and Finance~~ as specified in s. 17.11.

27 Section 337. Section 287.115, Florida Statutes, is
28 amended to read:

29 287.115 Chief Financial Officer ~~Comptroller~~; annual
30 report.--The Chief Financial Officer ~~Comptroller~~ shall submit
31 to the office of the Auditor General an annual report on those

1 contractual service contracts disallowed by the Chief
2 Financial Officer ~~Comptroller~~, which report shall include, but
3 is not limited to, the name of the user agency, the name of
4 the firm or individual from which the contractual service was
5 to be acquired, a description of the contractual service, the
6 financial terms of the contract, and the reason for rejection.

7 Section 338. Section 287.131, Florida Statutes, is
8 amended to read:

9 287.131 Assistance of Department of Financial Services
10 ~~Insurance~~.--The Department of Financial Services ~~Insurance~~
11 shall provide the Department of Management Services with
12 technical assistance in all matters pertaining to the purchase
13 of insurance for all agencies, and shall make surveys of the
14 insurance needs of the state and all departments thereof,
15 including the benefits, if any, of self-insurance.

16 Section 339. Section 287.175, Florida Statutes, is
17 amended to read:

18 287.175 Penalties.--A violation of this part or a rule
19 adopted hereunder, pursuant to applicable constitutional and
20 statutory procedures, constitutes misuse of public position as
21 defined in s. 112.313(6), and is punishable as provided in s.
22 112.317. The Chief Financial Officer ~~Comptroller~~ shall report
23 incidents of suspected misuse to the Commission on Ethics, and
24 the commission shall investigate possible violations of this
25 part or rules adopted hereunder when reported by the Chief
26 Financial Officer ~~Comptroller~~, notwithstanding the provisions
27 of s. 112.324. Any violation of this part or a rule adopted
28 hereunder shall be presumed to have been committed with
29 wrongful intent, but such presumption is rebuttable. Nothing
30 in this section is intended to deny rights provided to career
31 service employees by s. 110.227.

1 Section 340. Paragraph (f) of subsection (5) of
2 section 288.1045, Florida Statutes, is amended to read:

3 288.1045 Qualified defense contractor tax refund
4 program.--

5 (5) ANNUAL CLAIM FOR REFUND FROM A QUALIFIED DEFENSE
6 CONTRACTOR.--

7 (f) Upon approval of the tax refund pursuant to
8 paragraphs (c) and (d), the Chief Financial Officer
9 ~~Comptroller~~ shall issue a warrant for the amount included in
10 the written order. In the event of any appeal of the written
11 order, the ~~Comptroller~~ may not issue a warrant for a refund to
12 the qualified applicant until the conclusion of all appeals of
13 the written order.

14 Section 341. Paragraph (h) of subsection (5) of
15 section 288.106, Florida Statutes, is amended to read:

16 288.106 Tax refund program for qualified target
17 industry businesses.--

18 (5) ANNUAL CLAIM FOR REFUND.--
19 (h) Upon approval of the tax refund under paragraphs
20 (c), (d), and (e), the Chief Financial Officer ~~Comptroller~~
21 shall issue a warrant for the amount specified in the written
22 order. If the written order is appealed, the Chief Financial
23 Officer ~~Comptroller~~ may not issue a warrant for a refund to
24 the qualified target industry business until the conclusion of
25 all appeals of that order.

26 Section 342. Subsection (5) of section 288.109,
27 Florida Statutes, is amended to read:

28 288.109 One-Stop Permitting System.--

29 (5) By January 1, 2001, the following state agencies,
30 and the programs within such agencies which require the
31

1 issuance of licenses, permits, and approvals to businesses,
2 must also be integrated into the One-Stop Permitting System:

3 (a) The Department of Agriculture and Consumer
4 Services.

5 (b) The Department of Business and Professional
6 Regulation.

7 (c) The Department of Health.

8 (d) The Department of Financial Services ~~Insurance~~.

9 (e) The Office of Insurance Regulation of the
10 Financial Services Commission.

11 (f)~~(e)~~ The Department of Labor.

12 (g)~~(f)~~ The Department of Revenue.

13 (h)~~(g)~~ The Department of State.

14 (i)~~(h)~~ The Fish and Wildlife Conservation Commission.

15 (j)~~(i)~~ Other state agencies.

16 Section 343. Paragraphs (b) and (d) of subsection (1)
17 and subsection (2) of section 288.1253, Florida Statutes, are
18 amended to read:

19 288.1253 Travel and entertainment expenses.--

20 (1) As used in this section:

21 (b) "Entertainment expenses" means the actual,
22 necessary, and reasonable costs of providing hospitality for
23 business clients or guests, which costs are defined and
24 prescribed by rules adopted by the Office of Tourism, Trade,
25 and Economic Development, subject to approval by the Chief
26 Financial Officer ~~Comptroller~~.

27 (d) "Travel expenses" means the actual, necessary, and
28 reasonable costs of transportation, meals, lodging, and
29 incidental expenses normally incurred by a traveler, which
30 costs are defined and prescribed by rules adopted by the
31

1 Office of Tourism, Trade, and Economic Development, subject to
2 approval by the Chief Financial Officer ~~Comptroller~~.

3 (2) Notwithstanding the provisions of s. 112.061, the
4 Office of Tourism, Trade, and Economic Development shall adopt
5 rules by which it may make expenditures by advancement or
6 reimbursement, or a combination thereof, to:

7 (a) The Governor, the Lieutenant Governor, security
8 staff of the Governor or Lieutenant Governor, the Commissioner
9 of Film and Entertainment, or staff of the Office of Film and
10 Entertainment for travel expenses or entertainment expenses
11 incurred by such individuals solely and exclusively in
12 connection with the performance of the statutory duties of the
13 Office of Film and Entertainment.

14 (b) The Governor, the Lieutenant Governor, security
15 staff of the Governor or Lieutenant Governor, the Commissioner
16 of Film and Entertainment, or staff of the Office of Film and
17 Entertainment for travel expenses or entertainment expenses
18 incurred by such individuals on behalf of guests, business
19 clients, or authorized persons as defined in s. 112.061(2)(e)
20 solely and exclusively in connection with the performance of
21 the statutory duties of the Office of Film and Entertainment.

22 (c) Third-party vendors for the travel or
23 entertainment expenses of guests, business clients, or
24 authorized persons as defined in s. 112.061(2)(e) incurred
25 solely and exclusively while such persons are participating in
26 activities or events carried out by the Office of Film and
27 Entertainment in connection with that office's statutory
28 duties.

29

30 The rules shall be subject to approval by the Chief Financial
31 Officer ~~Comptroller~~ prior to promulgation. The rules shall

1 require the submission of paid receipts, or other proof of
2 expenditure prescribed by the Chief Financial Officer
3 ~~Comptroller~~, with any claim for reimbursement and shall
4 require, as a condition for any advancement of funds, an
5 agreement to submit paid receipts or other proof of
6 expenditure and to refund any unused portion of the
7 advancement within 15 days after the expense is incurred or,
8 if the advancement is made in connection with travel, within
9 10 working days after the traveler's return to headquarters.
10 However, with respect to an advancement of funds made solely
11 for travel expenses, the rules may allow paid receipts or
12 other proof of expenditure to be submitted, and any unused
13 portion of the advancement to be refunded, within 10 working
14 days after the traveler's return to headquarters. Operational
15 or promotional advancements, as defined in s. 288.35(4),
16 obtained pursuant to this section shall not be commingled with
17 any other state funds.

18 Section 344. Subsection (9) of section 288.709,
19 Florida Statutes, is amended to read:

20 288.709 Powers of the Florida Black Business
21 Investment Board, Inc.--The board shall have all the powers
22 necessary or convenient to carry out and effectuate the
23 purposes and provisions of ss. 288.707-288.714, including, but
24 not limited to, the power to:

25 (9) Invest any funds held in reserves or sinking
26 funds, or any funds not required for immediate disbursement,
27 in such investments as may be authorized for trust funds under
28 s. 215.47; however, such investments will be made on behalf of
29 the board by the Chief Financial Officer ~~Office of State~~
30 ~~Treasurer~~ or by another trustee appointed for that purpose.

31

1 Section 345. Paragraph (b) of subsection (4) of
2 section 288.712, Florida Statutes, is amended to read:

3 288.712 Florida guarantor funds.--

4 (4)

5 (b) If the board of the corporation chooses to
6 establish a loan guaranty program, it shall use the Black
7 Business Loan Guaranty Trust Fund in the State Treasury,
8 consisting of moneys deposited or credited to the Black
9 Business Loan Guaranty Trust Fund pursuant to appropriation
10 made by law; any grants, gifts, and contributions received
11 pursuant to ss. 288.707-288.714; all moneys recovered
12 following defaults; and any other moneys obtained by the
13 corporation for this purpose. The Black Business Loan
14 Guaranty Trust Fund shall be administered by the corporation
15 in trust for the purposes of this section and shall at no time
16 be part of general public funds under the following
17 procedures:

18 1. The corporation shall utilize the Black Business
19 Loan Guaranty Program Administrative and Loss Reserve Fund in
20 the State Treasury, consisting of all premiums charged and
21 collected in accordance with this section and any income
22 earned from the moneys in the account. All expenses of the
23 corporation in carrying out the purposes of this subsection
24 shall be paid from the Black Business Loan Guaranty Program
25 Administrative and Loss Reserve Fund. Any moneys to the
26 credit of the Black Business Loan Guaranty Program
27 Administrative and Loss Reserve Fund in excess of the amount
28 necessary to fund the corporation's activity shall be held as
29 a loss reserve to pay claims arising from defaults on loans
30 underwritten in accordance with this section.

31

1 2. Any claims against the state arising from defaults
2 shall be payable initially from the Black Business Loan
3 Guaranty Program Administrative and Loss Reserve Fund and,
4 secondarily, from the Black Business Loan Guaranty Trust Fund.

5 3. The corporation as loan guarantor may exercise all
6 rights and powers of a company authorized by the Office of
7 Insurance Regulation of the Financial Services Commission
8 ~~Department of Insurance~~ to guarantee loans but shall not be
9 subject to any requirements of an insurance company under the
10 Florida Insurance Code, nor to any rules of the Financial
11 Services Commission ~~Department of Insurance~~; however, the
12 corporation shall refer to the insurance code and rules
13 thereunder when designing and administering such program. The
14 corporation shall follow sound actuarial principles when
15 administering this program. The corporation shall establish a
16 premium for the loan guaranty and such rules as may be
17 necessary to carry out the purposes of this section.

18 4. The corporation may guarantee no more than 20
19 percent of the principal of a loan to a black business
20 enterprise.

21 Section 346. Paragraph (a) of subsection (1) of
22 section 288.776, Florida Statutes, is amended to read:

23 288.776 Board of directors; powers and duties.--

24 (1)(a) The corporation shall have a board of directors
25 consisting of 15 members representing all geographic areas of
26 the state. Minority and gender representation must be
27 considered when making appointments to the board. The board
28 membership must include:

29 1. A representative of the following businesses, all
30 of which must be registered to do business in this state: a
31 foreign bank, a state bank, a federal bank, an insurance

1 company involved in covering trade financing risks, and a
2 small or medium-sized exporter.

3 2. The following persons or their designee: the
4 President of Enterprise Florida, Inc., the Chief Financial
5 Officer ~~Comptroller~~, the Secretary of State, a senior official
6 of the United States Department of Commerce, and the chair of
7 the Florida Black Business Investment Board.

8 Section 347. Section 288.778, Florida Statutes, is
9 amended to read:

10 288.778 Office of Financial Institutions and
11 Securities Regulation ~~Department of Banking and Finance~~.--The
12 Office of Financial Regulation ~~Department of Banking and~~
13 ~~Finance~~ shall review the corporation's activities once every
14 24 months to determine compliance with this part and other
15 related laws and rules and to evaluate the corporation's
16 operations. The office ~~department~~ shall prepare a report
17 based on its review and evaluation with recommendation for any
18 corrective action. The president shall submit to the office
19 ~~department~~ regular reports on the corporation's activities.
20 The content and frequency of such reports shall be determined
21 by the office ~~department~~. The office ~~department~~ shall charge
22 a fee for conducting the review and evaluation and preparing
23 the related report, which fee shall not be in excess of the
24 examination fee paid by financial institutions chartered or
25 licensed under the financial institutions code of this state.

26 Section 348. Subsection (3) of section 288.901,
27 Florida Statutes, is amended to read:

28 288.901 Enterprise Florida, Inc.; creation;
29 membership; organization; meetings; disclosure.--

30
31

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

4 (a) The Governor or the Governor's designee.

5 (b) The Commissioner of Education or the
6 commissioner's designee.

7 (c) The Chief Financial Officer ~~Secretary of Labor and~~
8 ~~Employment Security~~ or his or her ~~the secretary's~~ designee.

9 (d) A member of the Senate, who shall be appointed by
10 the President of the Senate as an ex officio member of the
11 board and serve at the pleasure of the President.

12 (e) A member of the House of Representatives, who
13 shall be appointed by the Speaker of the House of
14 Representatives as an ex officio member of the board and serve
15 at the pleasure of the Speaker.

16 (f) The chairperson of the board of directors of
17 Workforce Florida, Inc.

18 (g) Twelve members from the private sector, six of
19 whom shall be appointed by the Governor, three of whom shall
20 be appointed by the President of the Senate, and three of whom
21 shall be appointed by the Speaker of the House of
22 Representatives. All appointees are subject to Senate
23 confirmation. In making such appointments, the Governor, the
24 President of the Senate, and the Speaker of the House of
25 Representatives shall ensure that the composition of the board
26 is reflective of the diversity of Florida's business
27 community, and to the greatest degree possible shall include,
28 but not be limited to, individuals representing large
29 companies, small companies, minority companies, and
30 individuals representing municipal, county, or regional
31 economic development organizations. Of the 12 members from the

1 private sector, 7 must have significant experience in
2 international business, with expertise in the areas of
3 transportation, finance, law, and manufacturing. The Governor,
4 the President of the Senate, and the Speaker of the House of
5 Representatives shall also consider whether the current board
6 members, together with potential appointees, reflect the
7 racial, ethnic, and gender diversity, as well as the
8 geographic distribution, of the population of the state.

9 (h) The Secretary of State or the secretary's
10 designee.

11 Section 349. Paragraphs (c) and (e) through (p) of
12 subsection (3), paragraphs (a), (b), (c), (d), (g), and (h) of
13 subsection (4), paragraph (b) of subsection (5), subsection
14 (7), paragraphs (a) and (c) of subsection (8), paragraph (b)
15 of subsection (9), paragraphs (a) through (e), (h), and (j) of
16 subsection (10), subsections (12), (13), and (14), paragraphs
17 (a), (c), (d), (e), and (g) of subsection (15), and subsection
18 (17) of section 288.99, Florida Statutes, are amended to read:

19 288.99 Certified Capital Company Act.--

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

21 (c) "Certified capital company" means a corporation,
22 partnership, or limited liability company which:

23 1. Is certified by the office ~~department~~ in accordance
24 with this act.

25 2. Receives investments of certified capital from two
26 or more unaffiliated certified investors.

27 3. Makes qualified investments as its primary
28 activity.

29 (e) "Commission" means the Financial Services
30 Commission ~~"Department"~~ means the ~~Department of Banking and~~
31 ~~Finance~~.

1 ~~(f)~~ "Director" means the director of the Office of
2 Tourism, Trade, and Economic Development.

3 (f)~~(g)~~ "Early stage technology business" means a
4 qualified business that is:

5 1. Involved, at the time of the certified capital
6 company's initial investment in such business, in activities
7 related to developing initial product or service offerings,
8 such as prototype development or the establishment of initial
9 production or service processes;

10 2. Less than 2 years old and has, together with its
11 affiliates, less than \$3 million in annual revenues for the
12 fiscal year immediately preceding the initial investment by
13 the certified capital company on a consolidated basis, as
14 determined in accordance with generally accepted accounting
15 principles;

16 3. The Florida Black Business Investment Board;

17 4. Any entity that is majority owned by the Florida
18 Black Business Investment Board; or

19 5. Any entity in which the Florida Black Business
20 Investment Board holds a majority voting interest on the board
21 of directors.

22 (g)~~(h)~~ "Office" means the Office of Financial
23 Regulation of the commission ~~Tourism, Trade, and Economic~~
24 ~~Development~~.

25 (h)~~(i)~~ "Premium tax liability" means any liability
26 incurred by an insurance company under the provisions of ss.
27 624.509 and 624.5091.

28 (i)~~(j)~~ "Principal" means an executive officer of a
29 corporation, partner of a partnership, manager of a limited
30 liability company, or any other person with equivalent
31 executive functions.

1 (j)~~(k)~~ "Qualified business" means the Digital Divide
2 Trust Fund established under the State of Florida Technology
3 Office or a business that meets the following conditions as
4 evidenced by documentation required by commission ~~department~~
5 rule:

6 1. The business is headquartered in this state and its
7 principal business operations are located in this state or at
8 least 75 percent of the employees are employed in the state.

9 2. At the time a certified capital company makes an
10 initial investment in a business, the business would qualify
11 for investment under 13 C.F.R. s. 121.301(c), which is
12 involved in manufacturing, processing or assembling products,
13 conducting research and development, or providing services.

14 3. At the time a certified capital company makes an
15 initial investment in a business, the business certifies in an
16 affidavit that:

17 a. The business is unable to obtain conventional
18 financing, which means that the business has failed in an
19 attempt to obtain funding for a loan from a bank or other
20 commercial lender or that the business cannot reasonably be
21 expected to qualify for such financing under the standards of
22 commercial lending;

23 b. The business plan for the business projects that
24 the business is reasonably expected to achieve in excess of
25 \$25 million in sales revenue within 5 years after the initial
26 investment, or the business is located in a designated Front
27 Porch community, enterprise zone, urban high crime area, rural
28 job tax credit county, or nationally recognized historic
29 district;

30 c. The business will maintain its headquarters in this
31 state for the next 10 years and any new manufacturing facility

1 financed by a qualified investment will remain in this state
2 for the next 10 years, or the business is located in a
3 designated Front Porch community, enterprise zone, urban high
4 crime area, rural job tax credit county, or nationally
5 recognized historic district; and

6 d. The business has fewer than 200 employees and at
7 least 75 percent of the employees are employed in this state.
8 For purposes of this subsection, the term also includes the
9 Florida Black Business Investment Board, any entity majority
10 owned by the Florida Black Business Investment Board, or any
11 entity in which the Florida Black Business Investment Board
12 holds a majority voting interest on the board of directors.

13 4. The term does not include:

14 a. Any business predominantly engaged in retail sales,
15 real estate development, insurance, banking, lending, or oil
16 and gas exploration.

17 b. Any business predominantly engaged in professional
18 services provided by accountants, lawyers, or physicians.

19 c. Any company that has no historical revenues and
20 either has no specific business plan or purpose or has
21 indicated that its business plan is solely to engage in a
22 merger or acquisition with any unidentified company or other
23 entity.

24 d. Any company that has a strategic plan to grow
25 through the acquisition of firms with substantially similar
26 business which would result in the planned net loss of
27 Florida-based jobs over a 12-month period after the
28 acquisition as determined by the office ~~department~~.

29 (k)~~(l)~~ "Qualified debt instrument" means a debt
30 instrument, or a hybrid of a debt instrument, issued by a
31 certified capital company, at par value or a premium, with an

1 original maturity date of at least 5 years after the date of
2 issuance, a repayment schedule which is no faster than a level
3 principal amortization over a 5-year period, and interest,
4 distribution, or payment features which are not related to the
5 profitability of the certified capital company or the
6 performance of the certified capital company's investment
7 portfolio.

8 (1)~~(m)~~ "Qualified distribution" means any distribution
9 or payment by a certified capital company for:

10 1. Reasonable costs and expenses, including, but not
11 limited to, professional fees, of forming and syndicating the
12 certified capital company, if no such costs or expenses are
13 paid to a certified investor, except as provided in
14 subparagraph (4)(f)2., and the total cash, cash equivalents,
15 and other current assets permitted by sub-subparagraph
16 (5)(b)3.g. that can be converted into cash within 5 business
17 days available to the certified capital company at the time of
18 receipt of certified capital from certified investors, after
19 deducting the costs and expenses of forming and syndicating
20 the certified capital company, including any payments made
21 over time for obligations incurred at the time of receipt of
22 certified capital but excluding other future qualified
23 distributions and payments made under paragraph (9)(a), are an
24 amount equal to or greater than 50 percent of the total
25 certified capital allocated to the certified capital pursuant
26 to subsection (7);

27 2. Reasonable costs of managing and operating the
28 certified capital company, not exceeding 5 percent of the
29 certified capital in any single year, including an annual
30 management fee in an amount that does not exceed 2.5 percent
31 of the certified capital of the certified capital company;

1 3. Reasonable and necessary fees in accordance with
2 industry custom for professional services, including, but not
3 limited to, legal and accounting services, related to the
4 operation of the certified capital company; or

5 4. Any projected increase in federal or state taxes,
6 including penalties and interest related to state and federal
7 income taxes, of the equity owners of a certified capital
8 company resulting from the earnings or other tax liability of
9 the certified capital company to the extent that the increase
10 is related to the ownership, management, or operation of a
11 certified capital company.

12 (m)~~(n)~~1. "Qualified investment" means the investment
13 of cash by a certified capital company in a qualified business
14 for the purchase of any debt, equity, or hybrid security,
15 including a debt instrument or security that has the
16 characteristics of debt but which provides for conversion into
17 equity or equity participation instruments such as options or
18 warrants.

19 2. The term does not include:

20 a. Any investment made after the effective date of
21 this act the contractual terms of which require the repayment
22 of any portion of the principal in instances, other than
23 default as determined by commission ~~department~~ rule, within 12
24 months following the initial investment by the certified
25 capital company unless such investment has a repayment
26 schedule no faster than a level principal amortization of at
27 least 2 years;

28 b. Any "follow-on" or "add-on" investment except for
29 the amount by which the new investment is in addition to the
30 amount of the certified capital company's initial investment
31

1 returned to it other than in the form of interest, dividends,
2 or other types of profit participation or distributions; or

3 c. Any investment in a qualified business or affiliate
4 of a qualified business that exceeds 15 percent of certified
5 capital.

6 (n)~~(o)~~ "Program One" means the \$150 million in premium
7 tax credits issued under this section in 1999, the allocation
8 of such credits under this section, and the regulation of
9 certified capital companies and investments made by them
10 hereunder.

11 (o)~~(p)~~ "Program Two" means the \$150 million in premium
12 tax credits to be issued under subsection (17), the allocation
13 of such credits under this section, and the regulation of
14 certified capital companies and investments made by them
15 hereunder.

16 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
17 DECERTIFICATION.--

18 (a) To operate as a certified capital company, a
19 corporation, partnership, or limited liability company must be
20 certified by the Department of Banking and Finance or the
21 office pursuant to this act.

22 (b) An applicant for certification as a certified
23 capital company must file a verified application with the
24 Department of Banking and Finance on or before December 1,
25 1998, a date determined in rules adopted pursuant to
26 subsection (17) in the case of applicants for Program Two, in
27 a form which the commission department may prescribe by rule.
28 The applicant shall submit a nonrefundable application fee of
29 \$7,500 to the office department. The applicant shall provide:

30 1. The name of the applicant and the address of its
31 principal office and each office in this state.

1 2. The applicant's form and place of organization and
2 the relevant organizational documents, bylaws, and amendments
3 or restatements of such documents, bylaws, or amendments.

4 3. Evidence from the Department of State that the
5 applicant is registered with the Department of State as
6 required by law, maintains an active status with the
7 Department of State, and has not been dissolved or had its
8 registration revoked, canceled, or withdrawn.

9 4. The applicant's proposed method of doing business.

10 5. The applicant's financial condition and history,
11 including an audit report on the financial statements prepared
12 in accordance with generally accepted accounting principles.
13 The applicant must have, at the time of application for
14 certification, an equity capitalization of at least \$500,000
15 in the form of cash or cash equivalents. The applicant must
16 maintain this equity capitalization until the applicant
17 receives an allocation of certified capital pursuant to this
18 act. If the date of the application is more than 90 days after
19 preparation of the applicant's fiscal year-end financial
20 statements, the applicant may file financial statements
21 reviewed by an independent certified public accountant for the
22 period subsequent to the audit report, together with the
23 audited financial statement for the most recent fiscal year.
24 If the applicant has been in business less than 12 months, and
25 has not prepared an audited financial statement, the applicant
26 may file a financial statement reviewed by an independent
27 certified public accountant.

28 6. Copies of any offering materials used or proposed
29 to be used by the applicant in soliciting investments of
30 certified capital from certified investors.

31

1 (c) Within 60 days after receipt of a verified
2 application, the office ~~department~~ shall grant or deny
3 certification as a certified capital company. If the office
4 ~~department~~ denies certification within the time period
5 specified, the office ~~department~~ shall inform the applicant of
6 the grounds for the denial. If the office ~~department~~ has not
7 granted or denied certification within the time specified, the
8 application shall be deemed approved. The office ~~department~~
9 shall approve the application if the office ~~department~~ finds
10 that:

11 1. The applicant satisfies the requirements of
12 paragraph (b).

13 2. No evidence exists that the applicant has committed
14 any act specified in paragraph (d).

15 3. At least two of the principals have a minimum of 5
16 years of experience making venture capital investments out of
17 private equity funds, with not less than \$20 million being
18 provided by third-party investors for investment in the early
19 stage of operating businesses. At least one full-time manager
20 or principal of the certified capital company who has such
21 experience must be primarily located in an office of the
22 certified capital company which is based in this state.

23 4. The applicant's proposed method of doing business
24 and raising certified capital as described in its offering
25 materials and other materials submitted to the office
26 ~~department~~ conforms with the requirements of this section.

27 (d) The office ~~department~~ may deny certification or
28 decertify a certified capital company if the grounds for
29 decertification are not removed or corrected within 90 days
30 after the notice of such grounds is received by the certified
31 capital company. The office ~~department~~ may deny certification

1 or decertify a certified capital company if the certified
2 capital company fails to maintain common stock or paid-in
3 capital of at least \$500,000, or if the office ~~department~~
4 determines that the applicant, or any principal or director of
5 the certified capital company, has:

6 1. Violated any provision of this section;
7 2. Made a material misrepresentation or false
8 statement or concealed any essential or material fact from any
9 person during the application process or with respect to
10 information and reports required of certified capital
11 companies under this section;

12 3. Been convicted of, or entered a plea of guilty or
13 nolo contendere to, a crime against the laws of this state or
14 any other state or of the United States or any other country
15 or government, including a fraudulent act in connection with
16 the operation of a certified capital company, or in connection
17 with the performance of fiduciary duties in another capacity;

18 4. Been adjudicated liable in a civil action on
19 grounds of fraud, embezzlement, misrepresentation, or deceit;
20 or

21 5.a. Been the subject of any decision, finding,
22 injunction, suspension, prohibition, revocation, denial,
23 judgment, or administrative order by any court of competent
24 jurisdiction, administrative law judge, or any state or
25 federal agency, national securities, commodities, or option
26 exchange, or national securities, commodities, or option
27 association, involving a material violation of any federal or
28 state securities or commodities law or any rule or regulation
29 adopted under such law, or any rule or regulation of any
30 national securities, commodities, or options exchange, or
31 national securities, commodities, or options association; or

1 b. Been the subject of any injunction or adverse
2 administrative order by a state or federal agency regulating
3 banking, insurance, finance or small loan companies, real
4 estate, mortgage brokers, or other related or similar
5 industries.

6 (g) On or before December 31 of each year, each
7 certified capital company shall pay to the office ~~department~~
8 an annual, nonrefundable renewal certification fee of \$5,000.
9 If a certified capital company fails to pay its renewal fee by
10 the specified deadline, the company must pay a late fee of
11 \$5,000 in addition to the renewal fee on or by January 31 of
12 each year in order to continue its certification in the
13 program. On or before April 30 of each year, each certified
14 capital company shall file audited financial statements with
15 the office ~~department~~. No renewal fees shall be required
16 within 6 months after the date of initial certification.

17 (h) The commission and office ~~department~~ shall
18 administer and provide for the enforcement of certification
19 requirements for certified capital companies as provided in
20 this act. The commission ~~department~~ may adopt any rules
21 necessary to carry out its duties, obligations, and powers
22 related to certification, renewal of certification, or
23 decertification of certified capital companies and the
24 commission and office may perform any other acts necessary for
25 the proper administration and enforcement of such duties,
26 obligations, and powers.

27 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--

28 (b) All capital not invested in qualified investments
29 by the certified capital company:
30
31

- 1 1. Must be held in a financial institution as defined
2 by s. 655.005(1)(h) or held by a broker-dealer registered
3 under s. 517.12, except as set forth in sub-subparagraph 3.g.
4 2. Must not be invested in a certified investor of the
5 certified capital company or any affiliate of the certified
6 investor of the certified capital company, except for an
7 investment permitted by sub-subparagraph 3.g., provided
8 repayment terms do not permit the obligor to directly or
9 indirectly manage or control the investment decisions of the
10 certified capital company.
- 11 3. Must be invested only in:
- 12 a. Any United States Treasury obligations;
- 13 b. Certificates of deposit or other obligations,
14 maturing within 3 years after acquisition of such certificates
15 or obligations, issued by any financial institution or trust
16 company incorporated under the laws of the United States;
- 17 c. Marketable obligations, maturing within 10 years or
18 less after the acquisition of such obligations, which are
19 rated "A" or better by any nationally recognized credit rating
20 agency;
- 21 d. Mortgage-backed securities, with an average life of
22 5 years or less, after the acquisition of such securities,
23 which are rated "A" or better by any nationally recognized
24 credit rating agency;
- 25 e. Collateralized mortgage obligations and real estate
26 mortgage investment conduits that are direct obligations of an
27 agency of the United States Government; are not private-label
28 issues; are in book-entry form; and do not include the classes
29 of interest only, principal only, residual, or zero;
30
31

1 f. Interests in money market funds, the portfolio of
2 which is limited to cash and obligations described in
3 sub-subparagraphs a.-d.; or

4 g. Obligations that are issued by an insurance company
5 that is not a certified investor of the certified capital
6 company making the investment, that has provided a guarantee
7 indemnity bond, insurance policy, or other payment undertaking
8 in favor of the certified capital company's certified
9 investors as permitted by subparagraph (3)(1)1.~~(3)(m)1.~~ or an
10 affiliate of such insurance company as defined by subparagraph
11 (3)(a)3. that is not a certified investor of the certified
12 capital company making the investment, provided that such
13 obligations are:

14 (I) Issued or guaranteed as to principal by an entity
15 whose senior debt is rated "AA" or better by Standard & Poor's
16 Ratings Group or such other nationally recognized credit
17 rating agency as the commission ~~department~~ may by rule
18 determine.

19 (II) Not subordinated to other unsecured indebtedness
20 of the issuer or the guarantor.

21 (III) Invested by such issuing entity in accordance
22 with sub-subparagraphs 3.a.-f.

23 (IV) Readily convertible into cash within 5 business
24 days for the purpose of making a qualified investment unless
25 such obligations are held to provide a guarantee, indemnity
26 bond, insurance policy, or other payment undertaking in favor
27 of the certified capital company's certified investors as
28 permitted by subparagraph (3)(1)1.~~(3)(m)1.~~

29 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
30 PROCESS.--

31

1 (a) The total amount of tax credits which may be
2 allocated by the Office of Tourism, Trade, and Economic
3 Development shall not exceed \$150 million with respect to
4 Program One and \$150 million with respect to Program Two. The
5 total amount of tax credits which may be used by certified
6 investors under this act shall not exceed \$15 million annually
7 with respect to credits earned under Program One and \$15
8 million annually with respect to credits earned under Program
9 Two.

10 (b) The Office of Tourism, Trade, and Economic
11 Development shall be responsible for allocating premium tax
12 credits as provided for in this act to certified capital
13 companies.

14 (c) Each certified capital company must apply to the
15 Office of Tourism, Trade, and Economic Development for an
16 allocation of premium tax credits for potential certified
17 investors on a form developed by the Office of Tourism, Trade,
18 and Economic Development with the cooperation of the
19 Department of Revenue. The form shall be accompanied by an
20 affidavit from each potential certified investor confirming
21 that the potential certified investor has agreed to make an
22 investment of certified capital in a certified capital company
23 up to a specified amount, subject only to the receipt of a
24 premium tax credit allocation pursuant to this subsection. No
25 certified capital company shall submit premium tax allocation
26 claims on behalf of certified investors that in the aggregate
27 would exceed the total dollar amount appropriated by the
28 Legislature for the specific program. No allocation shall be
29 made to the potential investors of a certified capital company
30 under Program Two unless such certified capital company has
31

1 filed premium tax allocation claims of not less than \$15
2 million in the aggregate.

3 (d) The Office of Tourism, Trade, and Economic
4 Development shall inform each certified capital company of its
5 share of total premium tax credits available for allocation to
6 each of its potential investors.

7 (e) If a certified capital company does not receive
8 certified capital equaling the amount of premium tax credits
9 allocated to a potential certified investor for which the
10 investor filed a premium tax allocation claim within 10
11 business days after the investor received a notice of
12 allocation, the certified capital company shall notify the
13 Office of Tourism, Trade, and Economic Development by
14 overnight common carrier delivery service of the company's
15 failure to receive the capital. That portion of the premium
16 tax credits allocated to the certified capital company shall
17 be forfeited. If the Office of Tourism, Trade, and Economic
18 Development must make a pro rata allocation under paragraph
19 (f), that ~~the~~ office shall reallocate such available credits
20 among the other certified capital companies on the same pro
21 rata basis as the initial allocation.

22 (f) If the total amount of capital committed by all
23 certified investors to certified capital companies in premium
24 tax allocation claims under Program Two exceeds the aggregate
25 cap on the amount of credits that may be awarded under Program
26 Two, the premium tax credits that may be allowed to any one
27 certified investor under Program Two shall be allocated using
28 the following ratio:

$$A/B = X / > \$150,000,000$$

29
30
31

1 where the letter "A" represents the total amount of certified
2 capital certified investors have agreed to invest in any one
3 certified capital company under Program Two, the letter "B"
4 represents the aggregate amount of certified capital that all
5 certified investors have agreed to invest in all certified
6 capital companies under Program Two, the letter "X" is the
7 numerator and represents the total amount of premium tax
8 credits and certified capital that may be allocated to a
9 certified capital company on a date determined by rule adopted
10 by the commission ~~department~~ pursuant to subsection (17), and
11 \$150 million is the denominator and represents the total
12 amount of premium tax credits and certified capital that may
13 be allocated to all certified investors under Program Two. Any
14 such premium tax credits are not first available for
15 utilization until annual filings are made in 2001 for calendar
16 year 2000 in the case of Program One, and the tax credits may
17 be used at a rate not to exceed 10 percent annually per
18 program.

19 (g) The maximum amount of certified capital for which
20 premium tax allocation claims may be filed on behalf of any
21 certified investor and its affiliates by one or more certified
22 capital companies may not exceed \$15 million for Program One
23 and \$22.5 million for Program Two.

24 (h) To the extent that less than \$150 million in
25 certified capital is raised in connection with the procedure
26 set forth in paragraphs (c)-(g), the commission ~~department~~ may
27 adopt rules to allow a subsequent allocation of the remaining
28 premium tax credits authorized under this section.

29 (i) The Office of Tourism, Trade, and Economic
30 Development shall issue a certification letter for each
31 certified investor, showing the amount invested in the

1 certified capital company under each program. The applicable
2 certified capital company shall attest to the validity of the
3 certification letter.

4 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.--

5 (a) On an annual basis, on or before January 31, each
6 certified capital company shall file with the office
7 ~~department~~ and the Office of Tourism, Trade, and Economic
8 Development, in consultation with the office ~~department~~, on a
9 form prescribed by the Office of Tourism, Trade, and Economic
10 Development, for each calendar year:

11 1. The total dollar amount the certified capital
12 company received from certified investors, the identity of the
13 certified investors, and the amount received from each
14 certified investor during the immediately preceding calendar
15 year.

16 2. The total dollar amount the certified capital
17 company invested and the amount invested in qualified
18 businesses, together with the identity and location of those
19 businesses and the amount invested in each qualified business
20 during the immediately preceding calendar year.

21 3. For informational purposes only, the total number
22 of permanent, full-time jobs either created or retained by the
23 qualified business during the immediately preceding calendar
24 year, the average wage of the jobs created or retained, the
25 industry sectors in which the qualified businesses operate,
26 and any additional capital invested in qualified businesses
27 from sources other than certified capital companies.

28 (c) The Office of Tourism, Trade, and Economic
29 Development shall review the form, and any supplemental
30 documentation, submitted by each certified capital company for
31 the purpose of verifying:

1 1. That the businesses in which certified capital has
2 been invested by the certified capital company are in fact
3 qualified businesses, and that the amount of certified capital
4 invested by the certified capital company is as represented in
5 the form.

6 2. The amount of certified capital invested in the
7 certified capital company by the certified investors.

8 3. The amount of premium tax credit available to
9 certified investors.

10 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
11 PARTICIPATION.--

12 (b) Cumulative distributions from a certified capital
13 company from funds related to a particular program to its
14 certified investors and equity holders under such program,
15 other than qualified distributions, in excess of the certified
16 capital company's original certified capital raised under such
17 program and any additional capital contributions to the
18 certified capital company with respect to such program may be
19 audited by a nationally recognized certified public accounting
20 firm acceptable to the office department, at the expense of
21 the certified capital company, if the office department
22 directs such audit be conducted. The audit shall determine
23 whether aggregate cumulative distributions from the funds
24 related to a particular program made by the certified capital
25 company to all certified investors and equity holders under
26 such program, other than qualified distributions, have equaled
27 the sum of the certified capital company's original certified
28 capital raised under such program and any additional capital
29 contributions to the certified capital company with respect to
30 such program. If at the time of any such distribution made by
31 the certified capital company, such distribution taken

1 together with all other such distributions from the funds
2 related to such program made by the certified capital company,
3 other than qualified distributions, exceeds in the aggregate
4 the sum of the certified capital company's original certified
5 capital raised under such program and any additional capital
6 contributions to the certified capital company with respect to
7 such program, as determined by the audit, the certified
8 capital company shall pay to the Department of Revenue 10
9 percent of the portion of such distribution in excess of such
10 amount. Payments to the Department of Revenue by a certified
11 capital company pursuant to this paragraph shall not exceed
12 the aggregate amount of tax credits used by all certified
13 investors in such certified capital company for such program.

14 (10) DECERTIFICATION.--

15 (a) The office ~~department~~ shall conduct an annual
16 review of each certified capital company to determine if the
17 certified capital company is abiding by the requirements of
18 certification, to advise the certified capital company as to
19 the eligibility status of its qualified investments, and to
20 ensure that no investment has been made in violation of this
21 act. The cost of the annual review shall be paid by each
22 certified capital company.

23 (b) Nothing contained in this subsection shall be
24 construed to limit the Chief Financial Officer's or the
25 office's ~~Comptroller's~~ authority to conduct audits of
26 certified capital companies as deemed appropriate and
27 necessary.

28 (c) Any material violation of this section, or a
29 finding that the certified capital company or any principal or
30 director thereof has committed any act specified in paragraph
31 (4)(d), shall be grounds for decertification of the certified

1 capital company. If the office ~~department~~ determines that a
2 certified capital company is no longer in compliance with the
3 certification requirements of this act, the office ~~department~~
4 shall, by written notice, inform the officers of such company
5 that the company may be subject to decertification 90 days
6 after the date of mailing of the notice, unless the
7 deficiencies are corrected and such company is again found to
8 be in compliance with all certification requirements.

9 (d) At the end of the 90-day grace period, if the
10 certified capital company is still not in compliance with the
11 certification requirements, the office ~~department~~ may issue a
12 notice to revoke or suspend the certification or to impose an
13 administrative fine. The office ~~department~~ shall advise each
14 respondent of the right to an administrative hearing under
15 chapter 120 prior to final action by the office ~~department~~.

16 (e) If the office ~~department~~ revokes a certification,
17 such revocation shall also deny, suspend, or revoke the
18 certifications of all affiliates of the certified capital
19 company.

20 (h) The Office of Tourism, Trade, and Economic
21 Development shall send written notice to the address of each
22 certified investor whose premium tax credit has been subject
23 to recapture or forfeiture, using the address last shown on
24 the last premium tax filing.

25 (j) The certified investor shall file with the
26 Department of Revenue an amended return or such other report
27 as the commission ~~department~~ may prescribe by rule ~~regulation~~
28 and pay any required tax, not later than 60 days after such
29 decertification has been agreed to or finally determined,
30 whichever shall first occur.

31

1 (12) REPORTING REQUIREMENTS.--The Office of Tourism,
2 Trade, and Economic Development shall report on an annual
3 basis to the Governor, the President of the Senate, and the
4 Speaker of the House of Representatives on or before April 1:

5 (a) The total dollar amount each certified capital
6 company received from all certified investors and any other
7 investor, the identity of the certified investors, and the
8 total amount of premium tax credit used by each certified
9 investor for the previous calendar year.

10 (b) The total dollar amount invested by each certified
11 capital company and that portion invested in qualified
12 businesses, the identity and location of those businesses, the
13 amount invested in each qualified business, and the total
14 number of permanent, full-time jobs created or retained by
15 each qualified business.

16 (c) The return for the state as a result of the
17 certified capital company investments, including the extent to
18 which:

19 1. Certified capital company investments have
20 contributed to employment growth.

21 2. The wage level of businesses in which certified
22 capital companies have invested exceed the average wage for
23 the county in which the jobs are located.

24 3. The investments of the certified capital companies
25 in qualified businesses have contributed to expanding or
26 diversifying the economic base of the state.

27 (13) FEES.--All fees and charges of any nature
28 collected by the office ~~department~~ pursuant to this act shall
29 be paid into the State Treasury and credited to the General
30 Revenue Fund.

31 (14) RULEMAKING AUTHORITY.--

1 (a) The Department of Revenue may by rule prescribe
2 forms and procedures for the tax credit filings, audits, and
3 forfeiture of premium tax credits described in this section,
4 and for certified capital company payments under paragraph
5 (9)(b).

6 (b) The commission and the Office of Tourism, Trade,
7 and Economic Development may adopt any rules necessary to
8 carry out their respective ~~its~~ duties, obligations, and powers
9 related to the administration, review, and reporting
10 provisions of this section and may perform any other acts
11 necessary for the proper administration and enforcement of
12 such duties, obligations, and powers.

13 (15)(a) CONFIDENTIALITY OF INVESTIGATION AND REVIEW
14 INFORMATION.--Except as otherwise provided by this section,
15 any information relating to an investigation or office
16 ~~department~~ review of a certified capital company, including
17 any consumer complaint, is confidential and exempt from the
18 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
19 Constitution until the investigation or review is complete or
20 ceases to be active. Such information shall remain
21 confidential and exempt from the provisions of s. 119.07(1)
22 and s. 24(a), Art. I of the State Constitution after the
23 investigation or review is complete or ceases to be active if
24 the information is submitted to any law enforcement or
25 administrative agency for further investigation, and shall
26 remain confidential and exempt from the provisions of s.
27 119.07(1) and s. 24(a), Art. I of the State Constitution until
28 that agency's investigation is complete or ceases to be
29 active. For purposes of this subsection, an investigation or
30 review shall be considered "active" so long as the office
31 ~~department~~, a law enforcement agency, or an administrative

1 agency is proceeding with reasonable dispatch and has a
2 reasonable good faith belief that the investigation may lead
3 to the filing of an administrative, civil, or criminal
4 proceeding. This section shall not be construed to prohibit
5 disclosure of information which is required by law to be filed
6 with the office ~~department~~ and which, but for the
7 investigation, would otherwise be subject to s. 119.07(1).

8 (c) Nothing in this section shall be construed to
9 prohibit the office ~~department~~ from providing information to
10 any law enforcement or administrative agency. Any law
11 enforcement or administrative agency receiving confidential
12 information in connection with its official duties shall
13 maintain the confidentiality of the information so long as it
14 would otherwise be confidential.

15 (d) In the event office ~~department~~ personnel are or
16 have been involved in an investigation or review of such
17 nature as to endanger their lives or physical safety or that
18 of their families, the home addresses, telephone numbers,
19 places of employment, and photographs of such personnel,
20 together with the home addresses, telephone numbers,
21 photographs, and places of employment of spouses and children
22 of such personnel and the names and locations of schools and
23 day care facilities attended by the children of such personnel
24 are confidential and exempt from s. 119.07(1).

25 (e) All information obtained by the office ~~department~~
26 from any person which is only made available to the office
27 ~~department~~ on a confidential or similarly restricted basis
28 shall be confidential and exempt from s. 119.07(1). This
29 exemption shall not be construed to prohibit disclosure of
30 information which is specifically required by law to be filed
31

1 with the office ~~department~~ or which is otherwise subject to s.
2 119.07(1).

3 (g) A privilege against civil liability is granted to
4 a person with regard to information or evidence furnished to
5 the office ~~department~~, unless such person acts in bad faith or
6 with malice in providing such information or evidence.

7 (17) Notwithstanding the limitations set forth in
8 paragraph (7)(a), in the first fiscal year in which the total
9 insurance premium tax collections as determined by the Revenue
10 Estimating Conference exceed collections for fiscal year
11 2000-2001 by more than the total amount of tax credits issued
12 pursuant to this section which were used by certified
13 investors in that year, the Office of Tourism, Trade, and
14 Economic Development may allocate to certified investors in
15 accordance with paragraph (7)(a) tax credits for Program Two.
16 The commission ~~department~~ shall establish, by rule, a date and
17 procedures by which certified capital companies must file
18 applications for allocations of such additional premium tax
19 credits, which date shall be no later than 180 days from the
20 date of determination by the Revenue Estimating Conference.
21 With respect to new certified capital invested and premium tax
22 credits earned pursuant to this subsection, the schedule
23 specified in subparagraphs (5)(a)1.-4. is satisfied by
24 investments by December 31 of the 2nd, 3rd, 4th, and 5th
25 calendar year, respectively, after the date established by the
26 commission ~~department~~ for applications of additional premium
27 tax credits. The commission ~~department~~ shall adopt rules by
28 which an entity not already certified as a certified capital
29 company may apply for certification as a certified capital
30 company for participation in this additional allocation. The
31 insurance premium tax credit authorized by Program Two may not

1 be used by certified investors until the annual return due
2 March 1, 2004, and may be used on all subsequent returns and
3 estimated payments; however, notwithstanding the provisions of
4 s. 624.5092(2)(b), the installments of taxes due and payable
5 on April 15, 2004, and June 15, 2004, shall be based on the
6 net tax due in 2003 not taking into account credits granted
7 pursuant to this section for Program Two.

8 Section 350. Paragraph (c) of subsection (1) of
9 section 289.051, Florida Statutes, is amended to read:

10 289.051 Membership of financial institutions; loans to
11 corporation, limitations.--

12 (1) Any financial institution may request membership
13 in the corporation by making application to the board of
14 directors on such form and in such manner as said board of
15 directors may require, and membership shall become effective
16 upon acceptance of such application by said board. Each
17 member of the corporation shall make loans to the corporation
18 as and when called upon by it to do so, on such terms and
19 other conditions as shall be approved from time to time by the
20 board of directors, subject to the following conditions:

21 (c) The total amount outstanding on loans to the
22 corporation made by any member at any one time, when added to
23 the amount of the investment in the capital stock of the
24 corporation then held by such member, shall not exceed:

25 1. Twenty percent of the total amount then outstanding
26 on loans to the corporation by all members, including, in said
27 total amount outstanding, amounts validly called for loan but
28 not yet loaned.

29 2. The following limit, to be determined as of the
30 time such member becomes a member on the basis of the audited
31 balance sheet of such member at the close of its fiscal year

1 immediately preceding its application for membership, or, in
2 the case of an insurance company, its last annual statement to
3 the Office of Insurance Regulation of the Financial Services
4 Commission ~~Department of Insurance~~: 2.5 percent of the capital
5 and surplus of commercial banks and trust companies; 0.5
6 percent of the total outstanding loans made by savings and
7 loan associations and building and loan associations; 2.5
8 percent of the capital and unassigned surplus of stock
9 insurance companies, except fire insurance companies; 2.5
10 percent of the unassigned surplus of mutual insurance
11 companies, except fire insurance companies; 0.1 percent of the
12 assets of fire insurance companies; and such limits as may be
13 approved by the board of directors of the corporation for
14 other financial institutions.

15 Section 351. Subsection (1) of section 289.081,
16 Florida Statutes, is amended to read:

17 289.081 Amendments to articles of incorporation.--

18 (1) The articles of incorporation may be amended by
19 the votes of the stockholders and the members of the
20 corporation, voting separately by classes, and such amendments
21 shall require approval by the affirmative vote of two-thirds
22 of the votes to which the stockholders shall be entitled and
23 two-thirds of the votes to which the members shall be
24 entitled. No amendment of the articles of incorporation which
25 is inconsistent with the general purposes expressed herein, or
26 which authorizes any additional class of capital stock to be
27 issued, or which eliminates or curtails the right of the
28 Office of Financial Regulation of the Financial Services
29 Commission ~~Department of Banking and Finance~~ to examine the
30 corporation or the obligation of the corporation to make
31 reports as provided in s. 289.121, shall be made. No

1 amendment of the articles of incorporation which increases the
2 obligation of a member to make loans to the corporation, or
3 makes any change in the principal amount, interest rate,
4 maturity date, or in the security or credit position of any
5 outstanding loan of a member to the corporation, or affects a
6 member's right to withdraw from membership as provided herein,
7 or affects a member's voting rights as provided herein, shall
8 be made without the consent of each member affected by such
9 amendment.

10 Section 352. Section 289.121, Florida Statutes, is
11 amended to read:

12 289.121 Periodic examinations; reports.--The
13 corporation shall be examined at least once annually by the
14 Office of Financial Regulation of the Financial Services
15 Commission ~~Department of Banking and Finance~~ and shall make
16 reports of its condition not less than annually to that office
17 ~~said department~~ and more frequently upon call of the office
18 ~~department~~, which in turn shall make copies of such reports
19 available to the Office of Insurance Regulation of the
20 Financial Services Commission ~~Department of Insurance~~ and the
21 Governor; and the corporation shall also furnish such other
22 information as may from time to time be required by the Office
23 of Financial Regulation ~~Department of Banking and Finance~~ and
24 Department of State. The corporation shall pay the actual cost
25 of ~~said~~ examinations. The office ~~Department of Banking and~~
26 ~~Finance~~ shall exercise the same power and authority over
27 corporations organized under this act as is exercised over
28 financial institutions under the provisions of the financial
29 institutions codes, when such codes are not in conflict with
30 this act.

31

1 Section 353. Section 292.085, Florida Statutes, is
2 amended to read:

3 292.085 Department of Veterans' Affairs Tobacco
4 Settlement Trust Fund.--

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

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

18 Section 354. Section 313.02, Florida Statutes, is
19 amended to read:

20 313.02 Bond.--Every harbormaster appointed for any
21 port shall give an approved bond in the sum of \$500, payable
22 to the Governor of the state, for the faithful performance of
23 the harbormaster's duty, such bond to be approved by the
24 county commissioners of the county in which the port is
25 situated, and by the Department of Financial Services ~~Banking~~
26 ~~and Finance~~, and to be filed with the Department of State.

27 Section 355. Section 314.02, Florida Statutes, is
28 amended to read:

29 314.02 Bond.--Each harbormaster so appointed shall
30 enter into a bond in the penal sum of \$2,000, with two or more
31 sureties, payable to the Governor of the state and the

1 Governor's successors in office, conditioned for the faithful
2 discharge of the duties of the harbormaster's office, by the
3 harbormaster and his or her deputies, and for the payment of
4 any damage any person may sustain in consequence of any
5 wrongful act of such officer or deputy under color of the
6 harbormaster's office; such bond to be approved by the county
7 commissioners of the county in which is situated said port and
8 by the Department of Financial Services ~~Banking and Finance~~,
9 and to be filed with the Department of State.

10 Section 356. Paragraph (b) of subsection (5) of
11 section 316.3025, Florida Statutes, is amended to read:

12 316.3025 Penalties.--

13 (5)

14 (b) All penalties imposed and collected under this
15 section by any state agency having jurisdiction shall be paid
16 to the Chief Financial Officer ~~Treasurer~~, who shall credit the
17 total amount collected to the State Transportation Trust Fund
18 for use in repairing and maintaining the roads of this state.

19 Section 357. Subsection (6) of section 316.545,
20 Florida Statutes, is amended to read:

21 316.545 Weight and load unlawful; special fuel and
22 motor fuel tax enforcement; inspection; penalty; review.--

23 (6) Any officer or agent collecting the penalties
24 herein imposed shall give to the owner or driver of the
25 vehicle an official receipt for all penalties collected. Such
26 officers or agents of the state departments shall cooperate
27 with the owners or drivers of motor vehicles so as not to
28 delay unduly the vehicles. All penalties imposed and collected
29 under this section by any state agency having jurisdiction
30 shall be paid to the Chief Financial Officer ~~Treasurer~~, who
31 shall credit the total amount thereof to the State

1 Transportation Trust Fund, which shall be used to repair and
2 maintain the roads of this state and to enforce this section.

3 Section 358. Paragraph (c) of subsection (5) of
4 section 320.02, Florida Statutes, is amended to read:

5 320.02 Registration required; application for
6 registration; forms.--

7 (5)

8 (c) For purposes of providing proof of purchase of
9 required insurance coverage under this subsection, the Office
10 of Insurance Regulation of the Financial Services Commission
11 ~~Department of Insurance~~ shall require that uniform
12 proof-of-purchase cards specified by the Department of Highway
13 Safety and Motor Vehicles be furnished by insurers writing
14 motor vehicle liability insurance in this state. Any person
15 altering or counterfeiting such a card or making a false
16 affidavit in order to furnish false proof or to knowingly
17 permit another person to furnish false proof is guilty of a
18 misdemeanor of the first degree, punishable as provided in s.
19 775.082 or s. 775.083.

20 Section 359. Subsection (5) of section 320.081,
21 Florida Statutes, is amended to read:

22 320.081 Collection and distribution of annual license
23 tax imposed on the following type units.--

24 (5) The department shall keep records showing the
25 total number of stickers issued to each type unit governed by
26 this section, the total amount of license taxes collected, and
27 the county or city wherein each such unit is located and shall
28 from month to month certify to the Chief Financial Officer
29 ~~Comptroller~~ the amount derived from license taxes in each
30 county and each city within the county. Such amount, less the
31 amount of \$1.50 collected on each license, shall be paid to

1 the counties and cities within the counties wherein the unit
2 or units are located as follows: one-half to the district
3 school board and the remainder either to the board of county
4 commissioners, for units which are located within the
5 unincorporated areas of the county, or to any city within such
6 county, for units which are located within its corporate
7 limits. Payment shall be by warrant drawn by the Chief
8 Financial Officer ~~Comptroller~~ upon the treasury, which amount
9 is hereby appropriated monthly out of the License Tax
10 Collection Trust Fund.

11 Section 360. Paragraphs (b) and (c) of subsection (5)
12 of section 320.20, Florida Statutes, are amended to read:

13 320.20 Disposition of license tax moneys.--The revenue
14 derived from the registration of motor vehicles, including any
15 delinquent fees and excluding those revenues collected and
16 distributed under the provisions of s. 320.081, must be
17 distributed monthly, as collected, as follows:

18 (5)

19 (b) The Chief Financial Officer ~~State Comptroller~~ each
20 month shall deposit in the State Transportation Trust Fund an
21 amount, drawn from other funds in the State Treasury which are
22 not immediately needed or are otherwise in excess of the
23 amount necessary to meet the requirements of the State
24 Treasury, which when added to such remaining revenues each
25 month will equal one-twelfth of the amount of the anticipated
26 annual revenues to be deposited in the State Transportation
27 Trust Fund under paragraph (a) as estimated by the most recent
28 revenue estimating conference held pursuant to s. 216.136(3).
29 The transfers required hereunder may be suspended by action of
30 the Legislative Budget Commission in the event of a
31 significant shortfall of state revenues.

1 (c) In any month in which the remaining revenues
2 derived from the registration of motor vehicles exceed
3 one-twelfth of those anticipated annual remaining revenues as
4 determined by the revenue estimating conference, the excess
5 shall be credited to those state funds in the State Treasury
6 from which the amount was originally drawn, up to the amount
7 which was deposited in the State Transportation Trust Fund
8 under paragraph (b). A final adjustment must be made in the
9 last months of a fiscal year so that the total revenue
10 deposited in the State Transportation Trust Fund each year
11 equals the amount derived from the registration of motor
12 vehicles, less the amount distributed under subsection (1).
13 For the purposes of this paragraph and paragraph (b), the term
14 "remaining revenues" means all revenues deposited into the
15 State Transportation Trust Fund under paragraph (a) and
16 subsections (2) and (3). In order that interest earnings
17 continue to accrue to the General Revenue Fund, the Department
18 of Transportation may not invest an amount equal to the
19 cumulative amount of funds deposited in the State
20 Transportation Trust Fund under paragraph (b) less funds
21 credited under this paragraph as computed on a monthly basis.
22 The amounts to be credited under this and the preceding
23 paragraph must be calculated and certified to the Chief
24 Financial Officer ~~Comptroller~~ by the Executive Office of the
25 Governor.

26 Section 361. Subsection (1) of section 320.71, Florida
27 Statutes, is amended to read:

28 320.71 Nonresident motor vehicle, mobile home, or
29 recreational vehicle dealer's license.--

30 (1) Any person who is a nonresident of the state, who
31 does not have a dealer's contract from the manufacturer or

1 manufacturer's distributor of motor vehicles, mobile homes, or
2 recreational vehicles authorizing the sale thereof in definite
3 Florida territory, and who sells or engages in the business of
4 selling said vehicles at retail within the state shall
5 register with the Department of Revenue for a sales tax dealer
6 registration number and comply with chapter 212, and pay a
7 license tax of \$2,000 per annum in each county where such
8 sales are made; \$1,250 of said tax shall be transmitted to the
9 Department of Financial Services ~~Banking and Finance~~ to be
10 deposited in the General Revenue Fund of the state, and \$750
11 thereof shall be returned to the county. The license tax
12 shall cover the period from January 1 to the following
13 December 31, and no such license shall be issued for any
14 fractional part of a year.

15 Section 362. Subsection (2) of section 320.781,
16 Florida Statutes, is amended to read:

17 320.781 Mobile Home and Recreational Vehicle
18 Protection Trust Fund.--

19 (2) Beginning October 1, 1990, the department shall
20 charge and collect an additional fee of \$1 for each new mobile
21 home and new recreational vehicle title transaction for which
22 it charges a fee. This additional fee shall be deposited into
23 the trust fund. The Department of Highway Safety and Motor
24 Vehicles shall charge a fee of \$40 per annual dealer and
25 manufacturer license and license renewal, which shall be
26 deposited into the trust fund. The sums deposited in the trust
27 fund shall be used exclusively for carrying out the purposes
28 of this section. These sums may be invested and reinvested by
29 the Chief Financial Officer ~~Treasurer~~ under the same
30 limitations as apply to investment of other state funds, with
31

1 all interest from these investments deposited to the credit of
2 the trust fund.

3 Section 363. Subsection (5) of section 322.21, Florida
4 Statutes, is amended to read:

5 322.21 License fees; procedure for handling and
6 collecting fees.--

7 (5) The department shall collect and transmit all fees
8 received by it under this section to the Chief Financial
9 Officer ~~Treasurer~~ to be placed in the General Revenue Fund of
10 the state, and sufficient funds for the necessary expenses of
11 the department shall be included in the appropriations act.
12 The fees shall be used for the maintenance and operation of
13 the department.

14 Section 364. Paragraph (b) of subsection (1) of
15 section 324.032, Florida Statutes, is amended to read:

16 324.032 Manner of proving financial responsibility;
17 for-hire passenger transportation vehicles.--

18 (1) Notwithstanding the provisions of s. 324.031, a
19 person who is either the owner or a lessee required to
20 maintain insurance under s. 324.021(9)(b) and who operates at
21 least 300 taxicabs, limousines, jitneys, or any other for-hire
22 passenger transportation vehicles may prove financial
23 responsibility by satisfying the following:

24 (b) Complying with the provisions of s. 324.171, such
25 compliance to be demonstrated by maintaining at its principal
26 place of business an audited financial statement, prepared in
27 accordance with generally accepted accounting principles, and
28 providing to the department a certification issued by a
29 certified public accountant that the applicant's net worth is
30 at least equal to the requirements of s. 324.171 as determined
31 by the Office of Insurance Regulation of the Financial

1 Services Commission ~~Department of Insurance~~, including claims
2 liabilities in an amount certified as adequate by a Fellow of
3 the Casualty Actuarial Society.

4
5 Upon request by the department, the applicant must provide the
6 department at the applicant's principal place of business in
7 this state access to the applicant's underlying financial
8 information and financial statements that provide the basis of
9 the certified public accountant's certification. The
10 applicant shall reimburse the requesting department for all
11 reasonable costs incurred by it in reviewing the supporting
12 information. The maximum amount of self-insurance permissible
13 under this subsection is \$300,000 and must be stated on a
14 per-occurrence basis, and the applicant shall maintain
15 adequate excess insurance issued by an authorized or eligible
16 insurer licensed or approved by the Office of Insurance
17 Regulation ~~Department of Insurance~~. All risks self-insured
18 shall remain with the owner or lessee providing it, and the
19 risks are not transferable to any other person, unless a
20 policy complying with paragraph (a) is obtained.

21 Section 365. Paragraph (b) of subsection (1) of
22 section 324.171, Florida Statutes, is amended to read:

23 324.171 Self-insurer.--

24 (1) Any person may qualify as a self-insurer by
25 obtaining a certificate of self-insurance from the department
26 which may, in its discretion and upon application of such a
27 person, issue said certificate of self-insurance when such
28 person has satisfied the requirements of this section to
29 qualify as a self-insurer under this section:

30
31

1 (b) A person, including any firm, partnership,
2 association, corporation, or other person, other than a
3 natural person, shall:

4 1. Possess a net unencumbered worth of at least
5 \$40,000 for the first motor vehicle and \$20,000 for each
6 additional motor vehicle; or

7 2. Maintain sufficient net worth, as determined
8 annually by the department, pursuant to rules promulgated by
9 the department, with the assistance of the Office of Insurance
10 Regulation of the Financial Services Commission ~~Department of~~
11 ~~Insurance~~, to be financially responsible for potential losses.
12 The rules shall take into consideration excess insurance
13 carried by the applicant. The department's determination
14 shall be based upon reasonable actuarial principles
15 considering the frequency, severity, and loss development of
16 claims incurred by casualty insurers writing coverage on the
17 type of motor vehicles for which a certificate of
18 self-insurance is desired.

19 Section 366. Paragraph (d) of subsection (2) of
20 section 326.006, Florida Statutes, is amended to read:

21 326.006 Powers and duties of division.--

22 (2) The division has the power to enforce and ensure
23 compliance with the provisions of this chapter and rules
24 adopted under this chapter relating to the sale and ownership
25 of yachts and ships. In performing its duties, the division
26 has the following powers and duties:

27 (d) Notwithstanding any remedies available to a yacht
28 or ship purchaser, if the division has reasonable cause to
29 believe that a violation of any provision of this chapter or
30 rule adopted under this chapter has occurred, the division may
31 institute enforcement proceedings in its own name against any

1 broker or salesperson or any of his or her assignees or
2 agents, or against any unlicensed person or any of his or her
3 assignees or agents, as follows:

4 1. The division may permit a person whose conduct or
5 actions are under investigation to waive formal proceedings
6 and enter into a consent proceeding whereby orders, rules, or
7 letters of censure or warning, whether formal or informal, may
8 be entered against the person.

9 2. The division may issue an order requiring the
10 broker or salesperson or any of his or her assignees or
11 agents, or requiring any unlicensed person or any of his or
12 her assignees or agents, to cease and desist from the unlawful
13 practice and take such affirmative action as in the judgment
14 of the division will carry out the purposes of this chapter.

15 3. The division may bring an action in circuit court
16 on behalf of a class of yacht or ship purchasers for
17 declaratory relief, injunctive relief, or restitution.

18 4. The division may impose a civil penalty against a
19 broker or salesperson or any of his or her assignees or
20 agents, or against an unlicensed person or any of his or her
21 assignees or agents, for any violation of this chapter or a
22 rule adopted under this chapter. A penalty may be imposed for
23 each day of continuing violation, but in no event may the
24 penalty for any offense exceed \$10,000. All amounts collected
25 must be deposited with the Chief Financial Officer ~~Treasurer~~
26 to the credit of the Division of Florida Land Sales,
27 Condominiums, and Mobile Homes Trust Fund. If a broker,
28 salesperson, or unlicensed person working for a broker, fails
29 to pay the civil penalty, the division shall thereupon issue
30 an order suspending the broker's license until such time as
31 the civil penalty is paid or may pursue enforcement of the

1 penalty in a court of competent jurisdiction. The order
2 imposing the civil penalty or the order of suspension may not
3 become effective until 20 days after the date of such order.
4 Any action commenced by the division must be brought in the
5 county in which the division has its executive offices or in
6 the county where the violation occurred.

7 Section 367. Subsections (8) and (25) of section
8 331.303, Florida Statutes, are amended to read:

9 331.303 Definitions.--

10 (8) "Entertainment expenses" means the actual,
11 necessary, and reasonable costs of providing hospitality for
12 business clients or guests, which costs are defined and
13 prescribed by rules adopted by the authority, subject to
14 approval by the Chief Financial Officer ~~Comptroller~~.

15 (25) "Travel expenses" means the actual, necessary,
16 and reasonable costs of transportation, meals, lodging, and
17 incidental expenses normally incurred by a traveler, which
18 costs are defined and prescribed by rules adopted by the
19 authority, subject to approval by the Chief Financial Officer
20 ~~Comptroller~~.

21 Section 368. Subsection (2) of section 331.309,
22 Florida Statutes, is amended to read:

23 331.309 Treasurer; depositories; fiscal agent.--

24 (2) The board is authorized to select as depositories
25 in which the funds of the board and of the authority shall be
26 deposited any qualified public depository as defined in s.
27 280.02, upon such terms and conditions as to the payment of
28 interest by such depository upon the funds so deposited as the
29 board may deem just and reasonable. Funds of the authority may
30 also be deposited with the Florida Commercial Space Financing
31 Corporation created by s. 331.407. The funds of the authority

1 may be kept in or removed from the State Treasury upon written
2 notification from the chair of the board to the Chief
3 Financial Officer ~~State Comptroller~~.

4 Section 369. Subsection (2) of section 331.3101,
5 Florida Statutes, is amended to read:

6 331.3101 Florida Space Authority; travel and
7 entertainment expenses.--

8 (2) The rules shall be subject to approval by the
9 Chief Financial Officer ~~Comptroller~~ prior to promulgation.

10 The rules shall require the submission of paid receipts, or
11 other proof prescribed by the Chief Financial Officer
12 ~~Comptroller~~, with any claim for reimbursement, and shall
13 require, as a condition for any advancement, an agreement to
14 submit paid receipts or other proof and to refund any unused
15 portion of the advancement within 15 days after the expense is
16 incurred or, if the advancement is made in connection with
17 travel, within 15 days after completion of the travel.
18 However, with respect to an advancement made solely for travel
19 expenses, the rules may allow paid receipts or other proof to
20 be submitted, and any unused portion of the advancement to be
21 refunded, within 30 days after completion of the travel.

22 Section 370. Section 331.348, Florida Statutes, is
23 amended to read:

24 331.348 Investment of funds.--The board may in its
25 discretion invest funds of the authority through the Chief
26 Financial Officer ~~Treasurer~~ or in:

27 (1) Direct obligations of or obligations guaranteed by
28 the United States or for the payment of the principal and
29 interest of which the faith and credit of the United States is
30 pledged;

31

1 (2) Bonds or notes issued by any of the following
2 federal agencies: Bank for Cooperatives; federal intermediate
3 credit banks; federal home loan bank system; federal land
4 banks; or the Federal National Mortgage Association (including
5 debentures or participating certificates issued by such
6 association);

7 (3) Public housing bonds issued by public housing
8 authorities and secured by a pledge or annual contributions
9 under an annual contribution contract or contracts with the
10 United States;

11 (4) Bonds or other interest-bearing obligations of any
12 county, district, city, or town located in the state for which
13 the full faith and credit of such political subdivision is
14 pledged;

15 (5) Any investment authorized for insurers by ss.
16 625.306-625.316 and amendments thereto; or

17 (6) Any investment authorized under s. 17.57 ~~s. 18.10~~
18 and amendments thereto.

19 Section 371. Subsection (3) of section 331.419,
20 Florida Statutes, is amended to read:

21 331.419 Reports and audits.--

22 (3) The Office of Financial Regulation of the
23 Financial Services Commission ~~Division of Banking of the~~
24 ~~Department of Banking and Finance~~ shall review the
25 corporation's activities once every 24 months to determine
26 compliance with this part and related laws and rules and to
27 evaluate the corporation's operations. The office division
28 shall prepare a report based on its review and evaluation with
29 recommendation for any corrective action. The president shall
30 submit to the office division regular reports on the
31 corporation's activities. The content and frequency of such

1 reports shall be determined by the office ~~division~~. The office
2 ~~division~~ may charge a fee for conducting the review and
3 evaluation and preparing the related report, which fee shall
4 not be in excess of the examination fee paid by chartered or
5 licensed financial institutions.

6 Section 372. Subsection (1) of section 336.022,
7 Florida Statutes, is amended to read:

8 336.022 County transportation trust fund; controls and
9 administrative remedies.--

10 (1) Each county shall establish and maintain a
11 transportation trust fund for all transportation-related
12 revenues and expenditures. All funds received by a county for
13 transportation shall be deposited into this fund. No
14 expenditures other than transportation expenditures authorized
15 by law shall be made from such fund. Each county shall use a
16 uniform accounts classification system approved by the Chief
17 Financial Officer ~~Comptroller~~.

18 Section 373. Subsection (9) of section 337.25, Florida
19 Statutes, is amended to read:

20 337.25 Acquisition, lease, and disposal of real and
21 personal property.--

22 (9) The department, with the approval of the Chief
23 Financial Officer ~~State Comptroller~~, is authorized to disburse
24 state funds for real estate closings in a manner consistent
25 with good business practices and in a manner minimizing costs
26 and risks to the state.

27 Section 374. Section 339.035, Florida Statutes, is
28 amended to read:

29 339.035 Expenditures.--All expenditures by the
30 department shall be made upon vouchers issued and certified by
31 the department in such manner as the department may, by rule

1 or internal management memorandum as required by chapter 120,
2 provide and shall be paid by warrants issued by the Chief
3 Financial Officer ~~Comptroller~~ upon the Treasurer.

4 Section 375. Section 339.081, Florida Statutes, is
5 amended to read:

6 339.081 Department trust funds.--The Chief Financial
7 Officer ~~Comptroller~~ shall maintain within the State Treasury
8 the following trust funds for the department:

9 (1) The State Transportation Trust Fund, to which
10 shall be credited the proceeds of the gas tax as authorized by
11 chapter 83-3, Laws of Florida, and such other funds which
12 accrue to the department which are not required to be
13 maintained in separate trust funds.

14 (2) Such other funds as may be authorized by bond
15 resolutions or agreements with any other public bodies or
16 agencies.

17 Section 376. Section 344.17, Florida Statutes, is
18 amended to read:

19 344.17 Depositories and investments.--All moneys
20 received by the Chief Financial Officer as treasurer of the
21 State Board of Administration, a body corporate under s. 9,
22 Art. XII of the State Constitution, shall be deposited by the
23 treasurer in a solvent bank or banks, to be approved and
24 accepted for such purposes by the board. In making such
25 deposits, he or she shall follow the method for the deposit of
26 state funds. Each bank receiving any portion of such funds
27 shall be required to deposit with such treasurer satisfactory
28 bonds or treasury certificates of the United States; bonds of
29 the several states; special tax school district bonds; bonds
30 of any municipality eligible to secure state deposits as
31 provided by law; bonds of any county or special road and

1 bridge district of this state entitled to participate under
2 the provisions of s. 16, Art. IX of the State Constitution of
3 1885, as adopted by the 1968 revised constitution, and of s.
4 9, Art. XII of that revision; bonds issued under the
5 provisions of s. 18, Art. XII of the State Constitution of
6 1885, as adopted by s. 9, Art. XII of the 1968 revised
7 constitution; or bonds, notes, or certificates issued by the
8 Florida State Improvement Commission or its successors, the
9 Florida Development Commission and the Division of Bond
10 Finance of the State Board of Administration, which contain a
11 pledge of the 80-percent surplus 2-cent constitutional
12 gasoline tax accruing under s. 16, Art. IX of the State
13 Constitution of 1885, as adopted by the 1968 revised
14 constitution, and under s. 9, Art. XII of that revision, which
15 shall be equal to the amount deposited with such bank. Such
16 security shall be in the possession of such treasurer; or the
17 treasurer is authorized to accept, in lieu of the actual
18 depositing with him or her of such security, trust or
19 safekeeping receipts issued by any Federal Reserve Bank, or
20 member bank thereof, or by any bank incorporated under the
21 laws of the United States; provided the member bank or bank
22 incorporated under the laws of the United States has been
23 previously approved and accepted for such purposes by the
24 State Board of Administration and the trust or safekeeping
25 receipts are in substantially the same form as that which the
26 Chief Financial Officer ~~State Treasurer~~ is authorized to
27 accept in lieu of securities given to cover deposits of state
28 funds.

29 Section 377. Subsections (2) and (9) of section
30 350.06, Florida Statutes, are amended to read:

31

1 350.06 Place of meeting; expenditures; employment of
2 personnel; records availability and fees.--

3 (2) All sums of money authorized to be paid on account
4 of said commissioners shall be paid out of the State Treasury
5 only on the order of the Chief Financial Officer ~~Comptroller~~.

6 (9) The commission shall keep a book in which all fees
7 collected by it as provided for herein shall be recorded,
8 together with the amount and purpose for which collected.
9 This book shall be a public record. The commission shall
10 prepare a statement of these fees in duplicate each month and
11 remit one copy of the statement, together with all fees
12 collected by it, to the Chief Financial Officer ~~Treasurer~~.
13 All moneys collected pursuant to this section by the
14 commission shall be deposited in the State Treasury to the
15 credit of the Florida Public Service Regulatory Trust Fund.

16 Section 378. Section 354.03, Florida Statutes, is
17 amended to read:

18 354.03 Bond.--Before entering into the performance of
19 his or her duties every such special officer shall enter into
20 a good and sufficient bond payable to the Governor of Florida,
21 and the Governor's successors, in the penal sum of \$5,000,
22 with some surety company authorized to do business in this
23 state as surety thereon, conditioned for the faithful
24 performance of his or her duties, and to pay any and all
25 damage done by any illegal act committed by him or her, to be
26 approved by the Department of Financial Services ~~Banking and~~
27 ~~Finance~~.

28 Section 379. Subsection (1) of section 365.173,
29 Florida Statutes, is amended to read:

30 365.173 Wireless Emergency Telephone System Fund.--

31

1 (1) All revenues derived from the E911 fee levied on
2 subscribers under s. 365.172 must be paid into the State
3 Treasury on or before the 15th day of each month. Such moneys
4 must be accounted for in a special fund to be designated as
5 the Wireless Emergency Telephone System Fund, a fund created
6 in the State Technology Office and must be invested by the
7 Chief Financial Officer ~~State Treasurer~~ pursuant to s. 17.61
8 ~~s. 18.125~~. All moneys in such fund are to be expended by the
9 State Technology Office for the purposes provided in this
10 section and s. 365.172. These funds are not subject to s.
11 215.20.

12 Section 380. Subsection (8) of section 370.06, Florida
13 Statutes, is amended to read:

14 370.06 Licenses.--

15 (8) COLLECTION OF LICENSES, FEES.--Unless otherwise
16 provided by law, all license taxes or fees provided for in
17 this chapter shall be collected by the commission or its duly
18 authorized agents or deputies to be deposited by the Chief
19 Financial Officer ~~Comptroller~~ in the Marine Resources
20 Conservation Trust Fund. The commission may by rule establish
21 a reasonable processing fee for any free license or permit
22 required under this chapter. The commission is authorized to
23 accept payment by credit card for fees, fines, and civil
24 penalties levied pursuant to this chapter.

25 Section 381. Subsection (6) of section 370.16, Florida
26 Statutes, is amended to read:

27 370.16 Noncultured shellfish harvesting.--

28 (6) SEIZURE OF VESSELS AND CARGOES VIOLATING OYSTER
29 AND CLAM LAWS, ETC.--Vessels, with their cargoes, violating
30 the provisions of the laws relating to oysters and clams may
31 be seized by anyone duly and lawfully authorized to make

1 arrests under this section or by any sheriff or the sheriff's
2 deputies, and taken into custody, and when not arrested by the
3 sheriff or the sheriff's deputies, delivered to the sheriff of
4 the county in which the seizure is made, and shall be liable
5 to forfeiture, on appropriate proceedings being instituted by
6 the Fish and Wildlife Conservation Commission, before the
7 courts of that county. In such case the cargo shall at once
8 be disposed of by the sheriff, for account of whom it may
9 concern. Should the master or any of the crew of said vessel
10 be found guilty of using dredges or other instruments in
11 fishing oysters on natural reefs contrary to law, or fishing
12 on the natural oyster or clam reefs out of season, or
13 unlawfully taking oysters or clams belonging to a lessee, such
14 vessel shall be declared forfeited by the court, and ordered
15 sold and the proceeds of the sale shall be deposited with the
16 Chief Financial Officer ~~Treasurer~~ to the credit of the General
17 Revenue Fund; any person guilty of such violations shall not
18 be permitted to have any license provided for in this chapter
19 within a period of 1 year from the date of conviction.
20 Pending proceedings such vessel may be released upon the owner
21 furnishing bond, with good and solvent security in double the
22 value of the vessel, conditioned upon its being returned in
23 good condition to the sheriff to abide the judgment of the
24 court.

25 Section 382. Paragraph (b) of subsection (5) and
26 subsection (6) of section 370.19, Florida Statutes, are
27 amended to read:

28 370.19 Atlantic States Marine Fisheries Compact;
29 implementing legislation.--

30 (5) ACCOUNTS TO BE KEPT BY COMMISSION; EXAMINATION.--

31

1 (b) The Department of Financial Services ~~Banking and~~
2 ~~Finance~~ is hereby authorized and empowered from time to time
3 to examine the accounts and books of the commission, including
4 its receipts, disbursements and such other items referring to
5 its financial standing as such department deems ~~may deem~~
6 proper and to report the results of such examination to the
7 governor of such state.

8 (6) APPROPRIATION FOR EXPENSES OF COMMISSION.--The sum
9 of \$600, annually, or so much thereof as may be necessary, is
10 hereby appropriated out of any moneys in the State Treasury
11 not otherwise appropriated, for the expenses of the commission
12 created by the compact authorized by this law. The moneys
13 hereby appropriated shall be paid out of the State Treasury on
14 the audit and warrant of the Chief Financial Officer
15 ~~Comptroller~~ upon vouchers certified by the chair of the
16 commission in the manner prescribed by law.

17 Section 383. Subsection (5) of section 370.20, Florida
18 Statutes, is amended to read:

19 370.20 Gulf States Marine Fisheries Compact;
20 implementing legislation.--

21 (5) ACCOUNTS TO BE KEPT BY COMMISSION;
22 EXAMINATION.--The commission shall keep accurate accounts of
23 all receipts and disbursements and shall report to the
24 Governor and the Legislature of the State of Florida on or
25 before the 10th day of December in each year, setting forth in
26 detail the transactions conducted by it during the 12 months
27 preceding December 1 of that year and shall make
28 recommendations for any legislative action deemed by it
29 advisable, including amendments to the statutes of the State
30 of Florida which may be necessary to carry out the intent and
31 purposes of the compact between the signatory states.

1 The Department of Financial Services ~~Banking and~~
2 ~~Finance~~ is hereby authorized and empowered from time to time
3 to examine the accounts and books of the commission, including
4 its receipts, disbursements and such other items referring to
5 its financial standing as such department deems ~~may deem~~
6 proper and to report the results of such examination to the
7 governor of such state.

8 Section 384. Subsection (5) of section 373.503,
9 Florida Statutes, is amended to read:

10 373.503 Manner of taxation.--

11 (5) Each water management district created under this
12 chapter which does not receive state shared revenues under
13 part II of chapter 218 shall, before January 1 of each year,
14 certify compliance or noncompliance with s. 200.065 to the
15 Department of Financial Services ~~Banking and Finance~~.
16 Specific grounds for noncompliance shall be stated in the
17 certification. In its annual report required by s. 218.32(2),
18 the Department of Financial Services ~~Banking and Finance~~ shall
19 report to the Governor and the Legislature those water
20 management districts certifying noncompliance or not
21 reporting.

22 Section 385. Paragraph (e) of subsection (10) of
23 section 373.59, Florida Statutes, is amended to read:

24 373.59 Water Management Lands Trust Fund.--

25 (10)

26 (e) Payment in lieu of taxes pursuant to this
27 subsection shall be made annually to qualifying counties and
28 local governments after certification by the Department of
29 Revenue that the amounts applied for are reasonably
30 appropriate, based on the amount of actual taxes paid on the
31 eligible property, and after the water management districts

1 have provided supporting documents to the Chief Financial
2 Officer ~~Comptroller~~ and have requested that payment be made in
3 accordance with the requirements of this section.

4 Section 386. Subsection (2) of section 373.6065,
5 Florida Statutes, is amended to read:

6 373.6065 Adoption benefits for water management
7 district employees.--

8 (2) The Chief Financial Officer ~~Comptroller~~ and the
9 Department of Management Services shall transfer funds to
10 water management districts to pay eligible water management
11 district employees for these child adoption monetary benefits
12 in accordance with s. 215.32(1)(c)5., as long as funds remain
13 available for the program described under s. 110.152.

14 Section 387. Subsection (2) of section 374.983,
15 Florida Statutes, is amended to read:

16 374.983 Governing body.--

17 (2) The present board of commissioners of the district
18 shall continue to hold office until their respective terms
19 shall expire. Thereafter the members of the board shall
20 continue to be appointed by the Governor for a term of 4 years
21 and until their successors shall be duly appointed.
22 Specifically, commencing on January 10, 1997, the Governor
23 shall appoint the commissioners from Broward, Indian River,
24 Martin, St. Johns, and Volusia Counties and on January 10,
25 1999, the Governor shall appoint the commissioners from
26 Brevard, Dade, Duval, Flagler, Palm Beach, and St. Lucie
27 Counties. Each new appointee must be confirmed by the Senate.
28 Whenever a vacancy occurs among the commissioners, the person
29 appointed to fill such vacancy shall hold office for the
30 unexpired portion of the term of the commissioner whose place
31 he or she is selected to fill. Each commissioner under this

1 act before he or she assumes office shall be required to give
2 a good and sufficient surety bond in the sum of \$10,000
3 payable to the Governor and his or her successors in office,
4 conditioned upon the faithful performance of the duties of his
5 or her office, such ~~said~~ bond to be approved by and filed with
6 the Chief Financial Officer ~~Comptroller~~. Any and all premiums
7 upon such ~~said~~ surety bonds shall be paid by the board of
8 commissioners of such ~~said~~ district as a necessary expense of
9 the district.

10 Section 388. Subsection (2) of section 374.986,
11 Florida Statutes, is amended to read:

12 374.986 Taxing authority.--

13 (2) The board may annually assess and levy against the
14 taxable property in the district a tax not to exceed one-tenth
15 mill on the dollar for each year, and the proceeds from such
16 tax shall be used by the district for all expenses of the
17 district including the purchase price of right-of-way and
18 other property. The board shall, on or before the 31st day of
19 July of each year, prepare a tentative annual written budget
20 of the district's expected income and expenditures. In
21 addition, the board shall compute a proposed millage rate to
22 be levied as taxes for that year upon the taxable property in
23 the district for the purposes of said district. The proposed
24 budget shall be submitted to the Department of Environmental
25 Protection for its approval. Prior to adopting a final budget,
26 the district shall comply with the provisions of s. 200.065,
27 relating to the method of fixing millage, and shall fix the
28 final millage rate by resolution of the district and shall
29 also, by resolution, adopt a final budget pursuant to chapter
30 200. Copies of such resolutions executed in the name of the
31 board by its chair, and attested by its secretary, shall be

1 made and delivered to the county officials specified in s.
2 200.065 of each and every county in the district, to the
3 Department of Revenue, and to the Chief Financial Officer
4 ~~Comptroller~~. Thereupon, it shall be the duty of the property
5 assessor of each of said counties to assess, and the tax
6 collector of each of said counties to collect, a tax at the
7 rate fixed by said resolution of the board upon all of the
8 real and personal taxable property in said counties for said
9 year (and such officers shall perform such duty) and said levy
10 shall be included in the warrant of the tax assessors of each
11 of said counties and attached to the assessment roll of taxes
12 for each of said counties. The tax collectors of each of said
13 counties shall collect such taxes so levied by the board in
14 the same manner as other taxes are collected, and shall pay
15 the same within the time and in the manner prescribed by law,
16 to the treasurer of the board. It shall be the duty of the
17 Chief Financial Officer ~~Comptroller~~ to assess and levy on all
18 railroad lines and railroad property and telegraph lines and
19 telegraph property in the district a tax at the rate
20 prescribed by resolution of the board, and to collect the tax
21 thereon in the same manner as he or she is required by law to
22 assess and collect taxes for state and county purposes and to
23 remit the same to the treasurer of the board. All such taxes
24 shall be held by the treasurer of the district for the credit
25 of the district and paid out by him or her as provided herein.
26 The tax assessor and property appraiser of each of said
27 counties shall be entitled to payment as provided for by
28 general laws.

29 Section 389. Subsection (3) of section 376.11, Florida
30 Statutes, is amended to read:

31 376.11 Florida Coastal Protection Trust Fund.--

1 (3) Moneys in the fund that are not needed currently
2 to meet the obligations of the department in the exercise of
3 its responsibilities under ss. 376.011-376.21 shall be
4 deposited with the Chief Financial Officer ~~Treasurer~~ to the
5 credit of the fund and may be invested in such manner as is
6 provided for by statute. Interest received on such investment
7 shall be credited to the fund, except as otherwise specified
8 herein.

9 Section 390. Subsection (5) of section 376.123,
10 Florida Statutes, is amended to read:

11 376.123 Claims against the Florida Coastal Protection
12 Trust Fund.--

13 (5) The secretary shall establish the amount to be
14 awarded and shall certify the amount of the award and the name
15 of the claimant to the Chief Financial Officer ~~State~~
16 ~~Treasurer~~, who shall pay the award from the fund, subject to
17 the provisions of subsection (12). If the claimant agrees
18 with the established amount of award, the settlement shall be
19 binding upon both parties as to all issues and cannot be
20 further attacked, collaterally or by separate action, in the
21 future.

22 Section 391. Subsection (6) of section 376.307,
23 Florida Statutes, is amended to read:

24 376.307 Water Quality Assurance Trust Fund.--

25 (6) Moneys in the fund which are not needed currently
26 to meet the obligations of the department in the exercise of
27 its responsibilities under this section shall be deposited
28 with the Chief Financial Officer ~~Treasurer~~ to the credit of
29 the fund and may be invested in such manner as is provided for
30 by statute. The interest received on such investment shall be
31 credited to the fund. Any provisions of law to the contrary

1 notwithstanding, such interest may be freely transferred
2 between this trust fund and the Inland Protection Trust Fund,
3 in the discretion of the department.

4 Section 392. Subsection (8) and paragraph (k) of
5 subsection (12) of section 376.3071, Florida Statutes, are
6 amended to read:

7 376.3071 Inland Protection Trust Fund; creation;
8 purposes; funding.--

9 (8) INVESTMENTS; INTEREST.--Moneys in the fund which
10 are not needed currently to meet the obligations of the
11 department in the exercise of its responsibilities under this
12 section and s. 376.3073 shall be deposited with the Chief
13 Financial Officer ~~Treasurer~~ to the credit of the fund and may
14 be invested in such manner as is provided for by statute. The
15 interest received on such investment shall be credited to the
16 fund. Any provisions of law to the contrary notwithstanding,
17 such interest may be freely transferred between this trust
18 fund and the Water Quality Assurance Trust Fund, in the
19 discretion of the department.

20 (12) REIMBURSEMENT FOR CLEANUP EXPENSES.--Except as
21 provided in s. 2(3), chapter 95-2, Laws of Florida, this
22 subsection shall not apply to any site rehabilitation program
23 task initiated after March 29, 1995. Effective August 1, 1996,
24 no further site rehabilitation work on sites eligible for
25 state-funded cleanup from the Inland Protection Trust Fund
26 shall be eligible for reimbursement pursuant to this
27 subsection. The person responsible for conducting site
28 rehabilitation may seek reimbursement for site rehabilitation
29 program task work conducted after March 28, 1995, in
30 accordance with s. 2(2) and (3), chapter 95-2, Laws of
31 Florida, regardless of whether the site rehabilitation program

1 task is completed. A site rehabilitation program task shall
2 be considered to be initiated when actual onsite work or
3 engineering design, pursuant to chapter 62-770, Florida
4 Administrative Code, which is integral to performing a site
5 rehabilitation program task has begun and shall not include
6 contract negotiation and execution, site research, or project
7 planning. All reimbursement applications pursuant to this
8 subsection must be submitted to the department by January 3,
9 1997. The department shall not accept any applications for
10 reimbursement or pay any claims on applications for
11 reimbursement received after that date; provided, however if
12 an application filed on or prior to January 3, 1997, was
13 returned by the department on the grounds of untimely filing,
14 it shall be refiled within 30 days after the effective date of
15 this act in order to be processed.

16 (k) Audits.--

17 1. The department is authorized to perform financial
18 and technical audits in order to certify site restoration
19 costs and ensure compliance with this chapter. The department
20 shall seek recovery of any overpayments based on the findings
21 of these audits. The department must commence any audit within
22 5 years after the date of reimbursement, except in cases where
23 the department alleges specific facts indicating fraud.

24 2. Upon determination by the department that any
25 portion of costs which have been reimbursed are disallowed,
26 the department shall give written notice to the applicant
27 setting forth with specificity the allegations of fact which
28 justify the department's proposed action and ordering
29 repayment of disallowed costs within 60 days of notification
30 of the applicant.

31

1 3. In the event the applicant does not make payment to
2 the department within 60 days of receipt of such notice, the
3 department shall seek recovery in a court of competent
4 jurisdiction to recover reimbursement overpayments made to the
5 person responsible for conducting site rehabilitation, unless
6 the department finds the amount involved too small or the
7 likelihood of recovery too uncertain.

8 4. In addition to the amount of any overpayment, the
9 applicant shall be liable to the department for interest of 1
10 percent per month or the prime rate, whichever is less, on the
11 amount of overpayment, from the date of overpayment by the
12 department until the applicant satisfies the department's
13 request for repayment pursuant to this paragraph. The
14 calculation of interest shall be tolled during the pendency of
15 any litigation.

16 5. Financial and technical audits frequently are
17 conducted under this section many years after the site
18 rehabilitation activities were performed and the costs
19 examined in the course of the audit were incurred by the
20 person responsible for site rehabilitation. During the
21 intervening span of years, the department's rule requirements
22 and its related guidance and other nonrule policy directives
23 may have changed significantly. The Legislature finds that it
24 may be appropriate for the department to provide relief to
25 persons subject to such requirements in financial and
26 technical audits conducted pursuant to this section.

27 a. The department is authorized to grant variances and
28 waivers from the documentation requirements of subparagraph
29 (e)2. and from the requirements of rules applicable in
30 technical and financial audits conducted under this section.
31 Variances and waivers shall be granted when the person

1 responsible for site rehabilitation demonstrates to the
2 department that application of a financial or technical
3 auditing requirement would create a substantial hardship or
4 would violate principles of fairness. For purposes of this
5 subsection, "substantial hardship" means a demonstrated
6 economic, technological, legal, or other type of hardship to
7 the person requesting the variance or waiver. For purposes of
8 this subsection, "principles of fairness" are violated when
9 the application of a requirement affects a particular person
10 in a manner significantly different from the way it affects
11 other similarly situated persons who are affected by the
12 requirement or when the requirement is being applied
13 retroactively without due notice to the affected parties.

14 b. A person whose reimbursed costs are subject to a
15 financial and technical audit under this section may file a
16 written request to the department for grant of a variance or
17 waiver. The request shall specify:

18 (I) The requirement from which a variance or waiver is
19 requested.

20 (II) The type of action requested.

21 (III) The specific facts which would justify a waiver
22 or variance.

23 (IV) The reason or reasons why the requested variance
24 or waiver would serve the purposes of this section.

25 c. Within 90 days after receipt of a written request
26 for variance or waiver under this subsection, the department
27 shall grant or deny the request. If the request is not granted
28 or denied within 90 days of receipt, the request shall be
29 deemed approved. An order granting or denying the request
30 shall be in writing and shall contain a statement of the
31 relevant facts and reasons supporting the department's action.

1 The department's decision to grant or deny the petition shall
2 be supported by competent substantial evidence and is subject
3 to ss. 120.569 and 120.57. Once adopted, model rules
4 promulgated by the Administration Commission under s. 120.542
5 shall govern the processing of requests under this provision.

6 6. The Chief Financial Officer ~~Comptroller~~ may audit
7 the records of persons who receive or who have received
8 payments pursuant to this chapter in order to verify site
9 restoration costs, ensure compliance with this chapter, and
10 verify the accuracy and completeness of audits performed by
11 the department pursuant to this paragraph. The Chief
12 Financial Officer ~~Comptroller~~ may contract with entities or
13 persons to perform audits pursuant to this subparagraph. The
14 Chief Financial Officer ~~Comptroller~~ shall commence any audit
15 within 1 year after the department's completion of an audit
16 conducted pursuant to this paragraph, except in cases where
17 the department or the Chief Financial Officer ~~Comptroller~~
18 alleges specific facts indicating fraud.

19 Section 393. Paragraphs (b) and (c) of subsection (5)
20 of section 376.3072, Florida Statutes, are amended to read:

21 376.3072 Florida Petroleum Liability and Restoration
22 Insurance Program.--

23 (5)

24 (b) The Office of Insurance Regulation of the
25 Financial Services Commission ~~Department of Insurance~~ shall
26 offer assistance as requested by the department to implement
27 the program.

28 (c) Any insurance company, reinsurance company, or
29 other entity contracted with by the department shall be
30 subject to the same rules and regulations of the Office of
31

1 Insurance Regulation Department of Insurance applicable to
2 other insurers, reinsurers, and other entities.

3 Section 394. Subsection (2) of section 376.3075,
4 Florida Statutes, is amended to read:

5 376.3075 Inland Protection Financing Corporation.--

6 (2) The corporation shall be governed by a board of
7 directors consisting of the Governor or the Governor's
8 designee, the Chief Financial Officer ~~Comptroller~~ or the Chief
9 Financial Officer's ~~Comptroller's~~ designee, ~~the Treasurer or~~
10 ~~the Treasurer's designee~~, the chair of the Florida Black
11 Business Investment Board, and the secretary of the Department
12 of Environmental Protection. The executive director of the
13 State Board of Administration shall be the chief executive
14 officer of the corporation and shall direct and supervise the
15 administrative affairs of the corporation and shall control,
16 direct, and supervise the operation of the corporation. The
17 corporation shall also have such other officers as may be
18 determined by the board of directors.

19 Section 395. Subsection (10) of section 376.3078,
20 Florida Statutes, is amended to read:

21 376.3078 Drycleaning facility restoration; funds;
22 uses; liability; recovery of expenditures.--

23 (10) INSURANCE REQUIREMENTS.--The owner or operator of
24 an operating drycleaning facility or wholesale supply facility
25 shall, by January 1, 1999, have purchased third-party
26 liability insurance for \$1 million of coverage for each
27 operating facility. The owner or operator shall maintain such
28 insurance while operating as a drycleaning facility or
29 wholesale supply facility and provide proof of such insurance
30 to the department upon registration renewal each year
31 thereafter. Such requirement applies only if such insurance

1 becomes available to the owner or operator at a reasonable
2 rate and covers liability for contamination subsequent to the
3 effective date of the policy and prior to the effective date,
4 retroactive to the commencement of operations at the
5 drycleaning facility or wholesale supply facility. Such
6 insurance may be offered in group coverage policies with a
7 minimum coverage of \$1 million for each member of the group
8 per year. For the purposes of this subsection, reasonable rate
9 means the rate developed based on exposure to loss and
10 underwriting and administrative costs as determined by the
11 Office of Insurance Regulation of the Financial Services
12 Commission ~~Department of Insurance~~, in consultation with
13 representatives of the drycleaning industry.

14 Section 396. Paragraphs (b) and (c) of subsection (4)
15 of section 376.3079, Florida Statutes, are amended to read:

16 376.3079 Third-party liability insurance.--

17 (4)

18 (b) The Office of Insurance Regulation of the
19 Financial Services Commission ~~Department of Insurance~~ shall
20 offer assistance as requested by the department to implement
21 the program.

22 (c) Any insurance company, reinsurance company, or
23 other entity contracted with by the department shall be
24 subject to the same rules of the Office of Insurance
25 Regulation ~~Department of Insurance~~ applicable to other
26 insurers, reinsurers, and other entities.

27 Section 397. Subsection (6) of section 376.40, Florida
28 Statutes, is amended to read:

29 376.40 Petroleum exploration and production; purposes;
30 funding.--

31

1 (6) INVESTMENTS; INTEREST.--Moneys in the trust fund
2 which are not needed currently to meet the obligations of the
3 department in the exercise of its responsibilities under this
4 section shall be deposited with the Chief Financial Officer
5 ~~Treasurer~~ to the credit of the trust fund and may be invested
6 as provided by law.

7 Section 398. Section 377.23, Florida Statutes, is
8 amended to read:

9 377.23 Monthly reports to division.--Every producer of
10 oil or gas in the state shall submit to the division, on forms
11 prescribed by the division, a monthly report of the actual
12 production from each and every oil and gas well operated by
13 him or her. Such ~~said~~ producer shall submit a duplicate copy
14 of such ~~said~~ report at the same time to the Department of
15 Financial Services ~~Banking and Finance~~; and such ~~said~~ reports
16 shall be submitted through the medium of the United States
17 mails, and it shall be unlawful for the same to be transmitted
18 or received in any other way.

19 Section 399. Paragraph (a) of subsection (1) of
20 section 377.2425, Florida Statutes, is amended to read:

21 377.2425 Manner of providing security for geophysical
22 exploration, drilling, and production.--

23 (1) Prior to granting a permit to conduct geophysical
24 operations; drilling of exploratory, injection, or production
25 wells; producing oil and gas from a wellhead; or transporting
26 oil and gas through a field-gathering system, the department
27 shall require the applicant or operator to provide surety that
28 these operations will be conducted in a safe and
29 environmentally compatible manner.

30
31

1 (a) The applicant for a drilling, production, or
2 injection well permit or a geophysical permit may provide the
3 following types of surety to the department for this purpose:

4 1. A deposit of cash or other securities made payable
5 to the Minerals Trust Fund. Such cash or securities so
6 deposited shall be held at interest by the Chief Financial
7 Officer ~~Comptroller~~ to satisfy safety and environmental
8 performance provisions of this chapter. The interest shall be
9 credited to the Minerals Trust Fund. Such cash or other
10 securities shall be released by the Chief Financial Officer
11 ~~Comptroller~~ upon request of the applicant and certification by
12 the department that all safety and environmental performance
13 provisions established by the department for permitted
14 activities have been fulfilled.

15 2. A bond of a surety company authorized to do
16 business in the state in an amount as provided by rule.

17 3. A surety in the form of an irrevocable letter of
18 credit in an amount as provided by rule guaranteed by an
19 acceptable financial institution.

20 Section 400. Paragraph (c) of subsection (4) of
21 section 377.705, Florida Statutes, is amended to read:

22 377.705 Solar Energy Center; development of solar
23 energy standards.--

24 (4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS,
25 REQUIRE DISCLOSURE, SET TESTING FEES.--

26 (c) The center shall be entitled to receive a testing
27 fee sufficient to cover the costs of such testing. All
28 testing fees shall be transmitted by the center to the Chief
29 Financial Officer ~~State Treasurer~~ to be deposited in the Solar
30 Energy Center Testing Trust Fund, which is hereby created in
31

1 the State Treasury, and disbursed for the payment of expenses
2 incurred in testing solar energy systems.

3 Section 401. Paragraph (a) of subsection (2) of
4 section 378.035, Florida Statutes, is amended to read:

5 378.035 Department responsibilities and duties with
6 respect to Nonmandatory Land Reclamation Trust Fund.--

7 (2)(a) The department shall verify that reclamation
8 activities or portions thereof have been accomplished in
9 accordance with the reclamation contract and shall certify the
10 cost of such reclamation activities to the Chief Financial
11 Officer ~~Comptroller~~ for reimbursement.

12 Section 402. Section 378.037, Florida Statutes, is
13 amended to read:

14 378.037 Chief Financial Officer ~~Comptroller~~;
15 responsibilities and duties with respect to reimbursement of
16 reclamation costs.--

17 (1) The Chief Financial Officer ~~Comptroller~~ shall
18 reimburse approved reclamation costs, less any amount
19 reasonably retained to ensure completion of the approved
20 reclamation program, subject to the following limitations:

21 (a) A landowner shall not be entitled to payments in
22 excess of the funds available in the Nonmandatory Land
23 Reclamation Trust Fund.

24 (b) Cost reimbursement shall not exceed the least of:

25 1. The amount actually expended and reasonably
26 necessary to effect the reclamation consistent with the
27 standards of the approved master reclamation plan;

28 2. The reclamation contract amount; or

29 3. The amount allowed based on prereclamation land
30 form, to include mined-out areas at \$4,000 per reclaimed acre
31 and clay settling areas and other land forms at \$2,500 per

1 reclaimed acre adjusted annually by the appropriate
2 inflationary index for construction.

3 (2) The Chief Financial Officer ~~Comptroller~~ shall
4 adopt rules to implement the payment provisions of the master
5 reclamation plan and this section, including, but not limited
6 to, periodic reimbursements and competitive procurement of
7 services and commodities to the extent practicable, unless a
8 landowner elects to utilize his or her own personnel and
9 equipment. The landowner may select a method of reimbursement
10 from the alternatives adopted by the Chief Financial Officer
11 ~~Comptroller~~.

12 Section 403. Subsection (3) of section 378.208,
13 Florida Statutes, is amended to read:

14 378.208 Financial responsibility.--

15 (3) The amount of financial responsibility shall be
16 established by the secretary and shall not exceed \$4,000 per
17 acre for each reclamation program, adjusted annually by the
18 appropriate inflationary index for construction. The Office of
19 Insurance Regulation of the Financial Services Commission
20 ~~Department of Insurance~~ shall be available to assist the
21 secretary in making this determination. In establishing the
22 amount of financial responsibility, the secretary shall
23 consider:

- 24 (a) The amount and type of reclamation involved.
25 (b) The probable cost of proper reclamation.
26 (c) Inflation rates.
27 (d) Changes in mining operations.

28 Section 404. Subsection (2) of section 381.765,
29 Florida Statutes, is amended to read:

30 381.765 Retention of title to and disposal of
31 equipment.--

1 (2) The department may offer for sale any surplus
2 items acquired in operating the brain and spinal cord injury
3 program when they are no longer necessary or exchange them for
4 necessary items that may be used to greater advantage. When
5 any such surplus equipment is sold or exchanged, a receipt for
6 the equipment shall be taken from the purchaser showing the
7 consideration given for such equipment and forwarded to the
8 Chief Financial Officer ~~Treasurer~~, and any funds received by
9 the brain and spinal cord injury program pursuant to any such
10 transaction shall be deposited in the Brain and Spinal Cord
11 Injury Rehabilitation Trust Fund and shall be available for
12 expenditure for any purpose consistent with this part.

13 Section 405. Subsection (3) of section 381.90, Florida
14 Statutes, is amended to read:

15 381.90 Health Information Systems Council; legislative
16 intent; creation, appointment, duties.--

17 (3) The council shall be composed of the following
18 members or their senior executive-level designees:

19 (a) The secretary of the Department of Health;

20 (b) The secretary of the Department of Business and
21 Professional Regulation;

22 (c) The secretary of the Department of Children and
23 Family Services;

24 (d) The Secretary of Health Care Administration;

25 (e) The secretary of the Department of Corrections;

26 (f) The Attorney General;

27 (g) The executive director of the Correctional Medical
28 Authority;

29 (h) Two members representing county health
30 departments, one from a small county and one from a large
31 county, appointed by the Governor;

- 1 (i) A representative from the Florida Association of
2 Counties;
- 3 (j) The Chief Financial Officer ~~State Treasurer and~~
4 ~~Insurance Commissioner~~;
- 5 (k) A representative from the Florida Healthy Kids
6 Corporation;
- 7 (l) A representative from a school of public health
8 chosen by the Board of Regents;
- 9 (m) The Commissioner of Education;
- 10 (n) The secretary of the Department of Elderly
11 Affairs; and
- 12 (o) The secretary of the Department of Juvenile
13 Justice.

14
15 Representatives of the Federal Government may serve without
16 voting rights.

17 Section 406. Effective July 1, 2003, subsection (3) of
18 section 385.207, Florida Statutes, is amended to read:

19 385.207 Care and assistance of persons with epilepsy;
20 establishment of programs in epilepsy control.--

21 (3) Revenue for statewide implementation of programs
22 for epilepsy prevention and education pursuant to this section
23 shall be derived pursuant to the provisions of s. 318.21(6)
24 and shall be deposited in the Epilepsy Services Trust Fund,
25 which is hereby established to be administered by the
26 Department of Health. All funds deposited into the trust fund
27 shall be invested pursuant to the provisions of s. 17.61 ~~s.~~
28 ~~18.125~~. Interest income accruing to such invested funds shall
29 increase the total funds available under this subsection.

30 Section 407. Subsection (5) of section 388.201,
31 Florida Statutes, is amended to read:

1 388.201 District budgets; hearing.--

2 (5) County commissioners' mosquito and arthropod
3 control budgets shall be made and adopted as prescribed by
4 subsections (1) and (2); summary figures shall be incorporated
5 into the county budgets as prescribed by the Department of
6 Financial Services ~~Banking and Finance~~.

7 Section 408. Section 388.301, Florida Statutes, is
8 amended to read:

9 388.301 Payment of state funds; supplies and
10 services.--State funds shall be payable quarterly, in
11 accordance with the rules of the department, upon requisition
12 by the department to the Chief Financial Officer ~~Comptroller~~.
13 The department is authorized to furnish insecticides,
14 chemicals, materials, equipment, vehicles, and personnel in
15 lieu of state funds where mass purchasing may save funds for
16 the state, or where it would be more practical and economical
17 to use equipment, supplies, and services between two or more
18 counties or districts.

19 Section 409. Subsection (3) of section 391.025,
20 Florida Statutes, is amended to read:

21 391.025 Applicability and scope.--

22 (3) The Children's Medical Services program shall not
23 be deemed an insurer and is not subject to the licensing
24 requirements of the Florida Insurance Code or the rules
25 adopted thereunder ~~of the Department of Insurance~~, when
26 providing services to children who receive Medicaid benefits,
27 other Medicaid-eligible children with special health care
28 needs, and children participating in the Florida Kidcare
29 program.

30 Section 410. Subsection (2) of section 391.221,
31 Florida Statutes, is amended to read:

1 391.221 Statewide Children's Medical Services Network
2 Advisory Council.--

3 (2) The council shall be composed of 12 members
4 representing the private health care provider sector, families
5 with children who have special health care needs, the Agency
6 for Health Care Administration, the Chief Financial Officer
7 ~~Department of Insurance~~, the Florida Chapter of the American
8 Academy of Pediatrics, an academic health center pediatric
9 program, and the health insurance industry. Members shall be
10 appointed for 4-year, staggered terms. In no case shall an
11 employee of the Department of Health serve as a member or as
12 an ex officio member of the advisory council. A vacancy shall
13 be filled for the remainder of the unexpired term in the same
14 manner as the original appointment. A member may not be
15 appointed to more than two consecutive terms. However, a
16 member may be reappointed after being off the council for at
17 least 2 years.

18 Section 411. Subsection (2) of section 392.69, Florida
19 Statutes, is amended to read:

20 392.69 Appropriation, sinking, and maintenance trust
21 funds; additional powers of the department.--

22 (2) All moneys required to be paid by the several
23 counties and patients for the care and maintenance of patients
24 hospitalized by the department for tuberculosis shall be paid
25 to the department, and the department shall immediately
26 transmit these moneys to the Chief Financial Officer
27 ~~Treasurer~~, who shall deposit the moneys in the Operations and
28 Maintenance Trust Fund, which shall contain all moneys
29 appropriated by the Legislature or received from patients or
30 other third parties and shall be expended for the operation
31 and maintenance of the state-operated tuberculosis hospital.

1 Section 412. Subsection (5) of section 393.002,
2 Florida Statutes, is amended to read:

3 393.002 Transfer of Florida Developmental Disabilities
4 Council as formerly created in this chapter to private
5 nonprofit corporation.--

6 (5) Pursuant to the applicable provisions of chapter
7 284, the Division of Risk Management of the Department of
8 Financial Services ~~Insurance~~ is authorized to insure this
9 nonprofit corporation under the same general terms and
10 conditions as the Florida Developmental Disabilities Council
11 was insured in the Department of Children and Family Services
12 by the division prior to the transfer of its functions
13 authorized by this section.

14 Section 413. Subsection (2) of section 393.075,
15 Florida Statutes, is amended to read:

16 393.075 General liability coverage.--

17 (2) The Division of Risk Management of the Department
18 of Financial Services ~~Insurance~~ shall provide coverage through
19 the Department of Children and Family Services to any person
20 who owns or operates a foster care facility or group home
21 facility solely for the Department of Children and Family
22 Services, who cares for children placed by developmental
23 services staff of the department, and who is licensed pursuant
24 to s. 393.067 to provide such supervision and care in his or
25 her place of residence. The coverage shall be provided from
26 the general liability account of the State Risk Management
27 Trust Fund. The coverage is limited to general liability
28 claims arising from the provision of supervision and care of
29 children in a foster care facility or group home facility
30 pursuant to an agreement with the department and pursuant to
31 guidelines established through policy, rule, or statute.

1 Coverage shall be subject to the limits provided in ss. 284.38
2 and 284.385, and the exclusions set forth therein, together
3 with other exclusions as may be set forth in the certificate
4 of coverage issued by the trust fund. A person covered under
5 the general liability account pursuant to this subsection
6 shall immediately notify the Division of Risk Management of
7 the Department of Financial Services ~~Insurance~~ of any
8 potential or actual claim.

9 Section 414. Section 394.482, Florida Statutes, is
10 amended to read:

11 394.482 Payment of financial obligations imposed by
12 compact.--The compact administrator, subject to the approval
13 of the Chief Financial Officer ~~Comptroller~~, may make or
14 arrange for any payments necessary to discharge any financial
15 obligations imposed upon this state by the compact or by any
16 supplementary agreement entered into thereunder.

17 Section 415. Paragraphs (a) and (c) of subsection (4)
18 of section 400.0238, Florida Statutes, are amended to read:

19 400.0238 Punitive damages; limitation.--

20 (4) Notwithstanding any other law to the contrary, the
21 amount of punitive damages awarded pursuant to this section
22 shall be equally divided between the claimant and the Quality
23 of Long-Term Care Facility Improvement Trust Fund, in
24 accordance with the following provisions:

25 (a) The clerk of the court shall transmit a copy of
26 the jury verdict to the Chief Financial Officer ~~State~~
27 ~~Treasurer~~ by certified mail. In the final judgment, the court
28 shall order the percentages of the award, payable as provided
29 herein.

30 (c) The Department of Financial Services ~~Banking and~~
31 ~~Finance~~ shall collect or cause to be collected all payments

1 due the state under this section. Such payments are made to
2 the Chief Financial Officer ~~Comptroller~~ and deposited in the
3 appropriate fund specified in this subsection.

4 Section 416. Subsection (2) of section 400.063,
5 Florida Statutes, is amended to read:

6 400.063 Resident Protection Trust Fund.--

7 (2) The agency is authorized to establish for each
8 facility, subject to intervention by the agency, a separate
9 bank account for the deposit to the credit of the agency of
10 any moneys received from the Resident Protection Trust Fund or
11 any other moneys received for the maintenance and care of
12 residents in the facility, and the agency is authorized to
13 disburse moneys from such account to pay obligations incurred
14 for the purposes of this section. The agency is authorized to
15 requisition moneys from the Resident Protection Trust Fund in
16 advance of an actual need for cash on the basis of an estimate
17 by the agency of moneys to be spent under the authority of
18 this section. Any bank account established under this section
19 need not be approved in advance of its creation as required by
20 s. 17.58 ~~s. 18.101~~, but shall be secured by depository
21 insurance equal to or greater than the balance of such account
22 or by the pledge of collateral security in conformance with
23 criteria established in s. 18.11. The agency shall notify the
24 Chief Financial Officer ~~Treasurer and the Comptroller~~ of any
25 such account so established and shall make a quarterly
26 accounting to the Chief Financial Officer ~~Comptroller~~ for all
27 moneys deposited in such account.

28 Section 417. Paragraph (c) of subsection (4) of
29 section 400.071, Florida Statutes, is amended to read:

30 400.071 Application for license.--

31

1 (4) Each applicant for licensure must comply with the
2 following requirements:

3 (c) Proof of compliance with the level 2 background
4 screening requirements of chapter 435 which has been submitted
5 within the previous 5 years in compliance with any other
6 health care or assisted living licensure requirements of this
7 state is acceptable in fulfillment of paragraph (a). Proof of
8 compliance with background screening which has been submitted
9 within the previous 5 years to fulfill the requirements of the
10 Financial Services Commission and the Office of Insurance
11 Regulation ~~Department of Insurance~~ pursuant to chapter 651 as
12 part of an application for a certificate of authority to
13 operate a continuing care retirement community is acceptable
14 in fulfillment of the Department of Law Enforcement and
15 Federal Bureau of Investigation background check.

16 Section 418. Paragraph (b) of subsection (1) of
17 section 400.4174, Florida Statutes, is amended to read:

18 400.4174 Background screening; exemptions.--

19 (1)

20 (b) Proof of compliance with level 2 screening
21 standards which has been submitted within the previous 5 years
22 to meet any facility or professional licensure requirements of
23 the agency or the Department of Health satisfies the
24 requirements of this subsection, provided that such proof is
25 accompanied, under penalty of perjury, by an affidavit of
26 compliance with the provisions of chapter 435. Proof of
27 compliance with the background screening requirements of the
28 Financial Services Commission and the Office of Insurance
29 Regulation ~~Department of Insurance~~ for applicants for a
30 certificate of authority to operate a continuing care
31 retirement community under chapter 651, submitted within the

1 last 5 years, satisfies the Department of Law Enforcement and
2 Federal Bureau of Investigation portions of a level 2
3 background check.

4 Section 419. Paragraphs (a) and (c) of subsection (4)
5 of section 400.4298, Florida Statutes, are amended to read:

6 400.4298 Punitive damages; limitation.--

7 (4) Notwithstanding any other law to the contrary, the
8 amount of punitive damages awarded pursuant to this section
9 shall be equally divided between the claimant and the Quality
10 of Long-Term Care Facility Improvement Trust Fund, in
11 accordance with the following provisions:

12 (a) The clerk of the court shall transmit a copy of
13 the jury verdict to the Chief Financial Officer ~~State~~
14 ~~Treasurer~~ by certified mail. In the final judgment, the court
15 shall order the percentages of the award, payable as provided
16 herein.

17 (c) The Department of Financial Services ~~Banking and~~
18 ~~Finance~~ shall collect or cause to be collected all payments
19 due the state under this section. Such payments are made to
20 the Chief Financial Officer ~~Comptroller~~ and deposited in the
21 appropriate fund specified in this subsection.

22 Section 420. Paragraph (c) of subsection (4) of
23 section 400.471, Florida Statutes, is amended to read:

24 400.471 Application for license; fee; provisional
25 license; temporary permit.--

26 (4) Each applicant for licensure must comply with the
27 following requirements:

28 (c) Proof of compliance with the level 2 background
29 screening requirements of chapter 435 which has been submitted
30 within the previous 5 years in compliance with any other
31 health care or assisted living licensure requirements of this

1 state is acceptable in fulfillment of paragraph (a). Proof of
2 compliance with background screening which has been submitted
3 within the previous 5 years to fulfill the requirements of the
4 Financial Services Commission and the Office of Insurance
5 Regulation ~~Department of Insurance~~ pursuant to chapter 651 as
6 part of an application for a certificate of authority to
7 operate a continuing care retirement community is acceptable
8 in fulfillment of the Department of Law Enforcement and
9 Federal Bureau of Investigation background check.

10 Section 421. Paragraph (c) of subsection (10) of
11 section 400.962, Florida Statutes, is amended to read:

12 400.962 License required; license application.--

13 (10)

14 (c) Proof of compliance with the level 2 background
15 screening requirements of chapter 435 which has been submitted
16 within the previous 5 years in compliance with any other
17 licensure requirements under this chapter satisfies the
18 requirements of paragraph (a). Proof of compliance with
19 background screening which has been submitted within the
20 previous 5 years to fulfill the requirements of the Financial
21 Services Commission and the Office of Insurance Regulation
22 ~~Department of Insurance~~ under chapter 651 as part of an
23 application for a certificate of authority to operate a
24 continuing care retirement community satisfies the
25 requirements for the Department of Law Enforcement and Federal
26 Bureau of Investigation background checks.

27 Section 422. Paragraph (b) of subsection (2) of
28 section 401.245, Florida Statutes, is amended to read:

29 401.245 Emergency Medical Services Advisory Council.--

30 (2)

31

1 (b) Representation on the Emergency Medical Services
2 Advisory Council shall include: two licensed physicians who
3 are "medical directors" as defined in s. 401.23(15) or whose
4 medical practice is closely related to emergency medical
5 services; two emergency medical service administrators, one of
6 whom is employed by a fire service; two certified paramedics,
7 one of whom is employed by a fire service; two certified
8 emergency medical technicians, one of whom is employed by a
9 fire service; one emergency medical services educator; one
10 emergency nurse; one hospital administrator; one
11 representative of air ambulance services; one representative
12 of a commercial ambulance operator; and two laypersons who are
13 in no way connected with emergency medical services, one of
14 whom is a representative of the elderly. Ex officio members of
15 the advisory council from state agencies shall include, but
16 shall not be limited to, representatives from the Department
17 of Education, the Department of Management Services, the State
18 Fire Marshal ~~Department of Insurance~~, the Department of
19 Highway Safety and Motor Vehicles, the Department of
20 Transportation, and the Department of Community Affairs.

21 Section 423. Paragraph (c) of subsection (2) of
22 section 401.25, Florida Statutes, is amended to read:

23 401.25 Licensure as a basic life support or an
24 advanced life support service.--

25 (2) The department shall issue a license for operation
26 to any applicant who complies with the following requirements:

27 (c) The applicant has furnished evidence of adequate
28 insurance coverage for claims arising out of injury to or
29 death of persons and damage to the property of others
30 resulting from any cause for which the owner of such business
31 or service would be liable. The applicant must provide

1 insurance in such sums and under such terms as required by the
2 department. In lieu of such insurance, the applicant may
3 furnish a certificate of self-insurance evidencing that the
4 applicant has established an adequate self-insurance plan to
5 cover such risks and that the plan has been approved by the
6 Office of Insurance Regulation of the Financial Services
7 Commission ~~Department of Insurance~~.

8 Section 424. Section 402.04, Florida Statutes, is
9 amended to read:

10 402.04 Award of scholarships and stipends;
11 disbursement of funds; administration.--The award of
12 scholarships or stipends provided for herein shall be made by
13 the Department of Children and Family Services, hereinafter
14 referred to as the department. The department shall handle the
15 administration of the scholarship or stipend and the
16 Department of Education shall, for and on behalf of the
17 department, handle the notes issued for the payment of the
18 scholarships or stipends provided for herein and the
19 collection of same. The department shall prescribe
20 regulations governing the payment of scholarships or stipends
21 to the school, college, or university for the benefit of the
22 scholarship or stipend holders. All scholarship awards,
23 expenses and costs of administration shall be paid from moneys
24 appropriated by the Legislature and shall be paid upon
25 vouchers approved by the department and properly certified by
26 the Chief Financial Officer ~~Comptroller~~.

27 Section 425. Paragraph (b) of subsection (1) and
28 subsection (4) of section 402.17, Florida Statutes, are
29 amended to read:

30 402.17 Claims for care and maintenance; trust
31 property.--The Department of Children and Family Services

1 shall protect the financial interest of the state with respect
2 to claims which the state may have for the care and
3 maintenance of clients of the department. The department
4 shall, as trustee, hold in trust and administer money of
5 clients and property designated for the personal benefit of
6 clients. The department shall act as trustee of clients' money
7 and property entrusted to it in accordance with the usual
8 fiduciary standards applicable generally to trustees, and
9 shall act to protect both the short-term and long-term
10 interests of the clients for whose benefit it is holding such
11 money and property.

12 (1) CLAIMS FOR CARE AND MAINTENANCE.--

13 (b) The Department of Children and Family Services may
14 charge off accounts if it certifies that the accounts are
15 uncollectible after diligent efforts have been made to collect
16 them. If the department certifies an account to the
17 Department of Financial Services ~~Banking and Finance~~, setting
18 forth the circumstances upon which it predicates the
19 uncollectibility, and if, pursuant to s. 17.04, the Department
20 of Financial Services ~~Banking and Finance~~ concurs, the account
21 shall be charged off.

22 (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the
23 death of any client affected by the provisions of this
24 section, any unclaimed money held in trust by the department
25 or by the Chief Financial Officer ~~Treasurer~~ for him or her
26 shall be applied first to the payment of any unpaid claim of
27 the state against the client, and any balance remaining
28 unclaimed for a period of 1 year shall escheat to the state as
29 unclaimed funds held by fiduciaries.

30 Section 426. Paragraph (a) of subsection (8) of
31 section 402.33, Florida Statutes, is amended to read:

1 402.33 Department authority to charge fees for
2 services provided.--

3 (8)(a) Unpaid fees for services provided by the
4 department to a client constitute a lien on any property owned
5 by the client or the client's responsible party which property
6 is not exempt by s. 4, Art. X of the State Constitution. If
7 fees are not paid within 6 months after they are billed, the
8 department shall charge interest on the unpaid balance at a
9 rate equal to the average rate of interest earned by the State
10 Treasury on state funds deposited in commercial banks as
11 reported by the Chief Financial Officer ~~Treasurer~~ for the
12 previous year. The department is authorized to negotiate and
13 settle any delinquent account, and to charge off any
14 delinquent account even though the claim of the department may
15 be against the client, a responsible party, or a payor of
16 third-party benefits, either directly for the department or as
17 a fiduciary for the client or responsible party.

18 Section 427. Paragraph (a) of subsection (8) of
19 section 403.1835, Florida Statutes, is amended to read:

20 403.1835 Water pollution control financial
21 assistance.--

22 (8)(a) If a local governmental agency becomes
23 delinquent on its loan, the department shall so certify to the
24 Chief Financial Officer ~~Comptroller~~, who shall forward the
25 amount delinquent to the department from any unobligated funds
26 due to the local governmental agency under any revenue-sharing
27 or tax-sharing fund established by the state, except as
28 otherwise provided by the State Constitution. Certification of
29 delinquency shall not limit the department from pursuing other
30 remedies available for default on a loan. The department may
31 impose a penalty for delinquent loan payments in an amount not

1 to exceed an interest rate of 18 percent per annum on the
2 amount due in addition to charging the cost to handle and
3 process the debt. Penalty interest shall accrue on any amount
4 due and payable beginning on the 30th day following the date
5 upon which payment is due.

6 Section 428. Subsection (2) of section 403.1837,
7 Florida Statutes, is amended to read:

8 403.1837 Florida Water Pollution Control Financing
9 Corporation.--

10 (2) The corporation shall be governed by a board of
11 directors consisting of the Governor's Budget Director or the
12 budget director's designee, the Chief Financial Officer
13 ~~Comptroller~~ or the Chief Financial Officer's ~~Comptroller's~~
14 ~~designee, the Treasurer or the Treasurer's designee,~~and the
15 Secretary of Environmental Protection or the secretary's
16 ~~designee, until January 7, 2003, at which time the board shall~~
17 ~~include the Chief Financial Officer or the Chief Financial~~
18 ~~Officer's designee in place of the Treasurer and Comptroller.~~
19 The executive director of the State Board of Administration
20 shall be the chief executive officer of the corporation; shall
21 direct and supervise the administrative affairs of the
22 corporation; and shall control, direct, and supervise
23 operation of the corporation. The corporation shall have such
24 other officers as may be determined by the board of directors.

25 Section 429. Subsection (20) of section 403.706,
26 Florida Statutes, is amended to read:

27 403.706 Local government solid waste
28 responsibilities.--

29 (20) In addition to any other penalties provided by
30 law, a local government that does not comply with the
31 requirements of subsections (2) and (4) shall not be eligible

1 for grants from the Solid Waste Management Trust Fund, and the
2 department may notify the Chief Financial Officer ~~State~~
3 ~~Treasurer~~ to withhold payment of all or a portion of funds
4 payable to the local government by the department from the
5 General Revenue Fund or by the department from any other state
6 fund, to the extent not pledged to retire bonded indebtedness,
7 unless the local government demonstrates that good faith
8 efforts to meet the requirements of subsections (2) and (4)
9 have been made or that the funds are being or will be used to
10 finance the correction of a pollution control problem that
11 spans jurisdictional boundaries.

12 Section 430. Subsection (3) of section 403.724,
13 Florida Statutes, is amended to read:

14 403.724 Financial responsibility.--

15 (3) The amount of financial responsibility required
16 shall be approved by the department upon each issuance,
17 renewal, or modification of a hazardous waste facility permit.
18 Such factors as inflation rates and changes in operation may
19 be considered when approving financial responsibility for the
20 duration of the permit. The Office of Insurance Regulation of
21 the Financial Services Commission ~~Department of Insurance~~
22 shall be available to assist the department in making this
23 determination. In approving or modifying the amount of
24 financial responsibility, the department shall consider:

25 (a) The amount and type of hazardous waste involved;

26 (b) The probable damage to human health and the
27 environment;

28 (c) The danger and probable damage to private and
29 public property near the facility;

30
31

1 (d) The probable time that the hazardous waste and
2 facility involved will endanger the public health, safety, and
3 welfare or the environment; and

4 (e) The probable costs of properly closing the
5 facility.

6 Section 431. Paragraph (a) of subsection (15) of
7 section 403.8532, Florida Statutes, is amended to read:

8 403.8532 Drinking water state revolving loan fund;
9 use; rules.--

10 (15)(a) If a local governmental agency defaults under
11 the terms of its loan agreement, the department shall so
12 certify to the Chief Financial Officer ~~Comptroller~~, who shall
13 forward the amount delinquent to the department from any
14 unobligated funds due to the local governmental agency under
15 any revenue-sharing or tax-sharing fund established by the
16 state, except as otherwise provided by the State Constitution.
17 Certification of delinquency shall not limit the department
18 from pursuing other remedies available for default on a loan,
19 including accelerating loan repayments, eliminating all or
20 part of the interest rate subsidy on the loan, and court
21 appointment of a receiver to manage the public water system.

22 Section 432. Paragraphs (a), (b), (c), and (e) of
23 subsection (2) of section 404.111, Florida Statutes, are
24 amended to read:

25 404.111 Surety requirements.--

26 (2) In lieu of posting a bond as required under
27 subsection (1), a licensee may:

28 (a) Deposit with the Chief Financial Officer ~~Treasurer~~
29 securities of the type eligible for deposit by insurers under
30 s. 625.52, which securities must have at all times a market
31

1 value of not less than the amount of the bond required under
2 subsection (1).

3 (b) Whenever the market value of the securities
4 deposited with the Chief Financial Officer ~~Treasurer~~ is less
5 than 95 percent of the amount required by the department, the
6 licensee shall deposit additional securities or otherwise
7 increase the deposit to the amount required.

8 (c) The state is responsible for the safekeeping of
9 all securities deposited with the Chief Financial Officer
10 ~~Treasurer~~ under this section. Such securities are not, on
11 account of being in this state, subject to taxation but shall
12 be held exclusively and solely to guarantee the faithful
13 performance by the licensee of its obligations.

14 (e) Such deposit shall be maintained unimpaired so
15 long as the licensee continues in business in this state.
16 Whenever the licensee ceases to do business in this state and
17 furnishes the department satisfactory proof that it has
18 discharged or otherwise adequately provided for all its
19 obligations in this state, the Chief Financial Officer
20 ~~Treasurer~~ shall release the deposit securities to the parties
21 entitled thereto, on the receipt of authorization from the
22 department.

23 Section 433. Subsection (2) of section 406.58, Florida
24 Statutes, is amended to read:

25 406.58 Fees; authority to accept additional funds;
26 annual audit.--

27 (2) The anatomical board is hereby empowered to
28 receive money from public or private sources in addition to
29 the fees collected from the institution or association to
30 which the bodies are distributed to be used to defray the
31 costs of embalming, handling, shipping, storage, cremation,

1 and other costs relating to the obtaining and use of such
2 bodies as described in this chapter; the anatomical board is
3 empowered to pay the reasonable expenses incurred by any
4 person delivering the bodies as described in this chapter to
5 the anatomical board and is further empowered to enter into
6 contracts and perform such other acts as are necessary to the
7 proper performance of its duties; a complete record of all
8 fees and other financial transactions of said anatomical board
9 shall be kept and audited annually by the Department of
10 Financial Services ~~Banking and Finance~~, and a report of such
11 audit shall be made annually to the University of Florida.

12 Section 434. Paragraph (b) of subsection (2) of
13 section 408.040, Florida Statutes, is amended to read:

14 408.040 Conditions and monitoring.--

15 (2)

16 (b) A certificate of need issued to an applicant
17 holding a provisional certificate of authority under chapter
18 651 shall terminate 1 year after the applicant receives a
19 valid certificate of authority from the Office of Insurance
20 Regulation of the Financial Services Commission ~~Department of~~
21 ~~Insurance~~.

22 Section 435. Paragraph (a) of subsection (8) of
23 section 408.05, Florida Statutes, is amended to read:

24 408.05 State Center for Health Statistics.--

25 (8) STATE COMPREHENSIVE HEALTH INFORMATION SYSTEM
26 ADVISORY COUNCIL.--

27 (a) There is established in the agency the State
28 Comprehensive Health Information System Advisory Council to
29 assist the center in reviewing the comprehensive health
30 information system and to recommend improvements for such
31 system. The council shall consist of the following members:

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

3 2. An employee of the Department of Financial Services
4 ~~Department of Insurance~~, to be appointed by the Chief
5 Financial Officer ~~Insurance Commissioner~~.

6 3. An employee of the Department of Education, to be
7 appointed by the Commissioner of Education.

8 4. Ten persons, to be appointed by the Secretary of
9 Health Care Administration, representing other state and local
10 agencies, state universities, the Florida Association of
11 Business/Health Coalitions, local health councils,
12 professional health-care-related associations, consumers, and
13 purchasers.

14 Section 436. Subsection (4) of section 408.08, Florida
15 Statutes, is amended to read:

16 408.08 Inspections and audits; violations; penalties;
17 fines; enforcement.--

18 (4) If a health insurer does not comply with the
19 requirements of s. 408.061, the agency shall report a health
20 insurer's failure to comply to the Office of Insurance
21 Regulation of the Financial Services Commission ~~Department of~~
22 ~~Insurance~~, which shall take into account the failure by the
23 health insurer to comply in conjunction with its approval
24 authority under s. 627.410. The agency shall adopt any rules
25 necessary to carry out its responsibilities required by this
26 subsection.

27 Section 437. Paragraph (a) of subsection (4) and
28 subsection (9) of section 408.18, Florida Statutes, are
29 amended to read:

30
31

1 408.18 Health Care Community Antitrust Guidance Act;
2 antitrust no-action letter; market-information collection and
3 education.--

4 (4)(a) Members of the health care community who seek
5 antitrust guidance may request a review of their proposed
6 business activity by the Attorney General's office. In
7 conducting its review, the Attorney General's office may seek
8 whatever documentation, data, or other material it deems
9 necessary from the Agency for Health Care Administration, the
10 State Center for Health Statistics, and the Office of
11 Insurance Regulation of the Financial Services Commission
12 ~~Department of Insurance~~.

13 (9) When the member of the health care community
14 seeking the no-action letter is regulated by the Office of
15 Insurance Regulation ~~Department of Insurance~~, the office
16 ~~Department of Insurance~~ shall make available to the Attorney
17 General's office, as needed, any information it maintains in
18 its regulatory capacity.

19 Section 438. Subsection (1) of section 408.50, Florida
20 Statutes, is amended to read:

21 408.50 Prospective payment arrangements.--

22 (1) Hospitals as defined in s. 395.002, and health
23 insurers regulated pursuant to parts VI and VII of chapter
24 627, shall establish prospective payment arrangements that
25 provide hospitals with financial incentives to contain costs.
26 Each hospital shall enter into a rate agreement with each
27 health insurer which represents 10 percent or more of the
28 private-pay patients of the hospital to establish a
29 prospective payment arrangement. Hospitals and health insurers
30 regulated pursuant to this section shall report annually the
31 results of each specific prospective payment arrangement

1 adopted by each hospital and health insurer to the board. The
2 agency shall report a health insurer's failure to comply to
3 the Office of Insurance Regulation of the Financial Services
4 Commission ~~Department of Insurance~~, which shall take into
5 account the failure by the health insurer to comply in
6 conjunction with its approval authority under s. 627.410. The
7 agency shall adopt any rules necessary to carry out its
8 responsibilities required by this section.

9 Section 439. Section 408.7056, Florida Statutes, is
10 amended to read:

11 408.7056 Statewide Provider and Subscriber Assistance
12 Program.--

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

14 (a) "Agency" means the Agency for Health Care
15 Administration.

16 (b) "Department" means the Department of Financial
17 Services ~~Insurance~~.

18 (c) "Grievance procedure" means an established set of
19 rules that specify a process for appeal of an organizational
20 decision.

21 (d) "Health care provider" or "provider" means a
22 state-licensed or state-authorized facility, a facility
23 principally supported by a local government or by funds from a
24 charitable organization that holds a current exemption from
25 federal income tax under s. 501(c)(3) of the Internal Revenue
26 Code, a licensed practitioner, a county health department
27 established under part I of chapter 154, a prescribed
28 pediatric extended care center defined in s. 400.902, a
29 federally supported primary care program such as a migrant
30 health center or a community health center authorized under s.
31 329 or s. 330 of the United States Public Health Services Act

1 that delivers health care services to individuals, or a
2 community facility that receives funds from the state under
3 the Community Alcohol, Drug Abuse, and Mental Health Services
4 Act and provides mental health services to individuals.

5 (e) "Managed care entity" means a health maintenance
6 organization or a prepaid health clinic certified under
7 chapter 641, a prepaid health plan authorized under s.
8 409.912, or an exclusive provider organization certified under
9 s. 627.6472.

10 (f) "Office" means the Office of Insurance Regulation
11 of the Financial Services Commission.

12 (g)~~(f)~~ "Panel" means a statewide provider and
13 subscriber assistance panel selected as provided in subsection
14 (11).

15 (2) The agency shall adopt and implement a program to
16 provide assistance to subscribers and providers, including
17 those whose grievances are not resolved by the managed care
18 entity to the satisfaction of the subscriber or provider. The
19 program shall consist of one or more panels that meet as often
20 as necessary to timely review, consider, and hear grievances
21 and recommend to the agency or the office ~~department~~ any
22 actions that should be taken concerning individual cases heard
23 by the panel. The panel shall hear every grievance filed by
24 subscribers and providers on behalf of subscribers, unless the
25 grievance:

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

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

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

5 (d) Is related to appeals by in-plan suppliers and
6 providers, unless related to quality of care provided by the
7 plan;

8 (e) Is part of a Medicaid fair hearing pursued under
9 42 C.F.R. ss. 431.220 et seq.;

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

12 (g) Is related to an appeal by nonparticipating
13 providers, unless related to the quality of care provided to a
14 subscriber by the managed care entity and the provider is
15 involved in the care provided to the subscriber;

16 (h) Was filed before the subscriber or provider
17 completed the entire internal grievance procedure of the
18 managed care entity, the managed care entity has complied with
19 its timeframes for completing the internal grievance
20 procedure, and the circumstances described in subsection (6)
21 do not apply;

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

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

30 (k) Is limited to issues involving conduct of a health
31 care provider or facility, staff member, or employee of a

1 managed care entity which constitute grounds for disciplinary
2 action by the appropriate professional licensing board and is
3 not indicative of a pattern of inappropriate behavior, and the
4 agency, office, or department has reported these grievances to
5 the appropriate professional licensing board or to the health
6 facility regulation section of the agency for possible
7 investigation; or

8 (1) Is withdrawn by the subscriber or provider.
9 Failure of the subscriber or the provider to attend the
10 hearing shall be considered a withdrawal of the grievance.

11 (3) The agency shall review all grievances within 60
12 days after receipt and make a determination whether the
13 grievance shall be heard. Once the agency notifies the panel,
14 the subscriber or provider, and the managed care entity that a
15 grievance will be heard by the panel, the panel shall hear the
16 grievance either in the network area or by teleconference no
17 later than 120 days after the date the grievance was filed.
18 The agency shall notify the parties, in writing, by facsimile
19 transmission, or by phone, of the time and place of the
20 hearing. The panel may take testimony under oath, request
21 certified copies of documents, and take similar actions to
22 collect information and documentation that will assist the
23 panel in making findings of fact and a recommendation. The
24 panel shall issue a written recommendation, supported by
25 findings of fact, to the provider or subscriber, to the
26 managed care entity, and to the agency or the office
27 ~~department~~ no later than 15 working days after hearing the
28 grievance. If at the hearing the panel requests additional
29 documentation or additional records, the time for issuing a
30 recommendation is tolled until the information or

31

1 documentation requested has been provided to the panel. The
2 proceedings of the panel are not subject to chapter 120.

3 (4) If, upon receiving a proper patient authorization
4 along with a properly filed grievance, the agency requests
5 medical records from a health care provider or managed care
6 entity, the health care provider or managed care entity that
7 has custody of the records has 10 days to provide the records
8 to the agency. Failure to provide requested medical records
9 may result in the imposition of a fine of up to \$500. Each
10 day that records are not produced is considered a separate
11 violation.

12 (5) Grievances that the agency determines pose an
13 immediate and serious threat to a subscriber's health must be
14 given priority over other grievances. The panel may meet at
15 the call of the chair to hear the grievances as quickly as
16 possible but no later than 45 days after the date the
17 grievance is filed, unless the panel receives a waiver of the
18 time requirement from the subscriber. The panel shall issue a
19 written recommendation, supported by findings of fact, to the
20 office ~~department~~ or the agency within 10 days after hearing
21 the expedited grievance.

22 (6) When the agency determines that the life of a
23 subscriber is in imminent and emergent jeopardy, the chair of
24 the panel may convene an emergency hearing, within 24 hours
25 after notification to the managed care entity and to the
26 subscriber, to hear the grievance. The grievance must be
27 heard notwithstanding that the subscriber has not completed
28 the internal grievance procedure of the managed care entity.
29 The panel shall, upon hearing the grievance, issue a written
30 emergency recommendation, supported by findings of fact, to
31 the managed care entity, to the subscriber, and to the agency

1 or the office ~~department~~ for the purpose of deferring the
2 imminent and emergent jeopardy to the subscriber's life.
3 Within 24 hours after receipt of the panel's emergency
4 recommendation, the agency or office ~~department~~ may issue an
5 emergency order to the managed care entity. An emergency order
6 remains in force until:

7 (a) The grievance has been resolved by the managed
8 care entity;

9 (b) Medical intervention is no longer necessary; or
10 (c) The panel has conducted a full hearing under
11 subsection (3) and issued a recommendation to the agency or
12 the office ~~department~~, and the agency or office ~~department~~ has
13 issued a final order.

14 (7) After hearing a grievance, the panel shall make a
15 recommendation to the agency or the office ~~department~~ which
16 may include specific actions the managed care entity must take
17 to comply with state laws or rules regulating managed care
18 entities.

19 (8) A managed care entity, subscriber, or provider
20 that is affected by a panel recommendation may within 10 days
21 after receipt of the panel's recommendation, or 72 hours after
22 receipt of a recommendation in an expedited grievance, furnish
23 to the agency or office ~~department~~ written evidence in
24 opposition to the recommendation or findings of fact of the
25 panel.

26 (9) No later than 30 days after the issuance of the
27 panel's recommendation and, for an expedited grievance, no
28 later than 10 days after the issuance of the panel's
29 recommendation, the agency or the office ~~department~~ may adopt
30 the panel's recommendation or findings of fact in a proposed
31 order or an emergency order, as provided in chapter 120, which

1 it shall issue to the managed care entity. The agency or
2 office ~~department~~ may issue a proposed order or an emergency
3 order, as provided in chapter 120, imposing fines or
4 sanctions, including those contained in ss. 641.25 and 641.52.
5 The agency or the office ~~department~~ may reject all or part of
6 the panel's recommendation. All fines collected under this
7 subsection must be deposited into the Health Care Trust Fund.

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

11 (a) The severity of the noncompliance, including the
12 probability that death or serious harm to the health or safety
13 of the subscriber will result or has resulted, the severity of
14 the actual or potential harm, and the extent to which
15 provisions of chapter 641 were violated.

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

18 (c) Any previous incidents of noncompliance by the
19 managed care entity.

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

22 (11) The panel shall consist of the Insurance Consumer
23 Advocate, or designee thereof, established by s. 627.0613; two
24 members employed by the agency and two members employed by the
25 department, chosen by their respective agencies; a consumer
26 appointed by the Governor; a physician appointed by the
27 Governor, as a standing member; and physicians who have
28 expertise relevant to the case to be heard, on a rotating
29 basis. The agency may contract with a medical director and a
30 primary care physician who shall provide additional technical
31 expertise to the panel. The medical director shall be

1 selected from a health maintenance organization with a current
2 certificate of authority to operate in Florida.

3 (12) Every managed care entity shall submit a
4 quarterly report to the agency, the office, and the department
5 listing the number and the nature of all subscribers' and
6 providers' grievances which have not been resolved to the
7 satisfaction of the subscriber or provider after the
8 subscriber or provider follows the entire internal grievance
9 procedure of the managed care entity. The agency shall notify
10 all subscribers and providers included in the quarterly
11 reports of their right to file an unresolved grievance with
12 the panel.

13 (13) Any information which would identify a subscriber
14 or the spouse, relative, or guardian of a subscriber and which
15 is contained in a report obtained by the office or department
16 ~~of Insurance~~ pursuant to this section is confidential and
17 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
18 I of the State Constitution.

19 (14) A proposed order issued by the agency or office
20 ~~department~~ which only requires the managed care entity to take
21 a specific action under subsection (7) is subject to a summary
22 hearing in accordance with s. 120.574, unless all of the
23 parties agree otherwise. If the managed care entity does not
24 prevail at the hearing, the managed care entity must pay
25 reasonable costs and attorney's fees of the agency or the
26 office ~~department~~ incurred in that proceeding.

27 (15)(a) Any information which would identify a
28 subscriber or the spouse, relative, or guardian of a
29 subscriber which is contained in a document, report, or record
30 prepared or reviewed by the panel or obtained by the agency
31 pursuant to this section is confidential and exempt from the

1 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
2 Constitution.

3 (b) Meetings of the panel shall be open to the public
4 unless the provider or subscriber whose grievance will be
5 heard requests a closed meeting or the agency or the
6 department ~~of Insurance~~ determines that information of a
7 sensitive personal nature which discloses the subscriber's
8 medical treatment or history; or information which constitutes
9 a trade secret as defined by s. 812.081; or information
10 relating to internal risk management programs as defined in s.
11 641.55(5)(c), (6), and (8) may be revealed at the panel
12 meeting, in which case that portion of the meeting during
13 which such sensitive personal information, trade secret
14 information, or internal risk management program information
15 is discussed shall be exempt from the provisions of s. 286.011
16 and s. 24(b), Art. I of the State Constitution. All closed
17 meetings shall be recorded by a certified court reporter.

18
19 This subsection is subject to the Open Government Sunset
20 Review Act of 1995 in accordance with s. 119.15, and shall
21 stand repealed on October 2, 2003, unless reviewed and saved
22 from repeal through reenactment by the Legislature.

23 Section 440. Subsection (1) of section 408.902,
24 Florida Statutes, is amended to read:

25 408.902 MedAccess program; creation; program title.--

26 (1) Effective July 1, 1994, there is hereby created
27 the MedAccess program to be administered by the Agency for
28 Health Care Administration. The MedAccess program shall not
29 be subject to the requirements of the Office of Insurance
30 Regulation of the Financial Services Commission ~~Department of~~

31

1 ~~Insurance~~ or chapter 627. The secretary of the agency shall
2 appoint an administrator of the MedAccess program.

3 Section 441. Paragraph (b) of subsection (2) and
4 subsections (3), (6), and (9) of section 408.909, Florida
5 Statutes, are amended to read:

6 408.909 Health flex plans.--

7 (2) DEFINITIONS.--As used in this section, the term:

8 (b) "Office" means the Office of Insurance Regulation
9 of the Financial Services Commission ~~"Department"~~ ~~means the~~
10 ~~Department of Insurance.~~

11 (3) PILOT PROGRAM.--The agency and the office
12 ~~department~~ shall each approve or disapprove health flex plans
13 that provide health care coverage for eligible participants
14 who reside in the three areas of the state that have the
15 highest number of uninsured persons, as identified in the
16 Florida Health Insurance Study conducted by the agency and in
17 Indian River County. A health flex plan may limit or exclude
18 benefits otherwise required by law for insurers offering
19 coverage in this state, may cap the total amount of claims
20 paid per year per enrollee, may limit the number of enrollees,
21 or may take any combination of those actions.

22 (a) The agency shall develop guidelines for the review
23 of applications for health flex plans and shall disapprove or
24 withdraw approval of plans that do not meet or no longer meet
25 minimum standards for quality of care and access to care.

26 (b) The office ~~department~~ shall develop guidelines for
27 the review of health flex plan applications and shall
28 disapprove or shall withdraw approval of plans that:

29 1. Contain any ambiguous, inconsistent, or misleading
30 provisions or any exceptions or conditions that deceptively
31

1 affect or limit the benefits purported to be assumed in the
2 general coverage provided by the health flex plan;

3 2. Provide benefits that are unreasonable in relation
4 to the premium charged or contain provisions that are unfair
5 or inequitable or contrary to the public policy of this state,
6 that encourage misrepresentation, or that result in unfair
7 discrimination in sales practices; or

8 3. Cannot demonstrate that the health flex plan is
9 financially sound and that the applicant is able to underwrite
10 or finance the health care coverage provided.

11 (c) The agency and the Financial Services Commission
12 ~~department~~ may adopt rules as needed to administer this
13 section.

14 (6) RECORDS.--Each health flex plan shall maintain
15 enrollment data and reasonable records of its losses,
16 expenses, and claims experience and shall make those records
17 reasonably available to enable the office ~~department~~ to
18 monitor and determine the financial viability of the health
19 flex plan, as necessary. Provider networks and total
20 enrollment by area shall be reported to the agency biannually
21 to enable the agency to monitor access to care.

22 (9) PROGRAM EVALUATION.--The agency and the office
23 ~~department~~ shall evaluate the pilot program and its effect on
24 the entities that seek approval as health flex plans, on the
25 number of enrollees, and on the scope of the health care
26 coverage offered under a health flex plan; shall provide an
27 assessment of the health flex plans and their potential
28 applicability in other settings; and shall, by January 1,
29 2004, jointly submit a report to the Governor, the President
30 of the Senate, and the Speaker of the House of
31 Representatives.

1 Section 442. Paragraph (f) of subsection (6) and
2 paragraph (a) of subsection (15) of section 409.175, Florida
3 Statutes, are amended to read:

4 409.175 Licensure of family foster homes, residential
5 child-caring agencies, and child-placing agencies.--

6 (6)

7 (f) All residential child-caring agencies must meet
8 firesafety standards for such agencies adopted by the Division
9 of State Fire Marshal of the Department of Financial Services
10 ~~Insurance~~ and must be inspected annually. At the request of
11 the department, firesafety inspections shall be conducted by
12 the Division of State Fire Marshal or a local fire department
13 official who has been certified by the division as having
14 completed the training requirements for persons inspecting
15 such agencies. Inspection reports shall be furnished to the
16 department within 30 days of a request.

17 (15)(a) The Division of Risk Management of the
18 Department of Financial Services ~~Insurance~~ shall provide
19 coverage through the Department of Children and Family
20 Services to any person who owns or operates a family foster
21 home solely for the Department of Children and Family Services
22 and who is licensed to provide family foster home care in her
23 or his place of residence. The coverage shall be provided
24 from the general liability account of the State Risk
25 Management Trust Fund, and the coverage shall be primary. The
26 coverage is limited to general liability claims arising from
27 the provision of family foster home care pursuant to an
28 agreement with the department and pursuant to guidelines
29 established through policy, rule, or statute. Coverage shall
30 be limited as provided in ss. 284.38 and 284.385, and the
31 exclusions set forth therein, together with other exclusions

1 as may be set forth in the certificate of coverage issued by
2 the trust fund, shall apply. A person covered under the
3 general liability account pursuant to this subsection shall
4 immediately notify the Division of Risk Management of the
5 Department of Financial Services ~~Insurance~~ of any potential or
6 actual claim.

7 Section 443. Subsection (10) of section 409.25656,
8 Florida Statutes, is amended to read:

9 409.25656 Garnishment.--

10 (10) The department shall provide notice to the Chief
11 Financial Officer ~~Comptroller~~, in electronic or other form
12 specified by the Chief Financial Officer ~~Comptroller~~, listing
13 the obligors for whom warrants are outstanding. Pursuant to
14 subsection (1), the Chief Financial Officer ~~Comptroller~~ shall,
15 upon notice from the department, withhold all payments to any
16 obligor who provides commodities or services to the state,
17 leases real property to the state, or constructs a public
18 building or public work for the state. The department may levy
19 upon the withheld payments in accordance with subsection (3).
20 Section 215.422 does not apply from the date the notice is
21 filed with the Chief Financial Officer ~~Comptroller~~ until the
22 date the department notifies the Chief Financial Officer
23 ~~Comptroller~~ of its consent to make payment to the person or 60
24 days after receipt of the department's notice in accordance
25 with subsection (1), whichever occurs earlier.

26 Section 444. Subsections (1), (2), (3), and (4) of
27 section 409.25658, Florida Statutes, are amended to read:

28 409.25658 Use of unclaimed property for past due
29 support.--

30 (1) In a joint effort to facilitate the collection and
31 payment of past due support, the Department of Revenue, in

1 cooperation with the Department of Financial Services ~~Banking~~
2 ~~and Finance~~, shall identify persons owing support collected
3 through a court who are presumed to have unclaimed property
4 held by the Department of Financial Services ~~Banking and~~
5 ~~Finance~~.

6 (2) The department shall periodically provide the
7 Department of Financial Services ~~Banking and Finance~~ with an
8 electronic file of support obligors who owe past due support.
9 The Department of Financial Services ~~Banking and Finance~~ shall
10 conduct a data match of the file against all apparent owners
11 of unclaimed property under chapter 717 and provide the
12 resulting match list to the department.

13 (3) Upon receipt of the data match list, the
14 department shall provide to the Department of Financial
15 Services ~~Banking and Finance~~ the obligor's last known address.
16 The Department of Financial Services ~~Banking and Finance~~ shall
17 follow the notification procedures under s. 717.118.

18 (4) Prior to paying an obligor's approved claim, the
19 Department of Financial Services ~~Banking and Finance~~ shall
20 notify the department that such claim has been approved. Upon
21 confirmation that the Department of Financial Services ~~Banking~~
22 ~~and Finance~~ has approved the claim, the department shall
23 immediately send a notice by certified mail to the obligor,
24 with a copy to the Department of Financial Services ~~Banking~~
25 ~~and Finance~~, advising the obligor of the department's intent
26 to intercept the approved claim up to the amount of the past
27 due support, and informing the obligor of the obligor's right
28 to request a hearing under chapter 120. The Department of
29 Financial Services ~~Banking and Finance~~ shall retain custody of
30 the property until a final order has been entered and any
31 appeals thereon have been concluded. If the obligor fails to

1 request a hearing, the department shall enter a final order
2 instructing the Department of Financial Services ~~Banking and~~
3 ~~Finance~~ to transfer to the department the property in the
4 amount stated in the final order. Upon such transfer, the
5 Department of Financial Services ~~Banking and Finance~~ shall be
6 released from further liability related to the transferred
7 property.

8 Section 445. Subsections (4) and (7) of section
9 409.2673, Florida Statutes, are amended to read:

10 409.2673 Shared county and state health care program
11 for low-income persons.--

12 (4) The levels of financial participation by counties
13 and the state for this program shall be determined as follows:

14 (a) If on July 1, 1988, a county funded inpatient
15 hospital services for those who would have been eligible for
16 the program, the county shall fund 35 percent of the cost of
17 this program and the state shall provide the remaining 65
18 percent of the funding required for this program. A county
19 participating at this level shall use that portion of its
20 budget that previously would have funded these inpatient
21 hospital services and that, under this program, has been
22 offset by state funding for funding other health programs.

23 (b) If a county has not reached its maximum ad valorem
24 millage rate as authorized by law and certified to the
25 Department of Revenue and the county does not currently fund
26 inpatient hospital services for those who would be eligible
27 for this program, the county:

28 1. Shall provide 35 percent of the cost for this
29 program from within the county's existing budget, and the
30 state shall provide the remaining 65 percent of the funding
31 required for this program; however, under no circumstances

1 will county funding which had been used for funding the county
2 health department under chapter 154 be utilized for funding
3 the county's portion of this program; or

4 2. Shall levy an additional ad valorem millage to fund
5 the county's portion of this program. The state shall provide
6 the remaining portion of program funding if:

7 a. A county levies additional ad valorem millage up to
8 the maximum authorized by law and certified to the Department
9 of Revenue and still does not have sufficient funds to meet
10 its 35 percent of the funding of this program; and

11 b. A county has exhausted all revenue sources which
12 can statutorily be used as possible funding sources for this
13 program.

14 (c) A county will be eligible for 100-percent state
15 funding of this program if:

16 1. On July 1, 1988, the county did not fund inpatient
17 hospital services for those who would have been eligible for
18 this program;

19 2. The county has reached its maximum ad valorem
20 millage as authorized by law and certified to the Department
21 of Revenue; and

22 3. The county has exhausted all revenue sources which
23 can statutorily be used as possible funding sources for this
24 program.

25
26 Reporting forms specifically designed to capture the
27 information necessary to determine the above levels of
28 participation will be developed as part of the joint
29 rulemaking required for the shared county and state program.
30 For purposes of this program, the counties will be required to
31

1 report necessary information to the Department of Financial
2 Services ~~Banking and Finance~~.

3 (7) A county that participates in the program at any
4 level may not reduce its total per capita expenditures being
5 devoted to health care if any of these funds were previously
6 utilized for the provision of inpatient hospital services to
7 those persons made eligible for the shared county and state
8 program. It is the intent of the Legislature that, as a
9 result of the shared county and state program, local funds
10 which were previously used for the provision of inpatient
11 hospital services to persons made eligible by the program be
12 used by counties for funding other health care programs which,
13 for purposes of this section, are health expenditures as
14 reported annually to the Department of Financial Services
15 ~~Banking and Finance~~ pursuant to s. 218.32, provided that this
16 subsection does not apply to reductions in county funding
17 resulting from the expiration of special sales taxes levied
18 pursuant to chapter 84-373, Laws of Florida.

19 Section 446. Subsection (3) of section 409.8132,
20 Florida Statutes, is amended to read:

21 409.8132 Medikids program component.--

22 (3) INSURANCE LICENSURE NOT REQUIRED.--The Medikids
23 program component shall not be subject to the licensing
24 requirements of the Florida Insurance Code or rules adopted
25 thereunder ~~of the Department of Insurance~~.

26 Section 447. Section 409.817, Florida Statutes, is
27 amended to read:

28 409.817 Approval of health benefits coverage;
29 financial assistance.--In order for health insurance coverage
30 to qualify for premium assistance payments for an eligible
31

1 child under ss. 409.810-409.820, the health benefits coverage
2 must:

3 (1) Be certified by the Office of Insurance Regulation
4 of the Financial Services Commission ~~Department of Insurance~~
5 under s. 409.818 as meeting, exceeding, or being actuarially
6 equivalent to the benchmark benefit plan;

7 (2) Be guarantee issued;

8 (3) Be community rated;

9 (4) Not impose any preexisting condition exclusion for
10 covered benefits; however, group health insurance plans may
11 permit the imposition of a preexisting condition exclusion,
12 but only insofar as it is permitted under s. 627.6561;

13 (5) Comply with the applicable limitations on premiums
14 and cost-sharing in s. 409.816;

15 (6) Comply with the quality assurance and access
16 standards developed under s. 409.820; and

17 (7) Establish periodic open enrollment periods, which
18 may not occur more frequently than quarterly.

19 Section 448. Paragraph (c) of subsection (2),
20 paragraphs (a) and (f) of subsection (3), and subsections (4)
21 and (6) of section 409.818, Florida Statutes, are amended to
22 read:

23 409.818 Administration.--In order to implement ss.
24 409.810-409.820, the following agencies shall have the
25 following duties:

26 (2) The Department of Health shall:

27 (c) Chair a state-level coordinating council to review
28 and make recommendations concerning the implementation and
29 operation of the program. The coordinating council shall
30 include representatives from the department, the Department of
31 Children and Family Services, the agency, the Florida Healthy

1 Kids Corporation, the Office of Insurance Regulation of the
2 Financial Services Commission ~~Department of Insurance~~, local
3 government, health insurers, health maintenance organizations,
4 health care providers, families participating in the program,
5 and organizations representing low-income families.

6 (3) The Agency for Health Care Administration, under
7 the authority granted in s. 409.914(1), shall:

8 (a) Calculate the premium assistance payment necessary
9 to comply with the premium and cost-sharing limitations
10 specified in s. 409.816. The premium assistance payment for
11 each enrollee in a health insurance plan participating in the
12 Florida Healthy Kids Corporation shall equal the premium
13 approved by the Florida Healthy Kids Corporation and the
14 Office of Insurance Regulation of the Financial Services
15 Commission ~~Department of Insurance~~ pursuant to ss. 627.410 and
16 641.31, less any enrollee's share of the premium established
17 within the limitations specified in s. 409.816. The premium
18 assistance payment for each enrollee in an employer-sponsored
19 health insurance plan approved under ss. 409.810-409.820 shall
20 equal the premium for the plan adjusted for any benchmark
21 benefit plan actuarial equivalent benefit rider approved by
22 the Office of Insurance Regulation ~~Department of Insurance~~
23 pursuant to ss. 627.410 and 641.31, less any enrollee's share
24 of the premium established within the limitations specified
25 in s. 409.816. In calculating the premium assistance payment
26 levels for children with family coverage, the agency shall set
27 the premium assistance payment levels for each child
28 proportionately to the total cost of family coverage.

29 (f) Approve health benefits coverage for participation
30 in the program, following certification by the Office of
31

1 Insurance Regulation ~~Department of Insurance~~ under subsection
2 (4).

3
4 The agency is designated the lead state agency for Title XXI
5 of the Social Security Act for purposes of receipt of federal
6 funds, for reporting purposes, and for ensuring compliance
7 with federal and state regulations and rules.

8 (4) The Office of Insurance Regulation ~~Department of~~
9 ~~Insurance~~ shall certify that health benefits coverage plans
10 that seek to provide services under the Florida Kidcare
11 program, except those offered through the Florida Healthy Kids
12 Corporation or the Children's Medical Services network, meet,
13 exceed, or are actuarially equivalent to the benchmark benefit
14 plan and that health insurance plans will be offered at an
15 approved rate. In determining actuarial equivalence of
16 benefits coverage, the Office of Insurance Regulation
17 ~~Department of Insurance~~ and health insurance plans must comply
18 with the requirements of s. 2103 of Title XXI of the Social
19 Security Act. The department shall adopt rules necessary for
20 certifying health benefits coverage plans.

21 (6) The agency, the Department of Health, the
22 Department of Children and Family Services, the Florida
23 Healthy Kids Corporation, and the Office of Insurance
24 Regulation ~~Department of Insurance~~, after consultation with
25 and approval of the Speaker of the House of Representatives
26 and the President of the Senate, are authorized to make
27 program modifications that are necessary to overcome any
28 objections of the United States Department of Health and Human
29 Services to obtain approval of the state's child health
30 insurance plan under Title XXI of the Social Security Act.

31

1 Section 449. Subsection (20) of section 409.910,
2 Florida Statutes, is amended to read:

3 409.910 Responsibility for payments on behalf of
4 Medicaid-eligible persons when other parties are liable.--

5 (20) Entities providing health insurance as defined in
6 s. 624.603, and health maintenance organizations and prepaid
7 health clinics as defined in chapter 641, shall provide such
8 records and information as are necessary to accomplish the
9 purpose of this section, unless such requirement results in an
10 unreasonable burden.

11 (a) The director of the agency and the director of the
12 Office of Insurance Regulation of the Financial Services
13 Commission ~~Insurance Commissioner~~ shall enter into a
14 cooperative agreement for requesting and obtaining information
15 necessary to effect the purpose and objective of this section.

16 1. The agency shall request only that information
17 necessary to determine whether health insurance as defined
18 pursuant to s. 624.603, or those health services provided
19 pursuant to chapter 641, could be, should be, or have been
20 claimed and paid with respect to items of medical care and
21 services furnished to any person eligible for services under
22 this section.

23 2. All information obtained pursuant to subparagraph
24 1. is confidential and exempt from s. 119.07(1).

25 3. The cooperative agreement or rules adopted under
26 this subsection may include financial arrangements to
27 reimburse the reporting entities for reasonable costs or a
28 portion thereof incurred in furnishing the requested
29 information. Neither the cooperative agreement nor the rules
30 shall require the automation of manual processes to provide
31 the requested information.

1 (b) The agency and the Financial Services Commission
2 ~~Department of Insurance~~ jointly shall adopt rules for the
3 development and administration of the cooperative agreement.
4 The rules shall include the following:

5 1. A method for identifying those entities subject to
6 furnishing information under the cooperative agreement.

7 2. A method for furnishing requested information.

8 3. Procedures for requesting exemption from the
9 cooperative agreement based on an unreasonable burden to the
10 reporting entity.

11 Section 450. Paragraphs (a) and (h) of subsection (3),
12 subsections (5), (15), and (18), and paragraph (a) of
13 subsection (36) of section 409.912, Florida Statutes, as
14 amended by sections 8 and 9 of chapter 2001-377, Laws of
15 Florida, are amended to read:

16 409.912 Cost-effective purchasing of health care.--The
17 agency shall purchase goods and services for Medicaid
18 recipients in the most cost-effective manner consistent with
19 the delivery of quality medical care. The agency shall
20 maximize the use of prepaid per capita and prepaid aggregate
21 fixed-sum basis services when appropriate and other
22 alternative service delivery and reimbursement methodologies,
23 including competitive bidding pursuant to s. 287.057, designed
24 to facilitate the cost-effective purchase of a case-managed
25 continuum of care. The agency shall also require providers to
26 minimize the exposure of recipients to the need for acute
27 inpatient, custodial, and other institutional care and the
28 inappropriate or unnecessary use of high-cost services. The
29 agency may establish prior authorization requirements for
30 certain populations of Medicaid beneficiaries, certain drug
31 classes, or particular drugs to prevent fraud, abuse, overuse,

1 and possible dangerous drug interactions. The Pharmaceutical
2 and Therapeutics Committee shall make recommendations to the
3 agency on drugs for which prior authorization is required. The
4 agency shall inform the Pharmaceutical and Therapeutics
5 Committee of its decisions regarding drugs subject to prior
6 authorization.

7 (3) The agency may contract with:

8 (a) An entity that provides no prepaid health care
9 services other than Medicaid services under contract with the
10 agency and which is owned and operated by a county, county
11 health department, or county-owned and operated hospital to
12 provide health care services on a prepaid or fixed-sum basis
13 to recipients, which entity may provide such prepaid services
14 either directly or through arrangements with other providers.
15 Such prepaid health care services entities must be licensed
16 under parts I and III by January 1, 1998, and until then are
17 exempt from the provisions of part I of chapter 641. An entity
18 recognized under this paragraph which demonstrates to the
19 satisfaction of the Office of Insurance Regulation of the
20 Financial Services Commission ~~Department of Insurance~~ that it
21 is backed by the full faith and credit of the county in which
22 it is located may be exempted from s. 641.225.

23 (h) An entity authorized in s. 430.205 to contract
24 with the agency and the Department of Elderly Affairs to
25 provide health care and social services on a prepaid or
26 fixed-sum basis to elderly recipients. Such prepaid health
27 care services entities are exempt from the provisions of part
28 I of chapter 641 for the first 3 years of operation. An entity
29 recognized under this paragraph that demonstrates to the
30 satisfaction of the Office of Insurance Regulation ~~Department~~
31 ~~of Insurance~~ that it is backed by the full faith and credit of

1 one or more counties in which it operates may be exempted from
2 s. 641.225.

3 (5) The agency may contract on a prepaid or fixed-sum
4 basis with any health insurer that:

5 (a) Pays for health care services provided to enrolled
6 Medicaid recipients in exchange for a premium payment paid by
7 the agency;

8 (b) Assumes the underwriting risk; and

9 (c) Is organized and licensed under applicable
10 provisions of the Florida Insurance Code and is currently in
11 good standing with the Office of Insurance Regulation
12 ~~Department of Insurance~~.

13 (15) An entity contracting on a prepaid or fixed-sum
14 basis shall, in addition to meeting any applicable statutory
15 surplus requirements, also maintain at all times in the form
16 of cash, investments that mature in less than 180 days
17 allowable as admitted assets by the Office of Insurance
18 Regulation ~~Department of Insurance~~, and restricted funds or
19 deposits controlled by the agency or the Office of Insurance
20 Regulation ~~Department of Insurance~~, a surplus amount equal to
21 one-and-one-half times the entity's monthly Medicaid prepaid
22 revenues. As used in this subsection, the term "surplus" means
23 the entity's total assets minus total liabilities. If an
24 entity's surplus falls below an amount equal to
25 one-and-one-half times the entity's monthly Medicaid prepaid
26 revenues, the agency shall prohibit the entity from engaging
27 in marketing and preenrollment activities, shall cease to
28 process new enrollments, and shall not renew the entity's
29 contract until the required balance is achieved. The
30 requirements of this subsection do not apply:

31

1 (a) Where a public entity agrees to fund any deficit
2 incurred by the contracting entity; or

3 (b) Where the entity's performance and obligations are
4 guaranteed in writing by a guaranteeing organization which:

5 1. Has been in operation for at least 5 years and has
6 assets in excess of \$50 million; or

7 2. Submits a written guarantee acceptable to the
8 agency which is irrevocable during the term of the contracting
9 entity's contract with the agency and, upon termination of the
10 contract, until the agency receives proof of satisfaction of
11 all outstanding obligations incurred under the contract.

12 (18) When a merger or acquisition of a Medicaid
13 prepaid contractor has been approved by the Office of
14 Insurance Regulation ~~Department of Insurance~~ pursuant to s.
15 628.4615, the agency shall approve the assignment or transfer
16 of the appropriate Medicaid prepaid contract upon request of
17 the surviving entity of the merger or acquisition if the
18 contractor and the other entity have been in good standing
19 with the agency for the most recent 12-month period, unless
20 the agency determines that the assignment or transfer would be
21 detrimental to the Medicaid recipients or the Medicaid
22 program. To be in good standing, an entity must not have
23 failed accreditation or committed any material violation of
24 the requirements of s. 641.52 and must meet the Medicaid
25 contract requirements. For purposes of this section, a merger
26 or acquisition means a change in controlling interest of an
27 entity, including an asset or stock purchase.

28 (36) The Agency for Health Care Administration is
29 directed to issue a request for proposal or intent to
30 negotiate to implement on a demonstration basis an outpatient
31 specialty services pilot project in a rural and urban county

1 in the state. As used in this subsection, the term
2 "outpatient specialty services" means clinical laboratory,
3 diagnostic imaging, and specified home medical services to
4 include durable medical equipment, prosthetics and orthotics,
5 and infusion therapy.

6 (a) The entity that is awarded the contract to provide
7 Medicaid managed care outpatient specialty services must, at a
8 minimum, meet the following criteria:

9 1. The entity must be licensed by the Office of
10 Insurance Regulation ~~Department of Insurance~~ under part II of
11 chapter 641.

12 2. The entity must be experienced in providing
13 outpatient specialty services.

14 3. The entity must demonstrate to the satisfaction of
15 the agency that it provides high-quality services to its
16 patients.

17 4. The entity must demonstrate that it has in place a
18 complaints and grievance process to assist Medicaid recipients
19 enrolled in the pilot managed care program to resolve
20 complaints and grievances.

21 Section 451. Subsections (2) and (3) of section
22 409.9124, Florida Statutes, are amended to read:

23 409.9124 Managed care reimbursement.--

24 (2) The agency shall by rule prescribe those items of
25 financial information which each managed care plan shall
26 report to the agency, in the time periods prescribed by rule.
27 In prescribing items for reporting and definitions of terms,
28 the agency shall consult with the Office of Insurance
29 Regulation of the Financial Services Commission ~~Department of~~
30 ~~Insurance~~ wherever possible.

31

1 (3) The agency shall quarterly examine the financial
2 condition of each managed care plan, and its performance in
3 serving Medicaid patients, and shall utilize examinations
4 performed by the Office of Insurance Regulation ~~Department of~~
5 ~~Insurance~~ wherever possible.

6 Section 452. Subsections (5) and (6) of section
7 409.915, Florida Statutes, are amended to read:

8 409.915 County contributions to Medicaid.--Although
9 the state is responsible for the full portion of the state
10 share of the matching funds required for the Medicaid program,
11 in order to acquire a certain portion of these funds, the
12 state shall charge the counties for certain items of care and
13 service as provided in this section.

14 (5) The Department of Financial Services ~~Banking and~~
15 ~~Finance~~ shall withhold from the cigarette tax receipts or any
16 other funds to be distributed to the counties the individual
17 county share that has not been remitted within 60 days after
18 billing.

19 (6) In any county in which a special taxing district
20 or authority is located which will benefit from the medical
21 assistance programs covered by this section, the board of
22 county commissioners may divide the county's financial
23 responsibility for this purpose proportionately, and each such
24 district or authority must furnish its share to the board of
25 county commissioners in time for the board to comply with the
26 provisions of subsection (3). Any appeal of the proration made
27 by the board of county commissioners must be made to the
28 Department of Financial Services ~~Banking and Finance~~, which
29 shall then set the proportionate share of each party.

30 Section 453. Paragraph (c) of subsection (7) of
31 section 411.01, Florida Statutes, is amended to read:

1 411.01 Florida Partnership for School Readiness;
2 school readiness coalitions.--
3 (7) PARENTAL CHOICE.--
4 (c) The Office of the Chief Financial Officer
5 ~~Comptroller~~ shall establish an electronic transfer system for
6 the disbursement of funds in accordance with this subsection.
7 School readiness coalitions shall fully implement the
8 electronic funds transfer system within 2 years after plan
9 approval unless a waiver is obtained from the partnership.

10 Section 454. Subsection (2) of section 413.32, Florida
11 Statutes, is amended to read:

12 413.32 Retention of title to and disposal of
13 equipment.--

14 (2) The division is authorized to offer for sale any
15 surplus items acquired in the operation of the program when
16 they are no longer necessary or to exchange them for necessary
17 items which may be used to greater advantage. When any such
18 surplus equipment is sold or exchanged a receipt for same
19 shall be taken from the purchaser showing the consideration
20 given for such equipment and forwarded to the Chief Financial
21 Officer ~~treasurer~~, and any funds received by the division
22 pursuant to any such transactions shall be deposited in the
23 State Treasury in the appropriate federal or state
24 rehabilitation funds and shall be available for expenditure
25 for any purpose consistent with this part.

26 Section 455. Section 414.27, Florida Statutes, is
27 amended to read:

28 414.27 Temporary cash assistance; payment on death.--

29 (1) Upon the death of any person receiving temporary
30 cash assistance through the Department of Children and Family
31 Services, all temporary cash accrued to such person from the

1 date of last payment to the date of death shall be paid to the
2 person who shall have been designated by her or him on a form
3 prescribed by the department and filed with the department
4 during the lifetime of the person making such designation. If
5 no designation is made, or the person so designated is no
6 longer living or cannot be found, then payment shall be made
7 to such person as may be designated by the circuit judge of
8 the county where the recipient of temporary cash assistance
9 resided. Designation by the circuit judge may be made on a
10 form provided by the department or by letter or memorandum to
11 the Chief Financial Officer ~~Comptroller~~. No filing or
12 recording of the designation shall be required, and the
13 circuit judge shall receive no compensation for such service.
14 If a warrant has not been issued and forwarded prior to notice
15 by the department of the recipient's death, upon notice
16 thereof, the department shall promptly requisition the Chief
17 Financial Officer ~~Comptroller~~ to issue a warrant in the amount
18 of the accrued temporary cash assistance payable to the person
19 designated to receive it and shall attach to the requisition
20 the original designation of the deceased recipient, or if
21 none, the designation made by the circuit judge, as well as a
22 notice of death. The Chief Financial Officer ~~Comptroller~~ shall
23 issue a warrant in the amount payable.

24 (2) If a warrant has been issued and not cashed by the
25 recipient payee prior to her or his death, such warrant shall
26 be promptly returned to the department, together with notice
27 of the death of the recipient. The original warrant shall be
28 endorsed on the back by an authorized employee of the
29 department. The endorsement must be on a form prescribed by
30 the department and approved by the Chief Financial Officer
31 ~~Comptroller~~ which must contain the name of the deceased

1 recipient, a statement of the recipient's death, and the date
2 thereof and state that it is payable to the order of the
3 designated beneficiary, without recourse. The form shall be
4 signed by the authorized employee or employees of the
5 department, and thereupon such warrant shall be payable to the
6 designated beneficiary as fully and completely as if made
7 payable to her or him when issued. The department shall
8 furnish to the Chief Financial Officer ~~Comptroller~~ each month
9 a list of such deceased recipients, the designated
10 beneficiaries or persons to whom such warrants are endorsed,
11 and a description of such warrants as herein provided. The
12 department shall cause all persons receiving temporary cash
13 assistance to make the designations as soon as conveniently
14 may be, and shall preserve such designations in a safe place
15 for use.

16 Section 456. Subsection (8) of section 414.28, Florida
17 Statutes, is amended to read:

18 414.28 Public assistance payments to constitute debt
19 of recipient.--

20 (8) DISPOSITION OF FUNDS RECOVERED.--All funds
21 collected under this section shall be deposited with the
22 Department of Financial Services ~~Banking and Finance~~ and a
23 report of such deposit made to the department. After payment
24 of costs the sums so collected shall be credited to the
25 department and used by it.

26 Section 457. Section 420.0005, Florida Statutes, is
27 amended to read:

28 420.0005 State Housing Trust Fund; State Housing
29 Fund.--There is hereby established in the State Treasury a
30 separate trust fund to be named the "State Housing Trust
31 Fund." There shall be deposited in the fund all moneys

1 appropriated by the Legislature, or moneys received from any
2 other source, for the purpose of this chapter, and all
3 proceeds derived from the use of such moneys. The fund shall
4 be administered by the Florida Housing Finance Corporation on
5 behalf of the department, as specified in this chapter. Money
6 deposited to the fund and appropriated by the Legislature
7 must, notwithstanding the provisions of chapter 216 or s.
8 420.504(3), be transferred quarterly in advance, to the extent
9 available, or, if not so available, as soon as received into
10 the State Housing Trust Fund, and subject to the provisions of
11 s. 420.5092(6)(a) and (b) by the Chief Financial Officer
12 ~~Comptroller~~ to the corporation upon certification by the
13 Secretary of Community Affairs that the corporation is in
14 compliance with the requirements of s. 420.0006. The
15 certification made by the secretary shall also include the
16 split of funds among programs administered by the corporation
17 and the department as specified in chapter 92-317, Laws of
18 Florida, as amended. Moneys advanced by the Chief Financial
19 Officer ~~Comptroller~~ must be deposited by the corporation into
20 a separate fund established with a qualified public depository
21 meeting the requirements of chapter 280 to be named the "State
22 Housing Fund" and used for the purposes of this chapter.
23 Administrative and personnel costs incurred in implementing
24 this chapter may be paid from the State Housing Fund, but such
25 costs may not exceed 5 percent of the moneys deposited into
26 such fund. To the State Housing Fund shall be credited all
27 loan repayments, penalties, and other fees and charges
28 accruing to such fund under this chapter. It is the intent of
29 this chapter that all loan repayments, penalties, and other
30 fees and charges collected be credited in full to the program
31 account from which the loan originated. Moneys in the State

1 Housing Fund which are not currently needed for the purposes
2 of this chapter shall be invested in such manner as is
3 provided for by statute. The interest received on any such
4 investment shall be credited to the State Housing Fund.

5 Section 458. Section 420.0006, Florida Statutes, is
6 amended to read:

7 420.0006 Authority to contract with corporation;
8 contract requirements; nonperformance.--The secretary of the
9 department shall contract, notwithstanding the provisions of
10 part I of chapter 287, with the Florida Housing Finance
11 Corporation on a multiyear basis to stimulate, provide, and
12 foster affordable housing in the state. The contract must
13 incorporate the performance measures required by s. 420.511
14 and must be consistent with the provisions of the
15 corporation's strategic plan prepared in accordance with s.
16 420.511 and compatible with s. 216.0166. The contract must
17 provide that, in the event the corporation fails to comply
18 with any of the performance measures required by s. 420.511,
19 the secretary shall notify the Governor and shall refer the
20 nonperformance to the department's inspector general for
21 review and determination as to whether such failure is due to
22 forces beyond the corporation's control or whether such
23 failure is due to inadequate management of the corporation's
24 resources. Advances shall continue to be made pursuant to s.
25 420.0005 during the pendency of the review by the department's
26 inspector general. If such failure is due to outside forces,
27 it shall not be deemed a violation of the contract. If such
28 failure is due to inadequate management, the department's
29 inspector general shall provide recommendations regarding
30 solutions. The Governor is authorized to resolve any
31 differences of opinion with respect to performance under the

1 contract and may request that advances continue in the event
2 of a failure under the contract due to inadequate management.
3 The Chief Financial Officer ~~Comptroller~~ shall approve the
4 request absent a finding by the Chief Financial Officer
5 ~~Comptroller~~ that continuing such advances would adversely
6 impact the state; however, in any event the Chief Financial
7 Officer ~~Comptroller~~ shall provide advances sufficient to meet
8 the debt service requirements of the corporation and
9 sufficient to fund contracts committing funds from the State
10 Housing Trust Fund so long as such contracts are in accordance
11 with the laws of this state. The department inspector general
12 shall perform for the corporation the functions set forth in
13 s. 20.055 and report to the secretary of the department. The
14 corporation shall be deemed an agency for the purposes of s.
15 20.055.

16 Section 459. Paragraph (d) of subsection (1) of
17 section 420.101, Florida Statutes, is amended to read:

18 420.101 Housing Development Corporation of Florida;
19 creation, membership, and purposes.--

20 (1) Twenty-five or more persons, a majority of whom
21 shall be residents of this state, who may desire to create a
22 housing development corporation under the provisions of this
23 part for the purpose of promoting and developing housing and
24 advancing the prosperity and economic welfare of the state
25 and, to that end, to exercise the powers and privileges
26 hereinafter provided, may be incorporated by filing in the
27 Department of State, as hereinafter provided, articles of
28 incorporation. The articles of incorporation shall contain:

29 (d) The names and post office addresses of the members
30 of the first board of directors. The first board of directors
31 shall be elected by and from the stockholders of the

1 corporation and shall consist of 21 members. However, five of
2 such members shall consist of the following persons, who shall
3 be nonvoting members: the secretary of the Department of
4 Community Affairs or her or his designee; the head of the
5 Department of Financial Services ~~Banking and Finance~~ or her or
6 his designee with expertise in banking matters; a designee of
7 the head of the Department of Financial Services with
8 expertise in insurance matters ~~Insurance or her or his~~
9 ~~designee~~; one state senator appointed by the President of the
10 Senate; and one representative appointed by the Speaker of the
11 House of Representatives.

12 Section 460. Subsection (1) of section 420.123,
13 Florida Statutes, is amended to read:

14 420.123 Stockholders; loan requirement.--

15 (1) Any financial institution may request membership
16 in the corporation by making application to the board of
17 directors on such form and in such manner as the board of
18 directors may require, and membership shall become effective
19 upon acceptance of the application in the manner designated by
20 the board. Each member stockholder of the corporation shall
21 make loans to the corporation as and when called upon by it to
22 do so on such terms and other conditions as shall be approved
23 from time to time by the board of directors, except that the
24 total amount outstanding on loans to the corporation made by
25 any member at any one time, when added to the amount of the
26 investment in the capital stock of the corporation then held
27 by such member, shall not exceed the following limit, to be
28 determined as of the time such member becomes a member on the
29 basis of the audited balance sheet of such member at the close
30 of its fiscal year immediately preceding its application for
31 membership or, in the case of an insurance company, its last

1 annual statement to the Office of Insurance Regulation of the
2 Financial Services Commission ~~Department of Insurance~~: 5
3 percent of the capital and surplus of commercial banks and
4 trust companies; 5 percent of the total outstanding loans made
5 by savings and loan associations and building and loan
6 associations; 5 percent of the capital and unassigned surplus
7 of stock insurance companies, except fire insurance companies;
8 5 percent of the unassigned surplus of mutual insurance
9 companies, except fire insurance companies; 0.2 percent of the
10 assets of fire insurance companies; and such limits as may be
11 approved by the board of directors of the corporation for
12 other financial institutions.

13 Section 461. Subsection (1) of section 420.131,
14 Florida Statutes, is amended to read:

15 420.131 Articles of incorporation; method of
16 amending.--

17 (1) The articles of incorporation may be amended by
18 the vote of the stockholders of the corporation, and such
19 amendments shall require approval by the affirmative vote of
20 two-thirds of the votes to which the stockholders shall be
21 entitled. However, no amendment of the articles of
22 incorporation which is inconsistent with the general purposes
23 expressed herein or which eliminates or curtails the right of
24 the Department of Financial Services ~~Banking and Finance~~ to
25 examine the corporation or the obligation of the corporation
26 to make reports as provided in s. 420.141(2) shall be made.

27 Section 462. Subsection (2) of section 420.141,
28 Florida Statutes, is amended to read:

29 420.141 Housing Development Corporation of Florida;
30 deposits and examination.--

31

1 (2) The corporation shall be examined at least once
2 annually by the Office of Financial Regulation of the
3 Financial Services Commission ~~Department of Banking and~~
4 ~~Finance~~ and shall make reports of its condition not less than
5 annually to the office ~~said department~~, and more frequently
6 upon call of the office ~~department~~, which in turn shall make
7 copies of such reports available to the Office of Insurance
8 Regulation of the Financial Services Commission ~~Department of~~
9 ~~Insurance~~ and the Governor; and the corporation shall also
10 furnish such other information as may from time to time be
11 required by the Office of Financial Regulation ~~Department of~~
12 ~~Banking and Finance~~ and the Department of State. The Office of
13 Financial Regulation ~~Department of Banking and Finance~~ shall
14 exercise the same power and authority over the corporation
15 organized pursuant to this part as is exercised over financial
16 institutions under the provisions of the financial
17 institutions codes, when such codes are not in conflict with
18 this chapter.

19 Section 463. Subsection (6) of section 420.5092,
20 Florida Statutes, is amended to read:

21 420.5092 Florida Affordable Housing Guarantee
22 Program.--

23 (6)(a) If the primary revenue sources to be used for
24 repayment of revenue bonds used to establish the guarantee
25 fund are insufficient for such repayment, the annual principal
26 and interest due on each series of revenue bonds shall be
27 payable from funds in the annual debt service reserve. The
28 corporation shall, before June 1 of each year, perform a
29 financial audit to determine whether at the end of the state
30 fiscal year there will be on deposit in the guarantee fund an
31 annual debt service reserve from interest earned pursuant to

1 the investment of the guarantee fund, fees, charges, and
2 reimbursements received from issued affordable housing
3 guarantees and other revenue sources available to the
4 corporation. Based upon the findings in such guarantee fund
5 financial audit, the corporation shall certify to the Chief
6 Financial Officer ~~Comptroller~~ the amount of any projected
7 deficiency in the annual debt service reserve for any series
8 of outstanding bonds as of the end of the state fiscal year
9 and the amount necessary to maintain such annual debt service
10 reserve. Upon receipt of such certification, the Chief
11 Financial Officer ~~Comptroller~~ shall transfer to the annual
12 debt service reserve, from the first available taxes
13 distributed to the State Housing Trust Fund pursuant to s.
14 201.15(9)(a) and (10)(a) during the ensuing state fiscal year,
15 the amount certified as necessary to maintain the annual debt
16 service reserve.

17 (b) If the claims payment obligations under affordable
18 housing guarantees from amounts on deposit in the guarantee
19 fund would cause the claims paying rating assigned to the
20 guarantee fund to be less than the third-highest rating
21 classification of any nationally recognized rating service,
22 which classifications being consistent with s. 215.84(3) and
23 rules adopted thereto by the State Board of Administration,
24 the corporation shall certify to the Chief Financial Officer
25 ~~Comptroller~~ the amount of such claims payment obligations.
26 Upon receipt of such certification, the Chief Financial
27 Officer ~~Comptroller~~ shall transfer to the guarantee fund, from
28 the first available taxes distributed to the State Housing
29 Trust Fund pursuant to s. 201.15(9)(a) and (10)(a) during the
30 ensuing state fiscal year, the amount certified as necessary
31 to meet such obligations, such transfer to be subordinate to

1 any transfer referenced in paragraph (a) and not to exceed 50
2 percent of the amounts distributed to the State Housing Trust
3 Fund pursuant to s. 201.15(9)(a) and (10)(a) during the
4 preceding state fiscal year.

5 Section 464. Section 430.42, Florida Statutes, is
6 amended to read:

7 430.42 Department of Elderly Affairs Tobacco
8 Settlement Trust Fund.--

9 (1) The Department of Elderly Affairs Tobacco
10 Settlement Trust Fund is created within that department. Funds
11 to be credited to the trust fund shall consist of funds
12 disbursed, by nonoperating transfer, from the Department of
13 Financial Services ~~Banking and Finance~~ Tobacco Settlement
14 Clearing Trust Fund in amounts equal to the annual
15 appropriations made from this trust fund.

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

22 Section 465. Subsection (6) of section 430.703,
23 Florida Statutes, is amended to read:

24 430.703 Definitions.--As used in this act, the term:

25 (6) "Managed care organization" means an entity that
26 meets the requirements of the Office of Insurance Regulation
27 of the Financial Services Commission ~~Department of Insurance~~
28 for operation as a health maintenance organization and meets
29 the qualifications for participation as a managed care
30 organization established by the agency and the office
31 ~~department~~.

1 Section 466. Section 440.015, Florida Statutes, is
2 amended to read:
3 440.015 Legislative intent.--It is the intent of the
4 Legislature that the Workers' Compensation Law be interpreted
5 so as to assure the quick and efficient delivery of disability
6 and medical benefits to an injured worker and to facilitate
7 the worker's return to gainful reemployment at a reasonable
8 cost to the employer. It is the specific intent of the
9 Legislature that workers' compensation cases shall be decided
10 on their merits. The workers' compensation system in Florida
11 is based on a mutual renunciation of common-law rights and
12 defenses by employers and employees alike. In addition, it is
13 the intent of the Legislature that the facts in a workers'
14 compensation case are not to be interpreted liberally in favor
15 of either the rights of the injured worker or the rights of
16 the employer. Additionally, the Legislature hereby declares
17 that disputes concerning the facts in workers' compensation
18 cases are not to be given a broad liberal construction in
19 favor of the employee on the one hand or of the employer on
20 the other hand, and the laws pertaining to workers'
21 compensation are to be construed in accordance with the basic
22 principles of statutory construction and not liberally in
23 favor of either employee or employer. It is the intent of the
24 Legislature to ensure the prompt delivery of benefits to the
25 injured worker. Therefore, an efficient and self-executing
26 system must be created which is not an economic or
27 administrative burden. The department, agency, the Office of
28 Insurance Regulation, the Department of Education, and the
29 Division of Administrative Hearings shall administer the
30 Workers' Compensation Law in a manner which facilitates the
31

1 self-execution of the system and the process of ensuring a
2 prompt and cost-effective delivery of payments.

3 Section 467. Subsections (12) and (14) of section
4 440.02, Florida Statutes, are amended, and subsection (43) is
5 added to that section, to read:

6 440.02 Definitions.--When used in this chapter, unless
7 the context clearly requires otherwise, the following terms
8 shall have the following meanings:

9 (12) "Department" means the Department of Financial
10 Services; the term does not include the Financial Services
11 Commission or any office of the commission ~~Insurance~~.

12 (14) "Division" means the Division of Workers'
13 Compensation of the Department of Financial Services
14 ~~Insurance~~.

15 (43) "Office of Insurance Regulation" means the Office
16 of Insurance Regulation of the Financial Services Commission.

17 Section 468. Subsections (6), (10), (11), (12), and
18 (13) of section 440.05, Florida Statutes, are amended to read:

19 440.05 Election of exemption; revocation of election;
20 notice; certification.--

21 (6) A construction industry certificate of election to
22 be exempt which is issued in accordance with this section
23 shall be valid for 2 years after the effective date stated
24 thereon. Both the effective date and the expiration date must
25 be listed on the face of the certificate by the department.
26 The construction industry certificate must expire at midnight,
27 2 years from its issue date, as noted on the face of the
28 exemption certificate. Any person who has received from the
29 department ~~division~~ a construction industry certificate of
30 election to be exempt which is in effect on December 31, 1998,
31 shall file a new notice of election to be exempt by the last

1 day in his or her birth month following December 1, 1998. A
2 construction industry certificate of election to be exempt may
3 be revoked before its expiration by the sole proprietor,
4 partner, or officer for whom it was issued or by the
5 department for the reasons stated in this section. At least
6 60 days prior to the expiration date of a construction
7 industry certificate of exemption issued after December 1,
8 1998, the department shall send notice of the expiration date
9 and an application for renewal to the certificateholder at the
10 address on the certificate.

11 (10) Each sole proprietor, partner, or officer of a
12 corporation who is actively engaged in the construction
13 industry and who elects an exemption from this chapter shall
14 maintain business records as specified by the department
15 ~~division~~ by rule, which rules must include the provision that
16 any corporation with exempt officers and any partnership
17 actively engaged in the construction industry with exempt
18 partners must maintain written statements of those exempted
19 persons affirmatively acknowledging each such individual's
20 exempt status.

21 (11) Any sole proprietor or partner actively engaged
22 in the construction industry claiming an exemption under this
23 section shall maintain a copy of his or her federal income tax
24 records for each of the immediately previous 3 years in which
25 he or she claims an exemption. Such federal income tax records
26 must include a complete copy of the following for each year in
27 which an exemption is claimed:

28 (a) For sole proprietors, a copy of Federal Income Tax
29 Form 1040 and its accompanying Schedule C;

30
31

1 (b) For partners, a copy of the partner's Federal
2 Income Tax Schedule K-1 (Form 1065) and Federal Income Tax
3 Form 1040 and its accompanying Schedule E.

4
5 A sole proprietor or partner shall produce, upon request by
6 the department ~~division~~, a copy of those documents together
7 with a statement by the sole proprietor or partner that the
8 tax records provided are true and accurate copies of what the
9 sole proprietor or partner has filed with the federal Internal
10 Revenue Service. The statement must be signed under oath by
11 the sole proprietor or partner and must be notarized. The
12 department ~~division~~ shall issue a stop-work order under s.
13 440.107(5) to any sole proprietor or partner who fails or
14 refuses to produce a copy of the tax records and affidavit
15 required under this paragraph to the department ~~division~~
16 within 3 business days after the request is made.

17 (12) For those sole proprietors or partners that have
18 not been in business long enough to provide the information
19 required of an established business, the department ~~division~~
20 shall require such sole proprietor or partner to provide
21 copies of the most recently filed Federal Income Tax Form
22 1040. The department ~~division~~ shall establish by rule such
23 other criteria to show that the sole proprietor or partner
24 intends to engage in a legitimate enterprise within the
25 construction industry and is not otherwise attempting to evade
26 the requirements of this section. The department ~~division~~
27 shall establish by rule the form and format of financial
28 information required to be submitted by such employers.

29 (13) Any corporate officer claiming an exemption under
30 this section must be listed on the records of this state's
31 Secretary of State, Division of Corporations, as a corporate

1 officer. If the person who claims an exemption as a corporate
2 officer is not so listed on the records of the Secretary of
3 State, the individual must provide to the department division,
4 upon request by the department division, a notarized affidavit
5 stating that the individual is a bona fide officer of the
6 corporation and stating the date his or her appointment or
7 election as a corporate officer became or will become
8 effective. The statement must be signed under oath by both the
9 officer and the president or chief operating officer of the
10 corporation and must be notarized. The department division
11 shall issue a stop-work order under s. 440.107(1) to any
12 corporation who employs a person who claims to be exempt as a
13 corporate officer but who fails or refuses to produce the
14 documents required under this subsection to the department
15 division within 3 business days after the request is made.

16 Section 469. Subsection (5) of section 440.09, Florida
17 Statutes, is amended to read:

18 440.09 Coverage.--

19 (5) If injury is caused by the knowing refusal of the
20 employee to use a safety appliance or observe a safety rule
21 required by statute or lawfully adopted by the department
22 division, and brought prior to the accident to the employee's
23 knowledge, or if injury is caused by the knowing refusal of
24 the employee to use a safety appliance provided by the
25 employer, the compensation as provided in this chapter shall
26 be reduced 25 percent.

27 Section 470. Paragraph (f) of subsection (1) of
28 section 440.10, Florida Statutes, is amended to read:

29 440.10 Liability for compensation.--

30 (1)

31

1 (f) If an employer fails to secure compensation as
2 required by this chapter, the department may assess against
3 the employer a penalty not to exceed \$5,000 for each employee
4 of that employer who is classified by the employer as an
5 independent contractor but who is found by the department to
6 not meet the criteria for an independent contractor that are
7 set forth in s. 440.02. The department ~~division~~ shall adopt
8 rules to administer the provisions of this paragraph.

9 Section 471. Section 440.1025, Florida Statutes, is
10 amended to read:

11 440.1025 Consideration of public employer workplace
12 safety program in rate-setting; program requirements;
13 rulemaking.--For a public employer to be eligible for receipt
14 of specific identifiable consideration under s. 627.0915 for a
15 workplace safety program in the setting of rates, the public
16 employer must have a workplace safety program. At a minimum,
17 the program must include a written safety policy and safety
18 rules, and make provision for safety inspections, preventative
19 maintenance, safety training, first-aid, accident
20 investigation, and necessary recordkeeping. For purposes of
21 this section, "public employer" means any agency within state,
22 county, or municipal government employing individuals for
23 salary, wages, or other remuneration. The department ~~division~~
24 may adopt ~~promulgate~~ rules for insurers to utilize in
25 determining public employer compliance with the requirements
26 of this section.

27 Section 472. Section 440.103, Florida Statutes, is
28 amended to read:

29 440.103 Building permits; identification of minimum
30 premium policy.--Except as otherwise provided in this chapter,
31 every employer shall, as a condition to receiving a building

1 permit, show proof that it has secured compensation for its
2 employees under this chapter as provided in ss. 440.10 and
3 440.38. Such proof of compensation must be evidenced by a
4 certificate of coverage issued by the carrier, a valid
5 exemption certificate approved by the department or the former
6 Division of Workers' Compensation of the Department of Labor
7 and Employment Security, or a copy of the employer's authority
8 to self-insure and shall be presented each time the employer
9 applies for a building permit. As provided in s. 627.413(5),
10 each certificate of coverage must show, on its face, whether
11 or not coverage is secured under the minimum premium
12 provisions of rules adopted by rating organizations licensed
13 pursuant to s. 627.221 ~~by the department~~. The words "minimum
14 premium policy" or equivalent language shall be typed,
15 printed, stamped, or legibly handwritten.

16 Section 473. Paragraph (a) of subsection (3) of
17 section 440.105, Florida Statutes, is amended to read:

18 440.105 Prohibited activities; reports; penalties;
19 limitations.--

20 (3) Whoever violates any provision of this subsection
21 commits a misdemeanor of the first degree, punishable as
22 provided in s. 775.082 or s. 775.083.

23 (a) It shall be unlawful for any employer to knowingly
24 fail to update applications for coverage as required by s.
25 440.381(1) and the Financial Services Commission ~~Department of~~
26 ~~Insurance~~ rules, or to post notice of coverage pursuant to s.
27 440.40.

28 Section 474. Subsections (1) and (2) of section
29 440.1051, Florida Statutes, are amended to read:

30 440.1051 Fraud reports; civil immunity; criminal
31 penalties.--

1 (1) The Bureau of Workers' Compensation Insurance
2 Fraud of the Division of Insurance Fraud of the department of
3 ~~insurance~~ shall establish a toll-free telephone number to
4 receive reports of workers' compensation fraud committed by an
5 employee, employer, insurance provider, physician, attorney,
6 or other person.

7 (2) Any person who reports workers' compensation fraud
8 to the Division of Insurance Fraud under subsection (1) is
9 immune from civil liability for doing so, and the person or
10 entity alleged to have committed the fraud may not retaliate
11 against him or her for providing such report, unless the
12 person making the report knows it to be false.

13 Section 475. Subsections (3) and (4) of section
14 440.106, Florida Statutes, are amended to read:

15 440.106 Civil remedies; administrative penalties.--

16 (3) Whenever any group or individual self-insurer,
17 carrier, rating bureau, or agent or other representative of
18 any carrier or rating bureau is determined to have violated s.
19 440.105, the agency responsible for licensure or certification
20 ~~department~~ may revoke or suspend the authority or
21 certification of the ~~any~~ group or individual self-insurer,
22 carrier, agent, or broker.

23 (4) The department or the Office of Insurance
24 Regulation shall report any contractor determined in violation
25 of requirements of this chapter to the appropriate state
26 licensing board for disciplinary action.

27 Section 476. Subsections (5), (7), and (12) of section
28 440.107, Florida Statutes, are amended to read:

29 440.107 Department powers to enforce employer
30 compliance with coverage requirements.--

31

1 (5) Whenever the department determines that an
2 employer who is required to secure the payment to his or her
3 employees of the compensation provided for by this chapter has
4 failed to do so, such failure shall be deemed an immediate
5 serious danger to public health, safety, or welfare sufficient
6 to justify service by the department of a stop-work order on
7 the employer, requiring the cessation of all business
8 operations at the place of employment or job site. If the
9 department ~~division~~ makes such a determination, the department
10 ~~division~~ shall issue a stop-work order within 72 hours. The
11 order shall take effect upon the date of service upon the
12 employer, unless the employer provides evidence satisfactory
13 to the department of having secured any necessary insurance or
14 self-insurance and pays a civil penalty to the department, to
15 be deposited by the department into the Workers' Compensation
16 Administration Trust Fund, in the amount of \$100 per day for
17 each day the employer was not in compliance with this chapter.

18 (7) In addition to any penalty, stop-work order, or
19 injunction, the department shall assess against any employer,
20 who has failed to secure the payment of compensation as
21 required by this chapter, a penalty in the following amount:

22 (a) An amount equal to at least the amount that the
23 employer would have paid or up to twice the amount the
24 employer would have paid during periods it illegally failed to
25 secure payment of compensation in the preceding 3-year period
26 based on the employer's payroll during the preceding 3-year
27 period; or

28 (b) One thousand dollars, whichever is greater.

29
30 Any penalty assessed under this subsection is due within 30
31 days after the date on which the employer is notified, except

1 that, if the department has posted a stop-work order or
2 obtained injunctive relief against the employer, payment is
3 due, in addition to those conditions set forth in this
4 section, as a condition to relief from a stop-work order or an
5 injunction. Interest shall accrue on amounts not paid when due
6 at the rate of 1 percent per month. The department ~~division~~
7 shall adopt rules to administer this section.

8 (12) If the department ~~division~~ finds that an employer
9 who is certified or registered under part I or part II of
10 chapter 489 and who is required to secure payment of the
11 compensation provided for by this chapter to his or her
12 employees has failed to do so, the department ~~division~~ shall
13 immediately notify the Department of Business and Professional
14 Regulation.

15 Section 477. Subsections (11) and (12) of section
16 440.13, Florida Statutes, are amended to read:

17 440.13 Medical services and supplies; penalty for
18 violations; limitations.--

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

21 (a) The Agency for Health Care Administration may
22 investigate health care providers to determine whether
23 providers are complying with this chapter and with rules
24 adopted by the agency, whether the providers are engaging in
25 overutilization, and whether providers are engaging in
26 improper billing practices. If the agency finds that a health
27 care provider has improperly billed, overutilized, or failed
28 to comply with agency rules or the requirements of this
29 chapter it must notify the provider of its findings and may
30 determine that the health care provider may not receive
31 payment from the carrier or may impose penalties as set forth

1 in subsection (8) or other sections of this chapter. If the
2 health care provider has received payment from a carrier for
3 services that were improperly billed or for overutilization,
4 it must return those payments to the carrier. The agency may
5 assess a penalty not to exceed \$500 for each overpayment that
6 is not refunded within 30 days after notification of
7 overpayment by the agency or carrier.

8 (b) The department shall monitor carriers as provided
9 in this chapter and the Office of Insurance Regulation shall
10 and audit insurers and group self-insurance funds ~~carriers~~ as
11 provided in s. 624.3161, to determine if medical bills are
12 paid in accordance with this section and ~~department~~ rules of
13 the department and Financial Services Commission,
14 respectively. Any employer, if self-insured, or carrier found
15 by the department or Office of Insurance Regulation ~~division~~
16 not to be within 90 percent compliance as to the payment of
17 medical bills after July 1, 1994, must be assessed a fine not
18 to exceed 1 percent of the prior year's assessment levied
19 against such entity under s. 440.51 for every quarter in which
20 the entity fails to attain 90-percent compliance. The
21 department shall fine or otherwise discipline an employer or
22 carrier, pursuant to this chapter, ~~the insurance code, or~~
23 rules adopted by the department, and the Office of Insurance
24 Regulation shall fine or otherwise discipline an insurer or
25 group self-insurance fund pursuant to the insurance code or
26 rules adopted by the Financial Services Commission, for each
27 late payment of compensation that is below the minimum
28 90-percent performance standard. Any carrier that is found to
29 be not in compliance in subsequent consecutive quarters must
30 implement a medical-bill review program approved by the
31 department or office ~~division~~, and an insurer or group

1 self-insurance fund ~~the carrier~~ is subject to disciplinary
2 action by the Office of Insurance Regulation ~~Department of~~
3 ~~Insurance~~.

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

9 (d) The following agency actions do not constitute
10 agency action subject to review under ss. 120.569 and 120.57
11 and do not constitute actions subject to s. 120.56: referral
12 by the entity responsible for utilization review; a decision
13 by the agency to refer a matter to a peer review committee;
14 establishment by a health care provider or entity of
15 procedures by which a peer review committee reviews the
16 rendering of health care services; and the review proceedings,
17 report, and recommendation of the peer review committee.

18 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
19 REIMBURSEMENT ALLOWANCES.--

20 (a) A three-member panel is created, consisting of the
21 Chief Financial Officer ~~Insurance Commissioner~~, or the Chief
22 Financial Officer's ~~Insurance Commissioner's~~ designee, and two
23 members to be appointed by the Governor, subject to
24 confirmation by the Senate, one member who, on account of
25 present or previous vocation, employment, or affiliation,
26 shall be classified as a representative of employers, the
27 other member who, on account of previous vocation, employment,
28 or affiliation, shall be classified as a representative of
29 employees. The panel shall determine statewide schedules of
30 maximum reimbursement allowances for medically necessary
31 treatment, care, and attendance provided by physicians,

1 hospitals, ambulatory surgical centers, work-hardening
2 programs, pain programs, and durable medical equipment. The
3 maximum reimbursement allowances for inpatient hospital care
4 shall be based on a schedule of per diem rates, to be approved
5 by the three-member panel no later than March 1, 1994, to be
6 used in conjunction with a precertification manual as
7 determined by the agency. All compensable charges for hospital
8 outpatient care shall be reimbursed at 75 percent of usual and
9 customary charges. Until the three-member panel approves a
10 schedule of per diem rates for inpatient hospital care and it
11 becomes effective, all compensable charges for hospital
12 inpatient care must be reimbursed at 75 percent of their usual
13 and customary charges. Annually, the three-member panel shall
14 adopt schedules of maximum reimbursement allowances for
15 physicians, hospital inpatient care, hospital outpatient care,
16 ambulatory surgical centers, work-hardening programs, and pain
17 programs. However, the maximum percentage of increase in the
18 individual reimbursement allowance may not exceed the
19 percentage of increase in the Consumer Price Index for the
20 previous year. An individual physician, hospital, ambulatory
21 surgical center, pain program, or work-hardening program shall
22 be reimbursed either the usual and customary charge for
23 treatment, care, and attendance, the agreed-upon contract
24 price, or the maximum reimbursement allowance in the
25 appropriate schedule, whichever is less.

26 (b) As to reimbursement for a prescription medication,
27 the reimbursement amount for a prescription shall be the
28 average wholesale price times 1.2 plus \$4.18 for the
29 dispensing fee, except where the carrier has contracted for a
30 lower amount. Fees for pharmaceuticals and pharmaceutical
31 services shall be reimbursable at the applicable fee schedule

1 amount. Where the employer or carrier has contracted for such
2 services and the employee elects to obtain them through a
3 provider not a party to the contract, the carrier shall
4 reimburse at the schedule, negotiated, or contract price,
5 whichever is lower.

6 (c) Reimbursement for all fees and other charges for
7 such treatment, care, and attendance, including treatment,
8 care, and attendance provided by any hospital or other health
9 care provider, ambulatory surgical center, work-hardening
10 program, or pain program, must not exceed the amounts provided
11 by the uniform schedule of maximum reimbursement allowances as
12 determined by the panel or as otherwise provided in this
13 section. This subsection also applies to independent medical
14 examinations performed by health care providers under this
15 chapter. Until the three-member panel approves a uniform
16 schedule of maximum reimbursement allowances and it becomes
17 effective, all compensable charges for treatment, care, and
18 attendance provided by physicians, ambulatory surgical
19 centers, work-hardening programs, or pain programs shall be
20 reimbursed at the lowest maximum reimbursement allowance
21 across all 1992 schedules of maximum reimbursement allowances
22 for the services provided regardless of the place of service.
23 In determining the uniform schedule, the panel shall first
24 approve the data which it finds representative of prevailing
25 charges in the state for similar treatment, care, and
26 attendance of injured persons. Each health care provider,
27 health care facility, ambulatory surgical center,
28 work-hardening program, or pain program receiving workers'
29 compensation payments shall maintain records verifying their
30 usual charges. In establishing the uniform schedule of maximum
31 reimbursement allowances, the panel must consider:

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

4 2. The impact upon cost to employers for providing a
5 level of reimbursement for treatment, care, and attendance
6 which will ensure the availability of treatment, care, and
7 attendance required by injured workers;

8 3. The financial impact of the reimbursement
9 allowances upon health care providers and health care
10 facilities, including trauma centers as defined in s.
11 395.4001, and its effect upon their ability to make available
12 to injured workers such medically necessary remedial
13 treatment, care, and attendance. The uniform schedule of
14 maximum reimbursement allowances must be reasonable, must
15 promote health care cost containment and efficiency with
16 respect to the workers' compensation health care delivery
17 system, and must be sufficient to ensure availability of such
18 medically necessary remedial treatment, care, and attendance
19 to injured workers; and

20 4. The most recent average maximum allowable rate of
21 increase for hospitals determined by the Health Care Board
22 under chapter 408.

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

25 1. Take testimony, receive records, and collect data
26 to evaluate the adequacy of the workers' compensation fee
27 schedule, nationally recognized fee schedules and alternative
28 methods of reimbursement to certified health care providers
29 and health care facilities for inpatient and outpatient
30 treatment and care.

31

1 2. Survey certified health care providers and health
2 care facilities to determine the availability and
3 accessibility of workers' compensation health care delivery
4 systems for injured workers.

5 3. Survey carriers to determine the estimated impact
6 on carrier costs and workers' compensation premium rates by
7 implementing changes to the carrier reimbursement schedule or
8 implementing alternative reimbursement methods.

9 4. Submit recommendations on or before January 1,
10 2003, and biennially thereafter, to the President of the
11 Senate and the Speaker of the House of Representatives on
12 methods to improve the workers' compensation health care
13 delivery system.

14
15 The agency and the department, as requested,~~division~~ shall
16 provide data to the panel, including but not limited to,
17 utilization trends in the workers' compensation health care
18 delivery system. The agency ~~division~~ shall provide the panel
19 with an annual report regarding the resolution of medical
20 reimbursement disputes and any actions pursuant to s.
21 440.13(8). The department ~~division~~ shall provide
22 administrative support and service to the panel to the extent
23 requested by the panel.

24 Section 478. Subsections (21), (23), and (24) of
25 section 440.134, Florida Statutes, are amended to read:

26 440.134 Workers' compensation managed care
27 arrangement.--

28 (21) Upon expiration of the suspension period, the
29 insurer's authorization shall automatically be reinstated
30 unless the agency finds that the causes of the suspension have
31 not been rectified or that the insurer is otherwise not in

1 compliance with the requirements of this chapter part. If not
2 so automatically reinstated, the authorization shall be deemed
3 to have expired as of the end of the suspension period.

4 (23) The agency shall immediately notify the office
5 ~~department~~ whenever it issues an administrative complaint or
6 an order or otherwise initiates legal proceedings resulting
7 in, or which may result in, suspension or revocation of an
8 insurer's authorization.

9 (24) Nothing in this chapter part shall be deemed to
10 authorize any entity to transact any insurance business,
11 assume risk, or otherwise engage in any other type of
12 insurance unless it is authorized as an insurer or a health
13 maintenance organization under a certificate of authority
14 ~~issued by the Department of Insurance~~ under the provisions of
15 the Florida Insurance Code.

16 Section 479. Paragraph (b) of subsection (5) of
17 section 440.14, Florida Statutes, is amended to read:

18 440.14 Determination of pay.--

19 (5)

20 (b) The employee waives any entitlement to interest,
21 penalties, and attorney's fees during the period in which the
22 employee has not provided information concerning the loss of
23 earnings from concurrent employment. Carriers are not subject
24 to penalties ~~by the division~~ under s. 440.20(8)(b) and (c) for
25 unpaid compensation related to concurrent employment during
26 the period in which the employee has not provided information
27 concerning the loss of earnings from concurrent employment.

28 Section 480. Section 440.17, Florida Statutes, is
29 amended to read:

30 440.17 Guardian for minor or incompetent.--Prior to
31 the filing of a claim, the department ~~division~~, and after the

1 filing of a claim, a judge of compensation claims, may require
2 the appointment by a court of competent jurisdiction, for any
3 person who is mentally incompetent or a minor, of a guardian
4 or other representative to receive compensation payable to
5 such person under this chapter and to exercise the powers
6 granted to or to perform the duties required of such person
7 under this chapter; however, the judge of compensation claims,
8 in the judge of compensation claims' discretion, may designate
9 in the compensation award a person to whom payment of
10 compensation may be paid for a minor or incompetent, in which
11 event payment to such designated person shall discharge all
12 liability for such compensation.

13 Section 481. Paragraph (c) of subsection (8) and
14 subsections (10), (15), (16), and (17) of section 440.20,
15 Florida Statutes, are amended to read:

16 440.20 Time for payment of compensation; penalties for
17 late payment.--

18 (8) In addition to any other penalties provided by
19 this chapter for late payment, if any installment of
20 compensation is not paid when it becomes due, the employer,
21 carrier, or servicing agent shall pay interest thereon at the
22 rate of 12 percent per year from the date the installment
23 becomes due until it is paid, whether such installment is
24 payable without an order or under the terms of an order. The
25 interest payment shall be the greater of the amount of
26 interest due or \$5.

27 (c) In order to ensure carrier compliance under this
28 chapter and provisions of the Florida Insurance Code, the
29 office ~~department~~ shall monitor the performance of carriers by
30 conducting market conduct examinations, as provided in s.
31 624.3161, and conducting investigations, as provided in s.

1 624.317. The department shall establish by rule minimum
2 performance standards for carriers to ensure that a minimum of
3 90 percent of all compensation benefits are timely paid. The
4 department shall fine a carrier as provided in s.
5 440.13(11)(b) up to \$50 for each late payment of compensation
6 that is below the minimum 90 percent performance standard.
7 This paragraph does not affect the imposition of any penalties
8 or interest due to the claimant. If a carrier contracts with a
9 servicing agent to fulfill its administrative responsibilities
10 under this chapter, the payment practices of the servicing
11 agent are deemed the payment practices of the carrier for the
12 purpose of assessing penalties against the carrier.

13 (10) Whenever the department deems it advisable, it
14 may require any employer to make a deposit with the Chief
15 Financial Officer ~~Treasurer~~ to secure the prompt and
16 convenient payments of such compensation; and payments
17 therefrom upon any awards shall be made upon order of the
18 department or judge of compensation claims.

19 (15)(a) The office ~~department~~ shall examine on an
20 ongoing basis claims files in accordance with s. 624.3161 and
21 may impose fines pursuant to s. 624.310(5) and this chapter in
22 order to identify questionable claims-handling techniques,
23 questionable patterns or practices of claims, or a pattern of
24 repeated unreasonably controverted claims by carriers, as
25 defined in s. 440.02, providing services to employees pursuant
26 to this chapter. If the office ~~department~~ finds such
27 questionable techniques, patterns, or repeated unreasonably
28 controverted claims as constitute a general business practice
29 of a carrier, as defined in s. 440.02, the office ~~department~~
30 shall take appropriate action so as to bring such general
31 business practices to a halt pursuant to s. 440.38(3) or may

1 impose penalties pursuant to s. 624.4211. The department and
2 office may initiate investigations of questionable techniques,
3 patterns, practices, or repeated unreasonably controverted
4 claims. The Financial Services Commission ~~department~~ may by
5 rule establish forms and procedures for corrective action
6 plans and for auditing carriers.

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

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

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

16 (c) If any person refuses to comply with any such
17 subpoena or to testify as to any matter concerning which she
18 or he may be lawfully interrogated, the Circuit Court of Leon
19 County or of the county wherein such examination,
20 investigation, or hearing is being conducted, or of the county
21 wherein such person resides, may, on the application of the
22 department or the office, issue an order requiring such person
23 to comply with the subpoena and to testify.

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

29 (e) The department shall publish annually a report
30 which indicates the promptness of first payment of
31 compensation records of each carrier or self-insurer so as to

1 focus attention on those carriers or self-insurers with poor
2 payment records for the preceding year. The department and the
3 office shall take appropriate steps so as to cause such poor
4 carrier payment practices to halt pursuant to s. 440.38(3). In
5 addition, the department shall take appropriate action so as
6 to halt such poor payment practices of self-insurers. "Poor
7 payment practice" means a practice of late payment sufficient
8 to constitute a general business practice.

9 (f) The Financial Services Commission, in consultation
10 with the department, shall adopt promulgate rules providing
11 guidelines to carriers, as defined in s. 440.02,
12 self-insurers, and employers to indicate behavior that may be
13 construed as questionable claims-handling techniques,
14 questionable patterns of claims, repeated unreasonably
15 controverted claims, or poor payment practices.

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

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

23 Section 482. Subsections (2) and (3) of section
24 440.24, Florida Statutes, is amended to read:

25 440.24 Enforcement of compensation orders;
26 penalties.--

27 (2) In any case where the employer is insured and the
28 carrier fails to comply with any compensation order of a judge
29 of compensation claims or court within 10 days after such
30 order becomes final, the department shall notify the office of
31 such failure and the office shall thereupon suspend the

1 license of such carrier to do an insurance business in this
2 state, until such carrier has complied with such order.

3 (3) In any case where the employer is a self-insurer
4 and fails to comply with any compensation order of a judge of
5 compensation claims or court within 10 days after such order
6 becomes final, the department ~~of Insurance~~ may suspend or
7 revoke any authorization previously given to the employer to
8 be a self-insurer, and the Florida Self-Insurers Guaranty
9 Association, Incorporated, may call or sue upon the surety
10 bond or exercise its rights under the letter of credit
11 deposited by the self-insurer with the association as a
12 qualifying security deposit as may be necessary to satisfy the
13 order.

14 Section 483. Subsections (1), (2), (3), and (4) of
15 section 440.38, Florida Statutes, are amended to read:

16 440.38 Security for compensation; insurance carriers
17 and self-insurers.--

18 (1) Every employer shall secure the payment of
19 compensation under this chapter:

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

24 (b) By furnishing satisfactory proof to the Florida
25 Self-Insurers Guaranty Association, Incorporated, created in
26 s. 440.385, that it has the financial strength necessary to
27 ensure timely payment of all current and future claims
28 individually and on behalf of its subsidiary and affiliated
29 companies with employees in this state and receiving an
30 authorization from the department ~~of Insurance~~ to pay such
31 compensation directly. The association shall review the

1 financial strength of applicants for membership, current
2 members, and former members and make recommendations to the
3 department ~~of Insurance~~ regarding their qualifications to
4 self-insure in accordance with this section and ss. 440.385
5 and 440.386. The department shall act in accordance with the
6 recommendations unless it finds by clear and convincing
7 evidence that the recommendations are erroneous.

8 1. As a condition of authorization under paragraph
9 (a), the association may recommend that the department ~~of~~
10 ~~Insurance~~ require an employer to deposit with the association
11 a qualifying security deposit. The association shall recommend
12 the type and amount of the qualifying security deposit and
13 shall prescribe conditions for the qualifying security
14 deposit, which shall include authorization for the association
15 to call the qualifying security deposit in the case of default
16 to pay compensation awards and related expenses of the
17 association. As a condition to authorization to self-insure,
18 the employer shall provide proof that the employer has
19 provided for competent personnel with whom to deliver benefits
20 and to provide a safe working environment. The employer shall
21 also provide evidence that it carries reinsurance at levels
22 that will ensure the financial strength and actuarial
23 soundness of such employer in accordance with rules adopted by
24 the department ~~of Insurance~~. The department ~~of Insurance~~ may
25 by rule require that, in the event of an individual
26 self-insurer's insolvency, such qualifying security deposits
27 and reinsurance policies are payable to the association. Any
28 employer securing compensation in accordance with the
29 provisions of this paragraph shall be known as a self-insurer
30 and shall be classed as a carrier of her or his own insurance.
31 The employer shall, if requested, provide the association an

1 actuarial report signed by a member of the American Academy of
2 Actuaries providing an opinion of the appropriate present
3 value of the reserves, using a 4-percent discount rate, for
4 current and future compensation claims. If any member or
5 former member of the association refuses to timely provide
6 such a report, the association may obtain an order from a
7 circuit court requiring the member to produce such a report
8 and ordering any other relief that the court determines is
9 appropriate. The association may recover all reasonable costs
10 and attorney's fees in such proceedings.

11 2. If the employer fails to maintain the foregoing
12 requirements, the association shall recommend to the
13 department ~~of Insurance~~ that the department revoke the
14 employer's authority to self-insure, unless the employer
15 provides to the association the certified opinion of an
16 independent actuary who is a member of the American Academy of
17 Actuaries as to the actuarial present value of the employer's
18 determined and estimated future compensation payments based on
19 cash reserves, using a 4-percent discount rate, and a
20 qualifying security deposit equal to 1.5 times the value so
21 certified. The employer shall thereafter annually provide such
22 a certified opinion until such time as the employer meets the
23 requirements of subparagraph 1. The qualifying security
24 deposit shall be adjusted at the time of each such annual
25 report. Upon the failure of the employer to timely provide
26 such opinion or to timely provide a security deposit in an
27 amount equal to 1.5 times the value certified in the latest
28 opinion, the association shall provide that information to the
29 department ~~of Insurance~~ along with a recommendation, and the
30 department ~~of Insurance~~ shall then revoke such employer's
31 authorization to self-insure. Failure to comply with this

1 subparagraph constitutes an immediate serious danger to the
2 public health, safety, or welfare sufficient to justify the
3 summary suspension of the employer's authorization to
4 self-insure pursuant to s. 120.68.

5 3. Upon the suspension or revocation of the employer's
6 authorization to self-insure, the employer shall provide to
7 the association the certified opinion of an independent
8 actuary who is a member of the American Academy of Actuaries
9 of the actuarial present value of the determined and estimated
10 future compensation payments of the employer for claims
11 incurred while the member exercised the privilege of
12 self-insurance, using a discount rate of 4 percent. The
13 employer shall provide such an opinion at 6-month intervals
14 thereafter until such time as the latest opinion shows no
15 remaining value of claims. With each such opinion, the
16 employer shall deposit with the association a qualifying
17 security deposit in an amount equal to the value certified by
18 the actuary. The association has a cause of action against an
19 employer, and against any successor of the employer, who fails
20 to timely provide such opinion or who fails to timely maintain
21 the required security deposit with the association. The
22 association shall recover a judgment in the amount of the
23 actuarial present value of the determined and estimated future
24 compensation payments of the employer for claims incurred
25 while the employer exercised the privilege of self-insurance,
26 together with attorney's fees. For purposes of this section,
27 the successor of an employer means any person, business
28 entity, or group of persons or business entities, which holds
29 or acquires legal or beneficial title to the majority of the
30 assets or the majority of the shares of the employer.

31

1 4. A qualifying security deposit shall consist, at the
2 option of the employer, of:

3 a. Surety bonds, in a form and containing such terms
4 as prescribed by the association, issued by a corporation
5 surety authorized to transact surety business by the office
6 ~~Department of Insurance~~, and whose policyholders' and
7 financial ratings, as reported in A.M. Best's Insurance
8 Reports, Property-Liability, are not less than "A" and "V",
9 respectively.

10 b. Irrevocable letters of credit in favor of the
11 association issued by financial institutions located within
12 this state, the deposits of which are insured through the
13 Federal Deposit Insurance Corporation.

14 5. The qualifying security deposit shall be held by
15 the association exclusively for the benefit of workers'
16 compensation claimants. The security shall not be subject to
17 assignment, execution, attachment, or any legal process
18 whatsoever, except as necessary to guarantee the payment of
19 compensation under this chapter. No surety bond may be
20 terminated, and no letter of credit may be allowed to expire,
21 without 90 days' prior written notice to the association and
22 deposit by the self-insuring employer of some other qualifying
23 security deposit of equal value within 10 business days after
24 such notice. Failure to provide such written notice or failure
25 to timely provide qualifying replacement security after such
26 notice shall constitute grounds for the association to call or
27 sue upon the surety bond or to exercise its rights under a
28 letter of credit. Current self-insured employers must comply
29 with this section on or before December 31, 2001, or upon the
30 maturity of existing security deposits, whichever occurs
31 later. The department ~~of Insurance~~ may specify by rule the

1 amount of the qualifying security deposit required prior to
2 authorizing an employer to self-insure and the amount of net
3 worth required for an employer to qualify for authorization to
4 self-insure;

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

10 (d) By entering into an interlocal agreement with
11 other local governmental entities to create a local government
12 pool pursuant to s. 624.4622; or

13 ~~(e) In accordance with s. 440.135, an employer, other
14 than a local government unit, may elect coverage under the
15 Workers' Compensation Law and retain the benefit of the
16 exclusiveness of liability provided in s. 440.11 by obtaining
17 a 24-hour health insurance policy from an authorized property
18 and casualty insurance carrier or an authorized life and
19 health insurance carrier, or by participating in a fully or
20 partially self-insured 24-hour health plan that is established
21 or maintained by or for two or more employers, so long as the
22 law of this state is not preempted by the Employee Retirement
23 Income Security Act of 1974, Pub. L. No. 93-406, or any
24 amendment to that law, which policy or plan must provide, for
25 at least occupational injuries and illnesses, medical benefits
26 that are comparable to those required by this chapter. A local
27 government unit, as a single employer, in accordance with s.
28 440.135, may participate in the 24-hour health insurance
29 coverage plan referenced in this paragraph. Disputes and
30 remedies arising under policies issued under this section are
31 governed by the terms and conditions of the policies and under~~

1 ~~the applicable provisions of the Florida Insurance Code and~~
2 ~~rules adopted under the insurance code and other applicable~~
3 ~~laws of this state. The 24-hour health insurance policy may~~
4 ~~provide for health care by a health maintenance organization~~
5 ~~or a preferred provider organization. The premium for such~~
6 ~~24-hour health insurance policy shall be paid entirely by the~~
7 ~~employer. The 24-hour health insurance policy may use~~
8 ~~deductibles and coinsurance provisions that require the~~
9 ~~employee to pay a portion of the actual medical care received~~
10 ~~by the employee. If an employer obtains a 24-hour health~~
11 ~~insurance policy or self-insured plan to secure payment of~~
12 ~~compensation as to medical benefits, the employer must also~~
13 ~~obtain an insurance policy or policies that provide indemnity~~
14 ~~benefits as follows:~~

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

18 2. ~~If indemnity benefits are provided for both~~
19 ~~occupational-related and nonoccupational-related disability,~~
20 ~~such benefits must be comparable to those required by this~~
21 ~~chapter, except that they must be based on 60 percent of the~~
22 ~~average weekly wages.~~

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

25 4. ~~Policies providing coverage under this subsection~~
26 ~~must use prescribed and acceptable underwriting standards,~~
27 ~~forms, and policies approved by the Department of Insurance.~~
28 ~~If any insurance policy that provides coverage under this~~
29 ~~section is canceled, terminated, or nonrenewed for any reason,~~
30 ~~the cancellation, termination, or nonrenewal is ineffective~~
31 ~~until the self-insured employer or insurance carrier or~~

1 ~~carriers notify the division and the Department of Insurance~~
2 ~~of the cancellation, termination, or nonrenewal, and until the~~
3 ~~division has actually received the notification. The division~~
4 ~~must be notified of replacement coverage under a workers'~~
5 ~~compensation and employer's liability insurance policy or plan~~
6 ~~by the employer prior to the effective date of the~~
7 ~~cancellation, termination, or nonrenewal; or~~

8 ~~(e)(f)~~ By entering into a contract with an individual
9 self-insurer under an approved individual
10 self-insurer-provided self-insurance program as set forth in
11 s. 624.46225. The department ~~division~~ may adopt rules to
12 administer this subsection.

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

17 (b) The department ~~of Insurance~~ shall adopt rules
18 requiring self-insurers to file any reports necessary to
19 fulfill the requirements of this chapter. Any self-insurer
20 who fails to file any report as prescribed by the rules
21 adopted by the department ~~of Insurance~~ shall be subject to a
22 civil penalty.

23 (3)(a) The license of any stock company or mutual
24 company or association or exchange authorized to do insurance
25 business in the state shall for good cause, upon
26 recommendation of the department ~~division~~, be suspended or
27 revoked by the office ~~Department of Insurance~~. No suspension
28 or revocation shall affect the liability of any carrier
29 already incurred.

30 (b) The department ~~of Insurance~~ shall suspend or
31 revoke any authorization to a self-insurer for failure to

1 comply with this section or for good cause, as defined by rule
2 of the department ~~of Insurance~~. No suspension or revocation
3 shall affect the liability of any self-insurer already
4 incurred.

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

13 (4)(a) A carrier of insurance, including the parties
14 to any mutual, reciprocal, or other association, may not write
15 any compensation insurance under this chapter without a
16 certificate of authority permit from the office ~~Department of~~
17 ~~Insurance~~. Such certificate of authority permit shall be
18 given, upon application therefor, to any insurance or mutual
19 or reciprocal insurance association upon the office's
20 ~~department's~~ being satisfied of the solvency of such
21 corporation or association and its ability to perform all its
22 undertakings. The office ~~Department of Insurance~~ may revoke
23 any certificate of authority permit so issued for violation of
24 any provision of this chapter.

25 (b) A carrier of insurance, including the parties to
26 any mutual, reciprocal, or other association, may not write
27 any compensation insurance under this chapter unless such
28 carrier has a claims adjuster, either in-house or under
29 contract, situated within this state. Self-insurers whose
30 compensation payments are administered through a third party
31 and carriers of insurance shall maintain a claims adjuster

1 within this state during any period for which there are any
2 open claims against such self-insurer or carrier arising under
3 the compensation insurance written by the self-insurer or
4 carrier. Individual self-insurers whose compensation payments
5 are administered by employees of the self-insurer shall not be
6 required to have their claims adjuster situated within this
7 state. Individual self-insurers shall not be required to have
8 their claims adjusters situated within this state.

9 Section 484. Subsections (1) and (3) of section
10 440.381, Florida Statutes, are amended to read:

11 440.381 Application for coverage; reporting payroll;
12 payroll audit procedures; penalties.--

13 (1) Applications by an employer to a carrier for
14 coverage required by s. 440.38 must be made on a form
15 prescribed by the Financial Services Commission ~~Department of~~
16 ~~Insurance~~. The Financial Services Commission ~~Department of~~
17 ~~Insurance~~ shall adopt rules for applications for coverage
18 required by s. 440.38. The rules must provide that an
19 application include information on the employer, the type of
20 business, past and prospective payroll, estimated revenue,
21 previous workers' compensation experience, employee
22 classification, employee names, and any other information
23 necessary to enable a carrier to accurately underwrite the
24 applicant. The rules must include a provision that a carrier
25 or self-insurance fund may require that an employer update an
26 application monthly to reflect any change in the required
27 application information.

28 (3) The Financial Services Commission, in consultation
29 with the department, shall establish by rule minimum
30 requirements for audits of payroll and classifications in
31 order to ensure that the appropriate premium is charged for

1 workers' compensation coverage. The rules shall ensure that
2 audits performed by both carriers and employers are adequate
3 to provide that all sources of payments to employees,
4 subcontractors, and independent contractors have been reviewed
5 and that the accuracy of classification of employees has been
6 verified. The rules shall provide that employers in all
7 classes other than the construction class be audited not less
8 frequently than biennially and may provide for more frequent
9 audits of employers in specified classifications based on
10 factors such as amount of premium, type of business, loss
11 ratios, or other relevant factors. In no event shall employers
12 in the construction class, generating more than the amount of
13 premium required to be experience rated, be audited less than
14 annually. The annual audits required for construction classes
15 shall consist of physical onsite audits. Payroll verification
16 audit rules must include, but need not be limited to, the use
17 of state and federal reports of employee income, payroll and
18 other accounting records, certificates of insurance maintained
19 by subcontractors, and duties of employees. At the completion
20 of an audit, the employer or officer of the corporation and
21 the auditor must print and sign their names on the audit
22 document and attach proof of identification to the audit
23 document.

24 Section 485. Section 440.385, Florida Statutes, is
25 amended to read:

26 440.385 Florida Self-Insurers Guaranty Association,
27 Incorporated.--

28 (1) CREATION OF ASSOCIATION.--

29 (a) There is created a nonprofit corporation to be
30 known as the "Florida Self-Insurers Guaranty Association,
31 Incorporated," hereinafter referred to as "the association."

1 Upon incorporation of the association, all individual
2 self-insurers as defined in ss. 440.02(23)(a) and
3 440.38(1)(b), other than individual self-insurers which are
4 public utilities or governmental entities, shall be members of
5 the association as a condition of their authority to
6 individually self-insure in this state. The association shall
7 perform its functions under a plan of operation as established
8 and approved under subsection (5) and shall exercise its
9 powers and duties through a board of directors as established
10 under subsection (2). The association shall have those powers
11 granted or permitted corporations not for profit, as provided
12 in chapter 617. The activities of the association shall be
13 subject to review by the department ~~of Insurance~~. The
14 department ~~of Insurance~~ shall have oversight responsibility as
15 set forth in this section. The association is specifically
16 authorized to enter into agreements with this state to perform
17 specified services.

18 (b) A member may voluntarily withdraw from the
19 association when the member voluntarily terminates the
20 self-insurance privilege and pays all assessments due to the
21 date of such termination. However, the withdrawing member
22 shall continue to be bound by the provisions of this section
23 relating to the period of his or her membership and any claims
24 charged pursuant thereto. The withdrawing member who is a
25 member on or after January 1, 1991, shall also be required to
26 provide to the association upon withdrawal, and at 12-month
27 intervals thereafter, satisfactory proof, including, if
28 requested by the association, a report of known and potential
29 claims certified by a member of the American Academy of
30 Actuaries, that it continues to meet the standards of s.
31 440.38(1)(b)1. in relation to claims incurred while the

1 withdrawing member exercised the privilege of self-insurance.
2 Such reporting shall continue until the withdrawing member
3 demonstrates to the association that there is no remaining
4 value to claims incurred while the withdrawing member was
5 self-insured. If a withdrawing member fails or refuses to
6 timely provide an actuarial report to the association, the
7 association may obtain an order from a circuit court requiring
8 the member to produce such a report and ordering any other
9 relief that the court determines appropriate. The association
10 is entitled to recover all reasonable costs and attorney's
11 fees expended in such proceedings. If during this reporting
12 period the withdrawing member fails to meet the standards of
13 s. 440.38(1)(b)1., the withdrawing member who is a member on
14 or after January 1, 1991, shall thereupon, and at 6-month
15 intervals thereafter, provide to the association the certified
16 opinion of an independent actuary who is a member of the
17 American Academy of Actuaries of the actuarial present value
18 of the determined and estimated future compensation payments
19 of the member for claims incurred while the member was a
20 self-insurer, using a discount rate of 4 percent. With each
21 such opinion, the withdrawing member shall deposit with the
22 association security in an amount equal to the value certified
23 by the actuary and of a type that is acceptable for qualifying
24 security deposits under s. 440.38(1)(b). The withdrawing
25 member shall continue to provide such opinions and to provide
26 such security until such time as the latest opinion shows no
27 remaining value of claims. The association has a cause of
28 action against a withdrawing member, and against any successor
29 of a withdrawing member, who fails to timely provide the
30 required opinion or who fails to maintain the required deposit
31 with the association. The association shall be entitled to

1 recover a judgment in the amount of the actuarial present
2 value of the determined and estimated future compensation
3 payments of the withdrawing member for claims incurred during
4 the time that the withdrawing member exercised the privilege
5 of self-insurance, together with reasonable attorney's fees.
6 The association is also entitled to recover reasonable
7 attorney's fees in any action to compel production of any
8 actuarial report required by this section. For purposes of
9 this section, the successor of a withdrawing member means any
10 person, business entity, or group of persons or business
11 entities, which holds or acquires legal or beneficial title to
12 the majority of the assets or the majority of the shares of
13 the withdrawing member.

14 (2) BOARD OF DIRECTORS.--The board of directors of the
15 association shall consist of nine persons and shall be
16 organized as established in the plan of operation. All board
17 members shall be experienced in self-insurance in this state.
18 Each director shall serve for a 4-year term and may be
19 reappointed. Appointments after January 1, 2002, shall be
20 made by the department ~~of insurance~~ upon recommendation of
21 members of the association. Any vacancy on the board shall be
22 filled for the remaining period of the term in the same manner
23 as appointments other than initial appointments are made. Each
24 director shall be reimbursed for expenses incurred in carrying
25 out the duties of the board on behalf of the association.

26 (3) POWERS AND DUTIES.--

27 (a) Upon creation of the Insolvency Fund pursuant to
28 the provisions of subsection (4), the association is obligated
29 for payment of compensation under this chapter to insolvent
30 members' employees resulting from incidents and injuries
31 existing prior to the member becoming an insolvent member and

1 from incidents and injuries occurring within 30 days after the
2 member has become an insolvent member, provided the incidents
3 giving rise to claims for compensation under this chapter
4 occur during the year in which such insolvent member is a
5 member of the guaranty fund and was assessable pursuant to the
6 plan of operation, and provided the employee makes timely
7 claim for such payments according to procedures set forth by a
8 court of competent jurisdiction over the delinquency or
9 bankruptcy proceedings of the insolvent member. Such
10 obligation includes only that amount due the injured worker or
11 workers of the insolvent member under this chapter. In no
12 event is the association obligated to a claimant in an amount
13 in excess of the obligation of the insolvent member. The
14 association shall be deemed the insolvent employer for
15 purposes of this chapter to the extent of its obligation on
16 the covered claims and, to such extent, shall have all rights,
17 duties, and obligations of the insolvent employer as if the
18 employer had not become insolvent. However, in no event shall
19 the association be liable for any penalties or interest.

20 (b) The association may:

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

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

25 3. Sue or be sued.

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

28 5. Purchase such reinsurance as is determined
29 necessary pursuant to the plan of operation.

30 6. Review all applicants for membership in the
31 association to determine whether the applicant is qualified

1 for membership under the law. The association shall recommend
2 to the department ~~of Insurance~~ that the application be
3 accepted or rejected based on the criteria set forth in s.
4 440.38(1)(b). The department ~~of Insurance~~ shall approve or
5 disapprove the application as provided in paragraph (6)(a).

6 7. Collect and review financial information from
7 employers and make recommendations to the department ~~of~~
8 ~~Insurance~~ regarding the appropriate security deposit and
9 reinsurance amounts necessary for an employer to demonstrate
10 that it has the financial strength necessary to ensure the
11 timely payment of all current and future claims. The
12 association may audit and examine an employer to verify the
13 financial strength of its current and former members. If the
14 association determines that a current or former self-insured
15 employer does not have the financial strength necessary to
16 ensure the timely payment of all current and estimated future
17 claims, the association may recommend to the department ~~of~~
18 ~~Insurance~~ that the department:

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

20 b. Require the employer to provide a certified opinion
21 of an independent actuary who is a member of the American
22 Academy of Actuaries as to the actuarial present value of the
23 employer's estimated current and future compensation payments,
24 using a 4-percent discount rate.

25 c. Require an increase in the employer's security
26 deposit in an amount determined by the association to be
27 necessary to ensure payment of compensation claims. The
28 department ~~of Insurance~~ shall act on such recommendations as
29 provided in paragraph (6)(a). The association has a cause of
30 action against an employer, and against any successor of an
31 employer, who fails to provide an additional security deposit

1 required by the department ~~of Insurance~~. The association
2 shall file an action in circuit court to recover a judgment in
3 the amount of the requested additional security deposit
4 together with reasonable attorney's fees. For the purposes of
5 this section, the successor of an employer is any person,
6 business entity, or group of persons or business entities
7 which holds or acquires legal or beneficial title to the
8 majority of the assets or the majority of the shares of the
9 employer.

10 8. Charge fees to any member of the association to
11 cover the actual costs of examining the financial and safety
12 conditions of that member.

13 9. Charge an applicant for membership in the
14 association a fee sufficient to cover the actual costs of
15 examining the financial condition of the applicant.

16 10. Implement any procedures necessary to ensure
17 compliance with regulatory actions taken by the department ~~of~~
18 ~~Insurance~~.

19 (c)1. To the extent necessary to secure funds for the
20 payment of covered claims and also to pay the reasonable costs
21 to administer them, the association, subject to approval by
22 the department ~~of Insurance~~, shall levy assessments based on
23 the annual written premium each employer would have paid had
24 the employer not been self-insured. Every assessment shall be
25 made as a uniform percentage of the figure applicable to all
26 individual self-insurers, provided that the assessment levied
27 against any self-insurer in any one year shall not exceed 1
28 percent of the annual written premium during the calendar year
29 preceding the date of the assessment. Assessments shall be
30 remitted to and administered by the board of directors in the
31 manner specified by the approved plan. Each employer so

1 assessed shall have at least 30 days' written notice as to the
2 date the assessment is due and payable. The association shall
3 levy assessments against any newly admitted member of the
4 association so that the basis of contribution of any newly
5 admitted member is the same as previously admitted members,
6 provision for which shall be contained in the plan of
7 operation.

8 2. If, in any one year, funds available from such
9 assessments, together with funds previously raised, are not
10 sufficient to make all the payments or reimbursements then
11 owing, the funds available shall be prorated, and the unpaid
12 portion shall be paid as soon thereafter as sufficient
13 additional funds become available.

14 3. Funds may be allocated or paid from the Workers'
15 Compensation Administration Trust Fund to contract with the
16 association to perform services required by law. However, no
17 state funds of any kind shall be allocated or paid to the
18 association or any of its accounts for payment of covered
19 claims or related expenses except those state funds accruing
20 to the association by and through the assignment of rights of
21 an insolvent employer. The department ~~of Insurance~~ may not
22 levy any assessment on the association.

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

26 (a) The Insolvency Fund is created for purposes of
27 meeting the obligations of insolvent members incurred while
28 members of the association and after the exhaustion of any
29 security deposit, as required under this chapter. However, if
30 such security deposit or reinsurance policy is payable to the
31 association, the association shall commence to provide

1 benefits out of the Insolvency Fund and be reimbursed from the
2 security deposit or reinsurance policy. The method of
3 operation of the Insolvency Fund shall be defined in the plan
4 of operation as provided in subsection (5).

5 (b) The department ~~of Insurance~~ shall have the
6 authority to audit the financial soundness of the Insolvency
7 Fund annually.

8 (c) The department ~~of Insurance~~ may offer certain
9 amendments to the plan of operation to the board of directors
10 of the association for purposes of assuring the ongoing
11 financial soundness of the Insolvency Fund and its ability to
12 meet the obligations of this section.

13 (5) PLAN OF OPERATION.--The association shall operate
14 pursuant to a plan of operation approved by the board of
15 directors. The plan of operation in effect on January 1,
16 2002, and approved by the Department of Labor and Employment
17 Security shall remain in effect. However, any amendments to
18 the plan shall not become effective until approved by the
19 Department of Financial Services ~~Insurance~~.

20 (a) The purpose of the plan of operation shall be to
21 provide the association and the board of directors with the
22 authority and responsibility to establish the necessary
23 programs and to take the necessary actions to protect against
24 the insolvency of a member of the association. In addition,
25 the plan shall provide that the members of the association
26 shall be responsible for maintaining an adequate Insolvency
27 Fund to meet the obligations of insolvent members provided for
28 under this act and shall authorize the board of directors to
29 contract and employ those persons with the necessary expertise
30 to carry out this stated purpose. By January 1, 2003, the
31 board of directors shall submit to the department ~~of Insurance~~

1 a proposed plan of operation for the administration of the
2 association. The department ~~of insurance~~ shall approve the
3 plan by order, consistent with this section. The department ~~of~~
4 ~~insurance~~ shall approve any amendments to the plan, consistent
5 with this section, which are determined appropriate to carry
6 out the duties and responsibilities of the association.

7 (b) All member employers shall comply with the plan of
8 operation.

9 (c) The plan of operation shall:

10 1. Establish the procedures whereby all the powers and
11 duties of the association under subsection (3) will be
12 performed.

13 2. Establish procedures for handling assets of the
14 association.

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

17 4. Establish procedures by which claims may be filed
18 with the association and establish acceptable forms of proof
19 of covered claims. Notice of claims to the receiver or
20 liquidator of the insolvent employer shall be deemed notice to
21 the association or its agent, and a list of such claims shall
22 be submitted periodically to the association or similar
23 organization in another state by the receiver or liquidator.

24 5. Establish regular places and times for meetings of
25 the board of directors.

26 6. Establish procedures for records to be kept of all
27 financial transactions of the association and its agents and
28 the board of directors.

29 7. Provide that any member employer aggrieved by any
30 final action or decision of the association may appeal to the
31

1 department ~~of Insurance~~ within 30 days after the action or
2 decision.

3 8. Establish the procedures whereby recommendations of
4 candidates for the board of directors shall be submitted to
5 the department ~~of Insurance~~.

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

8 (d) The plan of operation may provide that any or all
9 of the powers and duties of the association, except those
10 specified under subparagraphs (c)1. and 2., be delegated to a
11 corporation, association, or other organization which performs
12 or will perform functions similar to those of this association
13 or its equivalent in two or more states. Such a corporation,
14 association, or organization shall be reimbursed as a
15 servicing facility would be reimbursed and shall be paid for
16 its performance of any other functions of the association. A
17 delegation of powers or duties under this subsection shall
18 take effect only with the approval of both the board of
19 directors and the department ~~of Insurance~~ and may be made only
20 to a corporation, association, or organization which extends
21 protection which is not substantially less favorable and
22 effective than the protection provided by this section.

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

25 (a) Review recommendations of the association
26 concerning whether current or former self-insured employers or
27 members of the association have the financial strength
28 necessary to ensure the timely payment of all current and
29 estimated future claims. If the association determines an
30 employer does not have the financial strength necessary to
31 ensure the timely payment of all current and future claims and

1 recommends action pursuant to paragraph (3)(b), the department
2 shall take such action as necessary to order the employer to
3 comply with the recommendation, unless the department finds by
4 clear and convincing evidence that the recommendation is
5 erroneous.

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

8 1. Processing applications for self-insurance.

9 2. Collecting and reviewing financial statements and
10 loss reserve information from individual self-insurers.

11 3. Collecting and maintaining files for original
12 security deposit documents and reinsurance policies from
13 individual self-insurers and, if necessary, perfecting
14 security interests in security deposits.

15 4. Processing compliance documentation for individual
16 self-insurers and providing copies of such documentation to
17 the department.

18 5. Collecting all data necessary to calculate annual
19 premium for all individual self-insurers, including individual
20 self-insurers that are public utilities or governmental
21 entities, and providing such calculated annual premium to the
22 department ~~division~~ for assessment purposes.

23 6. Inspecting and auditing annually, if necessary, the
24 payroll and other records of each individual self-insurer,
25 including individual self-insurers that are public utilities
26 or governmental entities, in order to determine the wages paid
27 by each individual self-insurer, the premium such individual
28 self-insurer would have to pay if insured, and all payments of
29 compensation made by such individual self-insurer during each
30 prior period with the results of such audit provided to the
31 department ~~division~~. For purposes of this section, the payroll

1 records of each individual self-insurer shall be open to
2 inspection and audit by the association and the department, or
3 their authorized representatives, during regular business
4 hours.

5 7. Processing applications and making recommendations
6 with respect to the qualification of a business to be approved
7 to provide or continue to provide services to individual
8 self-insurers in the areas of underwriting, claims adjusting,
9 loss control, and safety engineering.

10 8. Providing legal representation to implement the
11 administration and audit of individual self-insurers and
12 making recommendations regarding prosecution of any
13 administrative or legal proceedings necessitated by the
14 regulation of the individual self-insurers by the department.

15 (c) Contract with an attorney or attorneys recommended
16 by the association for representation of the department in any
17 administrative or legal proceedings necessitated by the
18 recommended regulation of the individual self-insurers.

19 (d) Direct the association to require from each
20 individual self-insurer, at such time and in accordance with
21 such regulations as the department prescribes, reports
22 relating to wages paid, the amount of premiums such individual
23 self-insurer would have to pay if insured, and all payments of
24 compensation made by such individual self-insurer during each
25 prior period and to determine the amounts paid by each
26 individual self-insurer and the amounts paid by all individual
27 self-insurers during such period. For purposes of this
28 section, the payroll records of each individual self-insurer
29 shall be open to annual inspection and audit by the
30 association and the department, or their authorized
31 representative, during regular business hours, and if any

1 audit of such records of an individual self-insurer discloses
2 a deficiency in the amount reported to the association or in
3 the amounts paid to the department ~~division~~ by an individual
4 self-insurer for its assessment for the Workers' Compensation
5 Administration Trust Fund, the department or the association
6 may assess the cost of such audit against the individual
7 self-insurer.

8 (e) Require that the association notify the member
9 employers and any other interested parties of the
10 determination of insolvency and of their rights under this
11 section. Such notification shall be by mail at the last known
12 address thereof when available; but, if sufficient information
13 for notification by mail is not available, notice by
14 publication in a newspaper of general circulation shall be
15 sufficient.

16 (f) Suspend or revoke the authority of any member
17 employer failing to pay an assessment when due or failing to
18 comply with the plan of operation to self-insure in this
19 state. As an alternative, the department may levy a fine on
20 any member employer failing to pay an assessment when due.
21 Such fine shall not exceed 5 percent of the unpaid assessment
22 per month, except that no fine shall be less than \$100 per
23 month.

24 (g) Revoke the designation of any servicing facility
25 if the department finds that claims are being handled
26 unsatisfactorily.

27 (7) EFFECT OF PAID CLAIMS.--

28 (a) Any person who recovers from the association under
29 this section shall be deemed to have assigned his or her
30 rights to the association to the extent of such recovery.
31 Every claimant seeking the protection of this section shall

1 cooperate with the association to the same extent as such
2 person would have been required to cooperate with the
3 insolvent member. The association shall have no cause of
4 action against the employee of the insolvent member for any
5 sums the association has paid out, except such causes of
6 action as the insolvent member would have had if such sums had
7 been paid by the insolvent member. In the case of an
8 insolvent member operating on a plan with assessment
9 liability, payments of claims by the association shall not
10 operate to reduce the liability of the insolvent member to the
11 receiver, liquidator, or statutory successor for unpaid
12 assessments.

13 (b) The receiver, liquidator, or statutory successor
14 of an insolvent member shall be bound by settlements of
15 covered claims by the association or a similar organization in
16 another state. The court having jurisdiction shall grant such
17 claims priority against the assets of the insolvent member
18 equal to that to which the claimant would have been entitled
19 in the absence of this section. The expense of the association
20 or similar organization in handling claims shall be accorded
21 the same priority as the expenses of the liquidator.

22 (c) The association shall file periodically with the
23 receiver or liquidator of the insolvent member statements of
24 the covered claims paid by the association and estimates of
25 anticipated claims on the association, which shall preserve
26 the rights of the association against the assets of the
27 insolvent member.

28 (8) NOTIFICATION OF INSOLVENCIES.--To aid in the
29 detection and prevention of employer insolvencies: Upon
30 determination by majority vote that any member employer may be
31 insolvent or in a financial condition hazardous to the

1 employees thereof or to the public, it shall be the duty of
2 the board of directors to notify the department ~~of Insurance~~
3 of any information indicating such condition.

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

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

17 (11) STAY OF PROCEEDINGS; REOPENING OF DEFAULT
18 JUDGMENTS.--All proceedings in which an insolvent employer is
19 a party, or is obligated to defend a party, in any court or
20 before any quasi-judicial body or administrative board in this
21 state shall be stayed for up to 6 months, or for such
22 additional period from the date the employer becomes an
23 insolvent member, as is deemed necessary by a court of
24 competent jurisdiction to permit proper defense by the
25 association of all pending causes of action as to any covered
26 claims arising from a judgment under any decision, verdict, or
27 finding based on the default of the insolvent member. The
28 association, either on its own behalf or on behalf of the
29 insolvent member, may apply to have such judgment, order,
30 decision, verdict, or finding set aside by the same court or
31 administrator that made such judgment, order, decision,

1 verdict, or finding and shall be permitted to defend against
2 such claim on the merits. If requested by the association,
3 the stay of proceedings may be shortened or waived.

4 (12) LIMITATION ON CERTAIN ACTIONS.--Notwithstanding
5 any other provision of this chapter, a covered claim, as
6 defined herein, with respect to which settlement is not
7 effected and pursuant to which suit is not instituted against
8 the insured of an insolvent member or the association within 1
9 year after the deadline for filing claims with the receiver of
10 the insolvent member, or any extension of the deadline, shall
11 thenceforth be barred as a claim against the association.

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

20 Section 486. Subsections (2), (3), and (4) of section
21 440.386, Florida Statutes, are amended to read:

22 440.386 Individual self-insurers' insolvency;
23 conservation; liquidation.--

24 (2) COMMENCEMENT OF DELINQUENCY PROCEEDING.--The
25 department ~~of Insurance~~ or the Florida Self-Insurers Guaranty
26 Association, Incorporated, may commence a delinquency
27 proceeding by application to the court for an order directing
28 the individual self-insurer to show cause why the department
29 or association should not have the relief sought. On the
30 return of such order to show cause, and after a full hearing,
31 the court shall either deny the application or grant the

1 application, together with such other relief as the nature of
2 the case and the interests of the claimants, creditors,
3 stockholders, members, subscribers, or public may require. The
4 department and the association shall give reasonable written
5 notice to each other of all hearings which pertain to an
6 adjudication of insolvency of a member individual
7 self-insurer.

8 (3) GROUNDS FOR LIQUIDATION.--The department ~~of~~
9 ~~insurance~~ or the association may apply to the court for an
10 order appointing a receiver and directing the receiver to
11 liquidate the business of a domestic individual self-insurer
12 if such individual self-insurer is insolvent.

13 (4) GROUNDS FOR CONSERVATION; FOREIGN INDIVIDUAL
14 SELF-INSURERS.--

15 (a) The department ~~of insurance~~ or the association may
16 apply to the court for an order appointing a receiver or
17 ancillary receiver, and directing the receiver to conserve the
18 assets within this state, of a foreign individual self-insurer
19 if such individual self-insurer is insolvent.

20 (b) An order to conserve the assets of an individual
21 self-insurer shall require the receiver forthwith to take
22 possession of the property of the receiver within the state
23 and to conserve it, subject to the further direction of the
24 court.

25 Section 487. Subsection (2) of section 440.40, Florida
26 Statutes, is amended to read:

27 440.40 Compensation notice.--Every employer who has
28 secured compensation under the provisions of this chapter
29 shall keep posted in a conspicuous place or places in and
30 about her or his place or places of business typewritten or
31

1 printed notices, in accordance with a form prescribed by the
2 department, the following:

3 (2) A notice stating: "Anti-Fraud Reward
4 Program.--Rewards of up to \$25,000 may be paid to persons
5 providing information to the Department of Financial Services
6 ~~Insurance~~ leading to the arrest and conviction of persons
7 committing insurance fraud, including employers who illegally
8 fail to obtain workers' compensation coverage. Persons may
9 report suspected fraud to the department at ...(Phone No.)....
10 A person is not subject to civil liability for furnishing such
11 information, if such person acts without malice, fraud, or bad
12 faith."

13 Section 488. Subsections (3), (4), and (6) of section
14 440.44, Florida Statutes, are amended to read:

15 440.44 Workers' compensation; staff organization.--

16 (3) EXPENDITURES.--The department, the agency, the
17 office,the Department of Education, and the director of the
18 Division of Administrative Hearings shall make such
19 expenditures, including expenditures for personal services and
20 rent at the seat of government and elsewhere, for law books;
21 for telephone services and WATS lines; for books of reference,
22 periodicals, equipment, and supplies; and for printing and
23 binding as may be necessary in the administration of this
24 chapter. All expenditures in the administration of this
25 chapter shall be allowed and paid as provided in s. 440.50
26 upon the presentation of itemized vouchers therefor approved
27 by the department, the agency, the office,the Department of
28 Education, or the director of the Division of Administrative
29 Hearings.

30 (4) PERSONNEL ADMINISTRATION.--Subject to the other
31 provisions of this chapter, the department, the agency, the

1 office, the Department of Education, and the Division of
2 Administrative Hearings may appoint, and prescribe the duties
3 and powers of, bureau chiefs, attorneys, accountants, medical
4 advisers, technical assistants, inspectors, claims examiners,
5 and such other employees as may be necessary in the
6 performance of their duties under this chapter.

7 (6) SEAL.--The department and the judges of
8 compensation claims shall have a seal upon which shall be
9 inscribed the words "State of Florida Department of Financial
10 Services Insurance--Seal" and "Division of Administrative
11 Hearings--Seal," respectively.

12 Section 489. Subsections (8) and (9) of section
13 440.49, Florida Statutes, are amended to read:

14 440.49 Limitation of liability for subsequent injury
15 through Special Disability Trust Fund.--

16 (8) PREFERRED WORKER PROGRAM.--The Department of
17 Education or administrator shall issue identity cards to
18 preferred workers upon request by qualified employees and the
19 Department of Financial Services Insurance shall reimburse an
20 employer, from the Special Disability Trust Fund, for the cost
21 of workers' compensation premium related to the preferred
22 workers payroll for up to 3 years of continuous employment
23 upon satisfactory evidence of placement and issuance of
24 payroll and classification records and upon the employee's
25 certification of employment. The Department of Financial
26 Services and the Department of Education may by rule prescribe
27 definitions, forms, and procedures for the administration of
28 the preferred worker program. The Department of Education may
29 by rule prescribe the schedule for submission of forms for
30 participation in the program.

31 (9) SPECIAL DISABILITY TRUST FUND.--

1 (a) There is established in the State Treasury a
2 special fund to be known as the "Special Disability Trust
3 Fund," which shall be available only for the purposes stated
4 in this section; and the assets thereof may not at any time be
5 appropriated or diverted to any other use or purpose. The
6 Chief Financial Officer ~~Treasurer~~ shall be the custodian of
7 such fund, and all moneys and securities in such fund shall be
8 held in trust by such Chief Financial Officer ~~Treasurer~~ and
9 shall not be the money or property of the state. The Chief
10 Financial Officer ~~Treasurer~~ is authorized to disburse moneys
11 from such fund only when approved by the department or
12 corporation ~~and upon the order of the Comptroller~~. The Chief
13 Financial Officer ~~Treasurer~~ shall deposit any moneys paid into
14 such fund into such depository banks as the department may
15 designate and is authorized to invest any portion of the fund
16 which, in the opinion of the department, is not needed for
17 current requirements, in the same manner and subject to all
18 the provisions of the law with respect to the deposits of
19 state funds by such Chief Financial Officer ~~Treasurer~~. All
20 interest earned by such portion of the fund as may be invested
21 by the Chief Financial Officer ~~Treasurer~~ shall be collected by
22 her or him and placed to the credit of such fund.

23 (b)1. The Special Disability Trust Fund shall be
24 maintained by annual assessments upon the insurance companies
25 writing compensation insurance in the state, the commercial
26 self-insurers under ss. 624.462 and 624.4621, the assessable
27 mutuals as defined in s. 628.6011 ~~under s. 628.601~~, and the
28 self-insurers under this chapter, which assessments shall
29 become due and be paid quarterly at the same time and in
30 addition to the assessments provided in s. 440.51. The
31 department shall estimate annually in advance the amount

1 necessary for the administration of this subsection and the
2 maintenance of this fund and shall make such assessment in the
3 manner hereinafter provided.

4 2. The annual assessment shall be calculated to
5 produce during the ensuing fiscal year an amount which, when
6 combined with that part of the balance in the fund on June 30
7 of the current fiscal year which is in excess of \$100,000, is
8 equal to the average of:

9 a. The sum of disbursements from the fund during the
10 immediate past 3 calendar years, and

11 b. Two times the disbursements of the most recent
12 calendar year.

13

14 Such amount shall be prorated among the insurance companies
15 writing compensation insurance in the state and the
16 self-insurers. Provided however, for those carriers that have
17 excluded ceded reinsurance premiums from their assessments on
18 or before January 1, 2000, no assessments on ceded reinsurance
19 premiums shall be paid by those carriers until such time as
20 the former Division of Workers' Compensation of the Department
21 of Labor and Employment Security or the department advises
22 each of those carriers of the impact that the inclusion of
23 ceded reinsurance premiums has on their assessment. The
24 department may not recover any past underpayments of
25 assessments levied against any carrier that on or before
26 January 1, 2000, excluded ceded reinsurance premiums from
27 their assessment prior to the point that the former Division
28 of Workers' Compensation of the Department of Labor and
29 Employment Security or the department advises of the
30 appropriate assessment that should have been paid.

31

1 3. The net premiums written by the companies for
2 workers' compensation in this state and the net premium
3 written applicable to the self-insurers in this state are the
4 basis for computing the amount to be assessed as a percentage
5 of net premiums. Such payments shall be made by each carrier
6 and self-insurer to the department for the Special Disability
7 Trust Fund in accordance with such regulations as the
8 department prescribes.

9 4. The Chief Financial Officer ~~Treasurer~~ is authorized
10 to receive and credit to such Special Disability Trust Fund
11 any sum or sums that may at any time be contributed to the
12 state by the United States under any Act of Congress, or
13 otherwise, to which the state may be or become entitled by
14 reason of any payments made out of such fund.

15 (c) Notwithstanding the Special Disability Trust Fund
16 assessment rate calculated pursuant to this section, the rate
17 assessed shall not exceed 4.52 percent.

18 (d) The Special Disability Trust Fund shall be
19 supplemented by a \$250 notification fee on each notice of
20 claim filed or refiled after July 1, 1997, and a \$500 fee on
21 each proof of claim filed in accordance with subsection (7).
22 Revenues from the fee shall be deposited into the Special
23 Disability Trust Fund and are exempt from the deduction
24 required by s. 215.20. The fees provided in this paragraph
25 shall not be imposed upon any insurer which is in receivership
26 with the department ~~of Insurance~~.

27 (e) The department or administrator shall report
28 annually on the status of the Special Disability Trust Fund.
29 The report shall update the estimated undiscounted and
30 discounted fund liability, as determined by an independent
31 actuary, change in the total number of notices of claim on

1 file with the fund in addition to the number of newly filed
2 notices of claim, change in the number of proofs of claim
3 processed by the fund, the fee revenues refunded and revenues
4 applied to pay down the liability of the fund, the average
5 time required to reimburse accepted claims, and the average
6 administrative costs per claim. The department or
7 administrator shall submit its report to the Governor, the
8 President of the Senate, and the Speaker of the House of
9 Representatives by December 1 of each year.

10 Section 490. Subsections (1), (2), and (3) of section
11 440.50, Florida Statutes, are amended to read:

12 440.50 Workers' Compensation Administration Trust
13 Fund.--

14 (1)(a) There is established in the State Treasury a
15 special fund to be known as the "Workers' Compensation
16 Administration Trust Fund" for the purpose of providing for
17 the payment of all expenses in respect to the administration
18 of this chapter, including the vocational rehabilitation of
19 injured employees as provided in s. 440.49 and the payments
20 due under s. 440.15(1)(f), the funding of the fixed
21 administrative expenses of the plan, and the funding of the
22 Bureau of Workers' Compensation Fraud within the Department of
23 Financial Services Insurance. Such fund shall be administered
24 by the department.

25 (b) The department is authorized to transfer as a loan
26 an amount not in excess of \$250,000 from such special fund to
27 the Special Disability Trust Fund established by s. 440.49(9),
28 which amount shall be repaid to said special fund in annual
29 payments equal to not less than 10 percent of moneys received
30 for such Special Disability Trust Fund.

31

1 (2) The Chief Financial Officer ~~Treasurer~~ is
2 authorized to disburse moneys from such fund only when
3 approved by the department ~~and upon the order of the~~
4 ~~Comptroller~~.

5 (3) The Chief Financial Officer ~~Treasurer~~ shall
6 deposit any moneys paid into such fund into such depository
7 banks as the department may designate and is authorized to
8 invest any portion of the fund which, in the opinion of the
9 department, is not needed for current requirements, in the
10 same manner and subject to all the provisions of the law with
11 respect to the deposit of state funds by such Chief Financial
12 Officer ~~Treasurer~~. All interest earned by such portion of the
13 fund as may be invested by the Chief Financial Officer
14 ~~Treasurer~~ shall be collected by him or her and placed to the
15 credit of such fund.

16 Section 491. Paragraph (a) of subsection (1) and
17 subsection (3) of section 440.51, Florida Statutes, are
18 amended to read:

19 440.51 Expenses of administration.--

20 (1) The department shall estimate annually in advance
21 the amounts necessary for the administration of this chapter,
22 in the following manner.

23 (a) The department shall, by July 1 of each year,
24 notify carriers and self-insurers of the assessment rate,
25 which shall be based on the anticipated expenses of the
26 administration of this chapter for the next calendar year.
27 Such assessment rate shall take effect January 1 of the next
28 calendar year and shall be included in workers' compensation
29 rate filings approved by the office ~~Department of Insurance~~
30 which become effective on or after January 1 of the next
31

1 calendar year. Assessments shall become due and be paid
2 quarterly.

3 (3) If any carrier fails to pay the amounts assessed
4 against him or her under the provisions of this section within
5 60 days from the time such notice is served upon him or her,
6 the office, upon being notified by the department, may suspend
7 or revoke the authorization to insure compensation in
8 accordance with the procedure in s. 440.38(3)(a). The
9 department may permit a carrier to remit any underpayment of
10 assessments for assessments levied after January 1, 2001.

11 Section 492. Section 440.515, Florida Statutes, is
12 amended to read:

13 440.515 Reports from self-insurers;
14 confidentiality.--The department ~~of Insurance~~ shall maintain
15 the reports filed in accordance with s. 440.51(6)(b) as
16 confidential and exempt from the provisions of s. 119.07(1),
17 and such reports shall be released only for bona fide research
18 or educational purposes or after receipt of consent from the
19 employer.

20 Section 493. Subsections (3) and (4) of section
21 440.52, Florida Statutes, are amended to read:

22 440.52 Registration of insurance carriers; notice of
23 cancellation or expiration of policy; suspension or revocation
24 of authority.--

25 (3) If the department finds, after due notice and a
26 hearing at which the insurance carrier is entitled to be heard
27 in person or by counsel and present evidence, that the
28 insurance carrier has repeatedly failed to comply with its
29 obligations under this chapter, the department may request the
30 office to suspend or revoke the authorization of such
31 insurance carrier to write workers' compensation insurance

1 under this chapter. Such suspension or revocation shall not
2 affect the liability of any such insurance carrier under
3 policies in force prior to the suspension or revocation.

4 (4) In addition to the penalties prescribed in
5 subsection (3), violation of s. 440.381 by an insurance
6 carrier shall result in the imposition of a fine not to exceed
7 \$1,000 per audit, if the insurance carrier fails to act on
8 said audits by correcting errors in employee classification or
9 accepted applications for coverage where it knew employee
10 classifications were incorrect. Such fines shall be levied by
11 the office ~~Department of Insurance~~ and deposited into the
12 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

13 Section 494. Section 440.525, Florida Statutes, is
14 amended to read:

15 440.525 Examination of carriers.--The department and
16 office may examine each carrier as often as is warranted to
17 ensure that carriers are fulfilling their obligations under
18 this chapter ~~the law~~. The examination may cover any period of
19 the carrier's operations since the last previous examination.

20 Section 495. Section 440.591, Florida Statutes, is
21 amended to read:

22 440.591 Administrative procedure; rulemaking
23 authority.--The department, the Financial Services Commission,
24 the agency, and the Department of Education may adopt rules
25 pursuant to ss. 120.536(1) and 120.54 to implement the
26 provisions of this chapter conferring duties upon it.

27 Section 496. Paragraph (a) of subsection (5) of
28 section 443.131, Florida Statutes, is amended to read:

29 443.131 Contributions.--

30 (5) FINANCING BENEFITS PAID TO EMPLOYEES OF THE STATE
31 AND POLITICAL SUBDIVISIONS OF THE STATE.--Benefits paid to

1 employees of this state or any instrumentality of this state,
2 or to employees of any political subdivision of this state or
3 any instrumentality thereof, based upon service defined in s.
4 443.036(21)(b), shall be financed in accordance with this
5 subsection.

6 (a)1. Unless an election is made as provided in
7 paragraph (c), the state or any political subdivision of the
8 state shall pay into the Unemployment Compensation Trust Fund
9 an amount equivalent to the amount of regular benefits,
10 short-time compensation benefits, and extended benefits paid
11 to individuals, based on wages paid by the state or the
12 political subdivision for service defined in s.
13 443.036(21)(b).

14 2. If ~~Should~~ any state agency becomes ~~become~~ more than
15 120 days delinquent on reimbursements due to the Unemployment
16 Compensation Trust Fund, the division shall certify to the
17 Chief Financial Officer ~~Comptroller~~ the amount due and the
18 Chief Financial Officer ~~Comptroller~~ shall transfer the amount
19 due to the Unemployment Compensation Trust Fund from the funds
20 of such agency that may legally be used for such purpose. In
21 the event any political subdivision of the state or any
22 instrumentality thereof becomes more than 120 days delinquent
23 on reimbursements due to the Unemployment Compensation Trust
24 Fund, then, upon request by the division after a hearing, the
25 Department of Revenue or the Department of Financial Services
26 ~~Banking and Finance~~, as the case may be, shall deduct the
27 amount owed by the political subdivision or instrumentality
28 from any funds to be distributed by it to the county, city,
29 special district, or consolidated form of government for
30 further distribution to the trust fund in accordance with this
31 chapter. Should any employer for whom the city or county tax

1 collector collects taxes fail to make the reimbursements to
2 the Unemployment Compensation Trust Fund required by this
3 chapter, the tax collector after a hearing, at the request of
4 the division and upon receipt of a certificate showing the
5 amount owed by the employer, shall deduct the amount so
6 certified from any taxes collected for the employer and remit
7 same to the Department of Labor and Employment Security for
8 further distribution to the trust fund in accordance with this
9 chapter. This subparagraph does not apply to those amounts due
10 for benefits paid prior to October 1, 1979. This subparagraph
11 does not apply to amounts owed by a political subdivision for
12 benefits erroneously paid where the claimant is required to
13 repay to the division under s. 443.151(6)(a) or (b) any sum as
14 benefits received.

15 Section 497. Subsections (2), (3), and (4) of section
16 443.191, Florida Statutes, are amended to read:

17 443.191 Unemployment Compensation Trust Fund;
18 establishment and control.--

19 (2) The Chief Financial Officer ~~Treasurer~~ is the ex
20 officio treasurer and custodian of the fund and shall
21 administer the fund in accordance with the directions of the
22 division. All payments from the fund must be approved by the
23 division or by a duly authorized agent ~~and must be made by the~~
24 ~~Treasurer upon warrants issued by the Comptroller, except as~~
25 ~~hereinafter provided.~~ The Chief Financial Officer ~~Treasurer~~
26 shall maintain within the fund three separate accounts:

- 27 (a) A clearing account;
28 (b) An Unemployment Compensation Trust Fund account;
29 and
30 (c) A benefit account.

31

1 All moneys payable to the fund, including moneys received from
2 the United States as reimbursement for extended benefits paid
3 by the division, upon receipt thereof by the division, must be
4 forwarded to the Chief Financial Officer ~~Treasurer~~, who shall
5 immediately deposit them in the clearing account. Refunds
6 payable under s. 443.141 may be paid from the clearing account
7 ~~upon warrants issued by the Comptroller~~. After clearance, all
8 other moneys in the clearing account must be immediately
9 deposited with the Secretary of the Treasury of the United
10 States to the credit of the account of this state in the
11 Unemployment Compensation Trust Fund established and
12 maintained under s. 904 of the Social Security Act, as
13 amended, any provisions of the law in this state relating to
14 the deposit, administration, release, or disbursement of
15 moneys in the possession or custody of this state to the
16 contrary notwithstanding. The benefit account shall consist
17 of all moneys requisitioned from this state's account in the
18 Unemployment Compensation Trust Fund. Except as otherwise
19 provided, moneys in the clearing and benefit accounts may be
20 deposited by the Chief Financial Officer ~~Treasurer~~, under the
21 direction of the division, in any bank or public depository in
22 which general funds of the state may be deposited, but no
23 public deposit insurance charge or premium may be paid out of
24 the fund. If any warrant issued against the clearing account
25 or the benefit account is not presented for payment within 1
26 year after issuance thereof, the Chief Financial Officer
27 ~~Comptroller~~ must cancel the same and credit without
28 restriction the amount of such warrant to the account upon
29 which it is drawn. When the payee or person entitled to any
30 warrant so canceled requests payment thereof, the Chief
31 Financial Officer ~~Comptroller~~, upon direction of the division,

1 must issue a new warrant therefor, to be paid out of the
2 account against which the canceled warrant had been drawn.
3 (3) Moneys shall be requisitioned from the state's
4 account in the Unemployment Compensation Trust Fund solely for
5 the payment of benefits and extended benefits and in
6 accordance with rules prescribed by the division, except that
7 money credited to this state's account pursuant to s. 903 of
8 the Social Security Act, as amended, shall be used exclusively
9 as provided in subsection (5). The division, through the
10 Chief Financial Officer ~~Treasurer~~, shall from time to time
11 requisition from the Unemployment Compensation Trust Fund such
12 amounts, not exceeding the amounts standing to this state's
13 account therein, as it deems necessary for the payment of
14 benefits and extended benefits for a reasonable future period.
15 Upon receipt thereof, the Chief Financial Officer ~~Treasurer~~
16 shall deposit such moneys in the benefit account in the State
17 Treasury and warrants for the payment of benefits and extended
18 benefits shall be drawn ~~by the Comptroller~~ upon the order of
19 the division against such benefit account. All warrants for
20 benefits and extended benefits shall be payable directly to
21 the ultimate beneficiary. Expenditures of such moneys in the
22 benefit account and refunds from the clearing account shall
23 not be subject to any provisions of law requiring specific
24 appropriations or other formal release by state officers of
25 money in their custody. All warrants issued for the payment of
26 benefits and refunds shall bear the signature of the Chief
27 Financial Officer ~~Comptroller~~ as above set forth. Any balance
28 of moneys requisitioned from the Unemployment Compensation
29 Trust Fund which remains unclaimed or unpaid in the benefit
30 account after the expiration of the period for which such sums
31 were requisitioned shall either be deducted from estimates

1 for, and may be utilized for the payment of, benefits and
2 extended benefits during succeeding periods, or, in the
3 discretion of the division, shall be redeposited with the
4 Secretary of the Treasury of the United States, to the credit
5 of this state's account in the Unemployment Compensation Trust
6 Fund, as provided in subsection (2).

7 (4) The provisions of subsections (1), (2), and (3),
8 to the extent that they relate to the Unemployment
9 Compensation Trust Fund, shall be operative only so long as
10 such unemployment trust fund continues to exist and so long as
11 the Secretary of the Treasury of the United States continues
12 to maintain for this state a separate book account of all
13 funds deposited therein by this state for benefit purposes,
14 together with this state's proportionate share of the earnings
15 of such Unemployment Compensation Trust Fund, from which no
16 other state is permitted to make withdrawals. If and when
17 such Unemployment Compensation Trust Fund ceases to exist, or
18 such separate book account is no longer maintained, all
19 moneys, properties, or securities therein belonging to the
20 Unemployment Compensation Trust Fund of this state shall be
21 transferred to the treasurer of the Unemployment Compensation
22 Trust Fund, who shall hold, invest, transfer, sell, deposit,
23 and release such moneys, properties, or securities in a manner
24 approved by the division in accordance with the provisions of
25 this chapter; however, such moneys shall be invested in the
26 following readily marketable classes of securities: bonds or
27 other interest-bearing obligations of the United States or of
28 the state. Further, such investment shall at all times be so
29 made that all the assets of the fund shall always be readily
30 convertible into cash when needed for the payment of benefits.
31 The treasurer shall dispose of securities or other properties

1 belonging to the Unemployment Compensation Trust Fund only
2 under the direction of the division.

3 Section 498. Subsections (1) and (2) of section
4 443.211, Florida Statutes, are amended to read:

5 443.211 Employment Security Administration Trust Fund;
6 appropriation; reimbursement.--

7 (1) EMPLOYMENT SECURITY ADMINISTRATION TRUST
8 FUND.--There is created in the State Treasury a special fund
9 to be known as the "Employment Security Administration Trust
10 Fund." All moneys that are deposited into this fund remain
11 continuously available to the division for expenditure in
12 accordance with the provisions of this chapter and do not
13 lapse at any time and may not be transferred to any other
14 fund. All moneys in this fund which are received from the
15 Federal Government or any agency thereof or which are
16 appropriated by this state for the purposes described in ss.
17 443.171 and 443.181, except money received under s.
18 443.191(5)(c), must be expended solely for the purposes and in
19 the amounts found necessary by the authorized cooperating
20 federal agencies for the proper and efficient administration
21 of this chapter. The fund shall consist of all moneys
22 appropriated by this state; all moneys received from the
23 United States or any agency thereof; all moneys received from
24 any other source for such purpose; any moneys received from
25 any agency of the United States or any other state as
26 compensation for services or facilities supplied to such
27 agency; any amounts received pursuant to any surety bond or
28 insurance policy or from other sources for losses sustained by
29 the Employment Security Administration Trust Fund or by reason
30 of damage to equipment or supplies purchased from moneys in
31 such fund; and any proceeds realized from the sale or

1 disposition of any such equipment or supplies which may no
2 longer be necessary for the proper administration of this
3 chapter. Notwithstanding any provision of this section, all
4 money requisitioned and deposited in this fund under s.
5 443.191(5)(c) remains part of the Unemployment Compensation
6 Trust Fund and must be used only in accordance with the
7 conditions specified in s. 443.191(5). All moneys in this
8 fund must be deposited, administered, and disbursed in the
9 same manner and under the same conditions and requirements as
10 is provided by law for other special funds in the State
11 Treasury. Such moneys must be secured by the depository in
12 which they are held to the same extent and in the same manner
13 as required by the general depository law of the state, and
14 collateral pledged must be maintained in a separate custody
15 account. All payments from the Employment Security
16 Administration Trust Fund must be approved by the division or
17 by a duly authorized agent and must be made by the Chief
18 Financial Officer ~~Treasurer upon warrants issued by the~~
19 ~~Comptroller~~. Any balances in this fund do not lapse at any
20 time and must remain continuously available to the division
21 for expenditure consistent with this chapter.

22 (2) SPECIAL EMPLOYMENT SECURITY ADMINISTRATION TRUST
23 FUND.--There is created in the State Treasury a special fund,
24 to be known as the "Special Employment Security Administration
25 Trust Fund," into which shall be deposited or transferred all
26 interest on contributions, penalties, and fines or fees
27 collected under this chapter. Interest on contributions,
28 penalties, and fines or fees deposited during any calendar
29 quarter in the clearing account in the Unemployment
30 Compensation Trust Fund shall, as soon as practicable after
31 the close of such calendar quarter and upon certification of

1 the division, be transferred to the Special Employment
2 Security Administration Trust Fund. However, there shall be
3 withheld from any such transfer the amount certified by the
4 division to be required under this chapter to pay refunds of
5 interest on contributions, penalties, and fines or fees
6 collected and erroneously deposited into the clearing account
7 in the Unemployment Compensation Trust Fund. Such amounts of
8 interest and penalties so certified for transfer shall be
9 deemed to have been erroneously deposited in the clearing
10 account, and the transfer thereof to the Special Employment
11 Security Administration Trust Fund shall be deemed to be a
12 refund of such erroneous deposits. All moneys in this fund
13 shall be deposited, administered, and disbursed in the same
14 manner and under the same conditions and requirements as are
15 provided by law for other special funds in the State Treasury.
16 These moneys shall not be expended or be available for
17 expenditure in any manner which would permit their
18 substitution for, or permit a corresponding reduction in,
19 federal funds which would, in the absence of these moneys, be
20 available to finance expenditures for the administration of
21 the Unemployment Compensation Law. But nothing in this
22 section shall prevent these moneys from being used as a
23 revolving fund to cover expenditures, necessary and proper
24 under the law, for which federal funds have been duly
25 requested but not yet received, subject to the charging of
26 such expenditures against such funds when received. The
27 moneys in this fund, with the approval of the Executive Office
28 of the Governor, shall be used by the Division of Unemployment
29 Compensation and the Agency for Workforce Innovation for the
30 payment of costs of administration which are found not to have
31 been properly and validly chargeable against funds obtained

1 from federal sources. All moneys in the Special Employment
2 Security Administration Trust Fund shall be continuously
3 available to the division for expenditure in accordance with
4 the provisions of this chapter and shall not lapse at any
5 time. All payments from the Special Employment Security
6 Administration Trust Fund shall be approved by the division or
7 by a duly authorized agent thereof and shall be made by the
8 Chief Financial Officer ~~Treasurer upon warrants issued by the~~
9 ~~Comptroller~~. The moneys in this fund are hereby specifically
10 made available to replace, as contemplated by subsection (3),
11 expenditures from the Employment Security Administration Trust
12 Fund, established by subsection (1), which have been found by
13 the Bureau of Employment Security, or other authorized federal
14 agency or authority, because of any action or contingency, to
15 have been lost or improperly expended. The Chief Financial
16 Officer ~~Treasurer~~ shall be liable on her or his official bond
17 for the faithful performance of her or his duties in
18 connection with the Special Employment Security Administration
19 Trust Fund.

20 Section 499. Subsection (4) of section 445.0325,
21 Florida Statutes, is amended to read:

22 445.0325 Welfare Transition Trust Fund.--

23 (4) All funds transferred to and retained in the trust
24 fund shall be invested pursuant to s. 17.61 ~~s. 18.125~~. Any
25 interest accruing to the trust fund shall be for the benefit
26 of the welfare transition program. Notwithstanding s. 216.301
27 and pursuant to s. 216.351, any undisbursed balance remaining
28 in the trust fund and interest accruing to the trust fund not
29 distributed at the end of the fiscal year shall remain in the
30 trust fund and shall increase the total funds available to
31 implement the welfare transition program.

1 Section 500. Section 447.12, Florida Statutes, is
2 amended to read:

3 447.12 Fees for registration.--All fees collected by
4 the department under this part shall be paid to the Chief
5 Financial Officer ~~Treasurer~~ and credited to the General
6 Revenue Fund.

7 Section 501. Subsection (1) of section 450.155,
8 Florida Statutes, is amended to read:

9 450.155 Child Labor Law Trust Fund.--

10 (1) There is created in the State Treasury an account
11 to be known as the Child Labor Law Trust Fund. Subject to such
12 appropriations as the Legislature may make therefor from time
13 to time, disbursements from this account may be made by the
14 division, subject to the approval of the department, in order
15 to carry out the proper responsibilities of administering the
16 Child Labor Law, to protect the working youth of the state,
17 and to provide education about the Child Labor Law to
18 employers, public school employees, the general public, and
19 working youth. The Child Labor Law Trust Fund and the moneys
20 deposited therein shall be under the direct supervision and
21 control of the department, and such moneys may be disbursed by
22 the Chief Financial Officer ~~Treasurer~~ from time to time as
23 determined by the department.

24 Section 502. Subsections (1) and (2) of section
25 468.392, Florida Statutes, are amended to read:

26 468.392 Auctioneer Recovery Fund.--There is created
27 the Auctioneer Recovery Fund as a separate account in the
28 Professional Regulation Trust Fund. The fund shall be
29 administered by the Florida Board of Auctioneers.

30 (1) The Chief Financial Officer ~~Treasurer~~ shall invest
31 the money not currently needed to meet the obligations of the

1 fund in the same manner as other public funds may be invested.
2 Interest that accrues from these investments shall be
3 deposited to the credit of the Auctioneer Recovery Fund and
4 shall be available for the same purposes as other moneys
5 deposited in the Auctioneer Recovery Fund.

6 (2) All payments and disbursements from the Auctioneer
7 Recovery Fund shall be made by the Chief Financial Officer
8 ~~Treasurer~~ upon a voucher signed by the Secretary of Business
9 and Professional Regulation or the secretary's designee.
10 Amounts transferred to the Auctioneer Recovery Fund shall not
11 be subject to any limitation imposed by an appropriation act
12 of the Legislature.

13 Section 503. Subsection (3) of section 468.529,
14 Florida Statutes, is amended to read:

15 468.529 Licensee's insurance; employment tax; benefit
16 plans.--

17 (3) A licensed employee leasing company shall within
18 30 days of initiation or termination notify its workers'
19 compensation insurance carrier, the Division of Workers'
20 Compensation of the Department of Financial Services, and the
21 Division of Unemployment Compensation of the Department of
22 Labor and Employment Security of both the initiation or the
23 termination of the company's relationship with any client
24 company.

25 Section 504. Subsection (2) of section 473.3065,
26 Florida Statutes, is amended to read:

27 473.3065 Certified Public Accountant Education
28 Minority Assistance Program; advisory council.--

29 (2) All moneys used to provide scholarships under the
30 program shall be funded by a portion of existing license fees,
31 as set by the board, not to exceed \$10 per license. Such

1 moneys shall be deposited into the Professional Regulation
2 Trust Fund in a separate account maintained for that purpose.
3 The department is authorized to spend up to \$100,000 per year
4 for the program from this program account, but may not
5 allocate overhead charges to it. Moneys for scholarships
6 shall be disbursed annually upon recommendation of the
7 advisory council and approval by the board, based on the
8 adopted eligibility criteria and comparative evaluation of all
9 applicants. Funds in the program account may be invested by
10 the Chief Financial Officer ~~Treasurer~~ under the same
11 limitations as apply to investment of other state funds, and
12 all interest earned thereon shall be credited to the program
13 account.

14 Section 505. Subsection (7) of section 475.045,
15 Florida Statutes, is amended to read:

16 475.045 Florida Real Estate Commission Education and
17 Research Foundation.--

18 (7) The Chief Financial Officer ~~Treasurer~~ shall invest
19 \$3 million from the portion of the Professional Regulation
20 Trust Fund credited to the real estate profession, under the
21 same limitations as applied to investments of other state
22 funds, and the income earned thereon shall be available to the
23 foundation to fund the activities and projects authorized
24 under this section. However, any balance of such interest in
25 excess of \$1 million shall revert to the portion of the
26 Professional Regulation Trust Fund credited to the real estate
27 profession. In the event the foundation is abolished, the
28 funds in the trust fund shall revert to such portion of the
29 Professional Regulation Trust Fund.

30 Section 506. Subsection (6) of section 475.484,
31 Florida Statutes, is amended to read:

1 475.484 Payment from the fund.--

2 (6) All payments and disbursements from the Real
3 Estate Recovery Fund shall be made by the Chief Financial
4 Officer ~~Treasurer~~ upon a voucher signed by the secretary of
5 the department. Amounts transferred to the Real Estate
6 Recovery Fund shall not be subject to any limitation imposed
7 by an appropriation act of the Legislature.

8 Section 507. Section 475.485, Florida Statutes, is
9 amended to read:

10 475.485 Investment of the fund.--The funds in the Real
11 Estate Recovery Fund may be invested by the Chief Financial
12 Officer ~~Treasurer~~ under the same limitations as apply to
13 investment of other state funds, and the interest earned
14 thereon shall be deposited to the credit of the Real Estate
15 Recovery Fund and shall be available for the same purposes as
16 other moneys deposited in the Real Estate Recovery Fund.

17 Section 508. Section 489.114, Florida Statutes, is
18 amended to read:

19 489.114 Evidence of workers' compensation
20 coverage.--Except as provided in s. 489.115(5)(d), any person,
21 business organization, or qualifying agent engaged in the
22 business of contracting in this state and certified or
23 registered under this part shall, as a condition precedent to
24 the issuance or renewal of a certificate, registration, or
25 certificate of authority of the contractor, provide to the
26 Construction Industry Licensing Board, as provided by board
27 rule, evidence of workers' compensation coverage pursuant to
28 chapter 440. In the event that the Division of Workers'
29 Compensation of the Department of Financial Services ~~Labor and~~
30 ~~Employment Security~~ receives notice of the cancellation of a
31 policy of workers' compensation insurance insuring a person or

1 entity governed by this section, the Division of Workers'
2 Compensation shall certify and identify all persons or
3 entities by certification or registration license number to
4 the department after verification is made by the Division of
5 Workers' Compensation that persons or entities governed by
6 this section are no longer covered by workers' compensation
7 insurance. Such certification and verification by the
8 Division of Workers' Compensation may result from records
9 furnished to the Division of Workers' Compensation by the
10 persons or entities governed by this section or an
11 investigation completed by the Division of Workers'
12 Compensation. The department shall notify the persons or
13 entities governed by this section who have been determined to
14 be in noncompliance with chapter 440, and the persons or
15 entities notified shall provide certification of compliance
16 with chapter 440 to the department and pay an administrative
17 fine in the amount of \$500. The failure to maintain workers'
18 compensation coverage as required by law shall be grounds for
19 the board to revoke, suspend, or deny the issuance or renewal
20 of a certificate, registration, or certificate of authority of
21 the contractor under the provisions of s. 489.129.

22 Section 509. Section 489.144, Florida Statutes, is
23 amended to read:

24 489.144 Investment of the fund.--The funds in the
25 Construction Industries Recovery Fund may be invested by the
26 Chief Financial Officer ~~Treasurer~~ under the same limitations
27 as apply to the investment of other state funds, and the
28 interest earned thereon shall be deposited to the credit of
29 the Construction Industries Recovery Fund and shall be
30 available for the same purposes as other moneys deposited in
31 the Construction Industries Recovery Fund.

1 Section 510. Subsection (6) of section 489.145,
2 Florida Statutes, is amended to read:

3 489.145 Guaranteed energy performance savings
4 contracting.--

5 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
6 Department of Management Services, with the assistance of the
7 Office of the Chief Financial Officer ~~Comptroller~~, may, within
8 available resources, provide technical assistance to state
9 agencies contracting for energy conservation measures and
10 engage in other activities considered appropriate by the
11 department for promoting and facilitating guaranteed energy
12 performance contracting by state agencies. The Office of the
13 Chief Financial Officer ~~Comptroller~~, with the assistance of
14 the Department of Management Services, may, within available
15 resources, develop model contractual and related documents for
16 use by state agencies. Prior to entering into a guaranteed
17 energy performance savings contract, any contract or lease for
18 third-party financing, or any combination of such contracts, a
19 state agency shall submit such proposed contract or lease to
20 the Office of the Chief Financial Officer ~~Comptroller~~ for
21 review and approval.

22 Section 511. Section 489.510, Florida Statutes, is
23 amended to read:

24 489.510 Evidence of workers' compensation
25 coverage.--Except as provided in s. 489.515(3)(b), any person,
26 business organization, or qualifying agent engaged in the
27 business of contracting in this state and certified or
28 registered under this part shall, as a condition precedent to
29 the issuance or renewal of a certificate or registration of
30 the contractor, provide to the Electrical Contractors'
31 Licensing Board, as provided by board rule, evidence of

1 workers' compensation coverage pursuant to chapter 440. In
2 the event that the Division of Workers' Compensation of the
3 Department of Financial Services ~~Labor and Employment Security~~
4 receives notice of the cancellation of a policy of workers'
5 compensation insurance insuring a person or entity governed by
6 this section, the Division of Workers' Compensation shall
7 certify and identify all persons or entities by certification
8 or registration license number to the department after
9 verification is made by the Division of Workers' Compensation
10 that persons or entities governed by this section are no
11 longer covered by workers' compensation insurance. Such
12 certification and verification by the Division of Workers'
13 Compensation may result from records furnished to the Division
14 of Workers' Compensation by the persons or entities governed
15 by this section or an investigation completed by the Division
16 of Workers' Compensation. The department shall notify the
17 persons or entities governed by this section who have been
18 determined to be in noncompliance with chapter 440, and the
19 persons or entities notified shall provide certification of
20 compliance with chapter 440 to the department and pay an
21 administrative fine in the amount of \$500. The failure to
22 maintain workers' compensation coverage as required by law
23 shall be grounds for the board to revoke, suspend, or deny the
24 issuance or renewal of a certificate or registration of the
25 contractor under the provisions of s. 489.533.

26 Section 512. Subsection (5) of section 489.533,
27 Florida Statutes, is amended to read:

28 489.533 Disciplinary proceedings.--

29 (5) When the board imposes administrative fines
30 pursuant to subsection (2) resulting from violation of chapter
31 633 or violation of the rules of the State Fire Marshal, 50

1 percent of the fine shall be paid into the Insurance
2 ~~Commissioner's~~ Regulatory Trust Fund to help defray the costs
3 of investigating the violations and obtaining the corrective
4 action. The State Fire Marshal may participate at its
5 discretion, but not as a party, in any proceedings before the
6 board relating to violation of chapter 633 or the rules of the
7 State Fire Marshal, in order to make recommendations as to the
8 appropriate penalty in such case. However, the State Fire
9 Marshal shall not have standing to bring disciplinary
10 proceedings regarding certification.

11 Section 513. Subsection (8) of section 494.001,
12 Florida Statutes, is amended, present subsections (9) through
13 (29) of that section are renumbered as (10) through (30),
14 respectively, and a new subsection (9) is added to that
15 subsection to read:

16 494.001 Definitions.--As used in ss. 494.001-494.0077,
17 the term:

18 (8) "Commission" means the Financial Services
19 ~~Commission~~ ~~"Department"~~ ~~means the Department of Banking and~~
20 ~~Finance.~~

21 (9) "Office" means the Office of Financial Regulation
22 of the commission.

23 Section 514. Section 494.0011, Florida Statutes, is
24 amended to read:

25 494.0011 Powers and duties of the commission and
26 office department.--

27 (1) The office department shall be responsible for the
28 administration and enforcement of ss. 494.001-494.0077.

29 (2) The commission department has authority to adopt
30 rules pursuant to ss. 120.536(1) and 120.54 to implement ss.
31 494.001-494.0077. The commission department may adopt rules

1 to allow electronic submission of any forms, documents, or
2 fees required by this act. The commission ~~department~~ may also
3 adopt rules to accept certification of compliance with
4 requirements of this act in lieu of requiring submission of
5 documents.

6 (3) All fees, charges, and fines collected ~~by the~~
7 ~~department~~ pursuant to ss. 494.001-494.0077 shall be deposited
8 in the State Treasury to the credit of the Regulatory Trust
9 Fund under the office ~~department~~.

10 (4)(a) The office ~~department~~ has the power to issue
11 and to serve subpoenas and subpoenas duces tecum to compel the
12 attendance of witnesses and the production of all books,
13 accounts, records, and other documents and materials relevant
14 to an examination or investigation. The office ~~department~~, or
15 its duly authorized representative, has the power to
16 administer oaths and affirmations to any person.

17 (b) The office ~~department~~ may, in its discretion, seek
18 subpoenas or subpoenas duces tecum from any court of competent
19 jurisdiction commanding the appearance of witnesses and the
20 production of books, accounts, records, and other documents or
21 materials at a time and place named in the subpoenas; and any
22 authorized representative of the office ~~department~~ may serve
23 any subpoena.

24 (5)(a) In the event of substantial noncompliance with
25 a subpoena or subpoena duces tecum issued or caused to be
26 issued by the office ~~department~~, the office ~~department~~ may
27 petition the circuit court or any other court of competent
28 jurisdiction of the county in which the person subpoenaed
29 resides or has its principal place of business for an order
30 requiring the subpoenaed person to appear and testify and to
31 produce such books, accounts, records, and other documents as

1 are specified in the subpoena duces tecum. The court may
2 grant injunctive relief restraining the person from
3 advertising, promoting, soliciting, entering into, offering to
4 enter into, continuing, or completing any mortgage loan
5 transaction or mortgage loan servicing transaction. The court
6 may grant such other relief, including, but not limited to,
7 the restraint, by injunction or appointment of a receiver, of
8 any transfer, pledge, assignment, or other disposition of the
9 person's assets or any concealment, alteration, destruction,
10 or other disposition of books, accounts, records, or other
11 documents and materials as the court deems appropriate, until
12 the person has fully complied with the subpoena duces tecum
13 and the office ~~department~~ has completed its investigation or
14 examination. In addition, the court may order the refund of
15 any fees collected in a mortgage loan transaction whenever
16 books and documents substantiating the transaction are not
17 produced or cannot be produced. The office ~~department~~ is
18 entitled to the summary procedure provided in s. 51.011, and
19 the court shall advance such cause on its calendar.
20 Attorney's fees and any other costs incurred by the office
21 ~~department~~ to obtain an order granting, in whole or part, a
22 petition for enforcement of a subpoena or subpoena duces tecum
23 shall be taxed against the subpoenaed person, and failure to
24 comply with such order is a contempt of court.

25 (b) When it appears to the office ~~department~~ that the
26 compliance with a subpoena or subpoena duces tecum issued or
27 caused to be issued by the office ~~department~~ pursuant to this
28 section is essential and otherwise unavailable to an
29 investigation or examination, the office ~~department~~, in
30 addition to the other remedies provided for in this section,
31 may apply to the circuit court or any other court of competent

1 jurisdiction of the county in which the subpoenaed person
2 resides or has its principal place of business for a writ of
3 ne exeat. The court shall thereupon direct the issuance of the
4 writ against the subpoenaed person requiring sufficient bond
5 conditioned on compliance with the subpoena or subpoena duces
6 tecum. The court shall cause to be endorsed on the writ a
7 suitable amount of bond upon the payment of which the person
8 named in the writ shall be freed, having a due regard to the
9 nature of the case.

10 (c) Alternatively, the office ~~department~~ may seek a
11 writ of attachment from the court having jurisdiction over the
12 person who has refused to obey a subpoena, who has refused to
13 give testimony, or who has refused to produce the matters
14 described in the subpoena duces tecum.

15 Section 515. Section 494.0012, Florida Statutes, is
16 amended to read:

17 494.0012 Investigations; complaints; examinations.--

18 (1) The office ~~department~~ may conduct an investigation
19 of any person whenever the office ~~department~~ has reason to
20 believe, either upon complaint or otherwise, that any
21 violation of ss. 494.001-494.0077 has been committed or is
22 about to be committed.

23 (2) Any person having reason to believe that a
24 provision of this act has been violated may file a written
25 complaint with the office ~~department~~ setting forth details of
26 the alleged violation.

27 (3)(a) The office ~~department~~ may, at intermittent
28 periods, conduct examinations of any licensee or other person
29 under the provisions of ss. 494.001-494.0077.

30 (b) The office ~~department~~ shall conduct all
31 examinations at a convenient location in this state unless the

1 ~~office department~~ determines that it is more effective or
2 cost-efficient to perform an examination at the licensee's
3 out-of-state location. For an examination performed at the
4 licensee's out-of-state location, the licensee shall pay the
5 travel expense and per diem subsistence at the rate provided
6 by law for up to thirty 8-hour days per year for each office
7 ~~department~~ examiner who participates in such an examination.
8 However, if the examination involves or reveals fraudulent
9 conduct by the licensee, the licensee shall pay the travel
10 expense and per diem subsistence provided by law, without
11 limitation, for each participating examiner.

12 Section 516. Section 494.00125, Florida Statutes, is
13 amended to read:

14 494.00125 Confidentiality of information relating to
15 investigations and examinations.--

16 (1)(a) Except as otherwise provided by this section,
17 information relative to an investigation or examination by the
18 office department pursuant to this chapter, including any
19 consumer complaint received by the office or the Department of
20 Financial Services, is confidential and exempt from s.
21 119.07(1) until the investigation or examination is completed
22 or ceases to be active. The information compiled by the office
23 ~~department~~ in such an investigation or examination shall
24 remain confidential and exempt from s. 119.07(1) after the
25 office's department's investigation or examination is
26 completed or ceases to be active if the office department
27 submits the information to any law enforcement or
28 administrative agency for further investigation. Such
29 information shall remain confidential and exempt from s.
30 119.07(1) until that agency's investigation is completed or
31 ceases to be active. For purposes of this section, an

1 investigation or examination shall be considered "active" so
2 long as the office ~~department~~ or any law enforcement or
3 administrative agency is proceeding with reasonable dispatch
4 and has a reasonable good faith belief that the investigation
5 or examination may lead to the filing of an administrative,
6 civil, or criminal proceeding or to the denial or conditional
7 grant of a license. This section shall not be construed to
8 prohibit disclosure of information which is required by law to
9 be filed with the office ~~department~~ and which, but for the
10 investigation or examination, would be subject to s.
11 119.07(1).

12 (b) Except as necessary for the office ~~department~~ to
13 enforce the provisions of this chapter, a consumer complaint
14 and other information relative to an investigation or
15 examination shall remain confidential and exempt from s.
16 119.07(1) after the investigation or examination is completed
17 or ceases to be active to the extent disclosure would:

- 18 1. Jeopardize the integrity of another active
19 investigation or examination.
- 20 2. Reveal the name, address, telephone number, social
21 security number, or any other identifying number or
22 information of any complainant, customer, or account holder.
- 23 3. Disclose the identity of a confidential source.
- 24 4. Disclose investigative techniques or procedures.
- 25 5. Reveal a trade secret as defined in s. 688.002.

26 (c) In the event that office ~~department~~ personnel are
27 or have been involved in an investigation or examination of
28 such nature as to endanger their lives or physical safety or
29 that of their families, then the home addresses, telephone
30 numbers, places of employment, and photographs of such
31 personnel, together with the home addresses, telephone

1 numbers, photographs, and places of employment of spouses and
2 children of such personnel and the names and locations of
3 schools and day care facilities attended by the children of
4 such personnel are confidential and exempt from s. 119.07(1).

5 (d) Nothing in this section shall be construed to
6 prohibit the office ~~department~~ from providing information to
7 any law enforcement or administrative agency. Any law
8 enforcement or administrative agency receiving confidential
9 information in connection with its official duties shall
10 maintain the confidentiality of the information so long as it
11 would otherwise be confidential.

12 (e) All information obtained by the office ~~department~~
13 from any person which is only made available to the office
14 ~~department~~ on a confidential or similarly restricted basis
15 shall be confidential and exempt from s. 119.07(1). This
16 exemption shall not be construed to prohibit disclosure of
17 information which is required by law to be filed with the
18 office ~~department~~ or which is otherwise subject to s.
19 119.07(1).

20 (2) If information subject to subsection (1) is
21 offered in evidence in any administrative, civil, or criminal
22 proceeding, the presiding officer may, in her or his
23 discretion, prevent the disclosure of information which would
24 be confidential pursuant to paragraph (1)(b).

25 (3) A privilege against civil liability is granted to
26 a person who furnishes information or evidence to the office
27 ~~department~~, unless such person acts in bad faith or with
28 malice in providing such information or evidence.

29 Section 517. Section 494.0013, Florida Statutes, is
30 amended to read:

31 494.0013 Injunction to restrain violations.--

1 (1) The office ~~department~~ may bring action through its
2 own counsel in the name and on behalf of the state against any
3 person who has violated or is about to violate any provision
4 of ss. 494.001-494.0077 or any rule of the commission or order
5 of the office ~~department~~ issued under ss. 494.001-494.0077 to
6 enjoin the person from continuing in or engaging in any act in
7 furtherance of the violation.

8 (2) In any injunctive proceeding, the court may, on
9 due showing by the office ~~department~~, issue a subpoena or
10 subpoena duces tecum requiring the attendance of any witness
11 and requiring the production of any books, accounts, records,
12 or other documents and materials that appear necessary to the
13 expeditious resolution of the application for injunction.

14 (3) In addition to all other means provided by law for
15 the enforcement of any temporary restraining order, temporary
16 injunction, or permanent injunction issued in any such court
17 proceeding, the court has the power and jurisdiction, upon
18 application of the office ~~department~~, to impound, and to
19 appoint a receiver or administrator for, the property, assets,
20 and business of the defendant, including, but not limited to,
21 the books, records, documents, and papers appertaining
22 thereto. Such receiver or administrator, when appointed and
23 qualified, has all powers and duties as to custody,
24 collection, administration, winding up, and liquidation of the
25 property and business as are from time to time conferred upon
26 him or her by the court. In any such action, the court may
27 issue an order staying all pending suits and enjoining any
28 further suits affecting the receiver's or administrator's
29 custody or possession of the property, assets, and business,
30 or the court, in its discretion and with the consent of the
31 chief judge of the circuit, may require that all such suits be

1 assigned to the circuit court judge who appoints the receiver
2 or administrator.

3 Section 518. Section 494.0014, Florida Statutes, is
4 amended to read:

5 494.0014 Cease and desist orders; refund orders.--

6 (1) The office ~~department~~ has the power to issue and
7 serve upon any person an order to cease and desist and to take
8 corrective action whenever it has reason to believe the person
9 is violating, has violated, or is about to violate any
10 provision of ss. 494.001-494.0077, any rule or order ~~of the~~
11 ~~department~~ issued under ss. 494.001-494.0077, or any written
12 agreement between the person and the office ~~department~~. All
13 procedural matters relating to issuance and enforcement of
14 such a cease and desist order are governed by the
15 Administrative Procedure Act.

16 (2) The office ~~department~~ has the power to order the
17 refund of any fee directly or indirectly assessed and charged
18 on a mortgage loan transaction which is unauthorized or
19 exceeds the maximum fee specifically authorized in ss.
20 494.001-494.0077.

21 (3) The office ~~department~~ may prohibit the association
22 by a mortgage broker business, or the employment by a mortgage
23 lender or correspondent mortgage lender, of any person who has
24 engaged in a pattern of misconduct while an associate of a
25 mortgage brokerage business or an employee of a mortgage
26 lender or correspondent mortgage lender. For the purpose of
27 this subsection, the term "pattern of misconduct" means the
28 commission of three or more violations of ss. 494.001-494.0077
29 or the provisions of chapter 494 in effect prior to October 1,
30 1991, during any 1-year period or any criminal conviction for
31

1 violating ss. 494.001-494.0077 or the provisions of chapter
2 494 in effect prior to October 1, 1991.

3 Section 519. Section 494.0016, Florida Statutes, is
4 amended to read:

5 494.0016 Books, accounts, and records; maintenance;
6 examinations by the office ~~department~~.--

7 (1) Each licensee shall maintain, at the principal
8 place of business designated on the license, all books,
9 accounts, records, and documents necessary to determine the
10 licensee's compliance with ss. 494.001-494.0077.

11 (2) The office ~~department~~ may authorize maintenance of
12 records at a location other than a principal place of
13 business. The office ~~department~~ may require books, accounts,
14 and records to be produced and available at a reasonable and
15 convenient location in this state.

16 (3) All books, accounts, records, documents, and
17 receipts for expenses paid by the licensee on behalf of the
18 borrower, including each closing statement signed by a
19 borrower, shall be preserved and kept available for
20 examination by the office ~~department~~ for at least 3 years
21 after the date of original entry.

22 (4) The commission ~~department~~ may prescribe by rule
23 the minimum information to be shown in the books, accounts,
24 records, and documents of licensees so that such records will
25 enable the office ~~department~~ to determine the licensee's
26 compliance with ss. 494.001-494.0077.

27 Section 520. Subsection (2) of section 494.00165,
28 Florida Statutes, is amended to read:

29 494.00165 Prohibited advertising; record
30 requirements.--

31

1 (2) Each person required to be licensed under this
2 chapter shall maintain a record of samples of each of its
3 advertisements, including commercial scripts of each radio or
4 television broadcast, for examination by the office ~~department~~
5 for a period of 2 years after the date of publication or
6 broadcast.

7 Section 521. Section 494.0017, Florida Statutes, is
8 amended to read:

9 494.0017 Mortgage Brokerage Guaranty Fund.--

10 (1) The office ~~department~~ shall make transfers from
11 the Regulatory Trust Fund to the Mortgage Brokerage Guaranty
12 Fund to pay valid claims arising under former ss. 494.042,
13 494.043, and 494.044, as provided in former s. 494.00171.

14 (2) Any money paid to the Mortgage Brokerage Guaranty
15 Fund in excess of any liability to claimants against the
16 Mortgage Brokerage Guaranty Fund shall be transferred to the
17 Regulatory Trust Fund.

18 (3) The Mortgage Brokerage Guaranty Fund shall be
19 disbursed as provided in former s. 494.044, upon approval by
20 the office ~~department~~, to any party to a mortgage financing
21 transaction who:

22 (a) Is adjudged by a court of competent jurisdiction
23 of this state to have suffered monetary damages as a result of
24 any violation of chapter 494 in effect prior to October 1,
25 1991, committed by a licensee or registrant;

26 (b) Has filed a claim for recovery prior to January 1,
27 1992; and

28 (c) Has suffered monetary damages as a result of an
29 act occurring prior to October 1, 1991.

30 (4) Notwithstanding s. 215.965, the office ~~department~~
31 may disburse funds to a court or court-appointed person for

1 distribution, if the conditions precedent for recovery exist
2 and the distribution would be the fairest and most equitable
3 manner of distributing the funds.

4 Section 522. Section 494.0021, Florida Statutes, is
5 amended to read:

6 494.0021 Public records.--All audited financial
7 statements submitted pursuant to ss. 494.001-494.0077 are
8 confidential and exempt from the requirements of s. 119.07(1),
9 except that office ~~department~~ employees may have access to
10 such information in the administration and enforcement of ss.
11 494.001-494.0077 and such information may be used by office
12 ~~department~~ personnel in the prosecution of violations under
13 ss. 494.001-494.0077.

14 Section 523. Subsections (1), (2), (3), (5), and (7)
15 of section 494.0025, Florida Statutes, are amended to read:

16 494.0025 Prohibited practices.--It is unlawful for any
17 person:

18 (1) To act as a mortgage lender in this state without
19 a current, active license issued by the office ~~department~~
20 pursuant to ss. 494.006-494.0077.

21 (2) To act as a correspondent mortgage lender in this
22 state without a current, active license issued by the office
23 ~~department~~ pursuant to ss. 494.006-494.0077.

24 (3) To act as a mortgage broker in this state without
25 a current, active license issued by the office ~~department~~
26 pursuant to ss. 494.003-494.0043.

27 (5) In any matter within the jurisdiction of the
28 office ~~department~~, to knowingly and willfully falsify,
29 conceal, or cover up by a trick, scheme, or device a material
30 fact, make any false or fraudulent statement or
31 representation, or make or use any false writing or document,

1 knowing the same to contain any false or fraudulent statement
2 or entry.

3 (7) Who is required to be licensed under ss.
4 494.006-494.0077, to fail to report to the office ~~department~~
5 the failure to meet the net worth requirements of s. 494.0061,
6 s. 494.0062, or s. 494.0065 within 48 hours after the person's
7 knowledge of such failure or within 48 hours after the person
8 should have known of such failure.

9 Section 524. Subsection (3) of section 494.0028,
10 Florida Statutes, is amended to read:

11 494.0028 Arbitration.--

12 (3) All agreements subject to this section shall
13 provide the noninstitutional investor or borrower with the
14 option to elect arbitration before the American Arbitration
15 Association or other independent nonindustry arbitration
16 forum. Any other nonindustry arbitration forum may apply to
17 the office ~~department~~ to allow such forum to provide
18 arbitration services. The office ~~department~~ shall grant the
19 application if the applicant's fees, practices, and procedures
20 do not materially differ from those of the American
21 Arbitration Association.

22 Section 525. Section 494.0029, Florida Statutes, is
23 amended to read:

24 494.0029 Mortgage business schools.--

25 (1) Each person, school, or institution, except
26 accredited colleges, universities, community colleges, and
27 area technical centers in this state, which offers or conducts
28 mortgage business training as a condition precedent to
29 licensure as a mortgage broker or lender or a correspondent
30 mortgage lender shall obtain a permit from the office
31 ~~department~~ and abide by the regulations imposed upon such

1 person, school, or institution by this chapter and rules
2 adopted pursuant to this chapter. The commission ~~department~~
3 shall, by rule, recertify the permits annually with initial
4 and renewal permit fees that do not exceed \$500 plus the cost
5 of accreditation.

6 (2) All such schools shall maintain curriculum and
7 training materials necessary to determine the school's
8 compliance with this chapter and rules adopted pursuant to
9 this chapter. Any school that offers or conducts mortgage
10 business training shall at all times maintain an operation of
11 training, materials, and curriculum which is open to review by
12 the office ~~department~~ to determine compliance and competency
13 as a mortgage business school.

14 (3)(a) It is unlawful for any such person, school, or
15 institution to offer or conduct mortgage business courses,
16 regardless of the number of pupils, without first procuring a
17 permit or to guarantee that the pupils will pass any mortgage
18 business examination given on behalf of the office ~~department~~
19 or to represent that the issuance of a permit is any
20 recommendation or endorsement of the person, school, or
21 institution to which it is issued or of any course of
22 instruction given thereunder. Any person who violates this
23 paragraph commits a misdemeanor of the second degree,
24 punishable as provided in s. 775.082 or s. 775.083.

25 (b) The location of classes and the frequency of class
26 meetings shall be in the discretion of the school offering the
27 courses, if such courses conform to this chapter and related
28 rules adopted by the commission ~~department~~.

29 (c) A mortgage business school may not use advertising
30 of any nature which is false, inaccurate, misleading, or
31 exaggerated. Publicity and advertising of a mortgage business

1 school, or of its representative, shall be based upon relevant
2 facts and supported by evidence establishing their truth.

3 (d) A representative of a mortgage business school
4 subject to the provisions of this chapter may not promise or
5 guarantee employment or placement of any pupil or prospective
6 pupil, using information, training, or skill purported to be
7 provided or otherwise enhanced by a course or school as
8 inducement to enroll in the school, unless such person offers
9 the pupil or prospective pupil a bona fide contract of
10 employment.

11 (e) A school shall advertise only as a school and
12 under the permitted name of such school as recognized by the
13 office ~~department~~.

14 (f) Reference may not be made in any publication or
15 communication medium as to a pass/fail ratio on mortgage
16 business examinations by any school permitted by the office
17 ~~department~~.

18 Section 526. Subsections (1) and (3) of section
19 494.00295, Florida Statutes, are amended to read:

20 494.00295 Professional education.--

21 (1) Each mortgage broker, mortgage lender, and
22 correspondent mortgage lender must certify to the office
23 ~~department~~ at the time of renewal that during the 2 years
24 prior to an application for license renewal, all mortgage
25 brokers and the principal representative, loan originators,
26 and associates of a mortgage lender or correspondent mortgage
27 lender have successfully completed at least 14 hours of
28 professional education programs covering primary and
29 subordinate mortgage financing transactions and the provisions
30 of this chapter. Licensees shall maintain records documenting
31 compliance with this subsection for a period of 4 years.

1 (3) The commission ~~department~~ shall adopt rules
2 necessary to administer this section, including rules
3 governing qualifying hours for professional education programs
4 and standards for electronically transmitted or distance
5 education courses, including course completion requirements.

6 Section 527. Subsections (1), (2), (4), and (5) of
7 section 494.0031, Florida Statutes, are amended to read:

8 494.0031 Licensure as a mortgage brokerage business.--

9 (1) The office ~~department~~ shall issue a mortgage
10 brokerage business license to each person who:

11 (a) Has submitted a completed application form and a
12 nonrefundable application fee of \$425; and

13 (b) Has a qualified principal broker pursuant to s.
14 494.0035.

15 (2) The commission ~~department~~ may require that each
16 officer, director, and ultimate equitable owner of a
17 10-percent or greater interest in the mortgage brokerage
18 business submit a complete set of fingerprints taken by an
19 authorized law enforcement officer.

20 (4) A mortgage brokerage business or branch office
21 license may be canceled if it was issued through mistake or
22 inadvertence of the office ~~department~~. A notice of
23 cancellation must be issued by the office ~~department~~ within 90
24 days after the issuance of the license. A notice of
25 cancellation shall be effective upon receipt. The notice of
26 cancellation shall provide the applicant with notification of
27 the right to request a hearing within 21 days after the
28 applicant's receipt of the notice of cancellation. A license
29 shall be reinstated if the applicant can demonstrate that the
30 requirements for obtaining the license pursuant to this
31 chapter have been satisfied.

1 (5) If an initial mortgage brokerage business or
2 branch office license has been issued but the check upon which
3 the license is based is returned due to insufficient funds,
4 the license shall be deemed canceled. A license deemed
5 canceled pursuant to this subsection shall be reinstated if
6 the office department receives a certified check for the
7 appropriate amount within 30 days after the date the check was
8 returned due to insufficient funds.

9 Section 528. Section 494.0032, Florida Statutes, is
10 amended to read:

11 494.0032 Renewal of mortgage brokerage business
12 license or branch office license.--

13 (1) The office department shall renew a mortgage
14 brokerage business license upon receipt of a completed renewal
15 form and payment of a nonrefundable renewal fee of \$375. Each
16 licensee shall pay at the time of renewal a nonrefundable
17 renewal fee of \$225 for the renewal of each branch office
18 license.

19 (2) The commission department shall adopt rules
20 establishing a procedure for the biennial renewal of mortgage
21 brokerage business licenses and branch office licenses. The
22 commission department may prescribe the form for renewal and
23 may require an update of all information provided in the
24 licensee's initial application.

25 (3) A mortgage brokerage business or branch office
26 license that is not renewed by the end of the biennium
27 established by the commission department shall revert from
28 active to inactive status. An inactive license may be
29 reactivated within 6 months after becoming inactive by filing
30 a completed reactivation form with the office department,
31 payment of the renewal fee, and payment of a nonrefundable

1 reactivation fee of \$100. A license that is not renewed within
2 6 months after the end of the biennial period automatically
3 expires.

4 Section 529. Subsections (2), (3), (6), and (7) of
5 section 494.0033, Florida Statutes, are amended to read:

6 494.0033 Mortgage broker's license.--

7 (2) Each initial application for a mortgage broker's
8 license must be in the form prescribed by rule of the
9 commission ~~department~~. The commission ~~department~~ may require
10 each applicant to provide any information reasonably necessary
11 to make a determination of the applicant's eligibility for
12 licensure. The office ~~department~~ shall issue an initial
13 license to any natural person who:

14 (a) Is at least 18 years of age;

15 (b) Has passed a written test adopted by the office
16 ~~department~~ which is designed to determine competency in
17 primary and subordinate mortgage financing transactions as
18 well as to test knowledge of ss. 494.001-494.0077 and the
19 rules adopted pursuant thereto;

20 (c) Has submitted a completed application and a
21 nonrefundable application fee of \$200. The commission
22 ~~department~~ may set by rule an additional fee for a retake of
23 the examination; and

24 (d) Has filed a complete set of fingerprints, taken by
25 an authorized law enforcement officer, for submission by the
26 office ~~department~~ to the Department of Law Enforcement or the
27 Federal Bureau of Investigation for processing.

28 (3) Any person applying after July 1, 1992, must have
29 completed 24 hours of classroom education on primary and
30 subordinate financing transactions and the laws and rules of
31 ss. 494.001-494.0077 to be eligible for licensure. The

1 ~~commission~~ department may adopt rules regarding qualifying
2 hours.

3 (6) A mortgage broker license may be canceled if it
4 was issued through mistake or inadvertence of the office
5 ~~department~~. A notice of cancellation must be issued by the
6 office ~~department~~ within 90 days after the issuance of the
7 license. A notice of cancellation shall be effective upon
8 receipt. The notice of cancellation shall provide the
9 applicant with notification of the right to request a hearing
10 within 21 days after the applicant's receipt of the notice of
11 cancellation. A license shall be reinstated if the applicant
12 can demonstrate that the requirements for obtaining the
13 license pursuant to this chapter have been satisfied.

14 (7) If an initial mortgage broker license has been
15 issued but the check upon which the license is based is
16 returned due to insufficient funds, the license shall be
17 deemed canceled. A license deemed canceled pursuant to this
18 subsection shall be reinstated if the office ~~department~~
19 receives a certified check for the appropriate amount within
20 30 days after the date the check was returned due to
21 insufficient funds.

22 Section 530. Section 494.0034, Florida Statutes, is
23 amended to read:

24 494.0034 Renewal of mortgage broker's license.--

25 (1) The office ~~department~~ shall renew a mortgage
26 broker license upon receipt of the completed renewal form,
27 certification of compliance with continuing education
28 requirements of s. 494.00295, and payment of a nonrefundable
29 renewal fee of \$150.

30 (2) The commission ~~department~~ shall adopt rules
31 establishing a procedure for the biennial renewal of mortgage

1 broker's licenses. The commission ~~department~~ may prescribe the
2 form of the renewal application and may require an update of
3 information since the licensee's last renewal.

4 (3) A license that is not renewed by the end of the
5 biennium prescribed by the commission ~~department~~ shall revert
6 from active to inactive status. An inactive license may be
7 reactivated within 2 years after becoming inactive by filing a
8 completed reactivation form with the office ~~department~~,
9 payment of the renewal fee, and payment of a nonrefundable
10 reactivation fee of \$100. A license that is not renewed within
11 2 years after becoming inactive automatically expires.

12 Section 531. Section 494.0035, Florida Statutes, is
13 amended to read:

14 494.0035 Principal broker and branch broker
15 requirements.--

16 (1) Each mortgage brokerage business must have a
17 principal broker who shall operate the business under such
18 broker's full charge, control, and supervision. The principal
19 broker must have been a licensed mortgage broker pursuant to
20 s. 494.0033 for at least 1 year prior to being designated as a
21 principal broker, or shall demonstrate to the satisfaction of
22 the office ~~department~~ that such principal broker has been
23 actively engaged in a mortgage-related business for at least 1
24 year prior to being designated as a principal broker. Each
25 mortgage brokerage business shall maintain a form as
26 prescribed by the commission ~~department~~ indicating the
27 business's designation of principal broker and the
28 individual's acceptance of such responsibility. If the form is
29 unavailable, inaccurate, or incomplete, it is deemed that the
30 business was operated in the full charge, control, and
31 supervision by each officer, director, or ultimate equitable

1 owner of a 10-percent or greater interest in the mortgage
2 brokerage business, or any other person in a similar capacity.

3 (2) Each branch office of a mortgage brokerage
4 business must have a designated branch broker who shall
5 operate the business under such broker's full charge, control,
6 and supervision. The designated branch broker must be a
7 licensed mortgage broker pursuant to s. 494.0033. Each branch
8 office shall maintain a form as prescribed by the commission
9 ~~department~~ logging the branch's designation of a branch broker
10 and the individual's acceptance of such responsibility. If
11 the form is unavailable, inaccurate, or incomplete, it is
12 deemed that the branch was operated in the full charge,
13 control, and supervision by each officer, director, or
14 ultimate equitable owner of a 10-percent or greater interest
15 in the mortgage brokerage business, or any other person in a
16 similar capacity.

17 Section 532. Subsection (2) of section 494.0036,
18 Florida Statutes, is amended to read:

19 494.0036 Mortgage brokerage business branch offices.--

20 (2) The office ~~department~~ shall issue a mortgage
21 brokerage business branch office license upon receipt of a
22 completed application in a form as prescribed by commission
23 ~~department~~ rule and payment of an initial nonrefundable branch
24 office license fee of \$225. Branch office licenses must be
25 renewed in conjunction with the renewal of the mortgage
26 brokerage business license. The branch office license shall be
27 issued in the name of the mortgage brokerage business that
28 maintains the branch office.

29 Section 533. Paragraph (c) of subsection (1) of
30 section 494.0038, Florida Statutes, is amended to read:

31 494.0038 Mortgage broker disclosures.--

1 (1)

2 (c) The commission ~~department~~ may prescribe by rule
3 the form of disclosure of brokerage fees.

4 Section 534. Subsections (2), (3), (4), and (6) of
5 section 494.004, Florida Statutes, are amended to read:

6 494.004 Requirements of licensees.--

7 (2) Each licensee under ss. 494.003-494.0043 shall
8 report, in a form prescribed by rule of the commission
9 ~~department~~, any conviction of, or plea of nolo contendere to,
10 regardless of whether adjudication is withheld, any felony
11 committed by the licensee or any natural person named in s.
12 494.0031(3), not later than 30 days after the date of
13 conviction or the date the plea of nolo contendere is entered.

14 (3) Each licensee under ss. 494.003-494.0043 shall
15 report any action in bankruptcy, voluntary or involuntary, to
16 the office ~~department~~ not later than 7 business days after the
17 action is instituted.

18 (4) Each licensee under ss. 494.003-494.0043 shall
19 report any change in the form of business organization or any
20 change of a person named, pursuant to s. 494.0031(3), to the
21 office ~~department~~ in writing not later than 30 days after the
22 change is effective.

23 (6) On or before April 30, 2000, each mortgage
24 brokerage business shall file an initial report stating the
25 name, social security number, date of birth, mortgage broker
26 license number, date of hire and, if applicable, date of
27 termination for each person who was an associate of the
28 mortgage brokerage business during the immediate preceding
29 quarter. Thereafter, a mortgage brokerage business shall file
30 a quarterly report only if a person became an associate or
31 ceased to be an associate of the mortgage brokerage business

1 during the immediate preceding quarter. Such report shall be
2 filed within 30 days after the last day of each calendar
3 quarter and shall contain the name, social security number,
4 date of birth, mortgage broker license number, date of hire
5 and, if applicable, the date of termination of each person who
6 became or ceased to be an associate of the mortgage brokerage
7 business during the immediate preceding quarter. The
8 commission ~~department~~ shall prescribe, by rule, the procedures
9 for filing reports required by this subsection.

10 Section 535. Subsection (1) and paragraphs (j), (m),
11 and (n) of subsection (2) of section 494.0041, Florida
12 Statutes, are amended to read:

13 494.0041 Administrative penalties and fines; license
14 violations.--

15 (1) Whenever the office ~~department~~ finds a person in
16 violation of an act specified in subsection (2), it may enter
17 an order imposing one or more of the following penalties
18 against the person:

19 (a) Revocation of a license or registration.

20 (b) Suspension of a license or registration subject to
21 reinstatement upon satisfying all reasonable conditions that
22 the office ~~department~~ specifies.

23 (c) Placement of the licensee, registrant, or
24 applicant on probation for a period of time and subject to all
25 reasonable conditions that the office ~~department~~ specifies.

26 (d) Issuance of a reprimand.

27 (e) Imposition of a fine in an amount not exceeding
28 \$5,000 for each count or separate offense.

29 (f) Denial of a license or registration.

30
31

1 (2) Each of the following acts constitutes a ground
2 for which the disciplinary actions specified in subsection (1)
3 may be taken:

4 (j) Failure to comply with any ~~department~~ order or
5 rule made or issued under ss. 494.001-494.0077.

6 (m) Failure to maintain, preserve, and keep available
7 for examination all books, accounts, or other documents
8 required by ss. 494.001-494.0077 and the rules of the
9 commission ~~department~~.

10 (n) Refusal to permit an investigation or examination
11 of books and records, or refusal to comply with an office ~~a~~
12 ~~department~~ subpoena or subpoena duces tecum.

13 Section 536. Subsection (7) of section 494.00421,
14 Florida Statutes, is amended to read:

15 494.00421 Fees earned upon obtaining a bona fide
16 commitment.--Notwithstanding the provisions of ss.
17 494.001-494.0077, any mortgage brokerage business which
18 contracts to receive from a borrower a mortgage brokerage fee
19 upon obtaining a bona fide commitment shall accurately
20 disclose in the mortgage brokerage agreement:

21 (7)(a) The following statement, in no less than
22 12-point boldface type immediately above the signature lines
23 for the borrowers:

24
25 "You are entering into a contract with a mortgage brokerage
26 business to obtain a bona fide mortgage loan commitment under
27 the same terms and conditions as stated hereinabove or in a
28 separate executed good faith estimate form. If the mortgage
29 brokerage business obtains a bona fide commitment under the
30 same terms and conditions, you will be obligated to pay the
31 mortgage brokerage business fees, including, but not limited

1 to, a mortgage brokerage fee, even if you choose not to
2 complete the loan transaction. If the provisions of s.
3 494.00421, Florida Statutes, are not met, the mortgage
4 brokerage fee can only be earned upon the funding of the
5 mortgage loan. The borrower may contact the Department of
6 Financial Services ~~Banking and Finance~~, Tallahassee, Florida,
7 regarding any complaints that the borrower may have against
8 the mortgage broker or the mortgage brokerage business. The
9 telephone number of the department ~~as set by rule of the~~
10 ~~department~~ is: ...[insert telephone number]...."

11 (b) Paragraph (a) does not apply to nonresidential
12 mortgage loan commitments in excess of \$1 million.

13 Section 537. Subsections (1), (3), (6), (7), (8), (9),
14 and (10) of section 494.0061, Florida Statutes, are amended to
15 read:

16 494.0061 Mortgage lender's license requirements.--

17 (1) The commission or office ~~department~~ may require
18 each applicant for a mortgage lender license to provide any
19 information reasonably necessary to make a determination of
20 the applicant's eligibility for licensure. The office
21 ~~department~~ shall issue an initial mortgage lender license to
22 any person that submits:

23 (a) A completed application form;

24 (b) A nonrefundable application fee of \$575;

25 (c) Audited financial statements, which documents
26 disclose that the applicant has a bona fide and verifiable net
27 worth, pursuant to generally accepted accounting principles,
28 of at least \$250,000, which must be continuously maintained as
29 a condition of licensure;

30 (d) A surety bond in the amount of \$10,000, payable to
31 the state and conditioned upon compliance with ss.

1 494.001-494.0077, which inures to the office ~~department~~ and
2 which must be continuously maintained thereafter in full
3 force;

4 (e) Documentation that the applicant is duly
5 incorporated, registered, or otherwise formed as a general
6 partnership, limited partnership, limited liability company,
7 or other lawful entity under the laws of this state or another
8 state of the United States; and

9 (f) For applications submitted after October 1, 2001,
10 proof that the applicant's principal representative has
11 completed 24 hours of classroom instruction in primary and
12 subordinate financing transactions and in the provisions of
13 this chapter and rules adopted under this chapter.

14 (3) Each initial application for a mortgage lender's
15 license must be in a form prescribed by the commission
16 ~~department~~. The commission or office ~~department~~ may require
17 each applicant to provide any information reasonably necessary
18 to make a determination of the applicant's eligibility for
19 licensure. The commission or office ~~department~~ may require
20 that each officer, director, and ultimate equitable owner of a
21 10-percent or greater interest in the applicant submit a
22 complete set of fingerprints taken by an authorized law
23 enforcement officer.

24 (6) A mortgage lender or branch office license may be
25 canceled if it was issued through mistake or inadvertence of
26 the office ~~department~~. A notice of cancellation must be issued
27 by the office ~~department~~ within 90 days after the issuance of
28 the license. A notice of cancellation shall be effective upon
29 receipt. The notice of cancellation shall provide the
30 applicant with notification of the right to request a hearing
31 within 21 days after the applicant's receipt of the notice of

1 cancellation. A license shall be reinstated if the applicant
2 can demonstrate that the requirements for obtaining the
3 license pursuant to this chapter have been satisfied.

4 (7) If an initial mortgage lender or branch office
5 license has been issued but the check upon which the license
6 is based is returned due to insufficient funds, the license
7 shall be deemed canceled. A license deemed canceled pursuant
8 to this subsection shall be reinstated if the office
9 ~~department~~ receives a certified check for the appropriate
10 amount within 30 days after the date the check was returned
11 due to insufficient funds.

12 (8) Each lender, regardless of the number of branches
13 it operates, shall designate a principal representative who
14 exercises control of the licensee's business and shall
15 maintain a form prescribed by the commission ~~department~~
16 designating the principal representative. If the form is not
17 accurately maintained, the business is considered to be
18 operated by each officer, director, or equitable owner of a
19 10-percent or greater interest in the business.

20 (9) After October 1, 2001, an applicant's principal
21 representative must pass a written test prescribed by the
22 commission ~~department~~ which covers primary and subordinate
23 mortgage financing transactions and the provisions of this
24 chapter and rules adopted under this chapter.

25 (10) A lender shall notify the office ~~department~~ of
26 the name and address of any new principal representative and
27 shall document that the person has completed the educational
28 and testing requirements of this section upon the designation
29 of a new principal representative.

30
31

1 Section 538. Subsections (1), (3), (9), (10), (11),
2 (12), and (13) of section 494.0062, Florida Statutes, are
3 amended to read:

4 494.0062 Correspondent mortgage lender's license
5 requirements.--

6 (1) The office ~~department~~ shall issue an initial
7 correspondent mortgage lender license to any person who
8 submits:

9 (a) A completed application form;

10 (b) A nonrefundable application fee of \$500;

11 (c) Audited financial statements, which document that
12 the application has a bona fide and verifiable net worth
13 pursuant to generally accepted accounting principles of
14 \$25,000 or more, which must be continuously maintained as a
15 condition of licensure;

16 (d) A surety bond in the amount of \$10,000, payable to
17 the State of Florida and conditioned upon compliance with ss.
18 494.001-494.0077, which inures to the office ~~department~~ and
19 which must be continuously maintained, thereafter, in full
20 force;

21 (e) Documentation that the applicant is duly
22 incorporated, registered, or otherwise formed as a general
23 partnership, limited partnership, limited liability company,
24 or other lawful entity under the laws of this state or another
25 state of the United States; and

26 (f) For applications filed after October 1, 2001,
27 proof that the applicant's principal representative has
28 completed 24 hours of classroom instruction in primary and
29 subordinate financing transactions and in the provisions of
30 this chapter and rules enacted under this chapter.

31

1 (3) Each initial application for a correspondent
2 mortgage lender's license must be in a form prescribed by the
3 commission ~~department~~. The commission or office ~~department~~ may
4 require each applicant to provide any information reasonably
5 necessary to make a determination of the applicant's
6 eligibility for licensure. The commission or office ~~department~~
7 may require that each officer, director, and ultimate
8 equitable owner of a 10-percent or greater interest submit a
9 complete set of fingerprints taken by an authorized law
10 enforcement officer.

11 (9) A correspondent mortgage lender or branch office
12 license may be canceled if it was issued through mistake or
13 inadvertence of the office ~~department~~. A notice of
14 cancellation must be issued by the office ~~department~~ within 90
15 days after the issuance of the license. A notice of
16 cancellation shall be effective upon receipt. The notice of
17 cancellation shall provide the applicant with notification of
18 the right to request a hearing within 21 days after the
19 applicant's receipt of the notice of cancellation. A license
20 shall be reinstated if the applicant can demonstrate that the
21 requirements for obtaining the license pursuant to this
22 chapter have been satisfied.

23 (10) If an initial correspondent mortgage lender or
24 branch office license has been issued but the check upon which
25 the license is based is returned due to insufficient funds,
26 the license shall be deemed canceled. A license deemed
27 canceled pursuant to this subsection shall be reinstated if
28 the office ~~department~~ receives a certified check for the
29 appropriate amount within 30 days after the date the check was
30 returned due to insufficient funds.

31

1 (11) Each correspondent lender shall designate a
2 principal representative who exercises control over the
3 business and shall maintain a form prescribed by the
4 commission ~~department~~ designating the principal
5 representative. If the form is not accurately maintained, the
6 business is considered to be operated by each officer,
7 director, or equitable owner of a 10-percent or greater
8 interest in the business.

9 (12) After October 1, 2001, an applicant's principal
10 representative must pass a written test prescribed by the
11 commission ~~department~~ which covers primary and subordinate
12 mortgage financing transactions and the provisions of this
13 chapter and rules adopted under this chapter.

14 (13) A correspondent lender shall notify the office
15 ~~department~~ of the name and address of any new principal
16 representative and shall document that such person has
17 completed the educational and testing requirements of this
18 section upon the lender's designation of a new principal
19 representative.

20 Section 539. Section 494.0064, Florida Statutes, is
21 amended to read:

22 494.0064 Renewal of mortgage lender's license; branch
23 office license renewal.--

24 (1)(a) The office ~~department~~ shall renew a mortgage
25 lender license upon receipt of a completed renewal form and
26 the nonrefundable renewal fee of \$575. The office ~~department~~
27 shall renew a correspondent lender license upon receipt of a
28 completed renewal form and a nonrefundable renewal fee of
29 \$475. Each licensee shall pay at the time of renewal a
30 nonrefundable fee of \$325 for the renewal of each branch
31 office license.

1 (b) A licensee shall also submit, as part of the
2 renewal form, certification that during the preceding 2 years
3 the licensee's principal representative, loan originators, and
4 associates have completed the education requirements of s.
5 494.00295.

6 (2) The commission ~~department~~ shall adopt rules
7 establishing a procedure for the biennial renewal of mortgage
8 lender's licenses, correspondent lender's licenses, and branch
9 office permits. The commission ~~department~~ may prescribe the
10 form for renewal and may require an update of all information
11 provided in the licensee's initial application.

12 (3) The license of a mortgage lender, correspondent
13 mortgage lender, or branch office that is not renewed by the
14 end of the biennium prescribed by the commission ~~department~~
15 automatically reverts to inactive status. An inactive license
16 may be reactivated within 6 months after becoming inactive by
17 filing a completed reactivation form with the office
18 ~~department~~, payment of the appropriate renewal fee, and
19 payment of a nonrefundable reactivation fee of \$100. A
20 license that is not renewed within 6 months after the end of
21 the biennial period automatically expires.

22 (4) The commission ~~department~~ may adopt rules setting
23 forth the evidence or documentation of minimum net worth to be
24 submitted for renewal of a license.

25 Section 540. Paragraph (a) of subsection (1) and
26 subsections (2), (3), (5), and (8) of section 494.0065,
27 Florida Statutes, are amended to read:

28 494.0065 Saving clause.--

29 (1)(a) Any person in good standing who holds an active
30 registration pursuant to former s. 494.039 or license pursuant
31 to former s. 521.205, or any person who acted solely as a

1 mortgage servicer on September 30, 1991, is eligible to apply
2 to the office ~~department~~ for a mortgage lender's license and
3 is eligible for licensure if the applicant:

- 4 1. For at least 12 months during the period of October
5 1, 1989, through September 30, 1991, has engaged in the
6 business of either acting as a seller or assignor of mortgage
7 loans or as a servicer of mortgage loans, or both;
- 8 2. Has documented a minimum net worth of \$25,000 in
9 audited financial statements; and
- 10 3. Has applied for licensure pursuant to this section
11 by January 1, 1992, and paid an application fee of \$100.

12 (2) A licensee issued a license pursuant to subsection
13 (1) may renew its mortgage lending license if it documents a
14 minimum net worth of \$25,000, according to generally accepted
15 accounting principles, which must be continuously maintained
16 as a condition to licensure. The office ~~department~~ shall
17 require an audited financial statement which documents such
18 net worth.

19 (3) The commission ~~department~~ may prescribe by rule
20 forms and procedures for application for licensure, and
21 amendment and withdrawal of application for licensure, or
22 transfer, including any existing branch offices, in accordance
23 with subsections (4) and (5), and for renewal of licensure of
24 licensees under this section.

25 (5) The commission or office ~~department~~ may require
26 each applicant for any transfer to provide any information
27 reasonably necessary to make a determination of the
28 applicant's eligibility for licensure. The office ~~department~~
29 shall issue the transfer of licensure to any person who
30 submits the following documentation at least 90 days prior to
31 the anticipated transfer:

1 (a) A completed application form.

2 (b) A nonrefundable fee set by rule of the commission
3 ~~department~~ in the amount of \$500.

4 (c) Audited financial statements that substantiate
5 that the applicant has a bona fide and verifiable net worth,
6 according to generally accepted accounting principles, of at
7 least \$25,000, which must be continuously maintained as a
8 condition of licensure.

9 (d) Documentation that the applicant is incorporated,
10 registered, or otherwise formed as a general partnership,
11 limited partnership, limited liability company, or other
12 lawful entity under the laws of this state or another state of
13 the United States.

14

15 The commission or office ~~department~~ may require that each
16 officer, director, and ultimate equitable owner of a
17 10-percent or greater interest in the applicant submit a
18 complete set of fingerprints taken by an authorized law
19 enforcement officer.

20 (8) ~~The department shall require~~ Each person applying
21 for a transfer of any branch office pursuant to subsection (4)
22 ~~must of this section to~~ comply with the requirements of s.
23 494.0066.

24 Section 541. Subsection (2) of section 494.0066,
25 Florida Statutes, is amended to read:

26 494.0066 Branch offices.--

27 (2) The office ~~department~~ shall issue a branch office
28 license upon receipt of a completed application form as
29 prescribed by rule by the commission ~~department~~ and an initial
30 nonrefundable branch office license fee of \$325. The branch
31 office application must include the name and license number of

1 the licensee under ss. 494.006-494.0077, the name of the
2 licensee's employee in charge of the branch office, and the
3 address of the branch office. The branch office license shall
4 be issued in the name of the licensee under ss.
5 494.006-494.0077 and must be renewed in conjunction with the
6 license renewal.

7 Section 542. Subsections (4), (5), (6), (8), and (9)
8 of section 494.0067, Florida Statutes, are amended to read:

9 494.0067 Requirements of licensees under ss.
10 494.006-494.0077.--

11 (4) The commission or office ~~department~~ may require
12 each licensee under ss. 494.006-494.0077 to report any change
13 of address of the principal place of business, change of
14 address of any branch office, or change of principal officer,
15 director, or ultimate equitable owner of 10 percent or more of
16 the licensed corporation to the office ~~department~~ in a form
17 prescribed by rule of the commission ~~department~~ not later than
18 30 business days after the change is effective.

19 (5) Each licensee under ss. 494.006-494.0077 shall
20 report in a form prescribed by rule by the commission
21 ~~department~~ any indictment, information, charge, conviction,
22 plea of nolo contendere, or plea of guilty to any crime or
23 administrative violation that involves fraud, dishonest
24 dealing, or any other act of moral turpitude, in any
25 jurisdiction, by the licensee under ss. 494.006-494.0077 or
26 any principal officer, director, or ultimate equitable owner
27 of 10 percent or more of the licensed corporation, not later
28 than 30 business days after the indictment, information,
29 charge, conviction, or final administrative action.

30 (6) Each licensee under ss. 494.006-494.0077 shall
31 report any action in bankruptcy, voluntary or involuntary, to

1 the office ~~department~~, not later than 7 business days after
2 the action is instituted.

3 (8) Each licensee under ss. 494.006-494.0077 shall
4 provide an applicant for a mortgage loan a good faith estimate
5 of the costs the applicant can reasonably expect to pay in
6 obtaining a mortgage loan. The good faith estimate of costs
7 shall be mailed or delivered to the applicant within a
8 reasonable time after the licensee receives a written loan
9 application from the applicant. The estimate of costs may be
10 provided to the applicant by a person other than the licensee
11 making the loan. The commission ~~department~~ may adopt rules
12 that set forth the disclosure requirements of this section.

13 (9) On or before April 30, 2000, each mortgage lender
14 or correspondent mortgage lender shall file an initial report
15 stating the full legal name, residential address, social
16 security number, date of birth, mortgage broker license
17 number, date of hire, and, if applicable, date of termination
18 for each person who acted as a loan originator or an associate
19 of the mortgage lender or correspondent mortgage lender during
20 the immediate preceding quarter. Thereafter, a mortgage
21 lender or correspondent mortgage lender shall file a report
22 only if a person became or ceased to be a loan originator or
23 an associate of the mortgage lender or correspondent mortgage
24 lender during the immediate preceding quarter. Such report
25 shall be filed within 30 days after the last day of each
26 calendar quarter and shall contain the full legal name,
27 residential address, social security number, date of birth,
28 date of hire and, if applicable, the mortgage broker license
29 number and date of termination of each person who became or
30 ceased to be a loan originator or an associate of the mortgage
31 lender or correspondent mortgage lender during the immediate

1 preceding quarter. The commission ~~department~~ shall prescribe,
2 by rule, the procedures for filing reports required by this
3 subsection.

4 Section 543. Subsection (6) of section 494.0069,
5 Florida Statutes, is amended to read:

6 494.0069 Lock-in agreement.--

7 (6) The commission ~~department~~ may adopt by rule a form
8 for required lock-in agreement disclosures.

9 Section 544. Subsection (1) and paragraphs (j), (m),
10 and (n) of subsection (2) of section 494.0072, Florida
11 Statutes, are amended to read:

12 494.0072 Administrative penalties and fines; license
13 violations.--

14 (1) Whenever the office ~~department~~ finds a person in
15 violation of an act specified in subsection (2), it may enter
16 an order imposing one or more of the following penalties
17 against that person:

18 (a) Revocation of a license or registration.

19 (b) Suspension of a license or registration, subject
20 to reinstatement upon satisfying all reasonable conditions
21 that the office ~~department~~ specifies.

22 (c) Placement of the licensee or applicant on
23 probation for a period of time and subject to all reasonable
24 conditions that the office ~~department~~ specifies.

25 (d) Issuance of a reprimand.

26 (e) Imposition of a fine in an amount not exceeding
27 \$5,000 for each count or separate offense.

28 (f) Denial of a license or registration.

29 (2) Each of the following acts constitutes a ground
30 for which the disciplinary actions specified in subsection (1)
31 may be taken:

1 (j) Failure to comply with any ~~department~~ order or
2 rule made or issued under the provisions of ss.
3 494.001-494.0077.

4 (m) Failure to maintain, preserve, and keep available
5 for examination all books, accounts, or other documents
6 required by ss. 494.001-494.0077 or the rules of the
7 commission ~~department~~.

8 (n) Refusal to permit an investigation or examination
9 of books and records, or refusal to comply with an office ~~a~~
10 ~~department~~ subpoena or subpoena duces tecum.

11 Section 545. Subsection (2) of section 494.00721,
12 Florida Statutes, is amended to read:

13 494.00721 Net worth.--

14 (2) If a mortgage lender or correspondent mortgage
15 lender fails to satisfy the net worth requirements, the
16 mortgage lender or correspondent mortgage lender shall
17 immediately cease taking any new mortgage loan applications.
18 Thereafter, the mortgage lender or correspondent mortgage
19 lender shall have up to 60 days within which to satisfy the
20 net worth requirements. If the licensee makes the office
21 ~~department~~ aware, prior to an examination, that the licensee
22 no longer meets the net worth requirements, the mortgage
23 lender or correspondent mortgage lender shall have 120 days
24 within which to satisfy the net worth requirements. A mortgage
25 lender or correspondent mortgage lender shall not resume
26 acting as a mortgage lender or correspondent mortgage lender
27 without written authorization from the office ~~department~~,
28 which authorization shall be granted if the mortgage lender or
29 correspondent mortgage lender provides the office ~~department~~
30 with documentation which satisfies the requirements of s.

31

1 494.0061(1)(c), s. 494.0062(1)(c), or s. 494.0065(2),
2 whichever is applicable.

3 Section 546. Paragraph (b) of subsection (2) of
4 section 494.0076, Florida Statutes, is amended to read:

5 494.0076 Servicing audits.--

6 (2)

7 (b) The commission ~~may department is authorized to~~
8 adopt rules to ensure that investors are adequately protected
9 under this subsection.

10 Section 547. Subsection (5) of section 494.0079,
11 Florida Statutes, is amended, present subsections (6) and (7)
12 of that section are renumbered as (7) and (8), respectively,
13 and a new subsection (6) is added to that section to read:

14 494.0079 Definitions.--As used in this act:

15 (5) "Commission" means the Financial Services
16 ~~Commission~~ "~~Department~~" means the ~~Department of Banking and~~
17 ~~Finance~~.

18 (6) "Office" means the Office of Financial Regulation
19 of the commission.

20 Section 548. Section 494.00795, Florida Statutes, is
21 amended to read:

22 494.00795 Powers and duties of the commission and
23 office ~~Department of Banking and Finance~~; investigations;
24 examinations; injunctions; orders.--

25 (1)(a) The commission and office are ~~department shall~~
26 ~~be~~ responsible for the administration and enforcement of this
27 act.

28 (b) The commission ~~department~~ may adopt rules pursuant
29 to ss. 120.536(1) and 120.54 to implement this act. The
30 commission ~~department~~ may adopt rules to allow electronic
31

1 submission of any forms, documents, or fees required by this
2 act.

3 (2)(a) The office ~~department~~ may conduct an
4 investigation of any person whenever the office ~~department~~ has
5 reason to believe, upon complaint or otherwise, that any
6 violation of the act has occurred.

7 (b) Any person having reason to believe that a
8 provision of this act has been violated may file a written
9 complaint with the office ~~department~~ setting forth the details
10 of the alleged violation.

11 (c) The office ~~department~~ may conduct examinations of
12 any person to determine compliance with this act.

13 (3)(a) The office ~~department~~ may bring action, through
14 its own counsel in the name and on behalf of the state,
15 against any person who has violated or is about to violate any
16 provision of this act, or any rule or order ~~of the department~~
17 issued under the act, to enjoin the person from continuing in
18 or engaging in any act in furtherance of the violation.

19 (b) In any injunctive proceeding, the court may, on
20 due showing by the office ~~department~~, issue a subpoena or
21 subpoena duces tecum requiring the attendance of any witness
22 and requiring the production of any books, accounts, records,
23 or other documents and materials that appear necessary to the
24 expeditious resolution of the application for injunction.

25 (4) The office ~~department~~ may issue and serve upon any
26 person an order to cease and desist and to take corrective
27 action whenever the office ~~department~~ has reason to believe
28 the person is violating, has violated, or is about to violate
29 any provision of this act, any rule or order ~~of the department~~
30 issued under this act, or any written agreement between the
31 person and the office ~~department~~. All procedural matters

1 relating to issuance and enforcement of cease and desist
2 orders are governed by the Administrative Procedure Act.

3 (5) Whenever the office ~~department~~ finds a person in
4 violation of this act, it may enter an order imposing a fine
5 in an amount not exceeding \$5,000 for each count or separate
6 offense, provided that the aggregate fine for all violations
7 of this act that could have been asserted at the time of the
8 order imposing the fine shall not exceed \$500,000.

9 (6) Any violation of this act shall also be deemed to
10 be a violation of chapter 494, chapter 516, chapter 520,
11 chapter 655, chapter 657, chapter 658, chapter 660, chapter
12 663, chapter 665, or chapter 667. The commission ~~department~~
13 may adopt rules to enforce this subsection.

14 Section 549. Section 494.00797, Florida Statutes, is
15 amended to read:

16 494.00797 General rule.--All counties and
17 municipalities of this state are prohibited from enacting and
18 enforcing ordinances, resolutions, and rules regulating
19 financial or lending activities, including ordinances,
20 resolutions, and rules disqualifying persons from doing
21 business with a city, county, or municipality based upon
22 lending interest rates or imposing reporting requirements or
23 any other obligations upon persons regarding financial
24 services or lending practices of persons or entities, and any
25 subsidiaries or affiliates thereof, who:

26 (1) Are subject to the jurisdiction of the office
27 ~~department~~, including for activities subject to this chapter,
28 except entities licensed under s. 537.004;

29 (2) Are subject to the jurisdiction of the Office of
30 Thrift Supervision, the Office of the Comptroller of the
31 Currency, the National Credit Union Administration, the

1 Federal Deposit Insurance Corporation, the Federal Trade
2 Commission, or the United States Department of Housing and
3 Urban Development;

4 (3) Originate, purchase, sell, assign, secure, or
5 service property interests or obligations created by financial
6 transactions or loans made, executed, or originated by persons
7 referred to in subsection (1) or subsection (2) to assist or
8 facilitate such transactions;

9 (4) Are chartered by the United States Congress to
10 engage in secondary market mortgage transactions; or

11 (5) Are created by the Florida Housing Finance
12 Corporation.

13

14 Proof of noncompliance with this act can be used by a city,
15 county, or municipality of this state to disqualify a vendor
16 or contractor from doing business with a city, county, or
17 municipality of this state.

18 Section 550. Subsection (16) of section 497.005,
19 Florida Statutes, is amended to read:

20 497.005 Definitions.--As used in this chapter:

21 (16) "Department" means the Department of Financial
22 Services ~~Banking and Finance~~.

23 Section 551. Subsection (1) of section 497.101,
24 Florida Statutes, is amended to read:

25 497.101 Board of Funeral and Cemetery Services;
26 membership; appointment; terms.--

27 (1) The Board of Funeral and Cemetery Services is
28 created within the department of ~~Banking and Finance~~ and shall
29 consist of seven members appointed by the Governor, from
30 nominations made by the Chief Financial Officer ~~Comptroller~~,
31 and confirmed by the Senate. The Chief Financial Officer

1 ~~Comptroller~~ shall nominate three persons for each vacancy on
2 the board, and the Governor shall fill each vacancy on the
3 board by appointing one of the three persons nominated by the
4 Chief Financial Officer ~~Comptroller~~ to fill that vacancy. If
5 the Governor objects to each of the three nominations for a
6 vacancy, she or he shall inform the Chief Financial Officer
7 ~~Comptroller~~ in writing. Upon notification of an objection by
8 the Governor, the Chief Financial Officer ~~Comptroller~~ shall
9 submit three additional nominations for that vacancy until the
10 vacancy is filled.

11 Section 552. Section 497.105, Florida Statutes, is
12 amended to read:

13 497.105 Department ~~of Banking and Finance~~; powers and
14 duties.--The department ~~of Banking and Finance~~ shall:

15 (1) Adopt rules establishing procedures for the
16 renewal of licenses, registrations, and certificates of
17 authority.

18 (2) Appoint the executive director of the Board of
19 Funeral and Cemetery Services, subject to the approval of the
20 board.

21 (3) With the advice of the board, submit a biennial
22 budget to the Legislature at a time and in the manner provided
23 by law.

24 (4) Develop a training program for persons newly
25 appointed to membership on the board. The program shall
26 familiarize such persons with the substantive and procedural
27 laws and rules which relate to the regulation under this
28 chapter and with the structure of the department.

29 (5) Adopt rules pursuant to ss. 120.536(1) and 120.54
30 to implement the provisions of this chapter conferring duties
31 upon it.

1 (6) Establish by rule procedures by which the
2 department shall use the expert or technical advice of the
3 board, for the purposes of investigation, inspection, audit,
4 evaluation of applications, other duties of the department, or
5 any other areas the department may deem appropriate.

6 (7) Require all proceedings of the board or panels
7 thereof within the department and all formal or informal
8 proceedings conducted by the department, an administrative law
9 judge, or a hearing officer with respect to licensing,
10 registration, certification, or discipline to be
11 electronically recorded in a manner sufficient to ensure the
12 accurate transcription of all matters so recorded.

13 (8) Select only those investigators approved by the
14 board. Such investigators shall report to and work in
15 coordination with the executive director of the board and are
16 responsible for all inspections and investigations other than
17 financial examinations.

18 Section 553. Section 497.107, Florida Statutes, is
19 amended to read:

20 497.107 Headquarters.--The Board of Funeral and
21 Cemetery Services may be contacted through the headquarters of
22 the department ~~of Banking and Finance~~ in the City of
23 Tallahassee.

24 Section 554. Subsection (4) of section 497.109,
25 Florida Statutes, is amended to read:

26 497.109 Board of Funeral and Cemetery Services;
27 membership.--

28 (4) Unless otherwise provided by law, a board member
29 shall be compensated \$50 for each day the member attends an
30 official meeting of the board and for each day the member
31 participates in any other business involving the board. The

1 board shall adopt rules defining the phrase "other business
2 involving the board," but the phrase may not be defined to
3 include telephone conference calls. A board member is
4 entitled to reimbursement for expenses pursuant to s. 112.061,
5 but travel out of state requires the prior approval of the
6 Chief Financial Officer ~~Comptroller~~.

7 Section 555. Section 497.115, Florida Statutes, is
8 amended to read:

9 497.115 Board rules; final agency action;
10 challenges.--

11 (1) The Chief Financial Officer ~~Comptroller~~ shall have
12 standing to challenge any rule or proposed rule of the board
13 pursuant to s. 120.56. In addition to challenges for any
14 invalid exercise of delegated legislative authority, the
15 administrative law judge, upon such a challenge by the Chief
16 Financial Officer ~~Comptroller~~, may declare all or part of a
17 rule or proposed rule invalid if it:

18 (a) Does not protect the public from any significant
19 and discernible harm or damages;

20 (b) Unreasonably restricts competition or the
21 availability of professional services in the state or in a
22 significant part of the state; or

23 (c) Unnecessarily increases the cost of professional
24 services without a corresponding or equivalent public benefit.

25
26 However, there shall not be created a presumption of the
27 existence of any of the conditions cited in this subsection in
28 the event that the rule or proposed rule is challenged.

29 (2) In addition, either the Chief Financial Officer
30 ~~Comptroller~~ or the board shall be a substantially interested
31 party for purposes of s. 120.54(7). The board may, as an

1 adversely affected party, initiate and maintain an action
2 pursuant to s. 120.68 challenging the final agency action.

3 Section 556. Section 497.117, Florida Statutes, is
4 amended to read:

5 497.117 Legal and investigative services.--

6 (1) The Department of Legal Affairs shall provide
7 legal services to the board within the Department of Financial
8 Services ~~Banking and Finance~~, but the primary responsibility
9 of the Department of Legal Affairs shall be to represent the
10 interests of the citizens of the state by vigorously
11 counseling the board with respect to its obligations under the
12 laws of the state. Subject to the prior approval of the
13 Attorney General, the board may retain independent legal
14 counsel to provide legal advice to the board on a specific
15 matter. Fees and costs of such counsel shall be paid from the
16 Regulatory Trust Fund of the Department of Financial Services
17 ~~Banking and Finance~~.

18 (2) The Department of Financial Services ~~Banking and~~
19 ~~Finance~~ may employ or utilize the legal services of outside
20 counsel and the investigative services of outside personnel.
21 However, no attorney employed or utilized by the department
22 shall prosecute a matter or provide legal services to the
23 board with respect to the same matter.

24 Section 557. Subsections (1), (4), and (8) of section
25 497.131, Florida Statutes, are amended to read:

26 497.131 Disciplinary proceedings.--

27 (1) The department shall cause to be investigated any
28 complaint which is filed before it if the complaint is in
29 writing, signed by the complainant, and legally sufficient. A
30 complaint is legally sufficient if it contains ultimate facts
31 which show that a violation of this chapter, or of any rule

1 promulgated by the department or board has occurred. In order
2 to determine legal sufficiency, the department may require
3 supporting information or documentation. The department may
4 investigate or continue to investigate, and the department and
5 the board may take appropriate final action on, a complaint
6 even though the original complainant withdraws it or otherwise
7 indicates her or his desire not to cause the complaint to be
8 investigated or prosecuted to completion. The department may
9 investigate an anonymous complaint if the complaint is in
10 writing and is legally sufficient, if the alleged violation of
11 law or rules is substantial, and if the department has reason
12 to believe, after preliminary inquiry, that the alleged
13 violations in the complaint are true. The department may
14 investigate a complaint made by a confidential informant if
15 the complaint is legally sufficient, if the alleged violation
16 of law or rule is substantial, and if the department has
17 reason to believe, after preliminary inquiry, that the
18 allegations of the complainant are true. The department may
19 initiate an investigation if it has reasonable cause to
20 believe that a person has violated a state statute, a rule of
21 the department, or a rule of the board. When an investigation
22 of any person is undertaken, the department shall promptly
23 furnish to the person or her or his attorney a copy of the
24 complaint or document which resulted in the initiation of the
25 investigation. The person may submit a written response to
26 the information contained in such complaint or document within
27 20 days after service to the person of the complaint or
28 document. The person's written response shall be considered
29 by the probable cause panel. This right to respond shall not
30 prohibit the department from issuing a summary emergency order
31 if necessary to protect the public. However, if the Chief

1 Financial Officer ~~Comptroller~~ or her or his designee and the
2 chair of the board or the chair of its probable cause panel
3 agree in writing that such notification would be detrimental
4 to the investigation, the department may withhold
5 notification. The department may conduct an investigation
6 without notification to any person if the act under
7 investigation is a criminal offense.

8 (4) The determination as to whether probable cause
9 exists shall be made by majority vote of the probable cause
10 panel of the board. The board shall provide, by rule, that the
11 determination of probable cause shall be made by a panel of
12 its members or by the department. The board may provide, by
13 rule, for multiple probable cause panels composed of at least
14 two members. The board may provide, by rule, that one or more
15 members of the panel or panels may be a former board member.
16 The length of term or repetition of service of any such former
17 board member on a probable cause panel may vary according to
18 the direction of the board when authorized by board rule. Any
19 probable cause panel must include one of the board's former or
20 present consumer members, if one is available, willing to
21 serve, and is authorized to do so by the board chair. Any
22 probable cause panel must include a present board member. Any
23 probable cause panel must include a former or present
24 professional board member. However, any former professional
25 board member serving on the probable cause panel must hold an
26 active valid license for that profession. All probable cause
27 proceedings conducted pursuant to the provisions of this
28 section are exempt from the provisions of s. 286.011 and s.
29 24(b), Art. I of the State Constitution. The probable cause
30 panel may make a reasonable request, and upon such request the
31 department shall provide such additional investigative

1 information as is necessary to the determination of probable
2 cause. A request for additional investigative information
3 shall be made within 15 days from the date of receipt by the
4 probable cause panel of the investigative report of the
5 department. The probable cause panel shall make its
6 determination of probable cause within 30 days after receipt
7 by it of the final investigative report of the department. The
8 Chief Financial Officer ~~Comptroller~~ may grant extensions of
9 the 15-day and the 30-day time limits. If the probable cause
10 panel does not find probable cause within the 30-day time
11 limit, as may be extended, or if the probable cause panel
12 finds no probable cause, the department may determine, within
13 10 days after the panel fails to determine probable cause or
14 10 days after the time limit has elapsed, that probable cause
15 exists. If the probable cause panel finds that probable cause
16 exists, it shall direct the department to file a formal
17 complaint against the licensee. The department shall follow
18 the directions of the probable cause panel regarding the
19 filing of a formal complaint. If directed to do so, the
20 department shall file a formal complaint against the subject
21 of the investigation and prosecute that complaint pursuant to
22 the provisions of chapter 120. However, the department may
23 decide not to prosecute the complaint if it finds that
24 probable cause had been improvidently found by the panel. In
25 such cases, the department shall refer the matter to the
26 board. The board may then file a formal complaint and
27 prosecute the complaint pursuant to the provisions of chapter
28 120. The department shall also refer to the board any
29 investigation or disciplinary proceeding not before the
30 Division of Administrative Hearings pursuant to chapter 120 or
31 otherwise completed by the department within 1 year after the

1 filing of a complaint. A probable cause panel or the board may
2 retain independent legal counsel, employ investigators, and
3 continue the investigation as it deems necessary; all costs
4 thereof shall be paid from the department's Regulatory Trust
5 Fund. All proceedings of the probable cause panel shall be
6 exempt from the provisions of s. 120.525.

7 (8) Any proceeding for the purpose of summary
8 suspension of a license, or for the restriction of a license,
9 of a licensee pursuant to s. 120.60(6) shall be conducted by
10 the Chief Financial Officer ~~Comptroller~~ or her or his
11 designee, who shall issue the final summary order.

12 Section 558. Paragraph (f) of subsection (3) of
13 section 497.201, Florida Statutes, is amended to read:

14 497.201 Cemetery companies; license; application;
15 fee.--

16 (3) If the board finds that the applicant meets the
17 criteria established in subsection (2), the department shall
18 notify the applicant that a license will be issued when:

19 (f) The applicant has recorded, in the public records
20 of the county in which the land is located, a notice which
21 contains the following language:

22
23 NOTICE

24
25 The property described herein shall not be sold, conveyed,
26 leased, mortgaged, or encumbered without the prior written
27 approval of the Department of Financial Services ~~Banking and~~
28 ~~Finance~~, as provided in the Florida Funeral and Cemetery
29 Services Act.

1 Such notice shall be clearly printed in boldfaced type of not
2 less than 10 points and may be included on the face of the
3 deed of conveyance to the licensee or may be contained in a
4 separate recorded instrument which contains a description of
5 the property.

6 Section 559. Paragraph (d) of subsection (3) of
7 section 497.253, Florida Statutes, is amended to read:

8 497.253 Minimum acreage; sale or disposition of
9 cemetery lands.--

10 (3)

11 (d) Any deed, mortgage, or other conveyance by a
12 cemetery company or other owner pursuant to subsections (a)
13 and (c) above must contain a disclosure in the following or
14 substantially similar form:

15

16 NOTICE: The property described herein was formerly used and
17 dedicated as a cemetery. Conveyance of this property and its
18 use for noncemetery purposes was authorized by the Florida
19 Department of Financial Services ~~Banking and Finance~~ by Order
20 No., dated

21 Section 560. Subsection (4) of section 497.313,
22 Florida Statutes, is amended to read:

23 497.313 Other charges.--Other than the fees for the
24 sale of burial rights, burial merchandise, and burial
25 services, no other fee may be directly or indirectly charged,
26 contracted for, or received by a cemetery company as a
27 condition for a customer to use any burial right, burial
28 merchandise, or burial service, except for:

29 (4) Charges for credit life and credit disability
30 insurance, as requested by the purchaser, the premiums for
31 which may not exceed the applicable premiums chargeable in

1 accordance with the rates filed with the Office of Insurance
2 Regulation of the Financial Services Commission ~~Department of~~
3 ~~Insurance~~.

4 Section 561. Section 497.403, Florida Statutes, is
5 amended to read:

6 497.403 Insurance business not authorized.--Nothing in
7 the Florida Insurance Code or this chapter shall be deemed to
8 authorize any preneed funeral merchandise or service contract
9 business or any preneed burial merchandise or service business
10 to transact any insurance business, other than that of preneed
11 funeral merchandise or service insurance or preneed burial
12 merchandise or service insurance, or otherwise to engage in
13 any other type of insurance unless it is authorized under a
14 certificate of authority issued ~~by the Department of Insurance~~
15 under the provisions of the Florida Insurance Code. Any
16 insurance business transacted under this section must comply
17 with the provisions of s. 626.785.

18 Section 562. Paragraphs (d) and (m) of subsection (1)
19 of section 498.025, Florida Statutes, are amended to read:

20 498.025 Exemptions.--

21 (1) Except as provided in s. 498.022, the provisions
22 of this chapter do not apply to:

23 (d) An offer or transfer of securities currently
24 registered with the Office of Financial Regulation of the
25 Financial Services Commission ~~Department of Banking and~~
26 ~~Finance~~ or the United States Securities and Exchange
27 Commission, except when s. 498.023(4) applies.

28 (m) The offer or disposition of an interest in
29 subdivided lands to an accredited investor, as defined by rule
30 of the Financial Services Commission ~~Florida Department of~~
31

1 ~~Banking and Finance~~ in accordance with Securities and Exchange
2 Commission Regulation 230.501, 17 C.F.R. s. 230.501.

3 Section 563. Subsection (5) of section 498.049,
4 Florida Statutes, is amended to read:

5 498.049 Suspension; revocation; civil penalties.--

6 (5) Each person who materially participates in any
7 offer or disposition of any interest in subdivided lands in
8 violation of this chapter or relevant rules involving fraud,
9 deception, false pretenses, misrepresentation, or false
10 advertising or the disposition, concealment, or diversion of
11 any funds or assets of any person which adversely affects the
12 interests of a purchaser of any interest in subdivided lands,
13 and who directly or indirectly controls a subdivider or is a
14 general partner, officer, director, agent, or employee of a
15 subdivider shall also be liable under this subsection jointly
16 and severally with and to the same extent as the subdivider,
17 unless that person did not know, and in the exercise of
18 reasonable care could not have known, of the existence of the
19 facts creating the alleged liability. Among these persons a
20 right of contribution shall exist, except that a creditor of a
21 subdivider shall not be jointly and severally liable unless
22 the creditor has assumed managerial or fiduciary
23 responsibility in a manner related to the basis for the
24 liability of the subdivider under this subsection. Civil
25 penalties shall be limited to \$10,000 for each offense, and
26 all amounts collected shall be deposited with the Chief
27 Financial Officer ~~Treasurer~~ to the credit of the Division of
28 Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.
29 No order requiring the payment of a civil penalty shall become
30 effective until 20 days after the date of the order, unless
31

1 otherwise agreed in writing by the person on whom the penalty
2 is imposed.

3 Section 564. Section 499.057, Florida Statutes, is
4 amended to read:

5 499.057 Expenses and salaries.--All expenses and
6 salaries shall be paid out of the special fund hereby created
7 in the office of the Chief Financial Officer ~~Treasurer~~, which
8 fund is to be known as the "Florida Drug, Device, and Cosmetic
9 Trust Fund."

10 Section 565. Subsection (4) of section 501.212,
11 Florida Statutes, is amended to read:

12 501.212 Application.--This part does not apply to:

13 (4) Any person or activity regulated under laws
14 administered by the Department of Financial Services or the
15 Office of Insurance Regulation of the Financial Services
16 Commission ~~Department of Insurance~~ or banks and savings and
17 loan associations regulated by the Office of Financial
18 Regulation of the Financial Services Commission ~~Department of~~
19 ~~Banking and Finance~~ or banks or savings and loan associations
20 regulated by federal agencies.

21 Section 566. Subsection (3) of section 507.03, Florida
22 Statutes, is amended to read:

23 507.03 Registration.--

24 (3) Registration fees shall be \$300 per year per
25 mover. All amounts collected shall be deposited by the Chief
26 Financial Officer ~~Treasurer~~ to the credit of the General
27 Inspection Trust Fund of the department for the sole purpose
28 of administration of this act.

29 Section 567. Subsection (7) of section 509.215,
30 Florida Statutes, is amended to read:

31 509.215 Firesafety.--

1 (7) The National Fire Protection Association
2 publications referenced in this section are the ones most
3 recently adopted by rule of the Division of State Fire Marshal
4 of the Department of Financial Services ~~Insurance~~.

5 Section 568. Paragraph (a) of subsection (2) of
6 section 513.055, Florida Statutes, is amended to read:

7 513.055 Revocation or suspension of permit; fines;
8 procedure.--

9 (2)

10 (a) In lieu of such suspension or revocation of a
11 permit, the department may impose a fine against a permittee
12 for the permittee's failure to comply with the provisions
13 described in paragraph (1)(a) or may place such licensee on
14 probation. No fine so imposed shall exceed \$500 for each
15 offense, and all amounts collected in fines shall be deposited
16 with the Chief Financial Officer ~~Treasurer~~ to the credit of
17 the County Health Department Trust Fund.

18 Section 569. Subsection (3) of section 516.01, Florida
19 Statutes is amended, present subsections (4) through (6) of
20 that section are renumbered as (5) through (7), respectively,
21 and a new subsection (4) is added to that section to read:

22 516.01 Definitions.--As used in this chapter, the
23 term:

24 (3) "Commission" means the Financial Services
25 Commission ~~"Department"~~ means the ~~Department of Banking and~~
26 ~~Finance~~.

27 (4) "Office" means the Office of Financial Regulation
28 of the commission.

29 Section 570. Subsection (1) of section 516.02, Florida
30 Statutes, is amended to read:

31

1 516.02 Loans; lines of credit; rate of interest;
2 license.--

3 (1) A person must not engage in the business of making
4 consumer finance loans unless she or he is authorized to do so
5 under this chapter or other statutes and unless the person
6 first obtains a license from the office ~~department~~.

7 Section 571. Section 516.03, Florida Statutes, is
8 amended to read:

9 516.03 Application for license; fees; etc.--

10 (1) APPLICATION.--Application for a license to make
11 loans under this chapter shall be in the form prescribed by
12 rule of the commission ~~department~~, and shall contain the name,
13 residence and business addresses of the applicant and, if the
14 applicant is a copartnership or association, of every member
15 thereof and, if a corporation, of each officer and director
16 thereof, also the county and municipality with the street and
17 number or approximate location where the business is to be
18 conducted, and such further relevant information as the
19 commission or office ~~department~~ may require. At the time of
20 making such application the applicant shall pay to the office
21 ~~department~~ a biennial license fee of \$625. Applications,
22 except for applications to renew or reactivate a license, must
23 also be accompanied by an investigation fee of \$200. The
24 commission ~~department~~ may adopt rules to allow electronic
25 submission of any form, document, or fee required by this act.

26 (2) FEES.--Fees herein provided for shall be collected
27 by the office ~~department~~ and shall be turned into the State
28 Treasury to the credit of the regulatory trust fund under the
29 office ~~department~~. The office ~~department~~ shall have full
30 power to employ such examiners or clerks to assist the office
31 ~~department~~ as may from time to time be deemed necessary and

1 fix their compensation. The commission ~~department~~ may adopt
2 rules to allow electronic submission of any fee required by
3 this section.

4 Section 572. Subsection (2) of section 516.031,
5 Florida Statutes, is amended to read:

6 516.031 Finance charge; maximum rates.--

7 (2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH IN
8 LENDING ACT.--The annual percentage rate of finance charge
9 which may be contracted for and received under any loan
10 contract made by a licensee under this chapter may equal, but
11 not exceed, the annual percentage rate which must be computed
12 and disclosed as required by the federal Truth in Lending Act
13 and Regulation Z of the Board of Governors of the Federal
14 Reserve System. The maximum annual percentage rate of finance
15 charge which may be contracted for and received is 12 times
16 the maximum monthly rate, and the maximum monthly rate shall
17 be computed on the basis of one-twelfth of the annual rate for
18 each full month. The commission ~~department~~ shall by rule
19 ~~regulation~~ establish the rate for each day in a fraction of a
20 month when the period for which the charge is computed is more
21 or less than 1 month.

22 Section 573. Section 516.05, Florida Statutes, is
23 amended to read:

24 516.05 License.--

25 (1) Upon the filing of an application for a license
26 and payment of all applicable fees, the office ~~department~~
27 shall, unless the application is to renew or reactivate an
28 existing license, make an investigation of the facts
29 concerning the applicant's proposed activities. If the office
30 ~~department~~ determines that a license should be granted, it
31 shall issue the license for a period not to exceed 2 years.

1 Biennial licensure periods and procedures for renewal of
2 licenses shall be established by the rule of the commission
3 ~~department~~. If the office ~~department~~ determines that grounds
4 exist under this chapter for denial of an application other
5 than an application to renew a license, it shall deny such
6 application, return to the applicant the sum paid as a license
7 fee, and retain the investigation fee.

8 (2) A license that is not renewed at the end of the
9 biennium established by the commission ~~department~~ shall
10 automatically revert to inactive status. An inactive license
11 may be reactivated upon submission of a completed reactivation
12 application, payment of the biennial license fee, and payment
13 of a reactivation fee which shall equal the biennial license
14 fee. A license expires on the date at which it has been
15 inactive for 6 months.

16 (3) Only one place of business for the purpose of
17 making loans under this chapter may be maintained under one
18 license, but the office ~~department~~ may issue additional
19 licenses to a licensee upon compliance with all the provisions
20 of this chapter governing issuance of a single license.

21 (4) Prior to relocating his or her place of business,
22 a licensee must file with the office ~~department~~, in the manner
23 prescribed by commission ~~department~~ rule, notice of the
24 relocation.

25 (5) A licensee may conduct the business of making
26 loans under this chapter within a place of business in which
27 other business is solicited or engaged in, unless the office
28 ~~department~~ shall find that the conduct of such other business
29 by the licensee results in an evasion of this chapter. Upon
30 such finding, the office ~~department~~ shall order the licensee
31 to desist from such evasion; provided, however, that no

1 license shall be granted to or renewed for any person or
2 organization engaged in the pawnbroker business.

3 (6) If any person purchases substantially all of the
4 assets of any existing licensed place of business, the
5 purchaser shall give immediate notice thereof to the office
6 ~~department~~ and shall be granted a 90-day temporary license for
7 the place of business within 10 days after the office's
8 ~~department's~~ receipt of an application for a permanent
9 license. Issuance of a temporary license for a place of
10 business nullifies the existing license for the place of
11 business, and the temporary licensee is subject to any
12 disciplinary action provided for by this chapter.

13 (7) Licenses are not transferable or assignable. A
14 licensee may invalidate any license by delivering it to the
15 office ~~department~~ with a written notice of the delivery, but
16 such delivery does not affect any civil or criminal liability
17 or the authority to enforce this chapter for acts committed in
18 violation thereof.

19 (8) The office ~~department~~ may refuse to process an
20 initial application for a license if the applicant or any
21 person with power to direct the management or policies of the
22 applicant's business is the subject of a pending criminal
23 prosecution in any jurisdiction until conclusion of such
24 criminal prosecution.

25 (9) A licensee that is the subject of a voluntary or
26 involuntary bankruptcy filing must report such filing to the
27 office ~~department~~ within 7 business days after the filing
28 date.

29 Section 574. Subsections (1), (2), and (3) of section
30 516.07, Florida Statutes, are amended to read:

31

1 516.07 Grounds for denial of license or for
2 disciplinary action.--

3 (1) The following acts are violations of this chapter
4 and constitute grounds for denial of an application for a
5 license to make consumer finance loans and grounds for any of
6 the disciplinary actions specified in subsection (2):

7 (a) A material misstatement of fact in an application
8 for a license;

9 (b) Failure to maintain liquid assets of at least
10 \$25,000 at all times for the operation of business at a
11 licensed location or proposed location;

12 (c) Failure to demonstrate financial responsibility,
13 experience, character, or general fitness, such as to command
14 the confidence of the public and to warrant the belief that
15 the business operated at the licensed or proposed location is
16 lawful, honest, fair, efficient, and within the purposes of
17 this chapter;

18 (d) The violation, either knowingly or without the
19 exercise of due care, of any provision of this chapter, any
20 rule or order adopted under this chapter, or any written
21 agreement entered into with the office ~~department~~;

22 (e) Any act of fraud, misrepresentation, or deceit,
23 regardless of reliance by or damage to a borrower, or any
24 illegal activity, where such acts are in connection with a
25 loan under this chapter. Such acts include, but are not
26 limited to:

27 1. Willful imposition of illegal or excessive charges;

28 or

29 2. Misrepresentation, circumvention, or concealment of
30 any matter required to be stated or furnished to a borrower;

31

1 (f) The use of unreasonable collection practices or of
2 false, deceptive, or misleading advertising, where such acts
3 are in connection with the operation of a business to make
4 consumer finance loans;

5 (g) Any violation of part III of chapter 817 or part
6 II of chapter 559 or of any rule adopted under part II of
7 chapter 559;

8 (h) Failure to maintain, preserve, and keep available
9 for examination, all books, accounts, or other documents
10 required by this chapter, by any rule or order adopted under
11 this chapter, or by any agreement entered into with the office
12 ~~department~~;

13 (i) Refusal to permit inspection of books and records
14 in an investigation or examination by the office ~~department~~ or
15 refusal to comply with a subpoena issued by the office
16 ~~department~~;

17 (j) Pleading nolo contendere to, or having been
18 convicted or found guilty of, a crime involving fraud,
19 dishonest dealing, or any act of moral turpitude, regardless
20 of whether adjudication is withheld;

21 (k) Paying money or anything else of value, directly
22 or indirectly, to any person as compensation, inducement, or
23 reward for referring loan applicants to a licensee;

24 (l) Allowing any person other than the licensee to use
25 the licensee's business name, address, or telephone number in
26 an advertisement;

27 (m) Accepting or advertising that the licensee accepts
28 money on deposit or as consideration for the issuance or
29 delivery of certificates of deposit, savings certificates, or
30 similar instruments, except to the extent permitted under
31 chapter 517; or

1 (n) Failure to pay any fee, charge, or fine imposed or
2 assessed pursuant to this chapter or any rule adopted under
3 this chapter.

4 (2) Upon a finding by the office ~~department~~ that any
5 person has committed any of the acts set forth in subsection
6 (1), the office ~~department~~ may enter an order taking one or
7 more of the following actions:

8 (a) Denying an application for a license;

9 (b) Revoking or suspending a license previously
10 granted;

11 (c) Placing a licensee or an applicant for a license
12 on probation for a period of time and subject to such
13 conditions as the office ~~department~~ may specify;

14 (d) Placing permanent restrictions or conditions upon
15 issuance or maintenance of a license;

16 (e) Issuing a reprimand; or

17 (f) Imposing an administrative fine not to exceed
18 \$1,000 for each such act.

19 (3) The office ~~department~~ may take any of the actions
20 specified in subsection (2) against any partnership,
21 corporation, or association, if the office ~~department~~ finds
22 that any of the acts set forth in subsection (1) have been
23 committed by any member of the partnership, any officer or
24 director of the corporation or association, or any person with
25 power to direct the management or policies of the partnership,
26 corporation, or association.

27 Section 575. Section 516.11, Florida Statutes, is
28 amended to read:

29 516.11 Investigations and complaints.--

30 (1) The office ~~department~~ shall, at intermittent
31 periods, make such investigations and examinations of any

1 licensee or other person as it deems necessary to determine
2 compliance with this chapter. For such purposes, the office
3 ~~department~~ may examine the books, accounts, records, and other
4 documents or matters of any licensee or other person and
5 compel the production of all relevant books, records, and
6 other documents and materials relative to an examination or
7 investigation. Examinations of a licensee may not be made
8 more often than once a year unless the office ~~department~~ has
9 reason to believe the licensee is not complying with this
10 chapter.

11 (2) The office ~~department~~ shall conduct all
12 examinations at a convenient location in this state unless the
13 office ~~department~~ determines that it is more effective or
14 cost-efficient to perform an examination at the licensee's
15 out-of-state location. For an examination performed at the
16 licensee's out-of-state location, the licensee shall pay the
17 travel expense and per diem subsistence at the rate provided
18 by law for up to thirty 8-hour days per year for each examiner
19 who participates in such an examination. However, if the
20 examination involves or reveals possible fraudulent conduct of
21 the licensee, the licensee shall pay the travel expenses and
22 per diem subsistence provided by law, without limitation, for
23 each participating examiner.

24 (3) Any person who has reason to believe that this
25 chapter has been or will be violated may file a written
26 complaint with the office ~~department~~.

27 Section 576. Section 516.12, Florida Statutes, is
28 amended to read:

29 516.12 Records to be kept by licensee.--

30 (1) The licensee shall keep and use in her or his
31 business such books, accounts, and records in accordance with

1 sound and accepted accounting practices to enable the office
2 ~~department~~ to determine whether such licensee is complying
3 with the provisions of this chapter and with the rules ~~and~~
4 ~~regulations~~ lawfully made by the commission ~~department~~
5 ~~hereunder~~. Every licensee shall preserve such books, accounts,
6 and records, including cards used in the card system, if any,
7 for at least 2 years after making the final entry on any loan
8 recorded therein.

9 (2) A licensee, operating two or more licensed places
10 of business in this state, may maintain the books, accounts,
11 and records of all such offices at any one of such offices, or
12 at any other office maintained by such licensee, upon the
13 filing of a written request with the office ~~department~~
14 designating in the written request the office at which such
15 records are maintained. However, the licensee shall make all
16 books, accounts, and records available at a convenient
17 location in this state upon request of the office ~~department~~.

18 Section 577. Section 516.22, Florida Statutes, is
19 amended to read:

20 516.22 Rules; certified copies.--

21 (1) RULES.--The commission may ~~department has~~
22 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54
23 to implement the provisions of law conferring duties upon it.

24 (2) CERTIFIED COPIES OF OFFICIAL DOCUMENTS.--On
25 application of any person and payment of the costs thereof, at
26 the same rate and fees as allowed clerks of the circuit court
27 by statute, the office ~~department~~ shall furnish a certified
28 copy of any license, regulation, or order. In any court or
29 proceeding, such copy shall be prima facie evidence of the
30 fact of the issuance of such license, regulation, or order.

31

1 Section 578. Section 516.221, Florida Statutes, is
2 amended to read:

3 516.221 Liability when acting upon ~~department's~~ order,
4 declaratory statement, or rule.--No person or licensee
5 hereunder shall be deemed to be in violation of this chapter
6 nor shall such person or licensee be subject to any civil or
7 criminal liability for any act or omission to act in good
8 faith in reliance upon a subsisting order, declaratory
9 statement, or rule issued by the office or commission
10 ~~department~~, notwithstanding a subsequent decision by a court
11 of competent jurisdiction invalidating the order, declaratory
12 statement, or rule.

13 Section 579. Section 516.23, Florida Statutes, is
14 amended to read:

15 516.23 Subpoenas; enforcement actions; rules.--

16 (1) The office ~~department~~ may issue and serve
17 subpoenas to compel the attendance of witnesses and the
18 production of documents, papers, books, records, and other
19 evidence before it in any matter pertaining to this chapter.
20 The office ~~department~~ may administer oaths and affirmations to
21 any person whose testimony is required. If any person refuses
22 to testify, produce books, records, and documents, or
23 otherwise refuses to obey a subpoena issued under this
24 section, the office ~~department~~ may enforce the subpoena in the
25 same manner as subpoenas issued under the Administrative
26 Procedure Act are enforced. Witnesses are entitled to the same
27 fees and mileage as they are entitled to by law for attending
28 as witnesses in the circuit court, unless such examination or
29 investigation is held at the place of business or residence of
30 the witness.

31

1 (2) In addition to any other powers conferred upon it
2 to enforce or administer this chapter, the office ~~department~~
3 may:

4 (a) Bring an action in any court of competent
5 jurisdiction to enforce or administer this chapter, any rule
6 or order adopted under this chapter, or any written agreement
7 entered into with the office ~~department~~. In such action, the
8 office ~~department~~ may seek any relief at law or equity
9 including a temporary or permanent injunction, appointment of
10 a receiver or administrator, or an order of restitution.

11 (b) Issue and serve upon a person an order requiring
12 such person to cease and desist and take corrective action
13 whenever the office ~~department~~ finds that such person is
14 violating, has violated, or is about to violate any provision
15 of this chapter, any rule or order adopted under this chapter,
16 or any written agreement entered into with the office
17 ~~department~~.

18 (c) Impose and collect an administrative fine against
19 any person found to have violated any provision of this
20 chapter, any rule or order adopted under this chapter, or any
21 written agreement entered into with the office ~~department~~, in
22 an amount not to exceed \$1,000 for each violation.

23 (3) The commission may ~~department has authority to~~
24 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
25 the provisions of this chapter.

26 Section 580. Section 516.32, Florida Statutes, is
27 amended to read:

28 516.32 Consumer credit counseling.--The office
29 ~~department~~ shall be responsible for promoting a consumer
30 credit counseling service for the purpose of promoting and
31 helping establish consumer credit counseling services for

1 individuals in areas where a need has been established. The
2 purposes of the consumer credit counseling service shall be
3 to:

4 (1) Assist and educate individual consumers as to
5 money management.

6 (2) Assist individual consumers in consolidating
7 obligations when a situation exists in which the individual
8 consumer is in need of such assistance.

9 (3) Work with consumer credit grantors in an effort to
10 establish better relations with the individual consumer and
11 with state and federal regulatory agencies.

12 Section 581. Section 516.33, Florida Statutes, is
13 amended to read:

14 516.33 Public disclosures.--All findings of facts and
15 orders filed with the commission or office ~~department~~ shall be
16 a public record.

17 Section 582. Subsection (1) of section 516.35, Florida
18 Statutes, is amended to read:

19 516.35 Credit insurance must comply with credit
20 insurance act.--

21 (1) Tangible property offered as security may be
22 reasonably insured against loss for a reasonable term,
23 considering the circumstances of the loan. If such insurance
24 is sold at standard rates through a person duly licensed by
25 the Office of Insurance Regulation of the Financial Services
26 Commission ~~Department of Insurance~~ and if the policy is
27 payable to the borrower or any member of her or his family, it
28 shall not be deemed to be a collateral sale, purchase, or
29 agreement even though a customary mortgagee clause is attached
30 or the licensee is a coassured.

31

1 Section 583. Subsection (7) of section 517.021,
2 Florida Statutes, is amended, present subsections (8) through
3 (20) of that section are renumbered as (9) through (21),
4 respectively, and a new subsection (8) is added to that
5 section to read:

6 517.021 Definitions.--When used in this chapter,
7 unless the context otherwise indicates, the following terms
8 have the following respective meanings:

9 (7) "Commission" means the Financial Services
10 Commission~~"Department" means the Department of Banking and~~
11 ~~Finance.~~

12 (8) "Office" means the Office of Financial Regulation
13 of the commission.

14 Section 584. Section 517.03, Florida Statutes, is
15 amended to read:

16 517.03 Rulemaking; immunity for acts in conformity
17 with rules.--

18 (1) The office ~~Department of Banking and Finance~~ shall
19 administer and provide for the enforcement of all the
20 provisions of this chapter. The commission ~~may department has~~
21 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54
22 to implement the provisions of this chapter conferring powers
23 or duties upon the office ~~it~~, including, without limitation,
24 adopting rules and forms governing reports. The commission
25 ~~department~~ shall also have the nonexclusive power to define by
26 rule any term, whether or not used in this chapter, insofar as
27 the definition is not inconsistent with the provisions of this
28 chapter.

29 (2) No provision of this chapter imposing liability
30 shall apply to an act done, or omitted to be done, in
31 conformity with a rule of the commission ~~department~~ in

1 existence at the time of the act or omission, even though such
2 rule may thereafter be amended or repealed or determined by
3 judicial or other authority to be invalid for any reason.

4 Section 585. Section 517.051, Florida Statutes, is
5 amended to read:

6 517.051 Exempt securities.--The exemptions provided
7 herein from the registration requirements of s. 517.07 are
8 self-executing and do not require any filing with the office
9 ~~department~~ prior to claiming such exemption. Any person who
10 claims entitlement to any of these exemptions bears the burden
11 of proving such entitlement in any proceeding brought under
12 this chapter. The registration provisions of s. 517.07 do not
13 apply to any of the following securities:

14 (1) A security issued or guaranteed by the United
15 States or any territory or insular possession of the United
16 States, by the District of Columbia, or by any state of the
17 United States or by any political subdivision or agency or
18 other instrumentality thereof; provided that no person shall
19 directly or indirectly offer or sell securities, other than
20 general obligation bonds, under this subsection if the issuer
21 or guarantor is in default or has been in default any time
22 after December 31, 1975, as to principal or interest:

23 (a) With respect to an obligation issued by the issuer
24 or successor of the issuer; or

25 (b) With respect to an obligation guaranteed by the
26 guarantor or successor of the guarantor,

27
28 except by an offering circular containing a full and fair
29 disclosure as prescribed by rule of the commission ~~department~~.

30 (2) A security issued or guaranteed by any foreign
31 government with which the United States is maintaining

1 diplomatic relations at the time of the sale or offer of sale
2 of the security, or by any state, province, or political
3 subdivision thereof having the power of taxation or
4 assessment, which security is recognized at the time it is
5 offered for sale in this state as a valid obligation by such
6 foreign government or by such state, province, or political
7 subdivision thereof issuing the security.

8 (3) A security issued or guaranteed by:

9 (a) A national bank, a federally chartered savings and
10 loan association, or a federally chartered savings bank, or
11 the initial subscription for equity securities in such
12 national bank, federally chartered savings and loan
13 association, or federally chartered savings bank;

14 (b) Any federal land bank, joint-stock land bank, or
15 national farm loan association under the provisions of the
16 Federal Farm Loan Act of July 17, 1916;

17 (c) An international bank of which the United States
18 is a member; or

19 (d) A corporation created and acting as an
20 instrumentality of the government of the United States.

21 (4) A security issued or guaranteed, as to principal,
22 interest, or dividend, by a corporation owning or operating a
23 railroad or any other public service utility; provided that
24 such corporation is subject to regulation or supervision
25 whether as to its rates and charges or as to the issue of its
26 own securities by a public commission, board, or officer of
27 the government of the United States, of any state, territory,
28 or insular possession of the United States, of any
29 municipality located therein, of the District of Columbia, or
30 of the Dominion of Canada or of any province thereof; also
31 equipment securities based on chattel mortgages, leases, or

1 agreements for conditional sale of cars, motive power, or
2 other rolling stock mortgaged, leased, or sold to or furnished
3 for the use of or upon such railroad or other public service
4 utility corporation or where the ownership or title of such
5 equipment is pledged or retained in accordance with the
6 provisions of the laws of the United States or of any state or
7 of the Dominion of Canada to secure the payment of such
8 equipment securities; and also bonds, notes, or other
9 evidences of indebtedness issued by a holding corporation and
10 secured by collateral consisting of any securities hereinabove
11 described; provided, further, that the collateral securities
12 equal in fair value at least 125 percent of the par value of
13 the bonds, notes, or other evidences of indebtedness so
14 secured.

15 (5) A security issued or guaranteed by any of the
16 following which are subject to the examination, supervision,
17 or control of this state or of the Federal Deposit Insurance
18 Corporation or the National Credit Union Association:

- 19 (a) A bank,
20 (b) A trust company,
21 (c) A savings institution,
22 (d) A building or savings and loan association,
23 (e) An international development bank, or
24 (f) A credit union;

25
26 or the initial subscription for equity securities of any
27 institution listed in paragraphs (a)-(f), provided such
28 institution is subject to the examination, supervision, or
29 control of this state.

30 (6) A security, other than common stock, providing for
31 a fixed return, which security has been outstanding in the

1 hands of the public for a period of not less than 5 years, and
2 upon which security no default in payment of principal or
3 failure to pay the fixed return has occurred for an
4 immediately preceding period of 5 years.

5 (7) Securities of nonprofit agricultural cooperatives
6 organized under the laws of this state when the securities are
7 sold or offered for sale to persons principally engaged in
8 agricultural production or selling agricultural products.

9 (8) A note, draft, bill of exchange, or banker's
10 acceptance having a unit amount of \$25,000 or more which
11 arises out of a current transaction, or the proceeds of which
12 have been or are to be used for current transactions, and
13 which has a maturity period at the time of issuance not
14 exceeding 9 months exclusive of days of grace, or any renewal
15 thereof which has a maturity period likewise limited. This
16 subsection applies only to prime quality negotiable commercial
17 paper of a type not ordinarily purchased by the general
18 public; that is, paper issued to facilitate well-recognized
19 types of current operational business requirements and of a
20 type eligible for discounting by Federal Reserve banks.

21 (9) A security issued by a corporation organized and
22 operated exclusively for religious, educational, benevolent,
23 fraternal, charitable, or reformatory purposes and not for
24 pecuniary profit, no part of the net earnings of which
25 corporation inures to the benefit of any private stockholder
26 or individual, or any security of a fund that is excluded from
27 the definition of an investment company under s. 3(c)(10)(B)
28 of the Investment Company Act of 1940; provided that no person
29 shall directly or indirectly offer or sell securities under
30 this subsection except by an offering circular containing full
31 and fair disclosure, as prescribed by the rules of the

1 commission department, of all material information, including,
2 but not limited to, a description of the securities offered
3 and terms of the offering, a description of the nature of the
4 issuer's business, a statement of the purpose of the offering
5 and the intended application by the issuer of the proceeds
6 thereof, and financial statements of the issuer prepared in
7 conformance with generally accepted accounting principles.
8 Section 6(c) of the Philanthropy Protection Act of 1995, Pub.
9 L. No. 104-62, shall not preempt any provision of this
10 chapter.

11 (10) Any insurance or endowment policy or annuity
12 contract or optional annuity contract or self-insurance
13 agreement issued by a corporation, insurance company,
14 reciprocal insurer, or risk retention group subject to the
15 supervision of the insurance regulator ~~commissioner~~ or bank
16 regulator ~~commissioner~~, or any agency or officer performing
17 like functions, of any state or territory of the United States
18 or the District of Columbia.

19 Section 586. Section 517.061, Florida Statutes, is
20 amended to read:

21 517.061 Exempt transactions.--The exemption for each
22 transaction listed below is self-executing and does not
23 require any filing with the office ~~department~~ prior to
24 claiming such exemption. Any person who claims entitlement to
25 any of the exemptions bears the burden of proving such
26 entitlement in any proceeding brought under this chapter. The
27 registration provisions of s. 517.07 do not apply to any of
28 the following transactions; however, such transactions are
29 subject to the provisions of ss. 517.301, 517.311, and
30 517.312:

31

1 (1) At any judicial, executor's, administrator's,
2 guardian's, or conservator's sale, or at any sale by a
3 receiver or trustee in insolvency or bankruptcy, or any
4 transaction incident to a judicially approved reorganization
5 in which a security is issued in exchange for one or more
6 outstanding securities, claims, or property interests.

7 (2) By or for the account of a pledgeholder or
8 mortgagee selling or offering for sale or delivery in the
9 ordinary course of business and not for the purposes of
10 avoiding the provisions of this chapter, to liquidate a bona
11 fide debt, a security pledged in good faith as security for
12 such debt.

13 (3) The isolated sale or offer for sale of securities
14 when made by or on behalf of a vendor not the issuer or
15 underwriter of the securities, who, being the bona fide owner
16 of such securities, disposes of her or his own property for
17 her or his own account, and such sale is not made directly or
18 indirectly for the benefit of the issuer or an underwriter of
19 such securities or for the direct or indirect promotion of any
20 scheme or enterprise with the intent of violating or evading
21 any provision of this chapter. For purposes of this
22 subsection, isolated offers or sales include, but are not
23 limited to, an isolated offer or sale made by or on behalf of
24 a vendor of securities not the issuer or underwriter of the
25 securities if:

26 (a) The offer or sale of securities is in a
27 transaction satisfying all of the requirements of
28 subparagraphs (11)(a)1., 2., 3., and 4. and paragraph (11)(b);
29 or

30
31

1 (b) The offer or sale of securities is in a
2 transaction exempt under s. 4(1) of the Securities Act of
3 1933, as amended.

4
5 For purposes of this subsection, any person, including,
6 without limitation, a promoter or affiliate of an issuer,
7 shall not be deemed an underwriter, an issuer, or a person
8 acting for the direct or indirect benefit of the issuer or an
9 underwriter with respect to any securities of the issuer which
10 she or he has owned beneficially for at least 1 year.

11 (4) The distribution by a corporation, trust, or
12 partnership, actively engaged in the business authorized by
13 its charter or other organizational articles or agreement, of
14 securities to its stockholders or other equity security
15 holders, partners, or beneficiaries as a stock dividend or
16 other distribution out of earnings or surplus.

17 (5) The issuance of securities to such equity security
18 holders or other creditors of a corporation, trust, or
19 partnership in the process of a reorganization of such
20 corporation or entity, made in good faith and not for the
21 purpose of avoiding the provisions of this chapter, either in
22 exchange for the securities of such equity security holders or
23 claims of such creditors or partly for cash and partly in
24 exchange for the securities or claims of such equity security
25 holders or creditors.

26 (6) Any transaction involving the distribution of the
27 securities of an issuer exclusively among its own security
28 holders, including any person who at the time of the
29 transaction is a holder of any convertible security, any
30 nontransferable warrant, or any transferable warrant which is
31 exercisable within not more than 90 days of issuance, when no

1 commission or other remuneration is paid or given directly or
2 indirectly in connection with the sale or distribution of such
3 additional securities.

4 (7) The offer or sale of securities to a bank, trust
5 company, savings institution, insurance company, dealer,
6 investment company as defined by the Investment Company Act of
7 1940, pension or profit-sharing trust, or qualified
8 institutional buyer as defined by rule of the commission
9 ~~department~~ in accordance with Securities and Exchange
10 Commission Rule 144A (17 C.F.R. 230.144(A)(a)), whether any of
11 such entities is acting in its individual or fiduciary
12 capacity; provided that such offer or sale of securities is
13 not for the direct or indirect promotion of any scheme or
14 enterprise with the intent of violating or evading any
15 provision of this chapter.

16 (8) The sale of securities from one corporation to
17 another corporation provided that:

18 (a) The sale price of the securities is \$50,000 or
19 more; and

20 (b) The buyer and seller corporations each have assets
21 of \$500,000 or more.

22 (9) The offer or sale of securities from one
23 corporation to another corporation, or to security holders
24 thereof, pursuant to a vote or consent of such security
25 holders as may be provided by the articles of incorporation
26 and the applicable corporate statutes in connection with
27 mergers, share exchanges, consolidations, or sale of corporate
28 assets.

29 (10) The issuance of notes or bonds in connection with
30 the acquisition of real property or renewals thereof, if such
31

1 notes or bonds are issued to the sellers of, and are secured
2 by all or part of, the real property so acquired.

3 (11)(a) The offer or sale, by or on behalf of an
4 issuer, of its own securities, which offer or sale is part of
5 an offering made in accordance with all of the following
6 conditions:

7 1. There are no more than 35 purchasers, or the issuer
8 reasonably believes that there are no more than 35 purchasers,
9 of the securities of the issuer in this state during an
10 offering made in reliance upon this subsection or, if such
11 offering continues for a period in excess of 12 months, in any
12 consecutive 12-month period.

13 2. Neither the issuer nor any person acting on behalf
14 of the issuer offers or sells securities pursuant to this
15 subsection by means of any form of general solicitation or
16 general advertising in this state.

17 3. Prior to the sale, each purchaser or the
18 purchaser's representative, if any, is provided with, or given
19 reasonable access to, full and fair disclosure of all material
20 information.

21 4. No person defined as a "dealer" in this chapter is
22 paid a commission or compensation for the sale of the issuer's
23 securities unless such person is registered as a dealer under
24 this chapter.

25 5. When sales are made to five or more persons in this
26 state, any sale in this state made pursuant to this subsection
27 is voidable by the purchaser in such sale either within 3 days
28 after the first tender of consideration is made by such
29 purchaser to the issuer, an agent of the issuer, or an escrow
30 agent or within 3 days after the availability of that

31

1 privilege is communicated to such purchaser, whichever occurs
2 later.

3 (b) The following purchasers are excluded from the
4 calculation of the number of purchasers under subparagraph
5 (a)1.:

6 1. Any relative or spouse, or relative of such spouse,
7 of a purchaser who has the same principal residence as such
8 purchaser.

9 2. Any trust or estate in which a purchaser, any of
10 the persons related to such purchaser specified in
11 subparagraph 1., and any corporation specified in subparagraph
12 3. collectively have more than 50 percent of the beneficial
13 interest (excluding contingent interest).

14 3. Any corporation or other organization of which a
15 purchaser, any of the persons related to such purchaser
16 specified in subparagraph 1., and any trust or estate
17 specified in subparagraph 2. collectively are beneficial
18 owners of more than 50 percent of the equity securities or
19 equity interest.

20 4. Any purchaser who makes a bona fide investment of
21 \$100,000 or more, provided such purchaser or the purchaser's
22 representative receives, or has access to, the information
23 required to be disclosed by subparagraph (a)3.

24 5. Any accredited investor, as defined by rule of the
25 commission ~~department~~ in accordance with Securities and
26 Exchange Commission Regulation 230.501 (17 C.F.R. 230.501).

27 (c)1. For purposes of determining which offers and
28 sales of securities constitute part of the same offering under
29 this subsection and are therefore deemed to be integrated with
30 one another:

31

1 a. Offers or sales of securities occurring more than 6
2 months prior to an offer or sale of securities made pursuant
3 to this subsection shall not be considered part of the same
4 offering, provided there are no offers or sales by or for the
5 issuer of the same or a similar class of securities during
6 such 6-month period.

7 b. Offers or sales of securities occurring at any time
8 after 6 months from an offer or sale made pursuant to this
9 subsection shall not be considered part of the same offering,
10 provided there are no offers or sales by or for the issuer of
11 the same or a similar class of securities during such 6-month
12 period.

13 2. Offers or sales which do not satisfy the conditions
14 of any of the provisions of subparagraph 1. may or may not be
15 part of the same offering, depending on the particular facts
16 and circumstances in each case. The commission ~~department~~ may,
17 ~~but is not required to,~~ adopt a rule or rules indicating what
18 factors should be considered in determining whether offers and
19 sales not qualifying for the provisions of subparagraph 1. are
20 part of the same offering for purposes of this subsection.

21 (d) Offers or sales of securities made pursuant to,
22 and in compliance with, any other subsection of this section
23 or any subsection of s. 517.051 shall not be considered part
24 of an offering pursuant to this subsection, regardless of when
25 such offers and sales are made.

26 (12) The sale of securities by a bank or trust company
27 organized or incorporated under the laws of the United States
28 or this state at a profit to such bank or trust company of not
29 more than 2 percent of the total sale price of such
30 securities; provided that there is no solicitation of this
31 business by such bank or trust company where such bank or

1 trust company acts as agent in the purchase or sale of such
2 securities.

3 (13) An unsolicited purchase or sale of securities on
4 order of, and as the agent for, another by a dealer registered
5 ~~with the Department of Banking and Finance~~ pursuant to the
6 provisions of s. 517.12; provided that this exemption applies
7 solely and exclusively to such registered dealers and does not
8 authorize or permit the purchase or sale of securities on
9 order of, and as agent for, another by any person other than a
10 dealer so registered; and provided, further, that such
11 purchase or sale is not directly or indirectly for the benefit
12 of the issuer or an underwriter of such securities or for the
13 direct or indirect promotion of any scheme or enterprise with
14 the intent of violation or evading any provision of this
15 chapter.

16 (14) The offer or sale of shares of a corporation
17 which represent ownership, or entitle the holders of the
18 shares to possession and occupancy, of specific apartment
19 units in property owned by such corporation and organized and
20 operated on a cooperative basis, solely for residential
21 purposes.

22 (15) The offer or sale of securities under a bona fide
23 employer-sponsored stock option, stock purchase, pension,
24 profit-sharing, savings, or other benefit plan when offered
25 only to employees of the sponsoring organization or to
26 employees of its controlled subsidiaries.

27 (16) The sale by or through a registered dealer of any
28 securities option if at the time of the sale of the option:

29 (a) The performance of the terms of the option is
30 guaranteed by any dealer registered under the federal
31 Securities Exchange Act of 1934, as amended, which guaranty

1 and dealer are in compliance with such requirements or rules
2 as may be approved or adopted by the commission ~~department~~; or

3 (b) Such options transactions are cleared by the
4 Options Clearing Corporation or any other clearinghouse
5 recognized by the office ~~department~~; and

6 (c) The option is not sold by or for the benefit of
7 the issuer of the underlying security; and

8 (d) The underlying security may be purchased or sold
9 on a recognized securities exchange or is quoted on the
10 National Association of Securities Dealers Automated Quotation
11 System; and

12 (e) Such sale is not directly or indirectly for the
13 purpose of providing or furthering any scheme to violate or
14 evade any provisions of this chapter.

15 (17)(a) The offer or sale of securities, as agent or
16 principal, by a dealer registered pursuant to s. 517.12, when
17 such securities are offered or sold at a price reasonably
18 related to the current market price of such securities,
19 provided such securities are:

20 1. Securities of an issuer for which reports are
21 required to be filed by s. 13 or s. 15(d) of the Securities
22 Exchange Act of 1934, as amended;

23 2. Securities of a company registered under the
24 Investment Company Act of 1940, as amended;

25 3. Securities of an insurance company, as that term is
26 defined in s. 2(a)(17) of the Investment Company Act of 1940,
27 as amended;

28 4. Securities, other than any security that is a
29 federal covered security pursuant to s. 18(b)(1) of the
30 Securities Act of 1933 and is not subject to any registration
31 or filing requirements under this act, which appear in any

1 list of securities dealt in on any stock exchange registered
2 pursuant to the Securities Exchange Act of 1934, as amended,
3 and which securities have been listed or approved for listing
4 upon notice of issuance by such exchange, and also all
5 securities senior to any securities so listed or approved for
6 listing upon notice of issuance, or represented by
7 subscription rights which have been so listed or approved for
8 listing upon notice of issuance, or evidences of indebtedness
9 guaranteed by companies any stock of which is so listed or
10 approved for listing upon notice of issuance, such securities
11 to be exempt only so long as such listings or approvals remain
12 in effect. The exemption provided for herein does not apply
13 when the securities are suspended from listing approval for
14 listing or trading.

15 (b) The exemption provided in this subsection does not
16 apply if the sale is made for the direct or indirect benefit
17 of an issuer or controlling persons of such issuer or if such
18 securities constitute the whole or part of an unsold allotment
19 to, or subscription or participation by, a dealer as an
20 underwriter of such securities.

21 (c) This exemption shall not be available for any
22 securities which have been denied registration ~~by the~~
23 ~~department~~ pursuant to s. 517.111. Additionally, the office
24 ~~department~~ may deny this exemption with reference to any
25 particular security, other than a federal covered security, by
26 order published in such manner as the office ~~department~~ finds
27 proper.

28 (18) The offer or sale of any security effected by or
29 through a person registered pursuant to s. 517.12(17).

30 (19) Other transactions defined by rules as
31 transactions exempted from the registration provisions of s.

1 517.07, which rules the commission ~~department~~ may, ~~but is not~~
2 ~~required to,~~ adopt from time to time, but only after a finding
3 by the office ~~department~~ that the application of the
4 provisions of s. 517.07 to a particular transaction is not
5 necessary in the public interest and for the protection of
6 investors because of the small dollar amount of securities
7 involved or the limited character of the offering. In
8 conjunction with its adoption of such rules, the commission
9 ~~department~~ may also provide in such rules that persons selling
10 or offering for sale the exempted securities are exempt from
11 the registration requirements of s. 517.12. No rule so
12 adopted may have the effect of narrowing or limiting any
13 exemption provided for by statute in the other subsections of
14 this section.

15 (20) Any nonissuer transaction by a registered
16 associated person of a registered dealer, and any resale
17 transaction by a sponsor of a unit investment trust registered
18 under the Investment Company Act of 1940, in a security of a
19 class that has been outstanding in the hands of the public for
20 at least 90 days; provided, at the time of the transaction:

21 (a) The issuer of the security is actually engaged in
22 business and is not in the organization stage or in bankruptcy
23 or receivership and is not a blank check, blind pool, or shell
24 company whose primary plan of business is to engage in a
25 merger or combination of the business with, or an acquisition
26 of, any unidentified person;

27 (b) The security is sold at a price reasonably related
28 to the current market price of the security;

29 (c) The security does not constitute the whole or part
30 of an unsold allotment to, or a subscription or participation
31 by, the broker-dealer as an underwriter of the security;

1 (d) A nationally recognized securities manual
2 designated by rule of the commission or order of the office
3 ~~department~~ or a document filed with the Securities and
4 Exchange Commission that is publicly available through the
5 commission's electronic data gathering and retrieval system
6 contains:

7 1. A description of the business and operations of the
8 issuer;

9 2. The names of the issuer's officers and directors,
10 if any, or, in the case of an issuer not domiciled in the
11 United States, the corporate equivalents of such persons in
12 the issuer's country of domicile;

13 3. An audited balance sheet of the issuer as of a date
14 within 18 months before such transaction or, in the case of a
15 reorganization or merger in which parties to the
16 reorganization or merger had such audited balance sheet, a pro
17 forma balance sheet; and

18 4. An audited income statement for each of the
19 issuer's immediately preceding 2 fiscal years, or for the
20 period of existence of the issuer, if in existence for less
21 than 2 years or, in the case of a reorganization or merger in
22 which the parties to the reorganization or merger had such
23 audited income statement, a pro forma income statement; and

24 (e) The issuer of the security has a class of equity
25 securities listed on a national securities exchange registered
26 under the Securities Exchange Act of 1934 or designated for
27 trading on the National Association of Securities Dealers
28 Automated Quotation System, unless:

29 1. The issuer of the security is a unit investment
30 trust registered under the Investment Company Act of 1940;

31

1 2. The issuer of the security has been engaged in
2 continuous business, including predecessors, for at least 3
3 years; or

4 3. The issuer of the security has total assets of at
5 least \$2 million based on an audited balance sheet as of a
6 date within 18 months before such transaction or, in the case
7 of a reorganization or merger in which parties to the
8 reorganization or merger had such audited balance sheet, a pro
9 forma balance sheet.

10 Section 587. Section 517.07, Florida Statutes, is
11 amended to read:

12 517.07 Registration of securities.--

13 (1) It is unlawful and a violation of this chapter for
14 any person to sell or offer to sell a security within this
15 state unless the security is exempt under s. 517.051, is sold
16 in a transaction exempt under s. 517.061, is a federal covered
17 security, or is registered pursuant to this chapter.

18 (2) No securities that are required to be registered
19 under this chapter shall be sold or offered for sale within
20 this state unless such securities have been registered
21 pursuant to this chapter and unless prior to each sale the
22 purchaser is furnished with a prospectus meeting the
23 requirements of rules adopted by the commission ~~department~~.

24 (3) The office ~~department~~ shall issue a permit when
25 registration has been granted by the office ~~department~~. A
26 permit to sell securities is effective for 1 year from the
27 date it was granted. Registration of securities shall be
28 deemed to include the registration of rights to subscribe to
29 such securities if the application under s. 517.081 or s.
30 517.082 for registration of such securities includes a
31 statement that such rights are to be issued.

1 (4) A record of the registration of securities shall
2 be kept by ~~in~~ the office ~~of the department~~, in which register
3 of securities shall also be recorded any orders entered by the
4 office ~~department~~ with respect to such securities. Such
5 register, and all information with respect to the securities
6 registered therein, shall be open to public inspection.

7 (5) Notwithstanding any other provision of this
8 section, offers of securities required to be registered by
9 this section may be made in this state before the registration
10 of such securities if the offers are made in conformity with
11 rules adopted by the commission ~~department~~.

12 Section 588. Subsections (2), (3), (4), and (5) of
13 section 517.075, Florida Statutes, are amended to read:

14 517.075 Cuba, prospectus disclosure of doing business
15 with, required.--

16 (2) Any disclosure required by subsection (1) must
17 include:

18 (a) The name of such person, affiliate, or government
19 with which the issuer does business and the nature of that
20 business;

21 (b) A statement that the information is accurate as of
22 the date the securities were effective with the United States
23 Securities and Exchange Commission or with the office
24 ~~department~~, whichever date is later; and

25 (c) A statement that current information concerning
26 the issuer's business dealings with the government of Cuba or
27 with any person or affiliate located in Cuba may be obtained
28 from the office ~~Department of Banking and Finance~~, which
29 statement must include the address and phone number of the
30 office ~~department~~.

31

1 (3) If an issuer commences engaging in business with
2 the government of Cuba or with any person or affiliate located
3 in Cuba, after the date issuer's securities become effective
4 with the Securities and Exchange Commission or with the office
5 ~~department~~, whichever date is later, or if the information
6 reported in the prospectus concerning that business changes in
7 any material way, the issuer must provide the office
8 ~~department~~ notice of that business or change, as appropriate,
9 in a manner form acceptable to the office ~~department~~. The
10 commission department shall prescribe by rule a form for
11 persons to use to report the commencement of such business or
12 any change in such business which occurs after the effective
13 registration of such securities. This form must include, at a
14 minimum, the information required by subsection (2). The
15 information reported on the form must be kept current.
16 Information is current if reported to the office ~~department~~
17 within 90 days after the commencement of business or within 90
18 days after the change occurs with respect to previously
19 reported information.

20 (4) The office ~~department~~ shall provide, upon request,
21 a copy of any form filed with the office ~~department~~ under
22 subsection (3) to any person requesting the form.

23 (5) Each securities offering sold in violation of this
24 section, and each failure of an issuer to timely file the form
25 required by subsection (3), subjects the issuer to a fine of
26 up to \$5,000. Any fine collected under this section shall be
27 deposited into the Anti-Fraud Trust Fund of the office
28 ~~Department of Banking and Finance~~.

29 Section 589. Section 517.081, Florida Statutes, is
30 amended to read:

31 517.081 Registration procedure.--

1 (1) All securities required by this chapter to be
2 registered before being sold in this state and not entitled to
3 registration by notification shall be registered in the manner
4 provided by this section.

5 (2) The office ~~department~~ shall receive and act upon
6 applications to have securities registered and the commission
7 may prescribe forms on which it may require such applications
8 to be submitted. Applications shall be duly signed by the
9 applicant, sworn to by any person having knowledge of the
10 facts, and filed with the office ~~department~~. The commission
11 ~~department~~ may establish, by rule, procedures for depositing
12 fees and filing documents by electronic means provided such
13 procedures provide the office ~~department~~ with the information
14 and data required by this section. An application may be made
15 either by the issuer of the securities for which registration
16 is applied or by any registered dealer desiring to sell the
17 same within the state.

18 (3) The office ~~department~~ may require the applicant to
19 submit to the office ~~department~~ the following information
20 concerning the issuer and such other relevant information as
21 the office ~~department~~ may in its judgment deem necessary to
22 enable it to ascertain whether such securities shall be
23 registered pursuant to the provisions of this section:

24 (a) The names and addresses of the directors,
25 trustees, and officers, if the issuer be a corporation,
26 association, or trust; of all the partners, if the issuer be a
27 partnership; or of the issuer, if the issuer be an individual.

28 (b) The location of the issuer's principal business
29 office and of its principal office in this state, if any.

30

31

1 (c) The general character of the business actually to
2 be transacted by the issuer and the purposes of the proposed
3 issue.

4 (d) A statement of the capitalization of the issuer.

5 (e) A balance sheet showing the amount and general
6 character of its assets and liabilities on a day not more than
7 90 days prior to the date of filing such balance sheet or such
8 longer period of time, not exceeding 6 months, as the office
9 ~~department~~ may permit at the written request of the issuer on
10 a showing of good cause therefor.

11 (f) A detailed statement of the plan upon which the
12 issuer proposes to transact business.

13 (g)1. A specimen copy of the security and a copy of
14 any circular, prospectus, advertisement, or other description
15 of such securities.

16 2. The commission ~~department~~ shall adopt a form for a
17 simplified offering circular to be used solely by corporations
18 to register, under this section, securities of the corporation
19 that are sold in offerings in which the aggregate offering
20 price in any consecutive 12-month period does not exceed the
21 amount provided in s. 3(b) of the Securities Act of 1933. The
22 following issuers shall not be eligible to submit a simplified
23 offering circular adopted pursuant to this subparagraph:

24 a. An issuer seeking to register securities for resale
25 by persons other than the issuer.

26 b. An issuer who is subject to any of the
27 disqualifications described in 17 C.F.R. s. 230.262, adopted
28 pursuant to the Securities Act of 1933, or who has been or is
29 engaged or is about to engage in an activity that would be
30 grounds for denial, revocation, or suspension under s.
31 517.111. For purposes of this subparagraph, an issuer includes

1 an issuer's director, officer, shareholder who owns at least
2 10 percent of the shares of the issuer, promoter, or selling
3 agent of the securities to be offered or any officer,
4 director, or partner of such selling agent.

5 c. An issuer who is a development-stage company that
6 either has no specific business plan or purpose or has
7 indicated that its business plan is to merge with an
8 unidentified company or companies.

9 d. An issuer of offerings in which the specific
10 business or properties cannot be described.

11 e. Any issuer the office ~~department~~ determines is
12 ineligible if the form would not provide full and fair
13 disclosure of material information for the type of offering to
14 be registered by the issuer.

15 f. Any corporation which has failed to provide the
16 office ~~department~~ the reports required for a previous offering
17 registered pursuant to this subparagraph.

18
19 As a condition precedent to qualifying for use of the
20 simplified offering circular, a corporation shall agree to
21 provide the office ~~department~~ with an annual financial report
22 containing a balance sheet as of the end of the issuer's
23 fiscal year and a statement of income for such year, prepared
24 in accordance with generally accepted accounting principles
25 and accompanied by an independent accountant's report. If the
26 issuer has more than 100 security holders at the end of a
27 fiscal year, the financial statements must be audited. Annual
28 financial reports must be filed with the office ~~department~~
29 within 90 days after the close of the issuer's fiscal year for
30 each of the first 5 years following the effective date of the
31 registration.

1 (h) A statement of the amount of the issuer's income,
2 expenses, and fixed charges during the last fiscal year or, if
3 in actual business less than 1 year, then for such time as the
4 issuer has been in actual business.

5 (i) A statement of the issuer's cash sources and
6 application during the last fiscal year or, if in actual
7 business less than 1 year, then for such time as the issuer
8 has been in actual business.

9 (j) A statement showing the maximum price at which
10 such security is proposed to be sold, together with the
11 maximum amount of commission, including expenses, or other
12 form of remuneration to be paid in cash or otherwise, directly
13 or indirectly, for or in connection with the sale or offering
14 for sale of such securities.

15 (k) A copy of the opinion or opinions of counsel
16 concerning the legality of the issue or other matters which
17 the office ~~department~~ may determine to be relevant to the
18 issue.

19 (l) A detailed statement showing the items of cash,
20 property, services, patents, good will, and any other
21 consideration in payment for which such securities have been
22 or are to be issued.

23 (m) The amount of securities to be set aside and
24 disposed of and a statement of all securities issued from time
25 to time for promotional purposes.

26 (n) If the issuer is a corporation, there shall be
27 filed with the application a copy of its articles of
28 incorporation with all amendments and of its existing bylaws,
29 if not already on file in the office ~~department~~. If the
30 issuer is a trustee, there shall be filed with the application
31 a copy of all instruments by which the trust is created or

1 declared and in which it is accepted and acknowledged. If the
2 issuer is a partnership, unincorporated association,
3 joint-stock company, or any other form of organization
4 whatsoever, there shall be filed with the application a copy
5 of its articles of partnership or association and all other
6 papers pertaining to its organization, if not already on file
7 in the office ~~department~~.

8 (4) All of the statements, exhibits, and documents of
9 every kind required ~~by the department~~ under this section,
10 except properly certified public documents, shall be verified
11 by the oath of the applicant or of the issuer in such manner
12 and form as may be required by the commission ~~department~~.

13 (5) The commission ~~department~~ may by rule fix the
14 maximum discounts, commissions, expenses, remuneration, and
15 other compensation to be paid in cash or otherwise, not to
16 exceed 20 percent, directly or indirectly, for or in
17 connection with the sale or offering for sale of such
18 securities in this state.

19 (6) An issuer filing an application under this section
20 shall, at the time of filing, pay the office ~~department~~ a
21 nonreturnable fee of \$1,000 per application.

22 (7) If upon examination of any application the office
23 ~~department~~ shall find that the sale of the security referred
24 to therein would not be fraudulent and would not work or tend
25 to work a fraud upon the purchaser, that the terms of the sale
26 of such securities would be fair, just, and equitable, and
27 that the enterprise or business of the issuer is not based
28 upon unsound business principles, it shall record the
29 registration of such security in the register of securities;
30 and thereupon such security so registered may be sold by any
31

1 registered dealer, subject, however, to the further order of
2 the office ~~department~~.

3 Section 590. Section 517.082, Florida Statutes, is
4 amended to read:

5 517.082 Notification registration.--

6 (1) Except as provided in subsection (3), securities
7 offered or sold pursuant to a registration statement filed
8 under the Securities Act of 1933 shall be entitled to
9 registration by notification in the manner provided in
10 subsection (2), provided that prior to the offer or sale the
11 registration statement has become effective.

12 (2) An application for registration by notification
13 shall be filed with the office ~~department~~, shall contain the
14 following information, and shall be accompanied by the
15 following:

16 (a) An application to sell executed by the issuer, any
17 person on whose behalf the offering is made, a dealer
18 registered under this chapter, or any duly authorized agent of
19 any such person, setting forth the name and address of the
20 applicant, the name and address of the issuer, and the title
21 of the securities to be offered and sold;

22 (b) Copies of such documents filed with the Securities
23 and Exchange Commission as the Financial Services Commission
24 ~~department~~ may by rule require;

25 (c) An irrevocable written consent to service as
26 required by s. 517.101; and

27 (d) A nonreturnable fee of \$1,000 per application.
28

29 A registration under this section becomes effective when the
30 federal registration statement becomes effective or as of the
31 date the application is filed with the office ~~department~~,

1 whichever is later, provided that, in addition to the items
2 listed in paragraphs (a)-(d), the office ~~department~~ has
3 received written notification of effective registration under
4 the Securities Act of 1933 or the Investment Company Act of
5 1940 within 10 business days from the date federal
6 registration is granted. Failure to provide all the
7 information required by this subsection to the office
8 ~~department~~ within 60 days of the date the registration
9 statement becomes effective with the Securities and Exchange
10 Commission shall be a violation of this chapter.

11 (3) Except for units of limited partnership interests
12 or such other securities as the commission ~~department~~
13 describes by rule as exempt from this subsection due to high
14 investment quality, the provisions of this section may not be
15 used to register securities if the offering price at the time
16 of effectiveness with the Securities and Exchange Commission
17 is \$5 or less per share, unless such securities are listed or
18 designated, or approved for listing or designation upon notice
19 of issuance, on a stock exchange registered pursuant to the
20 Securities Exchange Act of 1934 or on the National Association
21 of Securities Dealers Automated Quotation (NASDAQ) System, or
22 unless such securities are of the same issuer and of senior or
23 substantially equal rank to securities so listed or
24 designated.

25 (4) In lieu of filing with the office ~~department~~ the
26 application, fees, and documents for registration required by
27 subsection (2), the commission ~~department~~ may establish, by
28 rule, procedures for depositing fees and filing documents by
29 electronic means, provided such procedures provide the office
30 ~~department~~ with the information and data required by this
31 section.

1 Section 591. Section 517.101, Florida Statutes, is
2 amended to read:

3 517.101 Consent to service.--

4 (1) Upon any initial application for registration
5 under s. 517.081 or s. 517.082 or upon request of the office
6 ~~department~~, the issuer shall file with such application the
7 irrevocable written consent of the issuer that in suits,
8 proceedings, and actions growing out of the violation of any
9 provision of this chapter, the service on the office
10 ~~department~~ of a notice, process, or pleading therein,
11 authorized by the laws of this state, shall be as valid and
12 binding as if due service had been made on the issuer.

13 (2) Any such action shall be brought either in the
14 county of the plaintiff's residence or in the county in which
15 the office ~~department~~ has its official headquarters. The
16 written consent shall be authenticated by the seal of said
17 issuer, if it has a seal, and by the acknowledged signature of
18 a member of the copartnership or company, or by the
19 acknowledged signature of any officer of the incorporated or
20 unincorporated association, if it be an incorporated or
21 unincorporated association, duly authorized by resolution of
22 the board of directors, trustees, or managers of the
23 corporation or association, and shall in such case be
24 accompanied by a duly certified copy of the resolution of the
25 board of directors, trustees, or managers of the corporation
26 or association, authorizing the officers to execute the same.
27 In case any process or pleadings mentioned in this chapter are
28 served upon the office ~~department~~, it shall be by duplicate
29 copies, one of which shall be filed in the office ~~department~~
30 and another immediately forwarded by the office ~~department~~ by
31

1 registered mail to the principal office of the issuer against
2 which said process or pleadings are directed.

3 Section 592. Section 517.111, Florida Statutes, is
4 amended to read:

5 517.111 Revocation or denial of registration of
6 securities.--

7 (1) The office ~~department~~ may revoke or suspend the
8 registration of any security, or may deny any application to
9 register securities, if upon examination into the affairs of
10 the issuer of such security it shall appear that:

11 (a) The issuer is insolvent;

12 (b) The issuer or any officer, director, or control
13 person of the issuer has violated any provision of this
14 chapter or any rule made hereunder or any order of the office
15 ~~department~~ of which such issuer has notice;

16 (c) The issuer or any officer, director, or control
17 person of the issuer has been or is engaged or is about to
18 engage in fraudulent transactions;

19 (d) The issuer or any officer, director, or control
20 person of the issuer has been found guilty of a fraudulent act
21 in connection with any sale of securities, has engaged, is
22 engaged, or is about to engage, in making a fictitious sale or
23 purchase of any security, or in any practice or sale of any
24 security which is fraudulent or a violation of any law;

25 (e) The issuer or any officer, director, or control
26 person of the issuer has had a final judgment entered against
27 such issuer or person in a civil action on the grounds of
28 fraud, embezzlement, misrepresentation, or deceit;

29 (f) The issuer or any officer, director, or control
30 person of the issuer has demonstrated any evidence of
31 unworthiness;

1 (g) The issuer or any officer, director, or control
2 person of the issuer is in any other way dishonest or has made
3 any fraudulent representations or failed to disclose any
4 material information in any prospectus or in any circular or
5 other literature that has been distributed concerning the
6 issuer or its securities;

7 (h) The security registered or sought to be registered
8 is the subject of an injunction entered by a court of
9 competent jurisdiction or is the subject of an administrative
10 stop-order or similar order prohibiting the offer or sale of
11 the security;

12 (i) For any security for which registration has been
13 applied pursuant to s. 517.081, the terms of the offer or sale
14 of such securities would not be fair, just, or equitable; or

15 (j) The issuer or any person acting on behalf of the
16 issuer has failed to timely complete any application for
17 registration filed with the office ~~department~~ pursuant to the
18 provisions of s. 517.081 or s. 517.082 or any rule adopted
19 under such sections.

20
21 In making such examination, the office ~~department~~ shall have
22 access to and may compel the production of all the books and
23 papers of such issuer and may administer oaths to and examine
24 the officers of such issuer or any other person connected
25 therewith as to its business and affairs and may also require
26 a balance sheet exhibiting the assets and liabilities of any
27 such issuer or its income statement, or both, to be certified
28 to by a public accountant either of this state or of any other
29 state where the issuer's business is located. Whenever the
30 office deems ~~department may deem~~ it necessary, it may also
31 require such balance sheet or income statement, or both, to be

1 made more specific in such particulars as the office
2 ~~department~~ may require.

3 (2) If any issuer shall refuse to permit an
4 examination to be made by the office ~~department~~, it shall be
5 proper ground for revocation of registration.

6 (3) If the office deems ~~department shall deem~~ it
7 necessary, it may enter an order suspending the right to sell
8 securities pending any investigation, provided that the order
9 shall state the office's ~~department's~~ grounds for taking such
10 action.

11 (4) Notice of the entry of such order shall be given
12 by mail, personally, by telephone confirmed in writing, or by
13 telegraph to the issuer. Before such order is made final, the
14 issuer applying for registration shall, on application, be
15 entitled to a hearing.

16 (5) The office ~~department~~ may deny any request to
17 terminate any registration or to withdraw any application for
18 registration if the office ~~department~~ believes that an act
19 which would be grounds for denial, suspension, or revocation
20 under this chapter has been committed.

21 Section 593. Section 517.12, Florida Statutes, is
22 amended to read:

23 517.12 Registration of dealers, associated persons,
24 investment advisers, and branch offices.--

25 (1) No dealer, associated person, or issuer of
26 securities shall sell or offer for sale any securities in or
27 from offices in this state, or sell securities to persons in
28 this state from offices outside this state, by mail or
29 otherwise, unless the person has been registered with the
30 office ~~department~~ pursuant to the provisions of this section.
31 The office ~~department~~ shall not register any person as an

1 associated person of a dealer unless the dealer with which the
2 applicant seeks registration is lawfully registered with the
3 office ~~department~~ pursuant to this chapter.

4 (2) The registration requirements of this section do
5 not apply to the issuers of securities exempted by s.
6 517.051(1)-(8) and (10).

7 (3) Except as otherwise provided in s.
8 517.061(11)(a)4., (13), (16), (17), or (19), the registration
9 requirements of this section do not apply in a transaction
10 exempted by s. 517.061(1)-(12), (14), and (15).

11 (4) No investment adviser or associated person of an
12 investment adviser or federal covered adviser shall engage in
13 business from offices in this state, or render investment
14 advice to persons of this state, by mail or otherwise, unless
15 the federal covered adviser has made a notice filing with the
16 office ~~department~~ pursuant to s. 517.1201 or the investment
17 adviser is registered pursuant to the provisions of this
18 chapter and associated persons of the federal covered adviser
19 or investment adviser have been registered with the office
20 ~~department~~ pursuant to this section. The office ~~department~~
21 shall not register any person or an associated person of a
22 federal covered adviser or an investment adviser unless the
23 federal covered adviser or investment adviser with which the
24 applicant seeks registration is in compliance with the notice
25 filing requirements of s. 517.1201 or is lawfully registered
26 with the office ~~department~~ pursuant to this chapter. A dealer
27 or associated person who is registered pursuant to this
28 section may render investment advice upon notification to and
29 approval from the office ~~department~~.

30 (5) No dealer or investment adviser shall conduct
31 business from a branch office within this state unless the

1 branch office is registered with the office ~~department~~
2 pursuant to the provisions of this section.

3 (6) A dealer, associated person, investment adviser,
4 or branch office, in order to obtain registration, must file
5 with the office ~~department~~ a written application, on a form
6 which the commission ~~department~~ may by rule prescribe,
7 verified under oath. The commission ~~department~~ may establish,
8 by rule, procedures for depositing fees and filing documents
9 by electronic means provided such procedures provide the
10 office ~~department~~ with the information and data required by
11 this section. Each dealer or investment adviser must also file
12 an irrevocable written consent to service of civil process
13 similar to that provided for in s. 517.101. The application
14 shall contain such information as the commission or office
15 ~~department~~ may require concerning such matters as:

16 (a) The name of the applicant and the address of its
17 principal office and each office in this state.

18 (b) The applicant's form and place of organization;
19 and, if the applicant is a corporation, a copy of its articles
20 of incorporation and amendments to the articles of
21 incorporation or, if a partnership, a copy of the partnership
22 agreement.

23 (c) The applicant's proposed method of doing business
24 and financial condition and history, including a certified
25 financial statement showing all assets and all liabilities,
26 including contingent liabilities of the applicant as of a date
27 not more than 90 days prior to the filing of the application.

28 (d) The names and addresses of all associated persons
29 of the applicant to be employed in this state and the offices
30 to which they will be assigned.

31

1 (7) The application shall also contain such
2 information as the commission or office ~~department~~ may require
3 about the applicant; any partner, officer, or director of the
4 applicant or any person having a similar status or performing
5 similar functions; any person directly or indirectly
6 controlling the applicant; or any employee of a dealer or of
7 an investment adviser rendering investment advisory services.
8 Each applicant shall file a complete set of fingerprints taken
9 by an authorized law enforcement officer. Such fingerprints
10 shall be submitted to the Department of Law Enforcement or the
11 Federal Bureau of Investigation for state and federal
12 processing. The commission ~~department~~ may waive, by rule, the
13 requirement that applicants must file a set of fingerprints or
14 the requirement that such fingerprints must be processed by
15 the Department of Law Enforcement or the Federal Bureau of
16 Investigation. The commission or office ~~department~~ may
17 require information about any such applicant or person
18 concerning such matters as:

19 (a) His or her full name, and any other names by which
20 he or she may have been known, and his or her age, photograph,
21 qualifications, and educational and business history.

22 (b) Any injunction or administrative order by a state
23 or federal agency, national securities exchange, or national
24 securities association involving a security or any aspect of
25 the securities business and any injunction or administrative
26 order by a state or federal agency regulating banking,
27 insurance, finance, or small loan companies, real estate,
28 mortgage brokers, or other related or similar industries,
29 which injunctions or administrative orders relate to such
30 person.

31

1 (c) His or her conviction of, or plea of nolo
2 contendere to, a criminal offense or his or her commission of
3 any acts which would be grounds for refusal of an application
4 under s. 517.161.

5 (d) The names and addresses of other persons of whom
6 the office ~~department~~ may inquire as to his or her character,
7 reputation, and financial responsibility.

8 (8) The commission or office ~~department~~ may require
9 the applicant or one or more principals or general partners,
10 or natural persons exercising similar functions, or any
11 associated person applicant to successfully pass oral or
12 written examinations. Because any principal, manager,
13 supervisor, or person exercising similar functions shall be
14 responsible for the acts of the associated persons affiliated
15 with a dealer or investment adviser, the examination standards
16 may be higher for a dealer, office manager, principal, or
17 person exercising similar functions than for a nonsupervisory
18 associated person. The commission ~~department~~ may waive the
19 examination process when it determines that such examinations
20 are not in the public interest. The office ~~department~~ shall
21 waive the examination requirements for any person who has
22 passed any tests as prescribed in s. 15(b)(7) of the
23 Securities Exchange Act of 1934 that relates to the position
24 to be filled by the applicant.

25 (9)(a) All dealers, except securities dealers who are
26 designated by the Federal Reserve Bank of New York as primary
27 government securities dealers or securities dealers registered
28 as issuers of securities, shall comply with the net capital
29 and ratio requirements imposed pursuant to the Securities
30 Exchange Act of 1934. The commission ~~department~~ may by rule
31 require a dealer to file with the office ~~department~~ any

1 financial or operational information that is required to be
2 filed by the Securities Exchange Act of 1934 or any rules
3 adopted under such act.

4 (b) The commission ~~department~~ may by rule require the
5 maintenance of a minimum net capital for securities dealers
6 who are designated by the Federal Reserve Bank of New York as
7 primary government securities dealers and securities dealers
8 registered as issuers of securities and investment advisers,
9 or prescribe a ratio between net capital and aggregate
10 indebtedness, to assure adequate protection for the investing
11 public. The provisions of this section shall not apply to any
12 investment adviser that maintains its principal place of
13 business in a state other than this state, provided such
14 investment adviser is registered in the state where it
15 maintains its principal place of business and is in compliance
16 with such state's net capital requirements.

17 (10) An applicant for registration shall pay an
18 assessment fee of \$200, in the case of a dealer or investment
19 adviser, or \$40, in the case of an associated person. The
20 assessment fee of an associated person shall be reduced to
21 \$30, but only after the office ~~department~~ determines, by final
22 order, that sufficient funds have been allocated to the
23 Securities Guaranty Fund pursuant to s. 517.1203 to satisfy
24 all valid claims filed in accordance with s. 517.1203(2) and
25 after all amounts payable under any service contract entered
26 into by the office ~~department~~ pursuant to s. 517.1204, and all
27 notes, bonds, certificates of indebtedness, other obligations,
28 or evidences of indebtedness secured by such notes, bonds,
29 certificates of indebtedness, or other obligations, have been
30 paid or provision has been made for the payment of such
31 amounts, notes, bonds, certificates of indebtedness, other

1 obligations, or evidences of indebtedness. An associated
2 person not having current fingerprint cards filed with the
3 National Association of Securities Dealers or a national
4 securities exchange registered with the Securities and
5 Exchange Commission shall be assessed an additional fee to
6 cover the cost for said fingerprint cards to be processed by
7 the office ~~department~~. Such fee shall be determined by rule
8 of the commission ~~department~~. Each dealer and each investment
9 adviser shall pay an assessment fee of \$100 for each office in
10 this state, except its designated principal office. Such fees
11 become the revenue of the state, except for those assessments
12 provided for under s. 517.131(1) until such time as the
13 Securities Guaranty Fund satisfies the statutory limits, and
14 are not returnable in the event that registration is withdrawn
15 or not granted.

16 (11) If the office ~~department~~ finds that the applicant
17 is of good repute and character and has complied with the
18 provisions of this chapter and the rules made pursuant hereto,
19 it shall register the applicant. The registration of each
20 dealer, investment adviser, and associated person will expire
21 on December 31, and the registration of each branch office
22 will expire on March 31, of the year in which it became
23 effective unless the registrant has renewed its registration
24 on or before that date. Registration may be renewed by
25 furnishing such information as the commission ~~department~~ may
26 require, together with payment of the fee required in
27 subsection (10) for dealers, investment advisers, associated
28 persons, or branch offices and the payment of any amount
29 lawfully due and owing to the office ~~department~~ pursuant to
30 any order of the office ~~department~~ or pursuant to any
31 agreement with the office ~~department~~. Any dealer, investment

1 adviser, or associated person registrant who has not renewed a
2 registration by the time the current registration expires may
3 request reinstatement of such registration by filing with the
4 office ~~department~~, on or before January 31 of the year
5 following the year of expiration, such information as may be
6 required by the commission ~~department~~, together with payment
7 of the fee required in subsection (10) for dealers, investment
8 advisers, or associated persons and a late fee equal to the
9 amount of such fee. Any reinstatement of registration granted
10 by the office ~~department~~ during the month of January shall be
11 deemed effective retroactive to January 1 of that year.

12 (12)(a) The office ~~department~~ may issue a license to a
13 dealer, investment adviser, associated person, or branch
14 office to evidence registration under this chapter. The
15 office ~~department~~ may require the return to the office
16 ~~department~~ of any license it may issue prior to issuing a new
17 license.

18 (b) Every dealer, investment adviser, or federal
19 covered adviser shall promptly file with the office
20 ~~department~~, as prescribed by rules adopted by the commission
21 ~~department~~, notice as to the termination of employment of any
22 associated person registered for such dealer or investment
23 adviser in this state and shall also furnish the reason or
24 reasons for such termination.

25 (c) Each dealer or investment adviser shall designate
26 in writing to, and register with, the office ~~department~~ a
27 manager for each office the dealer or investment adviser has
28 in this state.

29 (13) Changes in registration occasioned by changes in
30 personnel of a partnership or in the principals, copartners,
31 officers, or directors of any dealer or investment adviser or

1 by changes of any material fact or method of doing business
2 shall be reported by written amendment in such form and at
3 such time as the commission ~~department~~ may specify. In any
4 case in which a person or a group of persons, directly or
5 indirectly or acting by or through one or more persons,
6 proposes to purchase or acquire a controlling interest in a
7 registered dealer or investment adviser, such person or group
8 shall submit an initial application for registration as a
9 dealer or investment adviser prior to such purchase or
10 acquisition. The commission ~~department~~ shall adopt rules
11 providing for waiver of the application required by this
12 subsection where control of a registered dealer or investment
13 adviser is to be acquired by another dealer or investment
14 adviser registered under this chapter or where the application
15 is otherwise unnecessary in the public interest.

16 (14) Every dealer, investment adviser, or branch
17 office registered or required to be registered with the office
18 ~~department~~ shall keep records of all currency transactions in
19 excess of \$10,000 and shall file reports, as prescribed under
20 the financial recordkeeping regulations in 31 C.F.R. part 103,
21 with the office ~~department~~ when transactions occur in or from
22 this state. All reports required by this subsection to be
23 filed with the office ~~department~~ shall be confidential and
24 exempt from s. 119.07(1) except that any law enforcement
25 agency or the Department of Revenue shall have access to, and
26 shall be authorized to inspect and copy, such reports.

27 (15) In lieu of filing with the office ~~department~~ the
28 applications specified in subsection (6), the fees required by
29 subsection (10), and the termination notices required by
30 subsection (12), the commission ~~department~~ may by rule
31 establish procedures for the deposit of such fees and

1 documents with the Central Registration Depository of the
2 National Association of Securities Dealers, Inc., as developed
3 under contract with the North American Securities
4 Administrators Association, Inc.; provided, however, that such
5 procedures shall provide the office ~~department~~ with the
6 information and data as required by this section.

7 (16) Except for securities dealers who are designated
8 by the Federal Reserve Bank of New York as primary government
9 securities dealers or securities dealers registered as issuers
10 of securities, every applicant for initial or renewal
11 registration as a securities dealer and every person
12 registered as a securities dealer shall be registered as a
13 broker or dealer with the Securities and Exchange Commission
14 and shall be subject to insurance coverage by the Securities
15 Investor Protection Corporation.

16 (17)(a) A dealer that is located in Canada and has no
17 office or other physical presence in this state may, provided
18 the dealer is registered in accordance with this section,
19 effect transactions in securities with or for, or induce or
20 attempt to induce the purchase or sale of any security by:

21 1. A person from Canada who temporarily resides in
22 this state and with whom the Canadian dealer had a bona fide
23 dealer-client relationship before the person entered the
24 United States; or

25 2. A person from Canada who is a resident of this
26 state, and whose transactions are in a self-directed tax
27 advantage retirement plan in Canada of which the person is the
28 holder or contributor.

29 (b) An associated person who represents a Canadian
30 dealer registered under this section may, provided the agent
31 is registered in accordance with this section, effect

1 transactions in securities in this state as permitted for a
2 dealer, under subsection (a).

3 (c) A Canadian dealer may register under this section
4 provided that such dealer:

5 1. Files an application in the form required by the
6 jurisdiction in which the dealer has a head office.

7 2. Files a consent to service of process.

8 3. Is registered as a dealer in good standing in the
9 jurisdiction from which it is effecting transactions into this
10 state and files evidence of such registration with the office
11 ~~department~~.

12 4. Is a member of a self-regulatory organization or
13 stock exchange in Canada.

14 (d) An associated person who represents a Canadian
15 dealer registered under this section in effecting transactions
16 in securities in this state may register under this section
17 provided that such person:

18 1. Files an application in the form required by the
19 jurisdiction in which the dealer has its head office.

20 2. Is registered in good standing in the jurisdiction
21 from which he or she is effecting transactions into this state
22 and files evidence of such registration with the office
23 ~~department~~.

24 (e) If the office ~~department~~ finds that the applicant
25 is of good repute and character and has complied with the
26 provisions of this chapter, the office ~~department~~ shall
27 register the applicant.

28 (f) A Canadian dealer registered under this section
29 shall:
30
31

- 1 1. Maintain its provincial or territorial registration
2 and its membership in a self-regulatory organization or stock
3 exchange in good standing.
- 4 2. Provide the office ~~department~~ upon request with its
5 books and records relating to its business in this state as a
6 dealer.
- 7 3. Provide the office ~~department~~ notice of each civil,
8 criminal, or administrative action initiated against the
9 dealer.
- 10 4. Disclose to its clients in this state that the
11 dealer and its agents are not subject to the full regulatory
12 requirements under this chapter.
- 13 5. Correct any inaccurate information within 30 days,
14 if the information contained in the application form becomes
15 inaccurate for any reason before or after the dealer becomes
16 registered.
- 17 (g) An associated person of a Canadian dealer
18 registered under this section shall:
- 19 1. Maintain provincial or territorial registration in
20 good standing.
- 21 2. Provide the office ~~department~~ with notice of each
22 civil, criminal, or administrative action initiated against
23 such person.
- 24 3. Through the dealer, correct any inaccurate
25 information within 30 days, if the information contained in
26 the application form becomes inaccurate for any reason before
27 or after the associated person becomes registered.
- 28 (h) Renewal applications for Canadian dealers and
29 associated persons under this section must be filed before
30 December 31 each year. Every applicant for registration or
31

1 renewal registration under this section shall pay the fee for
2 dealers and associated persons under this chapter.

3 (18) Every dealer or associated person registered or
4 required to be registered with the office ~~department~~ shall
5 satisfy any continuing education requirements established by
6 rule pursuant to law.

7 (19) The registration requirements of this section
8 which apply to investment advisers and associated persons do
9 not apply to a commodity trading adviser who:

10 (a) Is registered as such with the Commodity Futures
11 Trading Commission pursuant to the Commodity Exchange Act.

12 (b) Advises or exercises trading discretion, with
13 respect to foreign currency options listed and traded
14 exclusively on the Philadelphia Stock Exchange, on behalf of
15 an "appropriate person" as defined by the Commodity Exchange
16 Act.

17
18 The exemption provided in this subsection does not apply to a
19 commodity trading adviser who engages in other activities that
20 require registration under this chapter.

21 (20) The registration requirements of this section do
22 not apply to any general lines insurance agent or life
23 insurance agent licensed under chapter 626 individuals
24 ~~licensed under s. 626.041 or its successor statute, or s.~~
25 ~~626.051 or its successor statute,~~ for the sale of a security
26 as defined in s. 517.021(20)(g)~~s. 517.021(19)(g)~~, if the
27 individual is directly authorized by the issuer to offer or
28 sell the security on behalf of the issuer and the issuer is a
29 federally chartered savings bank subject to regulation by the
30 Federal Deposit Insurance Corporation. Actions under this
31

1 subsection shall constitute activity under the insurance
2 agent's license for purposes of ss. 626.611 and 626.621.

3 Section 594. Section 517.1201, Florida Statutes, is
4 amended to read:

5 517.1201 Notice filing requirements for federal
6 covered advisers.--

7 (1) It is unlawful for a person to transact business
8 in this state as a federal covered adviser unless such person
9 has made a notice filing with the office ~~department~~. A notice
10 filing under this section shall consist of a copy of those
11 documents that have been filed or are required to be filed by
12 the federal covered adviser with the Securities and Exchange
13 Commission that the Financial Services Commission ~~department~~
14 by rule requires to be filed, together with a consent to
15 service of process and a filing fee of \$200. The commission
16 ~~department~~ may establish by rule procedures for the deposit of
17 fees and the filing of documents to be made through electronic
18 means, if the procedures provide to the office ~~department~~ the
19 information and data required by this section.

20 (2) A notice filing shall be effective upon receipt.
21 A notice filing shall expire on December 31 of the year in
22 which the filing became effective unless the federal covered
23 adviser has renewed the filing on or before that date. A
24 federal covered adviser may renew a notice filing by
25 furnishing to the office ~~department~~ such information that has
26 been filed or is required to be filed with the Securities and
27 Exchange Commission, as the Financial Services Commission or
28 office ~~department~~ may require, together with a renewal fee of
29 \$200 and the payment of any amount due and owing the office
30 ~~department~~ pursuant to any agreement with the office
31 ~~department~~. Any federal covered adviser who has not renewed a

1 notice filing by the time a current notice filing expires may
2 request reinstatement of such notice filing by filing with the
3 office department, on or before January 31 of the year
4 following the year the notice filing expires, such information
5 that has been filed or is required to be filed with the
6 Securities and Exchange Commission as may be required by the
7 Financial Services Commission or office department, together
8 with the payment of \$200 and a late fee equal to \$200. Any
9 reinstatement of a notice filing granted by the office
10 ~~department~~ during the month of January shall be deemed
11 effective retroactive to January 1 of that year.

12 (3) The commission department may require, by rule, a
13 federal covered adviser who has made a notice filing pursuant
14 to this section to file with the office department copies of
15 any amendments filed or required to be filed with the
16 Securities and Exchange Commission.

17 (4) The office department may issue a permit to
18 evidence the effectiveness of a notice filing for a federal
19 covered adviser.

20 (5) A notice filing may be terminated by filing notice
21 of such termination with the office department. Unless
22 another date is specified by the federal covered adviser, such
23 notice shall be effective upon its receipt by the office
24 ~~department~~.

25 (6) All fees collected under this section become the
26 revenue of the state, except for those assessments provided
27 for under s. 517.131(1) until such time as the Securities
28 Guaranty Fund satisfies the statutory limits, and are not
29 returnable in the event that a notice filing is withdrawn.

30 Section 595. Section 517.1203, Florida Statutes, is
31 amended to read:

1 517.1203 Allocation and disbursement of assessment
2 fees.--

3 (1) Notwithstanding s. 517.131(1), an additional
4 amount equal to 25 percent of all revenues received as
5 assessment fees pursuant to s. 517.12(10) and (11) from
6 persons applying for or renewing registrations as associated
7 persons shall be allocated to the Securities Guaranty Fund and
8 disbursed as provided in this section. This allocation shall
9 continue until the office ~~department~~ determines, by final
10 order, that sufficient funds have been allocated to the
11 Securities Guaranty Fund pursuant to this section to satisfy
12 all valid claims filed in accordance with subsection (2) and
13 until all amounts payable under any service contract entered
14 into by the office ~~department~~ pursuant to s. 517.1204, and all
15 notes, bonds, certificates of indebtedness, other obligations,
16 or evidences of indebtedness secured by such notes, bonds,
17 certificates of indebtedness, or other obligations, have been
18 paid or provision has been made for the payment of such
19 amounts, notes, bonds, certificates of indebtedness, other
20 obligations, or evidences of indebtedness. This assessment fee
21 shall be part of the regular license fee and shall be
22 transferred to or deposited into the Securities Guaranty Fund.
23 The moneys allocated to the Securities Guaranty Fund under
24 this section shall not be included in the calculation of the
25 allocation of the assessment fees referred to in s.
26 517.131(1)(b). Moneys allocated under this section in excess
27 of the valid claims filed pursuant to subsection (2) shall be
28 allocated to the Anti-Fraud Trust Fund.

29 (2)(a) Notwithstanding the provisions of ss. 517.131
30 and 517.141, moneys allocated to the Securities Guaranty Fund
31 under this section shall be used to pay amounts payable under

1 any service contract entered into by the office ~~department~~
2 pursuant to s. 517.1204, subject to annual appropriation by
3 the Legislature, and to pay investors who have filed claims
4 with the Department of Banking and Finance after October 1,
5 1996, and on or before December 31, 1998, who have:

6 1. Received a final judgment against an associated
7 person of GIC Government Securities, Inc., based upon
8 allegations which would amount to a violation of s. 517.07 or
9 s. 517.301; or

10 2. Demonstrated to the former Department of Banking
11 and Finance or office that the claimant has suffered monetary
12 damages as a result of the acts or actions of GIC Government
13 Securities, Inc., or any associated person thereof, based upon
14 allegations which would amount to a violation of s. 517.07 or
15 s. 517.301.

16 (b)1. Claims shall be paid in the order that they were
17 ~~have been~~ filed with the former Department of Banking and
18 Finance, unless the department ~~has~~ noticed its intent to deny
19 the claim in whole or in part. If a notice of intent to deny
20 a claim in whole or in part was ~~is~~ issued, the claim shall not
21 be paid until a final order has been entered which is not
22 subject to an order staying its effect.

23 2. If at any time the money in the Securities Guaranty
24 Fund allocated under this section is insufficient to satisfy
25 any valid claim or portion of a valid claim approved by the
26 department or office under this section, the office ~~department~~
27 shall prorate the payment based upon the ratio that the
28 person's claim bears to the total approved claims filed on the
29 same day. The office ~~department~~ shall satisfy the unpaid
30 claims as soon as a sufficient amount of money has been
31

1 deposited in or transferred to the fund as provided in this
2 section.

3 3. A claimant shall not be substantially affected by
4 the payment of another person's claim.

5 (c) Claims shall be limited to the amount of the
6 investment, reduced by any amounts received from a bankruptcy
7 proceeding or from any other source. If an investor is
8 deceased, the award shall be made to the surviving spouse. If
9 the investor and surviving spouse are both deceased, the award
10 shall be made pursuant to the laws of descent and
11 distribution. Neither the office ~~department~~ nor the Investment
12 Fraud Restoration Financing Corporation shall make payment to
13 assignees, secured parties, lien creditors, or other such
14 entities.

15 (3) In rendering a determination, the office
16 ~~department~~ may rely on records from the bankruptcy proceeding
17 regarding GIC Government Securities, Inc., unless there is
18 good cause to believe that the record is not genuine.

19 (4) Amounts deposited into the Securities Guaranty
20 Fund pursuant to this section shall be applied to or allocated
21 for payment of amounts payable by the office ~~department~~
22 pursuant to paragraph (2)(a), under a service contract entered
23 into by the office ~~department~~ pursuant to s. 517.1204, subject
24 to annual appropriation by the Legislature, before making or
25 providing for any other disbursements from the fund.

26 Section 596. Subsection (2), paragraph (e) of
27 subsection (3), and subsections (4), (5), and (6) of section
28 517.1204, Florida Statutes, are amended to read:

29 517.1204 Investment Fraud Restoration Financing
30 Corporation.--

31

1 (2) The corporation shall be governed by a board of
2 directors consisting of the director of the office or his or
3 her designee ~~assistant comptroller~~, the Secretary of Elderly
4 Affairs or the secretary's designee, and the executive
5 director of the Department of Veterans' Affairs or the
6 executive director's designee. The executive director of the
7 State Board of Administration shall be the chief executive
8 officer of the corporation and shall direct and supervise the
9 administrative affairs of the corporation and shall control,
10 direct, and supervise the operation of the corporation. The
11 corporation shall also have such other officers as may be
12 determined by the board of directors.

13 (3) The corporation shall have all the powers of a
14 corporate body under the laws of this state to the extent not
15 inconsistent with or restricted by the provisions of this
16 section, including, but not limited to, the power to:

17 (e) Elect or appoint and employ such officers, agents,
18 and employees as the corporation deems advisable to operate
19 and manage the affairs of the corporation, which officers,
20 agents, and employees may be officers or employees of the
21 office ~~department~~ and the state agencies represented on the
22 board of directors of the corporation.

23 (4) The corporation is authorized to enter into one or
24 more service contracts with the office ~~department~~ pursuant to
25 which the corporation shall provide services to the office
26 ~~department~~ in connection with financing the functions and
27 activities provided for in s. 517.1203. The office ~~department~~
28 may enter into one or more such service contracts with the
29 corporation and provide for payments under such contracts
30 pursuant to s. 517.1203(2)(a), subject to annual appropriation
31 by the Legislature. The proceeds from such service contracts

1 may be used for the costs and expenses of administration of
2 the corporation after payments as set forth in subsection (5).
3 Each service contract shall have a term not to exceed 15 years
4 and shall terminate no later than July 1, 2021. The aggregate
5 amount payable from the Securities Guaranty Fund under all
6 such service contracts shall not exceed the amount provided by
7 s. 517.1203(1). In compliance with provisions of s. 287.0641
8 and other applicable provisions of law, the obligations of the
9 office ~~department~~ under such service contracts shall not
10 constitute a general obligation of the state or a pledge of
11 the faith and credit or taxing power of the state nor shall
12 such obligations be construed in any manner as an obligation
13 of the State Board of Administration or entities for which it
14 invests funds, other than the office ~~department~~ as provided in
15 this section, but shall be payable solely from amounts
16 available in the Securities Guaranty Fund, subject to annual
17 appropriation. In compliance with this subsection and s.
18 287.0582, such service contracts shall expressly include the
19 following statement: "The State of Florida's performance and
20 obligation to pay under this contract is contingent upon an
21 annual appropriation by the Legislature."

22 (5) The corporation may issue and incur notes, bonds,
23 certificates of indebtedness, or other obligations or
24 evidences of indebtedness payable from and secured by amounts
25 payable to the corporation by the office ~~department~~ under a
26 service contract entered into pursuant to subsection (4) for
27 the purpose of the simultaneous payment of all claims approved
28 pursuant to s. 517.1203. The term of any such note, bond,
29 certificate of indebtedness, or other obligation or evidence
30 of indebtedness shall not exceed 15 years. The corporation may
31 select a financing team and issue obligations through

1 competitive bidding or negotiated contracts, whichever is most
2 cost-effective. Any such indebtedness of the corporation
3 shall not constitute a debt or obligation of the state or a
4 pledge of the faith and credit or taxing power of the state,
5 but shall be payable from and secured by payments made by the
6 office ~~department~~ under the service contract pursuant to
7 subsection (4).

8 (6) The corporation shall pay all claims approved
9 pursuant to s. 517.1203 as determined by and at the direction
10 of the office ~~department~~.

11 Section 597. Section 517.121, Florida Statutes, is
12 amended to read:

13 517.121 Books and records requirements;
14 examinations.--

15 (1) A dealer, investment adviser, branch office, or
16 associated person shall maintain such books and records as the
17 commission ~~department~~ may prescribe by rule.

18 (2) The office ~~department~~ shall, at intermittent
19 periods, examine the affairs and books and records of each
20 registered dealer, investment adviser, branch office, or
21 associated person, or require such records and reports to be
22 submitted to it as required ~~it may require~~ by rule of the
23 commission, to determine compliance with this act.

24 Section 598. Paragraph (a) of subsection (1),
25 paragraphs (b) and (e) of subsection (3), and subsection (4)
26 of section 517.131, Florida Statutes, are amended to read:

27 517.131 Securities Guaranty Fund.--

28 (1)(a) The Chief Financial Officer ~~Treasurer~~ shall
29 establish a Securities Guaranty Fund. An amount not exceeding
30 20 percent of all revenues received as assessment fees
31 pursuant to s. 517.12(10) and (11) for dealers and investment

1 advisers or s. 517.1201 for federal covered advisers and an
2 amount not exceeding 10 percent of all revenues received as
3 assessment fees pursuant to s. 517.12(10) and (11) for
4 associated persons shall be allocated to the fund. An
5 additional amount not exceeding 3.5 percent of all revenues
6 received as assessment fees for associated persons pursuant to
7 s. 517.12(10) and (11) shall be allocated to the Securities
8 Guaranty Fund but only after the office ~~department~~ determines,
9 by final order, that sufficient funds have been allocated to
10 the fund pursuant to s. 517.1203 to satisfy all valid claims
11 filed in accordance with s. 517.1203(2) and after all amounts
12 payable under any service contract entered into by the office
13 ~~department~~ pursuant to s. 517.1204, and all notes, bonds,
14 certificates of indebtedness, other obligations, or evidences
15 of indebtedness secured by such notes, bonds, certificates of
16 indebtedness, or other obligations, have been paid or
17 provision has been made for the payment of such amounts,
18 notes, bonds, certificates of indebtedness, other obligations,
19 or evidences of indebtedness. This assessment fee shall be
20 part of the regular license fee and shall be transferred to or
21 deposited in the Securities Guaranty Fund.

22 (3) Any person is eligible to seek recovery from the
23 Securities Guaranty Fund if:

24 (b) Such person has made all reasonable searches and
25 inquiries to ascertain whether the judgment debtor possesses
26 real or personal property or other assets subject to being
27 sold or applied in satisfaction of the judgment, and by her or
28 his search the person has discovered no property or assets; or
29 she or he has discovered property and assets and has taken all
30 necessary action and proceedings for the application thereof
31 to the judgment, but the amount thereby realized was

1 insufficient to satisfy the judgment. To verify compliance
2 with such condition, the office ~~department~~ may require such
3 person to have a writ of execution be issued upon such
4 judgment and may further require a showing that no personal or
5 real property of the judgment debtor liable to be levied upon
6 in complete satisfaction of the judgment can be found.

7 (e) The office ~~department~~ waives compliance with the
8 requirements of paragraph (a) or paragraph (b). The office
9 ~~department~~ may waive such compliance if the dealer, investment
10 adviser, or associated person which is the subject of the
11 claim filed with the office ~~department~~ is the subject of any
12 proceeding in which a receiver has been appointed by a court
13 of competent jurisdiction. If the office ~~department~~ waives
14 such compliance, the office ~~department~~ may, upon petition by
15 the debtor or the court-appointed trustee, examiner, or
16 receiver, distribute funds from the Securities Guaranty Fund
17 up to the amount allowed under s. 517.141. Any waiver granted
18 pursuant to this section shall be considered a judgment for
19 purposes of complying with the requirements of this section
20 and of s. 517.141.

21 (4) Any person who files an action that may result in
22 the disbursement of funds from the Securities Guaranty Fund
23 pursuant to the provisions of s. 517.141 shall give written
24 notice by certified mail to the office ~~department~~ as soon as
25 practicable after such action has been filed. The failure to
26 give such notice shall not bar a payment from the Securities
27 Guaranty Fund if all of the conditions specified in subsection
28 (3) are satisfied.

29 Section 599. Section 517.141, Florida Statutes, is
30 amended to read:

31 517.141 Payment from the fund.--

1 (1) Any person who meets all of the conditions
2 prescribed in s. 517.131 may apply to the office ~~department~~
3 for payment to be made to such person from the Securities
4 Guaranty Fund in the amount equal to the unsatisfied portion
5 of such person's judgment or \$10,000, whichever is less, but
6 only to the extent and amount reflected in the judgment as
7 being actual or compensatory damages, excluding costs and
8 attorney's fees.

9 (2) Regardless of the number of claimants involved,
10 payments for claims shall be limited in the aggregate to
11 \$100,000 against any one dealer, investment adviser, or
12 associated person. If the total claims exceed the aggregate
13 limit of \$100,000, the office ~~department~~ shall prorate the
14 payment based upon the ratio that the person's claim bears to
15 the total claims filed.

16 (3) No payment shall be made on any claim against any
17 one dealer, investment adviser, or associated person before
18 the expiration of 2 years from the date any claimant is found
19 by the office ~~department~~ to be eligible for recovery pursuant
20 to this section. If during this 2-year period more than one
21 claim is filed against the same dealer, investment adviser, or
22 associated person, or if the office ~~department~~ receives notice
23 pursuant to s. 517.131(4) that an action against the same
24 dealer, investment adviser, or associated person is pending,
25 all such claims and notices of pending claims received during
26 this period against the same dealer, investment adviser, or
27 associated person may be handled by the office ~~department~~ as
28 provided in this section. Two years after the first claimant
29 against that same dealer, investment adviser, or associated
30 person applies for payment pursuant to this section:

31

1 (a) The office ~~department~~ shall determine those
2 persons eligible for payment or for potential payment in the
3 event of a pending action. All such persons may be entitled
4 to receive their pro rata shares of the fund as provided in
5 this section.

6 (b) Those persons who meet all the conditions
7 prescribed in s. 517.131 and who have applied for payment
8 pursuant to this section will be entitled to receive their pro
9 rata shares of the total disbursement.

10 (c) Those persons who have filed notice with the
11 office ~~department~~ of a pending claim pursuant to s. 517.131(4)
12 but who are not yet eligible for payment from the fund will be
13 entitled to receive their pro rata shares of the total
14 disbursement once they have complied with subsection (1).
15 However, in the event that the amounts they are eligible to
16 receive pursuant to subsection (1) are less than their pro
17 rata shares as determined under this section, any excess shall
18 be distributed pro rata to those persons entitled to
19 disbursement under this subsection whose pro rata shares of
20 the total disbursement were less than the amounts of their
21 claims.

22 (4) Individual claims filed by persons owning the same
23 joint account, or claims stemming from any other type of
24 account maintained by a particular licensee on which more than
25 one name appears, shall be treated as the claims of one
26 eligible claimant with respect to payment from the fund. If a
27 claimant who has obtained a judgment which qualifies for
28 disbursement under s. 517.131 has maintained more than one
29 account with the dealer, investment adviser, or associated
30 person who is the subject of the claims, for purposes of
31 disbursement of the fund, all such accounts, whether joint or

1 individual, shall be considered as one account and shall
2 entitle such claimant to only one distribution from the fund
3 not to exceed the lesser of \$10,000 or the unsatisfied portion
4 of such claimant's judgment as provided in subsection (1). To
5 the extent that a claimant obtains more than one judgment
6 against a dealer, investment adviser, or one or more
7 associated persons arising out of the same transactions,
8 occurrences, or conduct or out of the dealer's, investment
9 adviser's, or associated person's handling of the claimant's
10 account, such judgments shall be consolidated for purposes of
11 this section and shall entitle the claimant to only one
12 disbursement from the fund not to exceed the lesser of \$10,000
13 or the unsatisfied portion of such claimant's judgment as
14 provided in subsection (1).

15 (5) If the final judgment which gave rise to the claim
16 is overturned in any appeal or in any collateral proceeding,
17 the claimant shall reimburse the fund all amounts paid to the
18 claimant on the claim. Such reimbursement shall be paid to
19 the office ~~department~~ within 60 days after the final
20 resolution of the appellate or collateral proceedings, with
21 the 60-day period commencing on the date the final order or
22 decision is entered in such proceedings.

23 (6) If a claimant receives payments in excess of that
24 which is permitted under this chapter, the claimant shall
25 reimburse the fund such excess within 60 days after the
26 claimant receives such excess payment or after the payment is
27 determined to be in excess of that permitted by law, whichever
28 is later.

29 (7) The office ~~department~~ may institute legal
30 proceedings to enforce compliance with this section and with
31 s. 517.131 to recover moneys owed to the fund, and shall be

1 entitled to recover interest, costs, and attorney's fees in
2 any action brought pursuant to this section in which the
3 office department prevails.

4 (8) If at any time the money in the Securities
5 Guaranty Fund is insufficient to satisfy any valid claim or
6 portion of a valid claim approved by the office department,
7 the office department shall satisfy such unpaid claim or
8 portion of such valid claim as soon as a sufficient amount of
9 money has been deposited in or transferred to the fund. When
10 there is more than one unsatisfied claim outstanding, such
11 claims shall be paid in the order in which the claims were
12 approved by final order of the office department, which order
13 is not subject to an appeal or other pending proceeding.

14 (9) Upon receipt by the claimant of the payment from
15 the Securities Guaranty Fund, the claimant shall assign any
16 additional right, title, and interest in the judgment, to the
17 extent of such payment, to the office department. If the
18 provisions of s. 517.131(3)(e) apply, the claimant must assign
19 to the office department any right, title, and interest in the
20 debt to the extent of any payment by the office department
21 from the Securities Guaranty Fund.

22 (10) All payments and disbursements made from the
23 Securities Guaranty Fund shall be made by the Chief Financial
24 Officer ~~Treasurer~~ upon authorization ~~a voucher~~ signed by the
25 director of the office ~~Comptroller, as head of the department,~~
26 or such agent as she or he may designate.

27 Section 600. Section 517.151, Florida Statutes, is
28 amended to read:

29 517.151 Investments of the fund.--The funds of the
30 Securities Guaranty Fund shall be invested by the Chief
31 Financial Officer ~~Treasurer~~ under the same limitations as

1 other state funds, and the interest earned thereon shall be
2 deposited to the credit of the fund and available for the same
3 purpose as other moneys deposited in the Securities Guaranty
4 Fund.

5 Section 601. Subsection (1), (3), and (5), and
6 paragraph (b) of subsection (6) of section 517.161, Florida
7 Statutes, are amended to read:

8 517.161 Revocation, denial, or suspension of
9 registration of dealer, investment adviser, associated person,
10 or branch office.--

11 (1) Registration under s. 517.12 may be denied or any
12 registration granted may be revoked, restricted, or suspended
13 by the office ~~department~~ if the office ~~department~~ determines
14 that such applicant or registrant:

15 (a) Has violated any provision of this chapter or any
16 rule or order made under this chapter;

17 (b) Has made a material false statement in the
18 application for registration;

19 (c) Has been guilty of a fraudulent act in connection
20 with rendering investment advice or in connection with any
21 sale of securities, has been or is engaged or is about to
22 engage in making fictitious or pretended sales or purchases of
23 any such securities or in any practice involving the rendering
24 of investment advice or the sale of securities which is
25 fraudulent or in violation of the law;

26 (d) Has made a misrepresentation or false statement
27 to, or concealed any essential or material fact from, any
28 person in the rendering of investment advice or the sale of a
29 security to such person;

30 (e) Has failed to account to persons interested for
31 all money and property received;

1 (f) Has not delivered, after a reasonable time, to
2 persons entitled thereto securities held or agreed to be
3 delivered by the dealer, broker, or investment adviser, as and
4 when paid for, and due to be delivered;

5 (g) Is rendering investment advice or selling or
6 offering for sale securities through any associated person not
7 registered in compliance with the provisions of this chapter;

8 (h) Has demonstrated unworthiness to transact the
9 business of dealer, investment adviser, or associated person;

10 (i) Has exercised management or policy control over or
11 owned 10 percent or more of the securities of any dealer or
12 investment adviser that has been declared bankrupt, or had a
13 trustee appointed under the Securities Investor Protection
14 Act; or is, in the case of a dealer or investment adviser,
15 insolvent;

16 (j) Has been convicted of, or has entered a plea of
17 guilty or nolo contendere to, a crime against the laws of this
18 state or any other state or of the United States or of any
19 other country or government which relates to registration as a
20 dealer, investment adviser, issuer of securities, associated
21 person, or branch office; which relates to the application for
22 such registration; or which involves moral turpitude or
23 fraudulent or dishonest dealing;

24 (k) Has had a final judgment entered against her or
25 him in a civil action upon grounds of fraud, embezzlement,
26 misrepresentation, or deceit;

27 (l) Is of bad business repute; or

28 (m) Has been the subject of any decision, finding,
29 injunction, suspension, prohibition, revocation, denial,
30 judgment, or administrative order by any court of competent
31 jurisdiction, administrative law judge, or by any state or

1 federal agency, national securities, commodities, or option
2 exchange, or national securities, commodities, or option
3 association, involving a violation of any federal or state
4 securities or commodities law or any rule or regulation
5 promulgated thereunder, or any rule or regulation of any
6 national securities, commodities, or options exchange or
7 national securities, commodities, or options association, or
8 has been the subject of any injunction or adverse
9 administrative order by a state or federal agency regulating
10 banking, insurance, finance or small loan companies, real
11 estate, mortgage brokers, or other related or similar
12 industries. For purposes of this subsection, the office
13 ~~department~~ may not deny registration to any applicant who has
14 been continuously registered with the office ~~department~~ for 5
15 years from the entry of such decision, finding, injunction,
16 suspension, prohibition, revocation, denial, judgment, or
17 administrative order provided such decision, finding,
18 injunction, suspension, prohibition, revocation, denial,
19 judgment, or administrative order has been timely reported to
20 the office ~~department~~ pursuant to the commission's
21 ~~department's~~ rules and regulations.

22 (3) In the event the office ~~department~~ determines to
23 deny an application or revoke a registration, it shall enter a
24 final order with its findings on the register of dealers and
25 associated persons; and denial, suspension, or revocation of
26 the registration of a dealer or investment adviser shall also
27 deny, suspend, or revoke the registration of all her or his
28 associated persons.

29 (5) The office ~~department~~ may deny any request to
30 terminate or withdraw any application or registration if the
31 office ~~department~~ believes that an act which would be a ground

1 for denial, suspension, restriction, or revocation under this
2 chapter has been committed.

3 (6) Registration under s. 517.12 may be denied or any
4 registration granted may be suspended or restricted if an
5 applicant or registrant is charged, in a pending enforcement
6 action or pending criminal prosecution, with any conduct that
7 would authorize denial or revocation under subsection (1).

8 (b) Any order of suspension or restriction under this
9 subsection shall:

10 1. Take effect only after a hearing, unless no hearing
11 is requested by the registrant or unless the suspension or
12 restriction is made in accordance with s. 120.60(6).

13 2. Contain a finding that evidence of a prima facie
14 case supports the charge made in the enforcement action or
15 criminal prosecution.

16 3. Operate for no longer than 10 days beyond receipt
17 of notice by the office ~~department~~ of termination with respect
18 to the registrant of the enforcement action or criminal
19 prosecution.

20 Section 602. Section 517.181, Florida Statutes, is
21 amended to read:

22 517.181 Escrow agreement.--

23 (1) If the statement containing information as to
24 securities to be registered, as provided for in s. 517.081,
25 shall disclose that any such securities or any securities
26 senior thereto shall have been or shall be intended to be
27 issued for any patent right, copyright, trademark, process,
28 formula, or goodwill; for organization or promotion fees or
29 expenses; or for goodwill or going-concern value or other
30 intangible assets, then the amount and nature thereof shall be
31 fully set forth, and the office ~~department~~ may require that

1 such securities so issued in payment of such patent right,
2 copyright, trademark, process, formula, or goodwill; for
3 organization or promotion fees or expenses; or for other
4 intangible assets shall be delivered in escrow to the office
5 ~~department~~ or other depository satisfactory to the office
6 ~~department~~ under an escrow agreement. The escrow agreement
7 shall be in a form suitable to the office ~~department~~ and shall
8 provide for the escrow or impoundment of such securities for a
9 reasonable length of time determined by the office ~~department~~
10 to be in the best interest of other shareholders. The
11 securities subject to escrow shall also include any dividend,
12 cash, or stock that may be paid during the life of the escrow
13 and any stock issued through, or by reason of, any stock
14 split, exchange of shares, recapitalization, merger,
15 consolidation, reorganization, or similar combination or
16 subdivision in substitution for or in lieu of any stock
17 subject to this provision; and in case of dissolution or
18 insolvency during the time such securities are held in escrow,
19 the owners of such securities shall not participate in the
20 assets until after the owners of all other securities shall
21 have been paid in full.

22 (2) Any securities held in escrow under this section
23 on November 1, 1978, may be released to the owners thereof
24 upon request, if satisfactory financial data is submitted to
25 the office ~~department~~ showing that the issuer is currently
26 operating on sound business principles and has net income in
27 accordance with criteria-implementing rules of the commission
28 ~~department~~ relating to escrow of securities. At any time, the
29 office ~~department~~ may review any existing escrow agreement
30 made under this section and determine that the same may be
31 amended in order to permit a subsequent release of the

1 securities upon terms and conditions which are just and
2 equitable as defined by said rules.

3 (3) When it shall appear from information available to
4 the office ~~department~~ that the issuer of securities held in
5 escrow has been dissolved or disbanded or is defunct or no
6 longer actively engaged in business and such securities are of
7 no value, the office ~~department~~, after giving at least 60
8 days' notice in at least one newspaper of general circulation
9 and after giving interested parties opportunity for hearing,
10 may enter its order authorizing the destruction of said
11 securities. Any affected escrow agent may rely on such order
12 and shall not be required to determine the validity or
13 sufficiency thereof.

14 Section 603. Section 517.191, Florida Statutes, is
15 amended to read:

16 517.191 Injunction to restrain violations.--

17 (1) When it appears ~~shall appear~~ to the office
18 ~~department~~, either upon complaint or otherwise, that a person
19 has engaged or is about to engage in any act or practice
20 constituting a violation of this chapter or a rule or order
21 hereunder, the office ~~department~~ may investigate; and whenever
22 it shall believe from evidence satisfactory to it that any
23 such person has engaged, is engaged, or is about to engage in
24 any act or practice constituting a violation of this chapter
25 or a rule or order hereunder, the office ~~department~~ may, in
26 addition to any other remedies, bring action in the name and
27 on behalf of the state against such person and any other
28 person concerned in or in any way participating in or about to
29 participate in such practices or engaging therein or doing any
30 act or acts in furtherance thereof or in violation of this
31 chapter to enjoin such person or persons from continuing such

1 fraudulent practices or engaging therein or doing any act or
2 acts in furtherance thereof or in violation of this chapter.
3 In any such court proceedings, the office ~~department~~ may apply
4 for, and on due showing be entitled to have issued, the
5 court's subpoena requiring forthwith the appearance of any
6 defendant and her or his employees, associated persons, or
7 agents and the production of documents, books, and records
8 that may appear necessary for the hearing of such petition, to
9 testify or give evidence concerning the acts or conduct or
10 things complained of in such application for injunction. In
11 such action, the equity courts shall have jurisdiction of the
12 subject matter, and a judgment may be entered awarding such
13 injunction as may be proper.

14 (2) In addition to all other means provided by law for
15 the enforcement of any temporary restraining order, temporary
16 injunction, or permanent injunction issued in any such court
17 proceedings, the court shall have the power and jurisdiction,
18 upon application of the office ~~department~~, to impound and to
19 appoint a receiver or administrator for the property, assets,
20 and business of the defendant, including, but not limited to,
21 the books, records, documents, and papers appertaining
22 thereto. Such receiver or administrator, when appointed and
23 qualified, shall have all powers and duties as to custody,
24 collection, administration, winding up, and liquidation of
25 said property and business as shall from time to time be
26 conferred upon her or him by the court. In any such action,
27 the court may issue orders and decrees staying all pending
28 suits and enjoining any further suits affecting the receiver's
29 or administrator's custody or possession of the said property,
30 assets, and business or, in its discretion, may with the
31 consent of the presiding judge of the circuit require that all

1 such suits be assigned to the circuit court judge appointing
2 the said receiver or administrator.

3 (3) In addition to any other remedies provided by this
4 chapter, the office ~~department~~ may apply to the court hearing
5 this matter for an order of restitution whereby the defendants
6 in such action shall be ordered to make restitution of those
7 sums shown by the office ~~department~~ to have been obtained by
8 them in violation of any of the provisions of this chapter.
9 Such restitution shall, at the option of the court, be payable
10 to the administrator or receiver appointed pursuant to this
11 section or directly to the persons whose assets were obtained
12 in violation of this chapter.

13 Section 604. Section 517.201, Florida Statutes, is
14 amended to read:

15 517.201 Investigations; examinations; subpoenas;
16 hearings; witnesses.--

17 (1) The office ~~department~~:

18 (a) May make investigations and examinations within or
19 outside of this state as it deems necessary:

20 1. To determine whether a person has violated or is
21 about to violate any provision of this chapter or a rule or
22 order hereunder; or

23 2. To aid in the enforcement of this chapter.

24 (b) May require or permit a person to file a statement
25 in writing, under oath or otherwise as the office ~~department~~
26 determines, as to all the facts and circumstances concerning
27 the matter to be investigated.

28 (2) When it is proposed to conduct an investigation or
29 examination, the office ~~department~~ may gather evidence in the
30 matter. The office ~~department~~ may administer oaths, examine
31 witnesses, and issue subpoenas.

1 (3) Subpoenas for witnesses whose evidence is deemed
2 material to any investigation or examination may be issued by
3 the office ~~department~~ under the seal of the office ~~department~~,
4 or by any county court judge or clerk of the circuit court or
5 county court, commanding such witnesses to be or appear before
6 the office ~~department~~ at a time and place to be therein named
7 and to bring such books, records, and documents as may be
8 specified or to submit such books, records, and documents to
9 inspection; and such subpoenas may be served by an authorized
10 representative of the office ~~department~~.

11 (4)(a) In the event of substantial noncompliance with
12 a subpoena or subpoena duces tecum issued or caused to be
13 issued by the office ~~department~~ pursuant to this section, the
14 office ~~department~~ may petition the circuit court of the county
15 in which the person subpoenaed resides or has its principal
16 place of business for an order requiring the subpoenaed person
17 to appear and testify and to produce such books, records, and
18 documents as are specified in such subpoena duces tecum. The
19 court may grant injunctive relief restraining the issuance,
20 sale or offer for sale, purchase or offer to purchase,
21 promotion, negotiation, advertisement, or distribution in or
22 from offices in this state of securities or investments by a
23 person or agent, employee, broker, partner, officer, director,
24 or stockholder thereof, and may grant such other relief,
25 including, but not limited to, the restraint, by injunction or
26 appointment of a receiver, of any transfer, pledge,
27 assignment, or other disposition of such person's assets or
28 any concealment, alteration, destruction, or other disposition
29 of subpoenaed books, records, or documents, as the court deems
30 appropriate, until such person has fully complied with such
31 subpoena or subpoena duces tecum and the office ~~department~~ has

1 completed its investigation or examination. The office
2 ~~department~~ is entitled to the summary procedure provided in s.
3 51.011, and the court shall advance the cause on its calendar.
4 Costs incurred by the office ~~department~~ to obtain an order
5 granting, in whole or in part, such petition for enforcement
6 of a subpoena or subpoena duces tecum shall be taxed against
7 the subpoenaed person, and failure to comply with such order
8 shall be a contempt of court.

9 (b) When it shall appear to the office ~~department~~ that
10 the compliance with a subpoena or subpoena duces tecum issued
11 or caused to be issued by the office ~~department~~ pursuant to
12 this section is essential and otherwise unavailable to an
13 investigation or examination, the office ~~department~~, in
14 addition to the other remedies provided for herein, may, by
15 verified petition setting forth the facts, apply to the
16 circuit court of the county in which the subpoenaed person
17 resides or has its principal place of business for a writ of
18 ne exeat. The court shall thereupon direct the issuance of
19 the writ against the subpoenaed person requiring sufficient
20 bond conditioned on compliance with the subpoena or subpoena
21 duces tecum. The court shall cause to be endorsed on the writ
22 a suitable amount of bond on payment of which the person named
23 in the writ shall be freed, having a due regard to the nature
24 of the case.

25 (5) Witnesses shall be entitled to the same fees and
26 mileage as they may be entitled by law for attending as
27 witnesses in the circuit court, except where such examination
28 or investigation is held at the place of business or residence
29 of the witness.

30 Section 605. Subsections (1) and (3) of section
31 517.2015, Florida Statutes, are amended to read:

1 517.2015 Confidentiality of information relating to
2 investigations and examinations.--

3 (1)(a) Except as otherwise provided by this section,
4 information relative to an investigation or examination by the
5 office ~~department~~ pursuant to this chapter, including any
6 consumer complaint, is confidential and exempt from s.
7 119.07(1) until the investigation or examination is completed
8 or ceases to be active. The information compiled by the office
9 ~~department~~ in such an investigation or examination shall
10 remain confidential and exempt from s. 119.07(1) after the
11 office's ~~department's~~ investigation or examination is
12 completed or ceases to be active if the office ~~department~~
13 submits the information to any law enforcement or
14 administrative agency or regulatory organization for further
15 investigation. Such information shall remain confidential and
16 exempt from s. 119.07(1) until that agency's or organization's
17 investigation is completed or ceases to be active. For
18 purposes of this section, an investigation or examination
19 shall be considered "active" so long as the office ~~department~~
20 or any law enforcement or administrative agency or regulatory
21 organization is proceeding with reasonable dispatch and has a
22 reasonable good faith belief that the investigation or
23 examination may lead to the filing of an administrative,
24 civil, or criminal proceeding or to the denial or conditional
25 grant of a license, registration, or permit. This section
26 shall not be construed to prohibit disclosure of information
27 which is required by law to be filed with the office
28 ~~department~~ and which, but for the investigation or
29 examination, would be subject to s. 119.07(1).

30 (b) Except as necessary for the office ~~department~~ to
31 enforce the provisions of this chapter, a consumer complaint

1 and other information relative to an investigation or
2 examination shall remain confidential and exempt from s.
3 119.07(1) after the investigation or examination is completed
4 or ceases to be active to the extent disclosure would:

- 5 1. Jeopardize the integrity of another active
6 investigation or examination.
- 7 2. Reveal the name, address, telephone number, social
8 security number, or any other identifying number or
9 information of any complainant, customer, or account holder.
- 10 3. Disclose the identity of a confidential source.
- 11 4. Disclose investigative techniques or procedures.
- 12 5. Reveal a trade secret as defined in s. 688.002.

13 (c) In the event that office ~~department~~ personnel are
14 or have been involved in an investigation or examination of
15 such nature as to endanger their lives or physical safety or
16 that of their families, then the home addresses, telephone
17 numbers, places of employment, and photographs of such
18 personnel, together with the home addresses, telephone
19 numbers, photographs, and places of employment of spouses and
20 children of such personnel and the names and locations of
21 schools and day care facilities attended by the children of
22 such personnel are confidential and exempt from s. 119.07(1).

23 (d) Nothing in this section shall be construed to
24 prohibit the office ~~department~~ from providing information to
25 any law enforcement or administrative agency or regulatory
26 organization. Any law enforcement or administrative agency or
27 regulatory organization receiving confidential information in
28 connection with its official duties shall maintain the
29 confidentiality of the information so long as it would
30 otherwise be confidential.

31

1 (e) All information obtained by the office ~~department~~
2 from any person which is only made available to the office
3 ~~department~~ on a confidential or similarly restricted basis
4 shall be confidential and exempt from s. 119.07(1). This
5 exemption shall not be construed to prohibit disclosure of
6 information which is required by law to be filed with the
7 office ~~department~~ or which is otherwise subject to s.
8 119.07(1).

9 (3) A privilege against civil liability is granted to
10 a person who furnishes information or evidence to the office
11 ~~department~~, unless such person acts in bad faith or with
12 malice in providing such information or evidence.

13 Section 606. Section 517.221, Florida Statutes, is
14 amended to read:

15 517.221 Cease and desist orders.--

16 (1) The office ~~department~~ may issue and serve upon a
17 person a cease and desist order whenever the office ~~department~~
18 has reason to believe that such person is violating, has
19 violated, or is about to violate any provision of this
20 chapter, any rule or order promulgated by the commission or
21 office ~~department~~, or any written agreement entered into with
22 the office ~~department~~.

23 (2) Whenever the office ~~department~~ finds that conduct
24 described in subsection (1) presents an immediate danger to
25 the public requiring an immediate final order, it may issue an
26 emergency cease and desist order reciting with particularity
27 the facts underlying such findings. The emergency cease and
28 desist order is effective immediately upon service of a copy
29 of the order on the respondent named therein and remains
30 effective for 90 days. If the office ~~department~~ begins
31 nonemergency cease and desist proceedings under subsection

1 (1), the emergency cease and desist order remains effective
2 until conclusion of the proceedings under ss. 120.569 and
3 120.57.

4 (3) The office ~~department~~ may impose and collect an
5 administrative fine against any person found to have violated
6 any provision of this chapter, any rule or order promulgated
7 by the commission or office ~~department~~, or any written
8 agreement entered into with the office ~~department~~ in an amount
9 not to exceed \$5,000 for each such violation. All fines
10 collected hereunder shall be deposited as received in the
11 Anti-Fraud Trust Fund.

12 Section 607. Subsection (1) of section 517.241,
13 Florida Statutes, is amended to read:

14 517.241 Remedies.--

15 (1) Any person aggrieved by a final order of the
16 office ~~department~~ may have the order reviewed as provided by
17 chapter 120, the Administrative Procedure Act.

18 Section 608. Paragraph (c) of subsection (1) and
19 paragraph (b) of subsection (2) of section 517.301, Florida
20 Statutes, are amended to read:

21 517.301 Fraudulent transactions; falsification or
22 concealment of facts.--

23 (1) It is unlawful and a violation of the provisions
24 of this chapter for a person:

25 (c) In any matter within the jurisdiction of the
26 office ~~department~~, to knowingly and willfully falsify,
27 conceal, or cover up, by any trick, scheme, or device, a
28 material fact, make any false, fictitious, or fraudulent
29 statement or representation, or make or use any false writing
30 or document, knowing the same to contain any false,
31 fictitious, or fraudulent statement or entry.

1 (2) For purposes of ss. 517.311 and 517.312 and this
2 section, the term "investment" means any commitment of money
3 or property principally induced by a representation that an
4 economic benefit may be derived from such commitment, except
5 that the term "investment" does not include a commitment of
6 money or property for:

7 (b) The purchase of tangible personal property through
8 a person not engaged in telephone solicitation, where said
9 property is offered and sold in accordance with the following
10 conditions:

11 1. There are no specific representations or guarantees
12 made by the offeror or seller as to the economic benefit to be
13 derived from the purchase;

14 2. The tangible property is delivered to the purchaser
15 within 30 days after sale, except that such 30-day period may
16 be extended by the office ~~department~~ if market conditions so
17 warrant; and

18 3. The seller has offered the purchaser a full refund
19 policy in writing, exercisable by the purchaser within 10 days
20 of the date of delivery of such tangible personal property,
21 except that the amount of such refund in no event shall exceed
22 the bid price in effect at the time the property is returned
23 to the seller. If the applicable sellers' market is closed at
24 the time the property is returned to the seller for a refund,
25 the amount of such refund shall be based on the bid price for
26 such property at the next opening of such market.

27 Section 609. Subsection (3) of section 517.302,
28 Florida Statutes, is amended to read:

29 517.302 Criminal penalties; alternative fine;
30 Anti-Fraud Trust Fund; time limitation for criminal
31 prosecution.--

1 (3) In lieu of a fine otherwise authorized by law, a
2 person who has been convicted of or who has pleaded guilty or
3 no contest to having engaged in conduct in violation of the
4 provisions of this chapter may be sentenced to pay a fine that
5 does not exceed the greater of three times the gross value
6 gained or three times the gross loss caused by such conduct,
7 plus court costs and the costs of investigation and
8 prosecution reasonably incurred.

9 (a) There is created within the office ~~department~~ a
10 trust fund to be known as the Anti-Fraud Trust Fund. Any
11 amounts assessed as costs of investigation and prosecution
12 under this subsection shall be deposited in the trust fund.
13 Funds deposited in such trust fund shall be used, when
14 authorized by appropriation, for investigation and prosecution
15 of administrative, civil, and criminal actions arising under
16 the provisions of this chapter. Funds may also be used to
17 improve the public's awareness and understanding of prudent
18 investing.

19 (b) The office ~~department~~ shall report to the
20 Executive Office of the Governor annually by November 15, the
21 amounts deposited into the Anti-Fraud Trust Fund during the
22 previous fiscal year. The Executive Office of the Governor
23 shall distribute these reports to the President of the Senate
24 and the Speaker of the House of Representatives.

25 Section 610. Subsections (1) and (2) of section
26 517.313, Florida Statutes, are amended to read:

27 517.313 Destroying certain records; reproduction.--

28 (1) The commission and office may ~~department is~~
29 ~~authorized to~~ photograph, microphotograph, or reproduce on
30 film or prints documents, records, data, and information of a
31 permanent character.

1 (2) The commission and office may ~~department is~~
2 ~~authorized to~~ destroy any of said documents after audit ~~of the~~
3 ~~office~~ has been completed for the period embracing the dates
4 of said instruments, after complying with the provisions of
5 chapter 119.

6 Section 611. Section 517.315, Florida Statutes, is
7 amended to read:

8 517.315 Fees.--All fees and charges of any nature
9 collected by the office ~~department~~ pursuant to this chapter,
10 except the fees and charges collected pursuant to s. 517.131,
11 shall be paid into the State Treasury and credited to the
12 General Revenue Fund; and an appropriation shall be made
13 annually of necessary funds for the administration of the
14 provisions of this chapter.

15 Section 612. Section 517.32, Florida Statutes, is
16 amended to read:

17 517.32 Exemption from excise tax, certain obligations
18 to pay.--There shall be exempt from all excise taxes imposed
19 by chapter 201 all promissory notes, nonnegotiable notes, and
20 other written obligations to pay money bearing dates
21 subsequent to July 1, 1957, when the maker thereof is a
22 security dealer registered by the office ~~department~~ under this
23 chapter and when such promissory note, nonnegotiable note or
24 notes, or other written obligation to pay money shall be for
25 the duration of 30 days or less and secured by pledge or
26 deposit, as collateral security for the payment thereof,
27 security or securities as defined in s. 517.021, provided all
28 excise taxes imposed by chapter 201 shall have been paid upon
29 such collateral security.

30 Section 613. Paragraph (b) of subsection (1) of
31 section 518.115, Florida Statutes, is amended to read:

1 518.115 Power of fiduciary or custodian to deposit
2 securities in a central depository.--

3 (1)

4 (b) A bank or a trust company so depositing securities
5 with a clearing corporation shall be subject to such rules and
6 regulations with respect to the making and maintenance of such
7 deposit as, in the case of state-chartered institutions, the
8 Financial Services Commission ~~Department of Banking and~~
9 ~~Finance~~ and, in the case of national banking associations, the
10 Comptroller of the Currency may from time to time issue.

11 Section 614. Paragraph (b) of subsection (1) of
12 section 518.116, Florida Statutes, is amended to read:

13 518.116 Power of certain fiduciaries and custodians to
14 deposit United States Government and agency securities with a
15 Federal Reserve bank.--

16 (1)

17 (b) A bank or trust company so depositing securities
18 with a Federal Reserve Bank shall be subject to such rules and
19 regulations with respect to the making and maintenance of such
20 deposits as, in the case of state-chartered institutions, the
21 Financial Services Commission ~~Department of Banking and~~
22 ~~Finance~~ and, in the case of national banking associations, the
23 Comptroller of the Currency may from time to time issue. The
24 records of such bank or trust company shall at all times show
25 the ownership of the securities held in such account.

26 Section 615. Section 518.15, Florida Statutes, is
27 amended to read:

28 518.15 Bonds or motor vehicle tax anticipation
29 certificates legal investments and security.--Notwithstanding
30 any restrictions on investments contained in any law of this
31 state, the state and all public officers, municipal

1 corporations, political subdivisions, and public bodies, all
2 banks, bankers, trust companies, savings banks, building and
3 loan associations, savings and loan associations, investment
4 companies, and all persons carrying on an insurance business,
5 and all executors, administrators, guardians, trustees, and
6 other fiduciaries may legally invest any sinking funds, moneys
7 or other funds belonging to them or within their control in
8 bonds or motor vehicle anticipation certificates issued under
9 authority of s. 18, Art. XII of the State Constitution of 1885
10 as adopted by s. 9(d) of Art. XII, 1968 revised constitution,
11 and the additional provisions of s. 9(d), and such bonds or
12 certificates shall be authorized security for all public
13 deposits, including, but not restricted to, deposits as
14 authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this
15 act to authorize any person, firm or corporation, association,
16 political subdivision, body, and officer, public or private,
17 to use any funds owned or controlled by them, including, but
18 not limited to, sinking, insurance, investment, retirement,
19 compensation, pension, and trust funds, and funds held on
20 deposit, for the purchase of any such bonds or anticipation
21 certificates, up to the amount as authorized by law to be
22 invested in any type of security, including United States
23 Government Bonds.

24 Section 616. Section 518.151, Florida Statutes, is
25 amended to read:

26 518.151 Higher education bonds or certificates legal
27 investments and security.--Notwithstanding any restrictions on
28 investments contained in any law of this state, the state and
29 all public officers, municipal corporations, political
30 subdivisions, and public bodies, all banks, bankers, trust
31 companies, savings banks, building and loan associations,

1 savings and loan associations, investment companies, and all
2 persons carrying on an insurance business, and all executors,
3 administrators, guardians, trustees, and other fiduciaries may
4 legally invest any sinking funds, moneys or other funds
5 belonging to them or within their control in higher education
6 bonds or certificates issued under authority of s. 19, Art.
7 XII of the State Constitution of 1885 or of s. 9(a), Art. XII
8 of the constitution as revised in 1968, as amended, and such
9 bonds or certificates shall be authorized security for all
10 public deposits, including, but not restricted to, deposits as
11 authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this
12 act to authorize any person, firm or corporation, association,
13 political subdivision, body, and officer, public or private,
14 to use any funds owned or controlled by them, including, but
15 not limited to, sinking, insurance, investment, retirement,
16 compensation, pension, and trust funds, and funds held on
17 deposit, for the purchase of any such bonds or certificates,
18 up to the amount as authorized by law to be invested in any
19 type of security, including United States Government Bonds.

20 Section 617. Section 518.152, Florida Statutes, is
21 amended to read:

22 518.152 Puerto Rican bonds or obligations, legal
23 investments and securities.--Notwithstanding any restrictions
24 on investments contained in any law of this state, all public
25 officers and public bodies of the state, counties, municipal
26 corporations, and other political subdivisions; all banks,
27 bankers, trust companies, savings banks, building and loan
28 associations, savings and loan associations, investment
29 companies, and other persons carrying on a banking business;
30 all insurance companies, insurance associations and other
31 persons carrying on an insurance business; all persons holding

1 in trust any pension, health and welfare, and vacation funds;
2 all administrators, executors, guardians, trustees, and other
3 fiduciaries of any public, quasi-public, or private fund or
4 estate; and all other persons authorized to invest in bonds or
5 other obligations may legally invest any sinking funds,
6 moneys, or other funds belonging to them or within their
7 control in bonds or other obligations issued by the
8 Commonwealth of Puerto Rico, its agencies, authorities,
9 instrumentalities, municipalities, or political subdivisions,
10 provided such agency, authority, instrumentality,
11 municipality, or political subdivision has not, within 5 years
12 prior to the making of such investment, defaulted for more
13 than 90 days in the payment of any part of the principal or
14 interest of its bonded indebtedness. Such bonds or
15 obligations shall be authorized security for all public
16 deposits, including, but not restricted to, deposits as
17 authorized in s. 17.57 ~~s. 18.10~~, it being the purpose of this
18 section to authorize any person, firm, corporation,
19 association, political subdivision, body, and officer, public
20 or private, to use any funds owned or controlled by them,
21 including, but not limited to, sinking, insurance, investment,
22 retirement, compensation, pension and trust funds, and funds
23 held on deposit, for the purchase of any such bonds or
24 obligations up to the amount as authorized by law to be
25 invested in any type of security, including United States
26 Government Bonds. However, nothing contained in this section
27 shall be construed as relieving any person from any duty of
28 exercising reasonable care in selecting securities.

29 Section 618. Section 519.101, Florida Statutes, is
30 amended to read:

31

1 519.101 Florida equity exchange feasibility study;
2 structure, operation, and regulation.--

3 (1) There may be created one or more Florida equity
4 exchanges, with one or more offices each, upon a determination
5 by the Office of Financial Regulation of the Financial
6 Services Commission ~~Comptroller~~ that each such exchange has a
7 reasonable promise of successful operation, will promote
8 economic development, will produce net economic benefits in
9 the state, and will not expose the public to undue risk of
10 financial loss. This determination shall be based on the
11 results of a feasibility study concerning the possible
12 structure, operation, and regulation of each such exchange, to
13 be carried out under the supervision of the office
14 ~~Comptroller~~. ~~The Secretary of Commerce shall provide the~~
15 ~~Comptroller any needed advice on economic development aspects~~
16 ~~of the feasibility study~~. Said feasibility study shall
17 evaluate to what extent securities laws may limit the
18 transferability of investments in which any exchange would
19 deal; to what extent companies financed through securities in
20 which the exchange would deal would prefer a stable group of
21 investors; to what extent the particular investment objectives
22 of potential participants in any exchange might be
23 inconsistent with an exchange operation; and the possibility
24 that the frequency of investment opportunities of the type in
25 which an exchange would deal would be too low to economically
26 operate any exchange. The determination of the office
27 ~~Comptroller~~ shall constitute a final order as defined in s.
28 120.52 and shall be subject to the provisions of chapter 120.
29 Nothing in this section, however, shall be construed to
30 require the expenditure of state funds for the purpose of
31 conducting any such feasibility study. For the purposes of

1 this section, the term "exchange" shall apply to any such
2 Florida equity exchange proposed or created under this
3 section.

4 (2) The purpose of the exchange shall be to provide a
5 marketplace for the negotiation, arrangement, exchange, sale,
6 purchase, brokerage, syndication, and underwriting, and all
7 activities incidental thereto, of investment opportunities, in
8 an institutionalized and, to the maximum extent possible,
9 self-regulated fashion.

10 (3) Within 30 days following such determination, a
11 committee shall be appointed to write the constitution and
12 bylaws of the exchange. The office ~~Comptroller~~ may provide
13 technical assistance to the committee on the development of
14 the constitution and bylaws of the exchange. The committee
15 shall consist of 15 members, 11 members to be appointed by the
16 Governor, 2 members to be appointed by the Speaker of the
17 House of Representatives, and 2 members to be appointed by the
18 President of the Senate. The chair shall be elected by a
19 majority of the committee. The committee shall transmit such
20 proposed constitution, bylaws, and other recommendations for
21 the approval of the office ~~Comptroller~~ no later than 90 days
22 following the first meeting of the committee. In reviewing
23 the constitution and the bylaws of the exchange, as well as
24 any other recommendations made to the office ~~Comptroller~~ by
25 the committee, the office ~~Comptroller~~ shall consider whether
26 such constitution, bylaws, and recommendations are reasonably
27 consistent with the public interest and the efficient
28 functioning of the exchange. The office ~~Comptroller~~ shall
29 approve the constitution and bylaws of the exchange if he or
30 she finds that they specifically describe the types of
31 business that the exchange will conduct, that such business

1 activities are not inconsistent with state or federal law,
2 that the form of business organization of the exchange
3 complies with statutory requirements, and that the interest of
4 owners or members of the exchange would be adequately
5 protected. The submission of the proposed constitution and
6 bylaws to the office ~~Comptroller~~ shall be deemed an
7 application for a license and shall be subject to the
8 provisions of s. 120.80(9).

9 (4) The exchange shall have full authority to function
10 60 days after its constitution and bylaws are approved by the
11 office ~~Comptroller~~. The initial Board of Governors of the
12 exchange shall consist of the members of the committee who
13 shall serve until the first election pursuant to the
14 constitution and bylaws. If the constitution and bylaws are
15 disapproved by the office ~~Comptroller~~, the committee, in
16 consultation with the office ~~Comptroller~~, shall have 60 days
17 from the date of such disapproval within which to submit an
18 acceptable constitution and bylaws.

19 (5) The constitution and bylaws of the exchange shall
20 include provision that:

21 (a) There shall be no less than 9 nor more than 15
22 governors of the exchange, at least one-third of whom shall
23 not be members of the exchange.

24 (b) The principal offices of each exchange and the
25 principal offices of its members shall be located within this
26 state for the purpose of conducting the type of business
27 described in subsection (2). Any exchange may have such other
28 offices around the state as it deems necessary from time to
29 time, subject to a determination by the office ~~Comptroller~~
30 that such additional offices will be necessary for the
31

1 efficient operation of the exchange and will be in the public
2 interest.

3 (c) All members and applicants for membership on the
4 exchange shall submit all financial information reasonably
5 required by the office ~~Comptroller~~.

6 (d) The exchange shall establish or participate in a
7 security fund which shall be capitalized or underwritten in
8 such form and amount as will reasonably protect persons
9 transacting business through the exchange from any harm or
10 loss occasioned by the insolvency of any member of the
11 exchange. The formation of such security fund and the
12 adequacy of the financial security provided thereby shall be
13 subject to the approval of the Office of Financial Regulation
14 ~~Department of Banking and Finance~~ based upon the types and
15 amounts of transactions effected through the facilities of the
16 exchange.

17 (e) Rules shall be adopted prescribing eligibility for
18 membership and the voting power, duties, and rights to
19 participate in the conduct and management of the affairs of
20 the exchange by the members thereof, such rights and duties to
21 include, without limitation, the manner and form of conducting
22 business, financial stability requirements, dues, membership
23 fees, resolution of dispute mechanisms, and all other matters
24 necessary or appropriate to conduct any business permitted
25 herein; however, such rules shall not impose any limit on the
26 number of members of any such exchange. Any amendments to the
27 constitution and bylaws shall be subject to the approval of
28 the office ~~Comptroller~~.

29 (f) Elections to the Board of Governors of the
30 exchange shall be held once every 2 years, with those persons
31

1 receiving the greatest number of votes cast being elected
2 thereto.

3 (6) If the exchange contemplated by this section is
4 established, the office ~~Comptroller~~ shall furnish the chairs
5 of the finance and taxation committees of the Legislature with
6 copies of its constitution and bylaws. Upon receipt of the
7 constitution and bylaws, the Legislature shall consider what
8 tax policy and tax exemptions are needed to facilitate
9 successful operation of the exchange.

10 (7) If the exchange contemplated by this section is
11 finally established, the Financial Services Commission
12 ~~Comptroller~~ shall forthwith adopt rules providing for the
13 reimbursement by the exchange or any member thereof of the
14 actual costs incurred by the office ~~Comptroller~~ in connection
15 with the regulation and supervision of the exchange. As used
16 in this section, "actual costs" means all direct and indirect
17 costs and expenses incurred by the office ~~Comptroller~~ in
18 connection with the exchange including, without limitation,
19 general administrative costs, travel expenses, salaries, and
20 other benefits given to persons involved in the regulation and
21 supervision of the exchange. The office ~~Comptroller~~ shall
22 have the power to make any allocations that are deemed
23 reasonable and necessary and may require the exchange or any
24 members to pay interim assessments related to estimated final
25 assessments.

26 (8) The Florida securities laws and rules shall apply
27 to the exchange and to its members.

28 (9) The Financial Services Commission ~~Comptroller~~ may
29 establish limitations on investments in members of the
30 exchange by any person or company, consistent with the public
31 interest and the efficient functioning of the exchange.

1 Section 619. Subsection (3) of section 520.02, Florida
2 Statutes, is amended, present subsections (4) through (17) of
3 that section are renumbered as (5) through (18), respectively,
4 and a new subsection (4) is added to that section to read:

5 520.02 Definitions.--In this act, unless the context
6 or subject matter otherwise requires:

7 (3) "Commission" means the Financial Services
8 Commission~~"Department" means the Department of Banking and~~
9 ~~Finance.~~

10 (4) "Office" means the Office of Financial Regulation
11 of the commission.

12 Section 620. Subsections (2), (3), (4), and (5) of
13 section 520.03, Florida Statutes, are amended to read:

14 520.03 Licenses.--

15 (2) An application for a license under this part must
16 be submitted to the office ~~department~~ in such form as the
17 commission ~~department~~ may prescribe by rule. If the office
18 ~~department~~ determines that an application should be granted,
19 it shall issue the license for a period not to exceed 2 years.
20 A nonrefundable application fee of \$175 shall accompany an
21 initial application for the principal place of business and
22 each application for a branch location of a retail installment
23 seller who is required to be licensed under this chapter.

24 (3) The renewal fee for a motor vehicle retail
25 installment seller license shall be \$175. The commission
26 ~~department~~ shall establish by rule biennial licensure periods
27 and procedures for renewal of licenses. A license that is not
28 renewed by the end of the biennium established by the
29 commission ~~department~~ shall revert from active to inactive
30 status. An inactive license may be reactivated within 6
31 months after becoming inactive upon filing a completed

1 reactivation form, payment of the renewal fee, and payment of
2 a reactivation fee equal to the renewal fee. A license that
3 is not reactivated within 6 months after becoming inactive
4 automatically expires.

5 (4) Each license shall specify the location for which
6 it is issued and must be conspicuously displayed at that
7 location. Prior to relocating a principal place of business or
8 any branch location, the licensee must provide to the office
9 ~~department~~ notice of the relocation in a form prescribed by
10 commission ~~department~~ rule. A licensee may not transact
11 business as a motor vehicle retail installment seller except
12 under the name by which it is licensed. Licenses issued under
13 this part are not transferable or assignable.

14 (5) The office ~~department~~ may deny an initial
15 application for a license under this part if the applicant or
16 any person with power to direct the management or policies of
17 the applicant is the subject of a pending criminal prosecution
18 or governmental enforcement action, in any jurisdiction, until
19 conclusion of such criminal prosecution or enforcement action.

20 Section 621. Subsections (4) and (9) of section
21 520.07, Florida Statutes, are amended to read:

22 520.07 Requirements and prohibitions as to retail
23 installment contracts.--

24 (4) The amount, if any, included for insurance which
25 may be purchased by the holder of the retail installment
26 contract may not exceed the applicable premiums chargeable in
27 accordance with the rates filed with the Office of Insurance
28 Regulation of the Commission ~~Department of Insurance~~. If dual
29 interest insurance on the motor vehicle is purchased by the
30 holder, it shall, within 30 days after execution of the retail
31 installment contract, send or cause to be sent to the buyer a

1 policy or policies or certificate of insurance, written by an
2 insurance company authorized to do business in this state,
3 clearly setting forth the amount of the premium, the kind or
4 kinds of insurance, the coverages, and all the terms,
5 exceptions, limitations, restrictions, and conditions of the
6 contract or contracts of insurance. Nothing in this act shall
7 impair or abrogate the right of a buyer, as defined herein, to
8 procure insurance from an agent and company of his or her own
9 selection as provided by the insurance laws of this state; and
10 nothing contained in this act shall modify, amend, alter, or
11 repeal any of the insurance laws of the state, including any
12 such laws enacted by the 1957 Legislature.

13 (9) The office ~~department~~ may order a seller to refund
14 any amounts assessed and charged on a retail installment
15 contract which exceed the maximum charges provided by this act
16 or by rules of the commission ~~department~~.

17 Section 622. Subsection (3) of section 520.31, Florida
18 Statutes, is amended, present subsections (4) through (17) of
19 that section are renumbered as (5) through (18), respectively,
20 and a new subsection (4) is added to that section to read:

21 520.31 Definitions.--Unless otherwise clearly
22 indicated by the context, the following words when used in
23 this act, for the purposes of this act, shall have the
24 meanings respectively ascribed to them in this section:

25 (3) "Commission" means the Financial Services
26 Commission ~~"Department" means the Department of Banking and~~
27 ~~Finance.~~

28 (4) "Office" means the Office of Financial Regulation
29 of the commission.

30 Section 623. Subsections (2), (3), (4), and (5) of
31 section 520.32, Florida Statutes, are amended to read:

1 520.32 Licenses.--

2 (2) An application for a license under this part must
3 be submitted to the office ~~department~~ in such form as the
4 commission ~~department~~ may prescribe by rule. If the office
5 ~~department~~ determines that an application should be granted,
6 it shall issue the license for a period not to exceed 2 years.
7 A nonrefundable application fee of \$175 shall accompany an
8 initial application for the principal place of business and
9 each application for a branch location of a retail installment
10 seller.

11 (3) The renewal fee for a retail seller license shall
12 be \$175. Biennial licensure periods and procedures for renewal
13 of licenses may also be established by the commission
14 ~~department~~ by rule. A license that is not renewed at the end
15 of the biennium established by the commission ~~department~~ shall
16 revert from active to inactive status. An inactive license
17 may be reactivated within 6 months after becoming inactive
18 upon filing a completed reactivation form, payment of the
19 renewal fee, and payment of a reactivation fee equal to the
20 renewal fee. A license that is not reactivated within 6
21 months after becoming inactive automatically expires.

22 (4) Each license must specify the location for which
23 it is issued and must be conspicuously displayed at that
24 location. If a licensee's principal place of business or
25 branch location changes, the licensee shall notify the office
26 ~~department~~ and the office ~~department~~ shall endorse the change
27 of location without charge. A licensee may not transact
28 business as a retail installment seller except under the name
29 by which it is licensed. A license issued under this part is
30 not transferable or assignable.

31

1 (5) The office ~~department~~ may deny an initial
2 application for a license under this part if the applicant or
3 any person with power to direct the management or policies of
4 the applicant is the subject of a pending criminal prosecution
5 or governmental enforcement action, in any jurisdiction, until
6 conclusion of such criminal prosecution or enforcement action.

7 Section 624. Subsection (8) of section 520.34, Florida
8 Statutes, is amended to read:

9 520.34 Retail installment contracts.--

10 (8) The seller under any retail installment contract
11 shall, within 30 days after execution of the contract, deliver
12 or mail or cause to be delivered or mailed to the buyer at his
13 or her aforesaid address any policy or policies of insurance
14 the seller has agreed to purchase in connection therewith, or
15 in lieu thereof a certificate or certificates of such
16 insurance. The amount, if any, included for insurance shall
17 not exceed the applicable premiums chargeable in accordance
18 with the rates filed with the Office of Insurance Regulation
19 of the commission ~~Department of Insurance~~; if any such
20 insurance is canceled, unearned insurance premium refunds and
21 any unearned finance charges thereon received by the holder
22 shall, at his or her option, be credited to the final maturing
23 installments of the contract or paid to the buyer, except to
24 the extent applied toward the payment for similar insurance
25 protecting the interests of the seller and the holder or
26 either of them. The finance charge on the original
27 transaction shall be separately computed:

28 (a) With the premium for the canceled or adjusted
29 insurance included in the "amount financed"; and
30
31

1 (b) With the premium for the canceled insurance or the
2 amount of the premium adjustment excluded from the "amount
3 financed."

4
5 The difference in the finance charge resulting from these
6 computations shall be the portion of the finance charge
7 attributable to the canceled or adjusted insurance, and the
8 unearned portion thereof shall be determined by the use of the
9 rule of 78ths. "Cancellation of insurance" occurs at such
10 time as the seller or holder receives from the insurance
11 carrier the proper refund of unearned insurance premiums.
12 Nothing in this act shall impair or abrogate the right of a
13 buyer to procure insurance from an agent and company of his or
14 her own selection, as provided by the insurance laws of this
15 state; and nothing contained in this act shall modify, alter,
16 or repeal any of the insurance laws of this state.

17 Section 625. Subsections (2), (3), (4), and (5) of
18 section 520.52, Florida Statutes, are amended to read:

19 520.52 Licensees.--

20 (2) An application for a license under this part must
21 be submitted to the office ~~department~~ in such form as the
22 commission ~~department~~ may prescribe by rule. If the office
23 ~~department~~ determines that an application should be granted,
24 it shall issue the license for a period not to exceed 2 years.
25 A nonrefundable application fee of \$175 shall accompany an
26 initial application for the principal place of business and
27 each branch location of a sales finance company.

28 (3) The renewal fee for a sales finance company
29 license shall be \$175. Biennial licensure periods and
30 procedures for renewal of licenses may also be established by
31 the commission ~~department~~ by rule. A license that is not

1 renewed at the end of the biennium established by the
2 commission ~~department~~ shall revert from active to inactive
3 status. An inactive license may be reactivated within 6
4 months after becoming inactive upon filing a completed
5 reactivation form, payment of the renewal fee, and payment of
6 a reactivation fee equal to the renewal fee. A license that
7 is not reactivated within 6 months after becoming inactive
8 automatically expires.

9 (4) Each license must specify the location for which
10 it is issued and must be conspicuously displayed at that
11 location. If a licensee's principal place of business or
12 branch location changes, the licensee shall notify the office
13 ~~department~~ and the office ~~department~~ shall endorse the change
14 of location without charge. A licensee may not transact
15 business as a sales finance company except under the name by
16 which it is licensed. A license issued under this part is not
17 transferable or assignable.

18 (5) The office ~~department~~ may deny an initial
19 application for a license under this part if the applicant or
20 any person with power to direct the management or policies of
21 the applicant is the subject of a pending criminal prosecution
22 or governmental enforcement action, in any jurisdiction, until
23 conclusion of such criminal prosecution or enforcement action.

24 Section 626. Subsection (6) of section 520.61, Florida
25 Statutes, is amended, present subsections (7) through (21) of
26 that section are renumbered as (8) through (22), respectively,
27 and a new subsection (7) is added to that section to read:

28 520.61 Definitions.--As used in this act:

29 (6) "Commission" means the Financial Services
30 Commission ~~"Department"~~ means the ~~Department of Banking and~~
31 ~~Finance~~.

1 (7) "Office" means the Office of Financial Regulation
2 of the commission.

3 Section 627. Section 520.63, Florida Statutes, is
4 amended to read:

5 520.63 Licensees.--

6 (1) A person may not engage in or transact any
7 business as a home improvement finance seller or operate a
8 branch without first obtaining a license from the office
9 ~~department~~, except that a banking institution, trust company,
10 savings and loan association, credit union authorized to do
11 business in this state, or licensee under ss. 494.006-494.0077
12 is not required to obtain a license to engage in home
13 improvement financing.

14 (2) An application for a license under this part must
15 be submitted to the office ~~department~~ in such form as the
16 commission ~~department~~ may prescribe by rule. If the office
17 ~~department~~ determines that an application should be granted,
18 it shall issue the license for a period not to exceed 2 years.
19 A nonrefundable application fee of \$175 shall accompany an
20 initial application for the principal place of business and
21 each application for a branch location of a home improvement
22 finance seller.

23 (3) The renewal fee for a home improvement finance
24 license shall be \$175. Biennial licensure periods and
25 procedures for renewal of licenses may also be established by
26 the commission ~~department~~ by rule. A license that is not
27 renewed at the end of the biennium established by the
28 commission ~~department~~ shall automatically revert from active
29 to inactive status. An inactive license may be reactivated
30 within 6 months after becoming inactive upon filing a
31 completed reactivation form, payment of the renewal fee, and

1 payment of a reactivation fee equal to the renewal fee. A
2 license that is not reactivated within 6 months after becoming
3 inactive automatically expires.

4 (4) Each license must specify the location for which
5 it is issued and must be conspicuously displayed at that
6 location. If a home improvement finance seller's principal
7 place of business or any branch location changes, the licensee
8 shall notify the office ~~department~~ and the office ~~department~~
9 shall endorse the change of location without charge. A
10 licensee may not transact business as a home improvement
11 finance seller except under the name by which it is licensed.
12 A license issued under this part is not transferable or
13 assignable.

14 (5) The office ~~department~~ may deny an initial
15 application for a license under this part if the applicant or
16 any person with power to direct the management or policies of
17 the applicant is the subject of a pending criminal prosecution
18 or governmental enforcement action, in any jurisdiction, until
19 conclusion of such criminal prosecution or enforcement action.

20 (6) Each seller shall designate and maintain an agent
21 in the state for service of process.

22 Section 628. Subsections (1) and (5) of section
23 520.73, Florida Statutes, are amended to read:

24 520.73 Home improvement contract; form and content;
25 separate disclosures.--

26 (1) Every home improvement contract shall be evidenced
27 by a written agreement and shall be signed by the parties.
28 The home improvement contract shall be in the form approved by
29 the office ~~department~~ and shall contain:

30 (a) The name, address, and license number of the home
31 improvement finance seller;

1 (b) The names of the home improvement finance seller's
2 employees who solicited or negotiated the home improvement
3 contract;

4 (c) The approximate dates when the work will begin and
5 will be completed; and

6 (d) A description of the work to be done and the
7 materials to be used.

8 (5) The home improvement contract shall contain the
9 following notice, in substantially this form, and such other
10 notices required by the public interest and specified by the
11 commission ~~department~~ by rule, in 10-point boldfaced type
12 directly above the space provided for the signature of the
13 owner:

14
15 Notice To Owner

16
17 a. Do not sign this home improvement contract in
18 blank.

19 b. You are entitled to a copy of the contract at the
20 time you sign. Keep it to protect your legal rights.

21 c. This home improvement contract may contain a
22 mortgage or otherwise create a lien on your property that
23 could be foreclosed on if you do not pay. Be sure you
24 understand all provisions of the contract before you sign.

25 Section 629. Subsection (3) of section 520.76, Florida
26 Statutes, is amended to read:

27 520.76 Insurance provisions, procurement, rates.--

28 (3) The amount, if any, included for such insurance
29 shall not exceed the applicable premiums chargeable in
30 accordance with rates filed with the Office of Insurance
31 Regulation of the commission ~~Department of Insurance~~. If any

1 such group credit life or other insurance is canceled, the
2 refund for unearned insurance premiums received or receivable
3 by the holder of the home improvement contract or the excess
4 of the amount included in the contract for insurance over the
5 premiums paid or payable by the holder of the contract
6 together with, in either case, the unearned portion of the
7 finance charge or other interest applicable thereto shall be
8 credited to the final maturing installments of the home
9 improvement contract. However, no such credit need be made if
10 the amount would be less than \$1.

11 Section 630. Subsection (2) of section 520.81, Florida
12 Statutes, is amended to read:

13 520.81 Completion certificate.--

14 (2) The form of the certificate shall be prescribed by
15 the commission ~~department~~.

16 Section 631. Subsection (2) of section 520.83, Florida
17 Statutes, is amended to read:

18 520.83 Cancellation of contract on payment in full.--

19 (2) For all other home improvement contracts, the
20 holder, upon payment in full by the owner of the time sales
21 price and other amounts lawfully due under the home
22 improvement contract, shall furnish the owner with such
23 instruments as the commission ~~department~~ may by rule
24 ~~regulation~~ provide.

25 Section 632. Subsections (10) and (12) of section
26 520.90, Florida Statutes, are amended to read:

27 520.90 Prohibited acts.--The following acts are
28 prohibited:

29 (10) Willful failure to notify the office ~~department~~
30 of any change of control in ownership, management, business
31 name, or location.

1 (12) Willful failure to comply with any order, demand,
2 or requirement lawfully made by the office ~~department~~.

3 Section 633. Section 520.994, Florida Statutes, is
4 amended to read:

5 520.994 Powers of office ~~department~~.--

6 (1) The office ~~department~~ may issue and serve
7 subpoenas to compel the attendance of witnesses and the
8 production of documents, papers, books, records, and other
9 evidence before it in any matter pertaining to this chapter.
10 The office ~~department~~ may administer oaths and affirmations to
11 any person whose testimony is required. If any person refuses
12 to testify, produce books, records, and documents, or
13 otherwise refuses to obey a subpoena issued under this
14 section, the office ~~department~~ may present its petition to a
15 court of competent jurisdiction in or for the county in which
16 such person resides or has its principal place of business,
17 whereupon the court shall issue its rule nisi requiring such
18 person to obey forthwith the subpoena issued by the office
19 ~~department~~ or show cause for failing to obey such subpoena.
20 Unless the person shows sufficient cause for failing to obey
21 the subpoena, the court shall forthwith direct such person to
22 obey the subpoena, subject to such punishment as the court may
23 direct, including, but not limited to, the restraint, by
24 injunction or by appointment of a receiver, of any transfer,
25 pledge, assignment, or other disposition of such person's
26 assets or any concealment, alteration, destruction, or other
27 disposition of subpoenaed books, records, or documents as the
28 court deems appropriate, until such person has fully complied
29 with such subpoena and the office ~~department~~ has completed its
30 investigation or examination. The office ~~department~~ is
31 entitled to the summary procedure provided in s. 51.011, and

1 the court shall advance the cause on its calendar. Costs
2 incurred by the office ~~department~~ to obtain an order granting,
3 in whole or in part, its petition shall be taxed against the
4 subpoenaed person, and failure to comply with such order is a
5 contempt of court. Witnesses are entitled to the same fees and
6 mileage as they are entitled to by law for attending as
7 witnesses in the circuit court, unless such examination or
8 investigation is held at the place of business or residence of
9 the witness.

10 (2) In addition to any other powers conferred upon it
11 to enforce or administer this chapter, the office ~~department~~
12 may bring an action in any court of competent jurisdiction to
13 enforce or administer any provision of this chapter, any rule
14 or order adopted pursuant to this chapter, or any written
15 agreement entered into with the office ~~department~~. In such
16 action, the office ~~department~~ may seek temporary or permanent
17 injunction, appointment of a receiver or administrator, or an
18 order of restitution. If in any such action the office
19 ~~department~~ alleges that five or more persons have been
20 defrauded by acts constituting violations of this chapter, it
21 shall state the circumstances constituting such fraud with
22 particularity and may seek any appropriate remedy at law or in
23 equity, provided the remedy does not impair any rights granted
24 by law to any holder in due course as defined in s. 673.302.

25 (3) In addition to any other powers conferred upon it
26 to enforce or administer this chapter, the office ~~department~~
27 may issue and serve upon a person a cease and desist order
28 whenever the office ~~department~~ finds that such person is
29 violating, has violated, or is about to violate any provision
30 of this chapter, any rule or order adopted pursuant to this
31 chapter, or any written agreement entered into with the office

1 ~~department~~. Any such order shall contain a notice of the
2 rights provided by ss. 120.569 and 120.57.

3 (4) In addition to any other powers conferred upon it
4 to enforce or administer this chapter, the office ~~department~~
5 may impose and collect an administrative fine against any
6 person found to have violated any provision of this chapter,
7 any rule or order adopted pursuant to this chapter, or any
8 written agreement entered into with the office ~~department~~, in
9 an amount not to exceed \$1,000 for each violation.

10 (5) The office ~~department~~ shall administer and enforce
11 this chapter. The commission ~~department~~ has authority to adopt
12 rules pursuant to ss. 120.536(1) and 120.54 to implement the
13 provisions of this chapter. The commission ~~department~~ may
14 adopt rules to allow electronic submission of any form,
15 document, or fee required by this chapter.

16 Section 634. Subsections (1), (2), and (4) of section
17 520.995, Florida Statutes, are amended to read:

18 520.995 Grounds for disciplinary action.--

19 (1) The following acts are violations of this chapter
20 and constitute grounds for the disciplinary actions specified
21 in subsection (2):

22 (a) Failure to comply with any provision of this
23 chapter, any rule or order adopted pursuant to this chapter,
24 or any written agreement entered into with the office
25 ~~department~~;

26 (b) Fraud, misrepresentation, deceit, or gross
27 negligence in any home improvement finance transaction or
28 retail installment transaction, regardless of reliance by or
29 damage to the buyer or owner;

30 (c) Fraudulent misrepresentation, circumvention, or
31 concealment of any matter required to be stated or furnished

1 to a retail buyer or owner pursuant to this chapter,
2 regardless of reliance by or damage to the buyer or owner;

3 (d) Willful imposition of illegal or excessive charges
4 in any retail installment transaction or home improvement
5 finance transaction;

6 (e) False, deceptive, or misleading advertising by a
7 seller or home improvement finance seller;

8 (f) Failure to maintain, preserve, and keep available
9 for examination, all books, accounts, or other documents
10 required by this chapter, by any rule or order adopted
11 pursuant to this chapter, or by any agreement entered into
12 with the office ~~department~~;

13 (g) Refusal to permit inspection of books and records
14 in an investigation or examination by the office ~~department~~ or
15 refusal to comply with a subpoena issued by the office
16 ~~department~~;

17 (h) Criminal conduct in the course of a person's
18 business as a seller, as a home improvement finance seller, or
19 as a sales finance company; or

20 (i) Failure to timely pay any fee, charge, or fine
21 imposed or assessed pursuant to this chapter or any rule
22 adopted under this chapter.

23 (2) Upon a finding by the office ~~department~~ that any
24 person has committed any of the acts set forth in subsection
25 (1), the office ~~department~~ may enter an order taking one or
26 more of the following actions:

27 (a) Denying an application for a license pursuant to
28 this chapter;

29 (b) Revoking or suspending a license previously
30 granted pursuant to this chapter;

31

1 (c) Placing a licensee or an applicant for a license
2 on probation for a period of time and subject to such
3 conditions as the office department may specify;

4 (d) Placing permanent restrictions or conditions upon
5 issuance or maintenance of a license pursuant to this chapter;

6 (e) Issuing a reprimand; or

7 (f) Imposing an administrative fine not to exceed
8 \$1,000 for each such act.

9 (4) It is sufficient cause for the office department
10 to take any of the actions specified in subsection (2) as to
11 any partnership, corporation, or association, if the office
12 ~~department~~ finds grounds for such action as to any member of
13 the partnership, as to any officer or director of the
14 corporation or association, or as to any person with power to
15 direct the management or policies of the partnership,
16 corporation, or association.

17 Section 635. Section 520.996, Florida Statutes, is
18 amended to read:

19 520.996 Investigations and complaints.--

20 (1)(a) The office department or its agent may, at
21 intermittent periods, make such investigations and
22 examinations of any licensee or other person as it deems
23 necessary to determine compliance with this chapter. For such
24 purposes, it may examine the books, accounts, records, and
25 other documents or matters of any licensee or other person. It
26 shall have the power to compel the production of all relevant
27 books, records, and other documents and materials relative to
28 an examination or investigation. Such investigations and
29 examinations shall not be made more often than once during any
30 12-month period unless the office department has good and
31 sufficient reason to believe the licensee is not complying

1 with the provisions of this chapter. Such examination fee
2 shall be calculated on an hourly basis and shall be rounded to
3 the nearest hour.

4 (b) The office ~~department~~ shall conduct all
5 examinations at a convenient location in this state unless the
6 office ~~department~~ determines that it is more effective or
7 cost-efficient to perform an examination at the licensee's
8 out-of-state location. For an examination performed at the
9 licensee's out-of-state location, the licensee shall pay the
10 travel expense and per diem subsistence at the rate provided
11 by law for up to thirty 8-hour days per year for each examiner
12 who participates in such an examination. However, if the
13 examination involves or reveals possible fraudulent conduct of
14 the licensee, the licensee shall pay the travel expenses and
15 per diem subsistence provided by law, without limitation, for
16 each participating examiner.

17 (2) The examination expenses incurred by the office
18 ~~department~~ in each examination shall be paid by the licensee
19 examined. The expenses of the office ~~department~~ incurred in
20 each examination of a home improvement finance seller or of an
21 employee representing such home improvement finance seller
22 shall be paid by the home improvement finance seller. Expenses
23 incurred for each examination of a sales finance company shall
24 be paid by it. The examination expenses shall be paid by such
25 licensee examined or such other person obligated to pay such
26 examination expenses within 30 days after demand therefor by
27 the office ~~department~~.

28 (3) Any retail buyer or owner having reason to believe
29 that the provisions of this chapter have been violated may
30 file with the office or the Department of Financial Services a
31 written complaint setting forth the details of such alleged

1 violations and the office ~~department~~ upon receipt of such
2 complaint, may inspect the pertinent books, records, letters,
3 and contracts of the licensee and of the seller involved,
4 relating to such specific written complaint.

5 Section 636. Section 520.9965, Florida Statutes, is
6 amended to read:

7 520.9965 Confidentiality of information relating to
8 investigations and examinations.--

9 (1)(a) Except as otherwise provided by this section,
10 information relative to an investigation or examination by the
11 office ~~department~~ pursuant to this chapter, including any
12 consumer complaint received by the office or the Department of
13 Financial Services, is confidential and exempt from s.
14 119.07(1) until the investigation or examination is completed
15 or ceases to be active. The information compiled by the office
16 ~~department~~ in such an investigation or examination shall
17 remain confidential and exempt from s. 119.07(1) after the
18 office's ~~department's~~ investigation or examination is
19 completed or ceases to be active if the office ~~department~~
20 submits the information to any law enforcement or
21 administrative agency for further investigation. Such
22 information shall remain confidential and exempt from s.
23 119.07(1) until that agency's investigation is completed or
24 ceases to be active. For purposes of this section, an
25 investigation or examination shall be considered "active" so
26 long as the office ~~department~~ or any law enforcement or
27 administrative agency is proceeding with reasonable dispatch
28 and has a reasonable good faith belief that the investigation
29 or examination may lead to the filing of an administrative,
30 civil, or criminal proceeding or to the denial or conditional
31 grant of a license, registration, or permit. This section

1 shall not be construed to prohibit disclosure of information
2 which is required by law to be filed with the office
3 ~~department~~ and which, but for the investigation or
4 examination, would be subject to s. 119.07(1).

5 (b) Except as necessary for the office ~~department~~ to
6 enforce the provisions of this chapter, a consumer complaint
7 and other information relative to an investigation or
8 examination shall remain confidential and exempt from s.
9 119.07(1) after the investigation or examination is completed
10 or ceases to be active to the extent disclosure would:

11 1. Jeopardize the integrity of another active
12 investigation or examination.

13 2. Reveal the name, address, telephone number, social
14 security number, or any other identifying number or
15 information of any complainant, customer, or account holder.

16 3. Disclose the identity of a confidential source.

17 4. Disclose investigative techniques or procedures.

18 5. Reveal a trade secret as defined in s. 688.002.

19 (c) In the event that office ~~department~~ personnel or
20 personnel of the former Department of Banking and Finance are
21 or have been involved in an investigation or examination of
22 such nature as to endanger their lives or physical safety or
23 that of their families, then the home addresses, telephone
24 numbers, places of employment, and photographs of such
25 personnel, together with the home addresses, telephone
26 numbers, photographs, and places of employment of spouses and
27 children of such personnel and the names and locations of
28 schools and day care facilities attended by the children of
29 such personnel are confidential and exempt from s. 119.07(1).

30 (d) Nothing in this section shall be construed to
31 prohibit the office ~~department~~ from providing information to

1 any law enforcement or administrative agency. Any law
2 enforcement or administrative agency receiving confidential
3 information in connection with its official duties shall
4 maintain the confidentiality of the information so long as it
5 would otherwise be confidential.

6 (e) All information obtained by the office ~~department~~
7 from any person which is only made available to the office
8 ~~department~~ on a confidential or similarly restricted basis
9 shall be confidential and exempt from s. 119.07(1). This
10 exemption shall not be construed to prohibit disclosure of
11 information which is required by law to be filed with the
12 office ~~department~~ or which is otherwise subject to s.
13 119.07(1).

14 (2) If information subject to subsection (1) is
15 offered in evidence in any administrative, civil, or criminal
16 proceeding, the presiding officer may, in his or her
17 discretion, prevent the disclosure of information which would
18 be confidential pursuant to paragraph (1)(b).

19 (3) A privilege against civil liability is granted to
20 a person who furnishes information or evidence to the office
21 ~~department~~, unless such person acts in bad faith or with
22 malice in providing such information or evidence.

23 Section 637. Section 520.997, Florida Statutes, is
24 amended to read:

25 520.997 Books, accounts, and records.--

26 (1) Every licensee shall maintain, at the principal
27 place of business, such books, accounts, and records of the
28 business conducted under the license issued for such place of
29 business as will enable the office ~~department~~ to determine
30 whether the business of the licensee contemplated by this
31 chapter is being operated in accordance with the provisions of

1 this chapter. The licensee shall make all such books,
2 accounts, and records of business conducted under the license
3 available at a convenient location in this state upon request
4 of the office ~~department~~.

5 (2) A licensee, operating two or more licensed places
6 of business in this state, may maintain the general control
7 records of all such offices at any one of such offices, or at
8 any other office maintained by such licensee, upon the filing
9 of a written request with the office ~~department~~ designating
10 therein the office at which such control records are
11 maintained.

12 (3) All books, accounts, and records of licensees,
13 including any cards used in a card system, shall be preserved
14 and available for examination by the office ~~department~~ for at
15 least 2 years after making the final entry therein.

16 (4) The commission ~~may department is hereby authorized~~
17 ~~and empowered to~~ prescribe the minimum information to be shown
18 in the books, accounts, and records of licensees so that such
19 records will enable the office ~~department~~ to determine
20 compliance with the provisions of this chapter.

21 (5) A licensee that is the subject of a voluntary or
22 involuntary bankruptcy filing must provide notice of such
23 filing to the office ~~department~~ within 7 days after the filing
24 date.

25 Section 638. Section 520.998, Florida Statutes, is
26 amended to read:

27 520.998 Regulatory Trust Fund.--All fees, charges, and
28 fines collected by the office ~~department~~ pursuant to this
29 chapter shall be deposited in the State Treasury to the credit
30 of the Regulatory Trust Fund under the office ~~department~~.

31

1 Section 639. Subsection (7) of section 526.141,
2 Florida Statutes, is amended to read:

3 526.141 Self-service gasoline stations; attendants;
4 regulations.--

5 (7) The Chief Financial Officer Insurance
6 ~~Commissioner~~, under her or his powers, duties, and functions
7 as State Fire Marshal, shall adopt ~~promulgate~~ rules and
8 ~~regulations~~ for the administration and enforcement of this
9 section, except for subsection (5) which shall be administered
10 and enforced by the Department of Agriculture and Consumer
11 Services.

12 Section 640. Subsection (2) of section 537.003,
13 Florida Statutes, is amended, present subsections (3) through
14 (15) of that section are renumbered as (4) through (16),
15 respectively, and a new subsection (3) is added to that
16 section to read:

17 537.003 Definitions.--As used in this act, unless the
18 context otherwise requires:

19 (2) "Commission" means the Financial Services
20 ~~Commission~~ "Department" means the Department of Banking and
21 ~~Finance.~~

22 (3) "Office" means the Office of Financial Regulation
23 of the commission.

24 Section 641. Subsections (1) through (5), (9), and
25 (10) of section 537.004, Florida Statutes, are amended to
26 read:

27 537.004 License required; license fees.--

28 (1) A person may not act as a title loan lender or own
29 or operate a title loan office unless such person has an
30 active title loan lender license issued by the office
31 ~~department~~ under this act. A title loan lender may not own or

1 operate more than one title loan office unless the lender
2 obtains a separate title loan lender license for each title
3 loan office.

4 (2) A person applying for licensure as a title loan
5 lender shall file with the office ~~department~~ an application,
6 the bond required by s. 537.005(3), a nonrefundable
7 application fee of \$1,200, a nonrefundable investigation fee
8 of \$200, and a complete set of fingerprints taken by an
9 authorized law enforcement officer. The office ~~department~~
10 shall submit such fingerprints to the Department of Law
11 Enforcement for state processing, and the Department of Law
12 Enforcement shall forward the fingerprints to the Federal
13 Bureau of Investigation for national processing.

14 (3) If the office ~~department~~ determines that an
15 application should be approved, the office ~~department~~ shall
16 issue a license for a period not to exceed 2 years.

17 (4) A license shall be renewed biennially by filing a
18 renewal form and a nonrefundable renewal fee of \$1,200. A
19 license that is not renewed by the end of the biennial period
20 shall automatically revert to inactive status. An inactive
21 license may be reactivated within 6 months after becoming
22 inactive by filing a reactivation form, payment of the
23 nonrefundable \$1,200 renewal fee, and payment of a
24 nonrefundable reactivation fee of \$600. A license that is not
25 reactivated within 6 months after becoming inactive may not be
26 reactivated and shall automatically expire. The commission
27 ~~department~~ shall establish by rule the procedures for renewal
28 and reactivation of a license and shall adopt a renewal form
29 and a reactivation form.

30 (5) Each license must be conspicuously displayed at
31 the title loan office. When a licensee wishes to move a title

1 loan office to another location, the licensee shall provide
2 prior written notice to the office ~~department~~.

3 (9) The commission ~~department~~ may adopt rules to allow
4 for electronic filing of applications, fees, and forms
5 required by this act.

6 (10) All moneys collected by the office ~~department~~
7 under this act shall be deposited into the Regulatory Trust
8 Fund of the office ~~Department of Banking and Finance~~.

9 Section 642. Section 537.005, Florida Statutes, is
10 amended to read:

11 537.005 Application for license.--

12 (1) A verified application for licensure under this
13 act, in the form prescribed by commission ~~department~~ rule,
14 shall:

15 (a) Contain the name and the residence and business
16 address of the applicant. If the applicant is other than a
17 natural person, the application shall contain the name and the
18 residence and business address of each ultimate equitable
19 owner of 10 percent or more of such entity and each director,
20 general partner, and executive officer of such entity.

21 (b) State whether any individual identified in
22 paragraph (a) has, within the last 10 years, pleaded nolo
23 contendere to, or has been convicted or found guilty of, a
24 felony, regardless of whether adjudication was withheld.

25 (c) Identify the county and municipality with the
26 street and number or location where the business is to be
27 conducted.

28 (d) Contain additional information as the commission
29 ~~department~~ determines by rule to be necessary to ensure
30 compliance with this act.

31

1 (2) Notwithstanding subsection (1), the application
2 need not state the full name and address of each officer,
3 director, and shareholder if the applicant is owned directly
4 or beneficially by a person who as an issuer has a class of
5 securities registered pursuant to s. 12 of the Securities
6 Exchange Act of 1934 or, pursuant to s. 13 or s. 15(d) of such
7 act, is an issuer of securities which is required to file
8 reports with the Securities and Exchange Commission, if the
9 person files with the office ~~department~~ any information,
10 documents, and reports required by such act to be filed with
11 the Securities and Exchange Commission.

12 (3) An applicant for licensure shall file with the
13 office ~~department~~ a bond, in the amount of \$100,000 for each
14 license, with a surety company qualified to do business in
15 this state. However, in no event shall the aggregate amount of
16 the bond required for a single title loan lender exceed \$1
17 million. In lieu of the bond, the applicant may establish a
18 certificate of deposit or an irrevocable letter of credit in a
19 financial institution, as defined in s. 655.005, in the amount
20 of the bond. The original bond, certificate of deposit, or
21 letter of credit shall be filed with the office ~~department~~,
22 and the office ~~department~~ shall be the beneficiary to that
23 document. The bond, certificate of deposit, or letter of
24 credit shall be in favor of the office ~~department~~ for the use
25 and benefit of any consumer who is injured pursuant to a title
26 loan transaction by the fraud, misrepresentation, breach of
27 contract, financial failure, or violation of any provision of
28 this act by the title loan lender. Such liability may be
29 enforced either by proceeding in an administrative action or
30 by filing a judicial suit at law in a court of competent
31 jurisdiction. However, in such court suit, the bond,

1 certificate of deposit, or letter of credit posted with the
2 office ~~department~~ shall not be amenable or subject to any
3 judgment or other legal process issuing out of or from such
4 court in connection with such lawsuit, but such bond,
5 certificate of deposit, or letter of credit shall be amenable
6 to and enforceable only by and through administrative
7 proceedings before the office ~~department~~. It is the intent of
8 the Legislature that such bond, certificate of deposit, or
9 letter of credit shall be applicable and liable only for the
10 payment of claims duly adjudicated by order of the office
11 ~~department~~. The bond, certificate of deposit, or letter of
12 credit shall be payable on a pro rata basis as determined by
13 the office ~~department~~, but the aggregate amount may not exceed
14 the amount of the bond, certificate of deposit, or letter of
15 credit.

16 (4) The office ~~department~~ shall approve an application
17 and issue a license if the office ~~department~~ determines that
18 the applicant satisfies the requirements of this act.

19 Section 643. Paragraphs (a), (f), (h), and (o) of
20 subsection (1) and subsections (2) and (4) of section 537.006,
21 Florida Statutes, are amended to read:

22 537.006 Denial, suspension, or revocation of
23 license.--

24 (1) The following acts are violations of this act and
25 constitute grounds for the disciplinary actions specified in
26 subsection (2):

27 (a) Failure to comply with any provision of this act,
28 any rule or order adopted pursuant to this act, or any written
29 agreement entered into with the office ~~department~~.

30 (f) Failure to maintain, preserve, and keep available
31 for examination all books, accounts, or other documents

1 required by this act, by any rule or order adopted pursuant to
2 this act, or by any agreement entered into with the office
3 ~~department~~.

4 (h) Refusal to provide information upon request of the
5 office ~~department~~, to permit inspection of books and records
6 in an investigation or examination by the office ~~department~~,
7 or to comply with a subpoena issued by the office ~~department~~.

8 (o) Having demonstrated unworthiness, as defined by
9 commission ~~department~~ rule, to transact the business of a
10 title loan lender.

11 (2) Upon a finding by the office ~~department~~ that any
12 person has committed any of the acts set forth in subsection
13 (1), the office ~~department~~ may enter an order taking one or
14 more of the following actions:

15 (a) Denying an application for licensure under this
16 act.

17 (b) Revoking or suspending a license previously
18 granted pursuant to this act.

19 (c) Placing a licensee or an applicant for a license
20 on probation for a period of time and subject to such
21 conditions as the office ~~department~~ specifies.

22 (d) Issuing a reprimand.

23 (e) Imposing an administrative fine not to exceed
24 \$5,000 for each separate act or violation.

25 (4) It is sufficient cause for the office ~~department~~
26 to take any of the actions specified in subsection (2), as to
27 any entity other than a natural person, if the office
28 ~~department~~ finds grounds for such action as to any member of
29 such entity, as to any executive officer or director of the
30 entity, or as to any person with power to direct the
31 management or policies of the entity.

1 Section 644. Paragraph (b) of subsection (2) of
2 section 537.008, Florida Statutes, is amended to read:

3 537.008 Title loan agreement.--

4 (2) The following information shall also be printed on
5 all title loan agreements:

6 (b) The name and address of the Department of
7 Financial Services as well as a telephone number to which
8 consumers may address complaints.

9 Section 645. Section 537.009, Florida Statutes, is
10 amended to read:

11 537.009 Recordkeeping; reporting; safekeeping of
12 property.--

13 (1) Every title loan lender shall maintain, at the
14 lender's title loan office, such books, accounts, and records
15 of the business conducted under the license issued for such
16 place of business as will enable the office ~~department~~ to
17 determine the licensee's compliance with this act.

18 (2) The office ~~department~~ may authorize the
19 maintenance of books, accounts, and records at a location
20 other than the lender's title loan office. The office
21 ~~department~~ may require books, accounts, and records to be
22 produced and available at a reasonable and convenient location
23 in this state within a reasonable period of time after such a
24 request.

25 (3) The title loan lender shall maintain the original
26 copy of each completed title loan agreement on the title loan
27 office premises, and shall not obliterate, discard, or destroy
28 any such original copy, for a period of at least 2 years after
29 making the final entry on any loan recorded in such office or
30 after an a ~~department~~ examination by the Office of Financial
31 Regulation, whichever is later.

1 (4) Loan property which is delivered to a title loan
2 lender shall be securely stored and maintained at the title
3 loan office unless the loan property has been forwarded to the
4 appropriate state agency for the purpose of having a lien
5 recorded or deleted.

6 (5) The commission ~~department~~ may prescribe by rule
7 the books, accounts, and records, and the minimum information
8 to be shown in the books, accounts, and records, of licensees
9 so that such records will enable the office ~~department~~ to
10 determine compliance with the provisions of this act.

11 Section 646. Subsection (2) and paragraph (c) of
12 subsection (4) of section 537.011, Florida Statutes, are
13 amended to read:

14 537.011 Title loan charges.--

15 (2) The annual percentage rate that may be charged for
16 a title loan may equal, but not exceed, the annual percentage
17 rate that must be computed and disclosed as required by the
18 federal Truth in Lending Act and Regulation Z of the Board of
19 Governors of the Federal Reserve System. The maximum annual
20 percentage rate of interest that may be charged is 12 times
21 the maximum monthly rate, and the maximum monthly rate must be
22 computed on the basis of one-twelfth of the annual rate for
23 each full month. The commission ~~Department of Banking and~~
24 ~~Finance~~ shall establish by rule the rate for each day in a
25 fraction of a month when the period for which the charge is
26 computed is more or less than 1 month.

27 (4) Any interest contracted for or received, directly
28 or indirectly, by a title loan lender, or an agent of the
29 title loan lender, in excess of the amounts authorized under
30 this chapter is prohibited and may not be collected by the
31 title loan lender or an agent of the title loan lender.

1 (c) The office ~~department~~ may order a title loan
2 lender, or an agent of the title loan lender, to comply with
3 the provisions of paragraphs (a) and (b).

4 Section 647. Paragraphs (b), (f), and (n) of
5 subsection (1) of section 537.013, Florida Statutes, are
6 amended to read:

7 537.013 Prohibited acts.--

8 (1) A title loan lender, or any agent or employee of a
9 title loan lender, shall not:

10 (b) Refuse to allow the office ~~department~~ to inspect
11 completed title loan agreements, extensions of such
12 agreements, or loan property during the ordinary operating
13 hours of the title loan lender's business or other times
14 acceptable to both parties.

15 (f) Fail to exercise reasonable care, as defined by
16 commission ~~department~~ rule, in the safekeeping of loan
17 property or of titled personal property repossessed pursuant
18 to this act.

19 (n) Act as a title loan lender under this act within a
20 place of business in which the licensee solicits or engages in
21 business outside the scope of this act if the office
22 ~~department~~ determines that the licensee's operation of and
23 conduct pertaining to such other business results in an
24 evasion of this act. Upon making such a determination, the
25 office ~~department~~ shall order the licensee to cease and desist
26 from such evasion; provided, no licensee shall engage in the
27 pawnbroker business.

28 Section 648. Section 537.016, Florida Statutes, is
29 amended to read:

30 537.016 Subpoenas; enforcement actions; rules.--

31

1 (1) The office ~~department~~ may issue and serve
2 subpoenas to compel the attendance of witnesses and the
3 production of documents, papers, books, records, and other
4 evidence before the office ~~department~~ in any matter pertaining
5 to this act. The office ~~department~~ may administer oaths and
6 affirmations to any person whose testimony is required. If any
7 person refuses to testify; produce books, records, and
8 documents; or otherwise refuses to obey a subpoena issued
9 under this section, the office ~~department~~ may enforce the
10 subpoena in the same manner as subpoenas issued under the
11 Administrative Procedure Act are enforced. Witnesses are
12 entitled to the same fees and mileage as they are entitled to
13 by law for attending as witnesses in the circuit court, unless
14 such examination or investigation is held at the place of
15 business or residence of the witness.

16 (2) In addition to any other powers conferred upon the
17 office ~~department~~ to enforce or administer this act, the
18 office ~~department~~ may:

19 (a) Bring an action in any court of competent
20 jurisdiction to enforce or administer this act, any rule or
21 order adopted under this act, or any written agreement entered
22 into with the office ~~department~~. In such action, the office
23 ~~department~~ may seek any relief at law or equity, including a
24 temporary or permanent injunction, appointment of a receiver
25 or administrator, or an order of restitution.

26 (b) Issue and serve upon a person an order requiring
27 such person to cease and desist and take corrective action
28 whenever the office ~~department~~ finds that such person is
29 violating, has violated, or is about to violate any provision
30 of this act, any rule or order adopted under this act, or any
31 written agreement entered into with the office ~~department~~.

1 (c) Whenever the office ~~department~~ finds that conduct
2 described in paragraph (b) presents an immediate danger to the
3 public health, safety, or welfare requiring an immediate final
4 order, the office ~~department~~ may issue an emergency cease and
5 desist order reciting with particularity the facts underlying
6 such findings. The emergency cease and desist order is
7 effective immediately upon service of a copy of the order on
8 the respondent named in the order and shall remain effective
9 for 90 days. If the office ~~department~~ begins nonemergency
10 proceedings under paragraph (b), the emergency cease and
11 desist order remains effective until the conclusion of the
12 proceedings under ss. 120.569 and 120.57.

13 (3) The commission ~~department~~ may adopt rules to
14 administer this act.

15 Section 649. Section 537.017, Florida Statutes, is
16 amended to read:

17 537.017 Investigations and complaints.--

18 (1) The office ~~department~~ may make any investigation
19 and examination of any licensee or other person the office
20 ~~department~~ deems necessary to determine compliance with this
21 act. For such purposes, the office ~~department~~ may examine the
22 books, accounts, records, and other documents or matters of
23 any licensee or other person. The office ~~department~~ may compel
24 the production of all relevant books, records, and other
25 documents and materials relative to an examination or
26 investigation. Examinations shall not be made more often than
27 once during any 12-month period unless the office ~~department~~
28 has reason to believe the licensee is not complying with the
29 provisions of this act.

30 (2) The office ~~department~~ shall conduct all
31 examinations at a convenient location in this state unless the

1 ~~office department~~ determines that it is more effective or
2 cost-efficient to perform an examination at the licensee's
3 out-of-state location. For an examination performed at the
4 licensee's out-of-state location, the licensee shall pay the
5 travel expense and per diem subsistence at the rate provided
6 by law for up to thirty 8-hour days per year for each office
7 ~~department~~ examiner who participates in such an examination.
8 However, if the examination involves or reveals possible
9 fraudulent conduct by the licensee, the licensee shall pay the
10 travel expenses and per diem subsistence provided by law,
11 without limitation, for each participating examiner.

12 (3) Any person having reason to believe that any
13 provision of this act has been violated may file with the
14 Department of Financial Services or the office a written
15 complaint setting forth the details of such alleged violation,
16 and the office department may investigate such complaint.

17 Section 650. Subsection (1) of section 548.066,
18 Florida Statutes, is amended to read:

19 548.066 Ticket refunds.--

20 (1) Upon the postponement, substitution of either
21 participant, or cancellation of the main event or the entire
22 program of matches, the promoter shall refund the full
23 purchase price of a ticket to each person presenting a ticket
24 for a refund within 30 days after the scheduled date of the
25 event. Within 10 days after the expiration of the 30-day
26 period, the promoter shall pay all unclaimed ticket receipts
27 to the commission. The commission shall hold the funds for 1
28 year and make refunds during such time to any person
29 presenting a ticket for a refund. Thereafter, the commission
30 shall pay all remaining moneys from the ticket sale to the
31

1 Chief Financial Officer ~~State Treasurer~~ for deposit into the
2 General Revenue Fund.

3 Section 651. Section 548.077, Florida Statutes, is
4 amended to read:

5 548.077 Florida State Boxing Commission; collection
6 and disposition of moneys.--All fees, fines, forfeitures, and
7 other moneys collected under the provisions of this chapter
8 shall be paid by the commission to the Chief Financial Officer
9 ~~State Treasurer~~ who, after the expenses of the commission are
10 paid, shall deposit them in the Professional Regulation Trust
11 Fund to be used for the administration and operation of the
12 commission and to enforce the laws and rules under its
13 jurisdiction. In the event the unexpended balance of such
14 moneys collected under the provisions of this chapter exceeds
15 \$250,000, any excess of that amount shall be deposited in the
16 General Revenue Fund.

17 Section 652. Subsection (10) of section 550.0251,
18 Florida Statutes, is amended to read:

19 550.0251 The powers and duties of the Division of
20 Pari-mutuel Wagering of the Department of Business and
21 Professional Regulation.--The division shall administer this
22 chapter and regulate the pari-mutuel industry under this
23 chapter and the rules adopted pursuant thereto, and:

24 (10) The division may impose an administrative fine
25 for a violation under this chapter of not more than \$1,000 for
26 each count or separate offense, except as otherwise provided
27 in this chapter, and may suspend or revoke a permit, a
28 pari-mutuel license, or an occupational license for a
29 violation under this chapter. All fines imposed and collected
30 under this subsection must be deposited with the Chief

31

1 Financial Officer ~~Treasurer~~ to the credit of the General
2 Revenue Fund.

3 Section 653. Paragraph (b) of subsection (9) of
4 section 550.054, Florida Statutes, is amended to read:

5 550.054 Application for permit to conduct pari-mutuel
6 wagering.--

7 (9)

8 (b) The division may revoke or suspend any permit or
9 license issued under this chapter upon the willful violation
10 by the permitholder or licensee of any provision of this
11 chapter or of any rule adopted under this chapter. In lieu of
12 suspending or revoking a permit or license, the division may
13 impose a civil penalty against the permitholder or licensee
14 for a violation of this chapter or any rule adopted by the
15 division. The penalty so imposed may not exceed \$1,000 for
16 each count or separate offense. All penalties imposed and
17 collected must be deposited with the Chief Financial Officer
18 ~~Treasurer~~ to the credit of the General Revenue Fund.

19 Section 654. Paragraph (a) of subsection (1) and
20 subsection (5) of section 550.0951, Florida Statutes, are
21 amended to read:

22 550.0951 Payment of daily license fee and taxes.--

23 (1)(a) DAILY LICENSE FEE.--Each person engaged in the
24 business of conducting race meetings or jai alai games under
25 this chapter, hereinafter referred to as the "permitholder,"
26 "licensee," or "permittee," shall pay to the division, for the
27 use of the division, a daily license fee on each live or
28 simulcast pari-mutuel event of \$100 for each horserace and \$80
29 for each dograce and \$40 for each jai alai game conducted at a
30 racetrack or fronton licensed under this chapter. In addition
31 to the tax exemption specified in s. 550.09514(1) of \$360,000

1 or \$500,000 per greyhound permitholder per state fiscal year,
2 each greyhound permitholder shall receive in the current state
3 fiscal year a tax credit equal to the number of live greyhound
4 races conducted in the previous state fiscal year times the
5 daily license fee specified for each dograce in this
6 subsection applicable for the previous state fiscal year.
7 This tax credit and the exemption in s. 550.09514(1) shall be
8 applicable to any tax imposed by this chapter or the daily
9 license fees imposed by this chapter except during any charity
10 or scholarship performances conducted pursuant to s. 550.0351.
11 Each permitholder shall pay daily license fees not to exceed
12 \$500 per day on any simulcast races or games on which such
13 permitholder accepts wagers regardless of the number of
14 out-of-state events taken or the number of out-of-state
15 locations from which such events are taken. This license fee
16 shall be deposited with the Chief Financial Officer ~~Treasurer~~
17 to the credit of the Pari-mutuel Wagering Trust Fund.

18 (5) PAYMENT AND DISPOSITION OF FEES AND
19 TAXES.--Payment for the admission tax, tax on handle, and the
20 breaks tax imposed by this section shall be paid to the
21 division. The division shall deposit these sums with the Chief
22 Financial Officer ~~Treasurer~~, to the credit of the Pari-mutuel
23 Wagering Trust Fund, hereby established. The permitholder
24 shall remit to the division payment for the daily license fee,
25 the admission tax, the tax on handle, and the breaks tax. Such
26 payments shall be remitted by 3 p.m. Wednesday of each week
27 for taxes imposed and collected for the preceding week ending
28 on Sunday. Permitholders shall file a report under oath by the
29 5th day of each calendar month for all taxes remitted during
30 the preceding calendar month. Such payments shall be
31 accompanied by a report under oath showing the total of all

1 admissions, the pari-mutuel wagering activities for the
2 preceding calendar month, and such other information as may be
3 prescribed by the division.

4 Section 655. Paragraph (a) of subsection (3) of
5 section 550.125, Florida Statutes, is amended to read:

6 550.125 Uniform reporting system; bond requirement.--

7 (3)(a) Each permitholder to which a license is granted
8 under this chapter, at its own cost and expense, must, before
9 the license is delivered, give a bond in the penal sum of
10 \$50,000 payable to the Governor of the state and her or his
11 successors in office, with a surety or sureties to be approved
12 by the division and the Chief Financial Officer ~~Treasurer~~,
13 conditioned to faithfully make the payments to the Chief
14 Financial Officer ~~Treasurer~~ in her or his capacity as
15 treasurer of the division; to keep its books and records and
16 make reports as provided; and to conduct its racing in
17 conformity with this chapter. When the greatest amount of tax
18 owed during any month in the prior state fiscal year, in which
19 a full schedule of live racing was conducted, is less than
20 \$50,000, the division may assess a bond in a sum less than
21 \$50,000. The division may review the bond for adequacy and
22 require adjustments each fiscal year. The division has the
23 authority to adopt rules to implement this paragraph and
24 establish guidelines for such bonds.

25 Section 656. Section 550.135, Florida Statutes, is
26 amended to read:

27 550.135 Division of moneys derived under this
28 law.--All moneys that are deposited with the Chief Financial
29 Officer ~~Treasurer~~ to the credit of the Pari-mutuel Wagering
30 Trust Fund shall be distributed as follows:

31

1 (1) The daily license fee revenues collected pursuant
2 to s. 550.0951(1) shall be used to fund the operating cost of
3 the division and to provide a proportionate share of the
4 operation of the office of the secretary and the Division of
5 Administration of the Department of Business and Professional
6 Regulation; however, other collections in the Pari-mutuel
7 Wagering Trust Fund may also be used to fund the operation of
8 the division in accordance with authorized appropriations.

9 (2) All unappropriated funds in excess of \$3.5 million
10 in the Pari-mutuel Wagering Trust Fund shall be deposited with
11 to the Chief Financial Officer ~~Treasurer~~ to the credit of the
12 General Revenue Fund.

13 Section 657. Subsection (3) of section 550.1645,
14 Florida Statutes, is amended to read:

15 550.1645 Escheat to state of abandoned interest in or
16 contribution to pari-mutuel pools.--

17 (3) All money or other property that has escheated to
18 and become the property of the state as provided herein, and
19 which is held by such licensee authorized to conduct
20 pari-mutuel pools in this state, shall be paid by such
21 licensee to the Chief Financial Officer ~~Treasurer~~ annually
22 within 60 days after the close of the race meeting of the
23 licensee. Such moneys so paid by the licensee to the Chief
24 Financial Officer ~~Treasurer~~ shall be deposited in the State
25 School Fund to be used for the support and maintenance of
26 public free schools as required by s. 6, Art. IX of the State
27 Constitution.

28 Section 658. Subsection (14) of section 552.081,
29 Florida Statutes, is amended to read:

30 552.081 Definitions.--As used in this chapter:
31

1 (14) "Division" means the Division of State Fire
2 Marshal of the Department of Financial Services Insurance.

3 Section 659. Subsection (2) of section 552.161,
4 Florida Statutes, is amended to read:

5 552.161 Administrative fines.--

6 (2) All such fines, monetary penalties, and costs
7 received by the division in connection with this chapter shall
8 be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust
9 Fund.

10 Section 660. Subsection (3) of section 552.21, Florida
11 Statutes, is amended to read:

12 552.21 Confiscation and disposal of explosives.--

13 (3) Costs incurred in the confiscation and disposal of
14 such explosives shall be paid from the Insurance
15 ~~Commissioner's~~ Regulatory Trust Fund.

16 Section 661. Section 552.26, Florida Statutes, is
17 amended to read:

18 552.26 Administration of chapter; personnel; fees to
19 be deposited in Insurance ~~Commissioner's~~ Regulatory Trust
20 Fund.--

21 (1) The division is authorized to employ such persons
22 as it may deem qualified and necessary, and incur such other
23 expenses as may be required, in connection with the
24 administration of this chapter.

25 (2) All fees collected for licenses and permits and
26 competency examination filing fees required by this chapter
27 shall be deposited in the Insurance ~~Commissioner's~~ Regulatory
28 Trust Fund and are ~~hereby~~ appropriated for the use of the
29 division in the administration of this chapter.

30 Section 662. Subsection (4) of section 553.72, Florida
31 Statutes, is amended to read:

1 553.72 Intent.--

2 (4) It is the intent of the Legislature that the
3 Florida Fire Prevention Code and the Life Safety Code of this
4 state be adopted, modified, updated, interpreted, and
5 maintained by the Department of Financial Services ~~Insurance~~
6 in accordance with ss. 120.536(1) and 120.54 and included by
7 reference as sections in the Florida Building Code.

8 Section 663. Paragraph (c) of subsection (1) of
9 section 553.73, Florida Statutes, is amended to read:

10 553.73 Florida Building Code.--

11 (1)

12 (c) The Florida Fire Prevention Code and the Life
13 Safety Code shall be referenced in the Florida Building Code,
14 but shall be adopted, modified, revised, or amended,
15 interpreted, and maintained by the Department of Financial
16 Services ~~Insurance~~ by rule adopted pursuant to ss. 120.536(1)
17 and 120.54. The Florida Building Commission may not adopt a
18 fire prevention or lifesafety code, and nothing in the Florida
19 Building Code shall affect the statutory powers, duties, and
20 responsibilities of any fire official or the Department of
21 Financial Services ~~Insurance~~.

22 Section 664. Paragraph (k) of subsection (1) of
23 section 553.74, Florida Statutes, is amended to read:

24 553.74 Florida Building Commission.--

25 (1) The Florida Building Commission is created and
26 shall be located within the Department of Community Affairs
27 for administrative purposes. Members shall be appointed by the
28 Governor subject to confirmation by the Senate. The commission
29 shall be composed of 23 members, consisting of the following:

30 (k) One member who represents the Department of
31 Financial Services ~~Insurance~~.

1 Section 665. Effective October 1, 2003, paragraph (k)
2 of subsection (1) of section 553.74, Florida Statutes, as
3 amended by chapter 2002-293, Laws of Florida, is amended to
4 read:

5 553.74 Florida Building Commission.--

6 (1) The Florida Building Commission is created and
7 shall be located within the Department of Community Affairs
8 for administrative purposes. Members shall be appointed by the
9 Governor subject to confirmation by the Senate. The commission
10 shall be composed of 23 members, consisting of the following:

11 (k) One member who represents the Department of
12 Financial Services ~~Insurance~~.

13
14 Any person serving on the commission under paragraph (c) or
15 paragraph (h) on October 1, 2003, and who has served less than
16 two full terms is eligible for reappointment to the commission
17 regardless of whether he or she meets the new qualification.

18 Section 666. Subsection (16) of section 553.79,
19 Florida Statutes, is amended to read:

20 553.79 Permits; applications; issuance; inspections.--

21 (16) Notwithstanding any other provision of law, state
22 agencies responsible for the construction, erection,
23 alteration, modification, repair, or demolition of public
24 buildings, or the regulation of public and private buildings,
25 structures, and facilities, shall be subject to enforcement of
26 the Florida Building Code by local jurisdictions. This
27 subsection applies in addition to the jurisdiction and
28 authority of the Department of Financial Services ~~Insurance~~ to
29 inspect state-owned buildings. This subsection does not apply
30 to the jurisdiction and authority of the Department of
31 Agriculture and Consumer Services to inspect amusement rides

1 or the Department of Financial Services ~~Insurance~~ to inspect
2 state-owned buildings and boilers.

3 Section 667. Subsection (6) of section 553.88, Florida
4 Statutes, is amended to read:

5 553.88 Adoption of electrical and alarm
6 standards.--For the purpose of establishing minimum electrical
7 and alarm standards in this state, the current edition of the
8 following standards are adopted:

9 (6) The minimum standards for grounding of portable
10 electric equipment, chapter 8C-27 as recommended by the
11 ~~Industrial Standards Section, Division of Workers'~~
12 ~~Compensation, Department of~~ Financial Services ~~Labor and~~
13 ~~Employment Security.~~

14
15 The Florida Building Commission shall update and maintain such
16 electrical standards consistent with the procedures
17 established in s. 553.73 and may recommend the National
18 Electrical Installation Standards.

19 Section 668. Subsection (6) of section 554.1021,
20 Florida Statutes, is amended to read:

21 554.1021 Definitions.--As used in ss.
22 554.1011-554.115:

23 (6) "Department" means the Department of Financial
24 Services ~~Insurance~~.

25 Section 669. Subsection (1) of section 554.105,
26 Florida Statutes, is amended to read:

27 554.105 Chief inspector.--

28 (1) The Chief Financial Officer ~~Insurance Commissioner~~
29 ~~and Treasurer~~ shall appoint a chief inspector, who shall have
30 not less than 5 years' experience in the construction,
31 installation, inspection, operation, maintenance, or repair of

1 high pressure, high temperature water boilers and who shall
2 hold a commission from the National Board of Boiler and
3 Pressure Vessel Inspectors or a certificate of competency from
4 the department.

5 Section 670. Subsection (3) of section 554.111,
6 Florida Statutes, is amended to read:

7 554.111 Fees.--

8 (3) The chief inspector shall deposit all fees
9 received pursuant to ss. 554.1011-554.115 into the Insurance
10 ~~Commissioner's~~ Regulatory Trust Fund.

11 Section 671. Paragraph (b) of subsection (2) and
12 subsection (3) of section 559.10, Florida Statutes, are
13 amended to read:

14 559.10 Definition; "budget planning".--

15 (2) The term "budget planning" does not include the
16 following:

17 (b) Other activities defined by rule of the Financial
18 Services Commission ~~Department of Banking and Finance~~ as not
19 within the prohibition of this part, provided such rule is
20 adopted after a finding that consumers are adequately
21 protected in the activity and that its prohibition is not
22 required in the public interest.

23 (3) The Financial Services Commission ~~Department of~~
24 ~~Banking and Finance~~ may adopt rules as necessary to implement
25 and enforce this part.

26 Section 672. Subsection (5) of section 559.543,
27 Florida Statutes, is amended, and subsection (6) is added to
28 that section, to read:

29 559.543 Definitions.--As used in this part:

30
31

1 (5) "Commission" means the Financial Services
2 Commission~~"Department"~~ means the ~~Department of Banking and~~
3 ~~Finance~~.

4 (6) "Office" means the Office of Financial Regulation
5 of the commission.

6 Section 673. Subsections (2), (3), and (4) of section
7 559.544, Florida Statutes, are amended to read:

8 559.544 Registration required; exemptions.--

9 (2) Each commercial collection agency doing business
10 in this state shall register with the office ~~department~~ and
11 annually renew such registration, providing the registration
12 fee, information, and surety bond required by this part.

13 (3) No registration shall be valid for any commercial
14 collection agency transacting business at any place other than
15 that designated in the registration unless the office
16 ~~department~~ is first notified in advance of any change of
17 location. A registration under this part is not transferable
18 or assignable. Any commercial collection agency desiring to
19 change its registered name, location, or agent for service of
20 process at any time other than renewal of registration shall
21 notify the office ~~department~~ of such change prior to the
22 change.

23 (4) The office ~~department~~ shall not accept any
24 registration for any commercial collection agency as validly
25 made and filed with the office ~~department~~ under this section
26 unless the registration information furnished to the office
27 ~~department~~ by the registrant is complete pursuant to s.
28 559.545 and facially demonstrates that such registrant is
29 qualified to engage in business as a commercial collection
30 agency, including specifically that neither the registrant nor
31 any principal of the registrant has engaged in any unlawful

1 collection practices, dishonest dealings, acts of moral
2 turpitude, or other criminal acts that reflect an inability to
3 engage in the commercial collection agency business. The
4 office ~~department~~ shall inform any person whose registration
5 is rejected by the office ~~department~~ of the fact of and basis
6 for such rejection. A prospective registrant shall be
7 entitled to be registered when her or his or its registration
8 information is complete on its face, the applicable
9 registration fee has been paid, and the required evidence of
10 current bond is furnished to the office ~~department~~.

11 Section 674. Section 559.545, Florida Statutes, is
12 amended to read:

13 559.545 Registration of commercial collection
14 agencies; procedure.--Any person who wishes to register as a
15 commercial collection agency in compliance with this part
16 shall do so on forms adopted by the commission and furnished
17 by the office ~~department~~. Any renewal of registration shall
18 be made between October 1 and December 31 of each year. In
19 registering or renewing a registration as required by this
20 part, each commercial collection agency shall furnish to the
21 office ~~department~~ a registration fee, information, and surety
22 bond, as follows:

23 (1) The registrant shall pay to the office ~~department~~
24 a registration fee of \$500. All amounts collected shall be
25 deposited to the credit of the Regulatory Trust Fund of the
26 office ~~department~~.

27 (2) The registrant shall provide the following
28 information:

29 (a) The business name or trade name of the commercial
30 collection agency, the current mailing address of the agency,
31 and the current business location of each place from which the

1 agency operates either a main or branch office, with a
2 designation of which location constitutes its principal place
3 of business.

4 (b) The full names, current addresses, current
5 telephone numbers, and social security numbers, or federal
6 identification numbers of any corporate owner, of the
7 registrant's owners or corporate officers and directors, and
8 of the Florida resident agent of the registering agency.

9 (c) A statement as to whether the registrant is a
10 domestic or foreign corporation, together with the state and
11 date of incorporation, charter number of the corporation, and,
12 if a foreign corporation, the date the corporation first
13 registered to do business in this state.

14 (d) A statement listing each county in this state in
15 which the registrant is currently doing business or plans to
16 do business within the next calendar year, indicating each
17 county in which the registrant holds an occupational license.

18 (e) A statement listing each county in this state in
19 which the registrant is operating under a fictitious name or
20 trade name other than that of the registrant, indicating the
21 date and place of registration of any such fictitious name or
22 trade name.

23 (f) A statement listing the names of any other
24 corporations, entities, or trade names through which any owner
25 or director of the registrant was known or did business as a
26 commercial or consumer collection agency within the 5 calendar
27 years immediately preceding the year in which the agency is
28 registering.

29 (g) A statement clearly identifying and explaining any
30 occasion on which any professional license or occupational
31 license held by the registrant, any principal of the

1 registrant, or any business entity in which any principal of
2 the registrant was the owner of 10 percent or more of such
3 business was the subject of any suspension, revocation, or
4 other disciplinary action.

5 (h) A statement clearly identifying and explaining any
6 occasion of a finding of guilt of any crime involving moral
7 turpitude or dishonest conduct on the part of any principal of
8 the registrant.

9 (3) The registrant shall furnish to the office
10 ~~department~~ evidence, as provided in s. 559.546, of the
11 registrant having a current surety bond in the amount of
12 \$50,000, valid for the year of registration, paid for and
13 issued for the use and benefit of any credit grantor who
14 suffers or sustains any loss or damage by reason of any
15 violation of the provisions of this part by the registrant, or
16 by any agent or employee of the registrant acting within the
17 scope of her or his employment, and issued to ensure
18 conformance with the provisions of this part.

19 Section 675. Section 559.546, Florida Statutes, is
20 amended to read:

21 559.546 Bond; evidence of current and valid
22 bond.--Pursuant to s. 559.545, the registrant shall provide to
23 the office ~~department~~ evidence that the registrant has been
24 issued a current and valid surety bond as required by this
25 part.

26 (1) In addition to each registration filed pursuant to
27 s. 559.545 and any renewal of such registration, each
28 registrant shall furnish to the office ~~department~~ the
29 following:
30
31

1 (a) A copy of the surety bond, which bond shall be one
2 issued by a surety known by the registrant to be acceptable to
3 the office ~~department~~.

4 (b) A statement from the surety that the annual
5 premium for the bond has been paid in full by the registrant.

6 (c) A statement from the surety that the bond issued
7 by the surety meets the requirements of this part.

8 (2) The liability of the surety under any bond issued
9 pursuant to the requirements of this part shall not exceed in
10 the aggregate the amount of the bond, regardless of the number
11 or amount of any claims filed or which might be asserted
12 against the surety on such bond. If multiple claims are filed
13 against the surety on any such bond in excess of the amount of
14 the bond, the surety may pay the full amount of the bond to
15 the office ~~department~~ and shall not be further liable under
16 the bond. The office ~~department~~ shall hold such funds for
17 distribution to claimants and administratively determine and
18 pay to each claimant the pro rata share of each valid claim
19 made against the funds within 6 months after the date of the
20 filing of the first claim against the surety.

21 Section 676. Paragraph (a) of subsection (1) and
22 paragraph (a) of subsection (2) of section 559.548, Florida
23 Statutes, are amended to read:

24 559.548 Penalties.--

25 (1) Each of the following acts constitutes a felony of
26 the third degree, punishable as provided in s. 775.082, s.
27 775.083, or s. 775.084:

28 (a) Operating or soliciting business as a commercial
29 collection agency in this state without first registering with
30 the office ~~department~~, unless specifically exempted by this
31 part.

1 (2) Each of the following acts constitutes a
2 misdemeanor of the second degree, punishable as provided in s.
3 775.082 or s. 775.083:

4 (a) Relocating a business as a commercial collection
5 agency, or operating under any name other than that designated
6 in the registration, unless written notification is given to
7 the office ~~department~~ and to the surety or sureties on the
8 original bond.

9 Section 677. Subsection (4) of section 559.55, Florida
10 Statutes, is amended to read:

11 559.55 Definitions.--The following terms shall, unless
12 the context otherwise indicates, have the following meanings
13 for the purpose of this part:

14 (4) "Office" means the Office of Financial Regulation
15 of the Financial Services Commission ~~"Department" means the~~
16 ~~Department of Banking and Finance.~~

17 Section 678. Subsections (2) and (3) of section
18 559.553, Florida Statutes, are amended to read:

19 559.553 Registration of consumer collection agencies
20 required; exemptions.--

21 (2) Each consumer collection agency doing business in
22 this state shall register with the office ~~department~~ and renew
23 such registration annually as set forth in s. 559.555.

24 (3) A prospective registrant shall be entitled to be
25 registered when registration information is complete on its
26 face and the applicable registration fee has been paid;
27 however, the office ~~department~~ may reject a registration
28 submitted by a prospective registrant if the registrant or any
29 principal of the registrant previously has held any
30 professional license or state registration which was the
31 subject of any suspension or revocation which has not been

1 explained by the prospective registrant to the satisfaction of
2 the office ~~department~~ either in the registration information
3 submitted initially or upon the subsequent written request of
4 the office ~~department~~. In the event that an attempted
5 registration is rejected by the office ~~department~~ the
6 prospective registrant shall be informed of the basis for
7 rejection.

8 Section 679. Section 559.555, Florida Statutes, is
9 amended to read:

10 559.555 Registration of consumer collection agencies;
11 procedure.--Any person required to register as a consumer
12 collection agency shall furnish to the office ~~department~~ the
13 registration fee and information as follows:

14 (1) The registrant shall pay to the office ~~department~~
15 a registration fee in the amount of \$200. All amounts
16 collected shall be deposited by the office ~~department~~ to the
17 credit of the Regulatory Trust Fund of the office ~~department~~.

18 (2) Each registrant shall provide to the office
19 ~~department~~ the business name or trade name, the current
20 mailing address, the current business location which
21 constitutes its principal place of business, and the full name
22 of each individual who is a principal of the registrant.
23 "Principal of a registrant" means the registrant's owners if a
24 partnership or sole proprietorship, corporate officers,
25 corporate directors other than directors of a not-for-profit
26 corporation organized pursuant to chapter 617 and Florida
27 resident agent if a corporate registrant. The registration
28 information shall include a statement clearly identifying and
29 explaining any occasion on which any professional license or
30 state registration held by the registrant, by any principal of
31 the registrant, or by any business entity in which any

1 principal of the registrant was the owner of 10 percent or
2 more of such business, was the subject of any suspension or
3 revocation.

4 (3) Renewal of registration shall be made between
5 October 1 and December 31 of each year. There shall be no
6 proration of the fee for any registration.

7 Section 680. Section 559.563, Florida Statutes, is
8 amended to read:

9 559.563 Void registration.--Any registration made
10 under this part based upon false identification or false
11 information, or identification not current with respect to
12 name, address, and business location, or other fact which is
13 material to such registration, shall be void. Any
14 registration made and subsequently void under this section
15 shall not be construed as creating any defense in any action
16 by the office ~~department~~ to impose any sanction for any
17 violation of this part.

18 Section 681. Section 559.725, Florida Statutes, is
19 amended to read:

20 559.725 Consumer complaints; administrative duties.--

21 (1) The Division of Consumer Services of the
22 Department of Financial Services shall serve as the registry
23 for receiving and maintaining records of inquiries,
24 correspondence, and complaints from consumers concerning any
25 and all persons who collect debts, including consumer
26 collection agencies.

27 (2) The division shall classify complaints by type and
28 identify the number of written complaints against persons
29 collecting or attempting to collect debts in this state,
30 including credit grantors collecting their own debts, debt
31 collectors generally, and, specifically, consumer collection

1 agencies as distinguished from other persons who collect debts
2 such as commercial debt collection agencies regulated under
3 part V of this chapter. The division shall identify the
4 nature and number of various kinds of written complaints,
5 including specifically those alleging violations of s. 559.72.

6 (3) The division shall inform and furnish relevant
7 information to the appropriate regulatory body of the state,
8 or The Florida Bar in the case of attorneys, when any consumer
9 debt collector exempt from registration under this part has
10 been named in five or more written consumer complaints
11 alleging violations of s. 559.72 within a 12-month period.

12 (4) The division shall furnish a form to each
13 complainant whose complaint concerns an alleged violation of
14 s. 559.72 by a consumer collection agency. Such form may be
15 filed with the office ~~Department of Banking and Finance~~. The
16 form shall identify the accused consumer collection agency and
17 provide for the complainant's summary of the nature of the
18 alleged violation and facts which allegedly support the
19 complaint. The form shall include a provision for the
20 complainant to state under oath before a notary public that
21 the allegations therein made are true.

22 (5) Upon receipt of such sworn complaint, the office
23 ~~department~~ shall promptly furnish a copy of the sworn
24 complaint to the accused consumer collection agency.

25 (6) The office ~~department~~ shall investigate sworn
26 complaints by direct written communication with the
27 complainant and the affected consumer collection agency. In
28 addition, the office ~~department~~ shall attempt to resolve each
29 sworn complaint and shall record the resolution of such
30 complaints.

31

1 (7) Periodically, the office ~~department~~ shall identify
2 consumer collection agencies that have unresolved sworn
3 consumer complaints from five or more different consumers
4 within a 12-month period under the provisions of this part.

5 (8) The office ~~department~~ shall issue a written
6 warning notice to the accused consumer collection agency if
7 the office ~~department~~ is unable to resolve all such sworn
8 complaints and fewer than five unresolved complaints remain.
9 Such notice shall include a statement that the warning may
10 constitute evidence in any future investigation of similar
11 complaints against that agency and in any future
12 administrative determination of the imposition of other
13 administrative remedies available to the office ~~department~~
14 under this part.

15 (9) The office ~~department~~ may issue a written
16 reprimand when five or more such unresolved sworn complaints
17 against a consumer collection agency collectively fall short
18 of constituting apparent repeated violations that warrant more
19 serious administrative sanctions. Such reprimand shall include
20 a statement that the reprimand may constitute evidence in any
21 future investigation of similar complaints against that agency
22 and in any future administrative determination of the
23 imposition of other administrative remedies available to the
24 office ~~department~~.

25 (10) The office ~~department~~ shall issue a notice of
26 intent either to revoke or suspend the registration or to
27 impose an administrative fine when the office ~~department~~
28 preliminarily determines that repeated violations of s. 559.72
29 by an accused registrant have occurred which would warrant
30 more serious administrative sanctions being imposed under this
31 part. The office ~~department~~ shall advise each registrant of

1 the right to require an administrative hearing under chapter
2 120, prior to the agency's final action on the matter as
3 authorized by s. 559.730.

4 (11) The office ~~department~~ shall advise the
5 appropriate state attorney, or the Attorney General in the
6 case of an out-of-state consumer debt collector, of any
7 determination by the office ~~department~~ of a violation of the
8 requirements of this part by any consumer collection agency
9 which is not registered as required by this part. The office
10 ~~department~~ shall furnish the state attorney or Attorney
11 General with the office's ~~department's~~ information concerning
12 the alleged violations of such requirements.

13 Section 682. Section 559.730, Florida Statutes, is
14 amended to read:

15 559.730 Administrative remedies.--

16 (1) The office ~~department~~ may revoke or suspend the
17 registration of any registrant under this part who has engaged
18 in repeated violations which establish a clear pattern of
19 abuse of prohibited collection practices under s. 559.72.
20 Final office ~~department~~ action to revoke or suspend the
21 registration of any registrant shall be subject to review in
22 accordance with chapter 120 in the same manner as revocation
23 of a license. The repeated violations of the law by one
24 employee shall not be grounds for revocation or suspension of
25 the registration of the employing consumer collection agency,
26 unless the employee is also the owner of a majority interest
27 in the collection agency.

28 (2) The registration of a registrant shall not be
29 revoked or suspended if the registrant shows by a
30 preponderance of the evidence that the violations were not
31 intentional and resulted from bona fide error notwithstanding

1 the maintenance of procedures reasonably adapted to avoid any
2 such error.

3 (3) The office ~~department~~ shall consider the number of
4 complaints against the registrant in relation to the accused
5 registrant's volume of business when determining whether
6 suspension or revocation is the more appropriate sanction when
7 circumstances warrant that one or the other should be imposed
8 upon a registrant.

9 (4) The office ~~department~~ shall impose suspension
10 rather than revocation when circumstances warrant that one or
11 the other should be imposed upon a registrant and the accused
12 registrant demonstrates that the registrant has taken
13 affirmative steps which can be expected to effectively
14 eliminate the repeated violations and that the registrant's
15 registration has never previously been suspended.

16 (5) The office ~~department~~ may impose an administrative
17 fine up to \$1,000 against the offending registrant as a
18 sanction for repeated violations of the provisions of s.
19 559.72 when violations do not rise to the level of misconduct
20 governed by subsection (1). Final office ~~department~~ action to
21 impose an administrative fine shall be subject to review in
22 accordance with ss. 120.569 and 120.57.

23 (6) Any administrative fine imposed under this part
24 shall be payable to the office ~~department~~. The office
25 ~~department~~ shall maintain an appropriate record and shall
26 deposit such fine into the Regulatory Trust Fund of the office
27 ~~department~~.

28 (7) An administrative action by the office ~~department~~
29 to impose revocation, suspension, or fine shall be brought
30 within 2 years after the date of the last violation upon which
31 the action is founded.

1 (8) Nothing in this part shall be construed to
2 preclude any person from pursuing remedies available under the
3 Federal Fair Debt Collection Practices Act for any violation
4 of such act, including specifically against any person who is
5 exempt from the registration provisions of this part.

6 Section 683. Section 559.785, Florida Statutes, is
7 amended to read:

8 559.785 Criminal penalty.--It shall be a misdemeanor
9 of the first degree, punishable as provided in s. 775.082 or
10 s. 775.083, for any person not exempt from registering as
11 provided in this part to engage in collecting consumer debts
12 in this state without first registering with the office
13 ~~department~~, or to register or attempt to register by means of
14 fraud, misrepresentation, or concealment.

15 Section 684. Subsection (2) of section 559.928,
16 Florida Statutes, is amended to read:

17 559.928 Registration.--

18 (2) Registration fees shall be \$300 per year per
19 registrant. All amounts collected shall be deposited by the
20 Chief Financial Officer ~~Treasurer~~ to the credit of the General
21 Inspection Trust Fund of the Department of Agriculture and
22 Consumer Services pursuant to s. 570.20, for the sole purpose
23 of administration of this part.

24 Section 685. Subsection (2) of section 559.9232,
25 Florida Statutes, is amended to read:

26 559.9232 Definitions; exclusion of rental-purchase
27 agreements from certain regulations.--

28 (2) A rental-purchase agreement that complies with
29 this act shall not be construed to be, nor be governed by, any
30 of the following:

31

- 1 (a) A lease or agreement which constitutes a credit
2 sale as defined in 12 C.F.R. s. 226.2(a)(16) and s. 1602(g) of
3 the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.;
- 4 (b) A lease which constitutes a "consumer lease" as
5 defined in 12 C.F.R. s. 213.2(a)(6);
- 6 (c) Any lease for agricultural, business, or
7 commercial purposes;
- 8 (d) Any lease made to an organization;
- 9 (e) A lease or agreement which constitutes a "retail
10 installment contract" or "retail installment transaction" as
11 those terms are defined in s. 520.31(13) and (14)~~s.~~
12 ~~520.31(12) and (13)~~; or
- 13 (f) A security interest as defined in s. 671.201(37).
14 Section 686. Subsection (1) and paragraph (h) of
15 subsection (2) of section 560.102, Florida Statutes, are
16 amended to read:
- 17 560.102 Purpose; application.--The purposes of the
18 code are to:
- 19 (1) Provide general regulatory powers to be exercised
20 by the Financial Services Commission and the Office of
21 Financial Regulation ~~Department of Banking and Finance~~ in
22 relation to the regulation of the money transmitter industry.
23 The code applies to all money transmitters transacting
24 business in this state and to the enforcement of all laws
25 relating to the money transmitter industry.
- 26 (2) Provide for and promote, subject to the provisions
27 of the code:
- 28 (h) Only such rulemaking power to the commission and
29 administrative discretion to the office ~~department~~ as is
30 necessary, in order that the supervision and regulation of
31 money transmitters may be flexible and readily responsive to

1 changes in economic conditions, in technology, and in money
2 transmitter practices.

3 Section 687. Subsections (1), (7), (17), and (20) of
4 section 560.103, Florida Statutes, are amended, present
5 subsections (8) through (20) of that section are renumbered as
6 (9) through (21), respectively, and a new subsection (8) is
7 added to that section to read:

8 560.103 Definitions.--As used in the code, unless the
9 context otherwise requires:

10 (1) "Appropriate regulator" means any state or federal
11 agency, including the commission or office ~~department~~, which
12 has been granted state or federal statutory authority with
13 regard to the money transmission function.

14 (7) "Commission" means the Financial Services
15 Commission ~~"Department"~~ means the Florida Department of
16 Banking and Finance.

17 (8) "Office" means the Office of Financial Regulation
18 of the commission.

19 ~~(18)~~~~(17)~~ (17) "Registrant" means a person registered by the
20 office ~~department~~ pursuant to the code.

21 ~~(21)~~~~(20)~~ (20) "Unsafe or unsound practice" means any
22 practice or conduct found by the office ~~department~~ to be
23 contrary to generally accepted standards applicable to the
24 specific money transmitter, or a violation of any prior order
25 of an appropriate regulatory agency, which practice, conduct,
26 or violation creates the likelihood of material loss,
27 insolvency, or dissipation of assets of the money transmitter
28 or otherwise materially prejudices the interests of its
29 customers. In making this determination, the office ~~department~~
30 must consider the size and condition of the money transmitter,
31

1 the magnitude of the loss, the gravity of the violation, and
2 the prior conduct of the person or business involved.

3 Section 688. Section 560.105, Florida Statutes, is
4 amended to read:

5 560.105 Supervisory powers ~~of the department~~;
6 rulemaking.--

7 (1) Consistent with the purposes of the code, the
8 office ~~department~~ shall have:

9 (a)~~(1)~~ Supervision over all money transmitters and
10 their authorized vendors.

11 (b)~~(2)~~ Access to books and records of persons over
12 whom the office ~~department~~ exercises supervision as is
13 necessary for the performance of the duties and functions of
14 the office ~~department~~ prescribed by the code.

15 (c)~~(3)~~ Power to issue orders and declaratory
16 statements, disseminate information, and otherwise exercise
17 its discretion to effectuate the purposes, policies, and
18 provisions of the code.

19 (2) Consistent with the purposes of the code, the
20 commission may ~~and to~~ adopt rules pursuant to ss. 120.536(1)
21 and 120.54 to implement the provisions of the code.

22 Section 689. Subsection (2) of section 560.106,
23 Florida Statutes, is amended to read:

24 560.106 Construction; standards.--

25 (2) The purposes and policies stated in s. 560.102
26 constitute the standards to be observed by both the commission
27 and the office ~~department~~ in the exercise of their ~~its~~
28 discretionary powers under the code, in the adoption of rules,
29 in the issuance of orders and declaratory statements, in the
30 examination and supervision of money transmitters and their
31 authorized vendors, and in all matters of construction and

1 application of the code required for any determination or
2 action by the commission or the office ~~department~~.

3 Section 690. Section 560.107, Florida Statutes, is
4 amended to read:

5 560.107 Liability.--No person acting, or who has
6 acted, in good faith reliance upon a rule, order, or
7 declaratory statement issued by the commission or the office
8 ~~department~~ shall be subject to any criminal, civil, or
9 administrative liability for such action, notwithstanding a
10 subsequent decision by a court of competent jurisdiction
11 invalidating the rule, order, or declaratory statement. In the
12 case of an order or a declaratory statement that is not of
13 general application, no person other than the person to whom
14 the order or declaratory statement was issued is entitled to
15 rely upon it, except upon material facts or circumstances that
16 are substantially the same as those upon which the order or
17 declaratory statement was based.

18 Section 691. Section 560.1073, Florida Statutes, is
19 amended to read:

20 560.1073 False or misleading statements or supporting
21 documents; penalty.--Any person who, personally or otherwise,
22 files with the office ~~department~~, or signs as the duly
23 authorized representative for filing with the office
24 ~~department~~, any financial statement or any document in support
25 thereof which is required by law or rule with intent to
26 deceive and with knowledge that the statement or document is
27 materially false or materially misleading commits a felony of
28 the third degree, punishable as provided in s. 775.082, s.
29 775.083, or s. 775.084.

30 Section 692. Section 560.108, Florida Statutes, is
31 amended to read:

1 560.108 Administrative enforcement guidelines.--

2 (1) In imposing any administrative remedy or penalty
3 provided for in the code, the office ~~department~~ shall take
4 into account the appropriateness of the penalty with respect
5 to the size of the financial resources and good faith of the
6 person charged, the gravity of the violation, the history of
7 previous violations, and such other matters as justice may
8 require.

9 (2) All administrative proceedings pursuant to the
10 code shall be conducted in accordance with chapter 120. Any
11 service required or authorized to be made by the office
12 ~~department~~ under the code must be made by certified mail,
13 return receipt requested, delivered to the addressee only by
14 personal delivery or in accordance with chapter 48. The
15 service provided for in this subsection is effective on the
16 date of delivery.

17 Section 693. Section 560.109, Florida Statutes, is
18 amended to read:

19 560.109 Investigations, subpoenas, hearings, and
20 witnesses.--

21 (1) The office ~~department~~ may make investigations,
22 within or outside this state, which it deems necessary in
23 order to determine whether a person has violated any provision
24 of the code or the rules adopted by the commission ~~department~~
25 pursuant to the code.

26 (2)(a) In the course of or in connection with an
27 investigation by the office ~~department~~ pursuant to the
28 provisions of subsection (1) or an investigation or
29 examination in connection with any application to the office
30 ~~department~~ for the organization or establishment of a money
31 transmitter business, or in connection with an examination or

1 investigation of a money transmitter or its authorized vendor,
2 the office ~~department~~, or any of its officers holding no
3 lesser title and position than financial examiner or analyst,
4 financial investigator, or attorney at law, may:

- 5 1. Administer oaths and affirmations.
- 6 2. Take or cause to be taken testimony and
7 depositions.

8 (b) The office ~~department~~, or any of its officers
9 holding no lesser title than attorney or area financial
10 manager, may issue, revoke, quash, or modify subpoenas and
11 subpoenas duces tecum under the seal of the office ~~department~~
12 or cause any such subpoena or subpoena duces tecum to be
13 issued by any county court judge or clerk of the circuit court
14 or county court to require persons to appear before the office
15 ~~department~~ at a reasonable time and place to be therein named
16 and to bring such books, records, and documents for inspection
17 as may be therein designated. Such subpoenas may be served by
18 a representative of the office ~~department~~ or may be served as
19 otherwise provided for by law for the service of subpoenas.

20 (c) In connection with any such investigation or
21 examination, the office ~~department~~ may permit a person to file
22 a statement in writing, under oath or otherwise as the office
23 ~~department~~ determines, as to facts and circumstances specified
24 by the office ~~department~~.

25 (3)(a) In the event of noncompliance with a subpoena
26 issued or caused to be issued by the office ~~department~~
27 pursuant to this section, the office ~~department~~ may petition
28 the circuit court of the county in which the person subpoenaed
29 resides or has its principal place of business for an order
30 requiring the subpoenaed person to appear and testify and to
31 produce such books, records, and documents as are specified in

1 such subpoena duces tecum. The office ~~department~~ is entitled
2 to the summary procedure provided in s. 51.011, and the court
3 shall advance the cause on its calendar.

4 (b) A copy of the petition shall be served upon the
5 person subpoenaed by any person authorized by this section to
6 serve subpoenas, who shall make and file with the court an
7 affidavit showing the time, place, and date of service.

8 (c) At any hearing on any such petition, the person
9 subpoenaed, or any person whose interests will be
10 substantially affected by the investigation, examination, or
11 subpoena, may appear and object to the subpoena and to the
12 granting of the petition. The court may make any order that
13 justice requires in order to protect a party or other person
14 and her or his personal and property rights, including, but
15 not limited to, protection from annoyance, embarrassment,
16 oppression, or undue burden or expense.

17 (d) Failure to comply with an order granting, in whole
18 or in part, a petition for enforcement of a subpoena is a
19 contempt of the court.

20 (4) Witnesses are entitled to the same fees and
21 mileage to which they would be entitled by law for attending
22 as witnesses in the circuit court, except that no fees or
23 mileage is allowed for testimony of a person taken at the
24 person's principal office or residence.

25 (5) Reasonable and necessary costs incurred by the
26 office ~~department~~ and payable to persons involved with
27 investigations may be assessed against any person on the basis
28 of actual costs incurred. Assessable expenses include, but are
29 not limited to: expenses for interpreters; expenses for
30 communications; expenses for legal representation; expenses
31 for economic, legal, or other research, analyses, and

1 testimony; and fees and expenses for witnesses. The failure to
2 reimburse the office ~~department~~ is a ground for denial of the
3 registration application or for revocation of any approval
4 thereof. No such costs shall be assessed against a person
5 unless the office ~~department~~ has determined that the person
6 has operated or is operating in violation of the code.

7 Section 694. Subsection (1) of section 560.111,
8 Florida Statutes, is amended to read:

9 560.111 Prohibited acts and practices.--

10 (1) It is unlawful for any money transmitter or money
11 transmitter-affiliated party to:

12 (a) Receive or possess itself of any property
13 otherwise than in payment of a just demand, and, with intent
14 to deceive or defraud, to omit to make or cause to be made a
15 full and true entry thereof in its books and accounts, or to
16 concur in omitting to make any material entry thereof;

17 (b) Embezzle, abstract, or misapply any money,
18 property, or thing of value of the money transmitter or
19 authorized vendor with intent to deceive or defraud such money
20 transmitter or authorized vendor;

21 (c) Make any false entry in any book, report, or
22 statement of such money transmitter or authorized vendor with
23 intent to deceive or defraud such money transmitter,
24 authorized vendor, or another person, or with intent to
25 deceive the office ~~department~~, any other state or federal
26 regulatory agency, or any authorized representative appointed
27 to examine or investigate the affairs of such money
28 transmitter or authorized vendor;

29 (d) Engage in an act that violates 18 U.S.C. s. 1956,
30 31 U.S.C. s. 5324, or any other law, rule, or regulation of
31 another state or of the United States relating to the business

1 of money transmission or usury which may cause the denial or
2 revocation of a money transmitter license or registration in
3 such jurisdiction;

4 (e) Deliver or disclose to the office ~~department~~ or
5 any of its employees any examination report, report of
6 condition, report of income and dividends, audit, account,
7 statement, or document known by it to be fraudulent or false
8 as to any material matter; or

9 (f) Place among the assets of such money transmitter
10 or authorized vendor any note, obligation, or security that
11 the money transmitter or authorized vendor does not own or
12 that to the person's knowledge is fraudulent or otherwise
13 worthless, or for any such person to represent to the office
14 ~~department~~ that any note, obligation, or security carried as
15 an asset of such money transmitter or authorized vendor is the
16 property of the money transmitter or authorized vendor and is
17 genuine if it is known to such person that such representation
18 is false or that such note, obligation, or security is
19 fraudulent or otherwise worthless.

20 Section 695. Subsections (1), (3), and (6) of section
21 560.112, Florida Statutes, are amended to read:

22 560.112 Procedures for disciplinary actions.--

23 (1) The office ~~department~~ may issue and serve upon any
24 person a complaint stating charges whenever the office
25 ~~department~~ has reason to believe that such person has engaged
26 in or is engaging in conduct described in s. 560.114.

27 (3) If no hearing is requested within the time allowed
28 by ss. 120.569 and 120.57, or if a hearing is held and the
29 office ~~department~~ finds that any of the charges are true, the
30 office ~~department~~ may enter an order directing the money
31 transmitter, the money transmitter-affiliated party, or the

1 person named therein to cease and desist from engaging in the
2 conduct complained of and to take reasonable corrective
3 action. The office ~~department~~ may also issue an order
4 suspending or barring any money transmitter-affiliated party
5 from continuing to be employed by or associated with any money
6 transmitter or authorized vendor during the period such order
7 is in effect.

8 (6) Whenever the office ~~department~~ finds that conduct
9 described in s. 560.114 is likely to cause substantial
10 dissipation of assets or earnings of the money transmitter or,
11 insolvency or substantial prejudice to the customers of the
12 money transmitter or authorized vendor, it may issue an
13 emergency removal order or an emergency cease and desist order
14 requiring any person to disassociate itself from participating
15 in the affairs of the money transmitter or authorized vendor
16 or to immediately cease and desist from engaging in the
17 conduct complained of and to take corrective action. The
18 emergency order is effective immediately upon service of the
19 order upon the person and remains effective for 90 days. Such
20 person may object to the issuance of the emergency order
21 pursuant to the provisions of chapter 120. Such objection must
22 be in writing and must include a request for a formal hearing,
23 which is to be promptly instituted and acted upon. If the
24 office ~~department~~ begins nonemergency proceedings under
25 subsection (1), the emergency order remains effective until
26 the conclusion of the proceedings under ss. 120.569 and
27 120.57.

28 Section 696. Section 560.113, Florida Statutes, is
29 amended to read:

30 560.113 Injunctions.--Whenever a violation of the code
31 is threatened or impending and such violation will cause

1 substantial injury to any person, the circuit court has
2 jurisdiction to hear any complaint filed by the office
3 ~~department~~ and, upon proper showing, to issue an injunction
4 restraining such violation or granting other such appropriate
5 relief.

6 Section 697. Subsections (1) and (2) of section
7 560.114, Florida Statutes, are amended to read:

8 560.114 Disciplinary actions.--

9 (1) The following actions by a money transmitter or
10 money transmitter-affiliated party are violations of the code
11 and constitute grounds for the issuance of a cease and desist
12 order, the issuance of a removal order, the denial of a
13 registration application or the suspension or revocation of
14 any registration previously issued pursuant to the code, or
15 the taking of any other action within the authority of the
16 office ~~department~~ pursuant to the code:

17 (a) Failure to comply with any provision of the code,
18 any rule or order adopted pursuant thereto, or any written
19 agreement entered into with the office ~~department~~.

20 (b) Fraud, misrepresentation, deceit, or gross
21 negligence in any transaction involving money transmission,
22 regardless of reliance thereon by, or damage to, a money
23 transmitter customer.

24 (c) Fraudulent misrepresentation, circumvention, or
25 concealment of any matter required to be stated or furnished
26 to a money transmitter customer pursuant to the code,
27 regardless of reliance thereon by, or damage to, such
28 customer.

29 (d) False, deceptive, or misleading advertising.

30 (e) Failure to maintain, preserve, and keep available
31 for examination all books, accounts, or other documents

1 required by the code, by any rule or order adopted pursuant to
2 the code, or by any agreement entered into with the office
3 ~~department~~.

4 (f) Refusal to permit the examination or inspection of
5 books and records in an investigation or examination by the
6 office ~~department~~, pursuant to the provisions of the code, or
7 to comply with a subpoena issued by the office ~~department~~.

8 (g) Failure to pay a judgment recovered in any court
9 in this state by a claimant in an action arising out of a
10 money transmission transaction within 30 days after the
11 judgment becomes final.

12 (h) Engaging in an act or practice proscribed by s.
13 560.111.

14 (i) Insolvency or operating in an unsafe and unsound
15 manner.

16 (j) Failure by a money transmitter to remove a money
17 transmitter-affiliated party after the office ~~department~~ has
18 issued and served upon the money transmitter a final order
19 setting forth a finding that the money transmitter-affiliated
20 party has violated any provision of the code.

21 (k) Making any material misstatement or
22 misrepresentation or committing any fraud in an initial or
23 renewal application for registration.

24 (l) Committing any act resulting in an application for
25 registration, or a registration or its equivalent, to practice
26 any profession or occupation being denied, suspended, revoked,
27 or otherwise acted against by a registering authority in any
28 jurisdiction or a finding by an appropriate regulatory body of
29 engaging in unlicensed activity as a money transmitter within
30 any jurisdiction.

31

1 (m) Committing any act resulting in a registration or
2 its equivalent, or an application for registration, to
3 practice any profession or occupation being denied, suspended,
4 or otherwise acted against by a registering authority in any
5 jurisdiction for a violation of 18 U.S.C. s. 1956, 31 U.S.C.
6 s. 5324, or any other law, rule, or regulation of another
7 state or of the United States relating to the business of
8 money transmission or usury which may cause the denial or
9 revocation of a money transmitter license or registration in
10 such jurisdiction.

11 (n) Having been convicted of or found guilty of, or
12 having pleaded guilty or nolo contendere to, any felony or
13 crime punishable by imprisonment of 1 year or more under the
14 law of any state or of the United States which involves fraud,
15 moral turpitude, or dishonest dealing, without regard to
16 whether a judgment of conviction has been entered by the
17 court.

18 (o) Having been convicted of or found guilty of, or
19 having pleaded guilty or nolo contendere to, a crime under 18
20 U.S.C. s. 1956 or 31 U.S.C. s. 5324, without regard to whether
21 a judgment of conviction has been entered by the court.

22 (p) Having been convicted of or found guilty of, or
23 having pleaded guilty or nolo contendere to, misappropriation,
24 conversion, or unlawful withholding of moneys that belong to
25 others and were received in the conduct of the business of the
26 money transmitter.

27 (q) Failure to inform the office ~~department~~ in writing
28 within 15 days after pleading guilty or nolo contendere to, or
29 being convicted or found guilty of, any felony or crime
30 punishable by imprisonment of 1 year or more under the law of
31 any state or of the United States, or of any crime involving

1 fraud, moral turpitude, or dishonest dealing, without regard
2 to whether a judgment of conviction has been entered by the
3 court.

4 (r) Aiding, assisting, procuring, advising, or
5 abetting any person in violating a provision of this code or
6 any order or rule of the office or commission ~~department~~.

7 (s) Failure to timely pay any fee, charge, or fine
8 under the code.

9 (t) Failure to pay any judgment entered by any court
10 within 30 days after the judgment becomes final.

11 (u) Engaging or holding oneself out to be engaged in
12 the business of a money transmitter without the proper
13 registration.

14 (v) Any action that would be grounds for denial of a
15 registration or for revocation, suspension, or restriction of
16 a registration previously granted under part III of this
17 chapter.

18 (w) Failure to pay any fee, charge, or fine under the
19 code.

20 (x) Engaging or advertising engagement in the business
21 of a money transmitter without a registration, unless the
22 person is exempted from the registration requirements of the
23 code.

24 (2) The office ~~department~~ may issue a cease and desist
25 order or removal order, suspend or revoke any previously
26 issued registration, or take any other action within the
27 authority of the office ~~department~~ against a money transmitter
28 based on any fact or condition that exists and that, if it had
29 existed or been known to exist at the time the money
30 transmitter applied for registration, would have been grounds
31 for denial of registration.

1 Section 698. Section 560.115, Florida Statutes, is
2 amended to read:

3 560.115 Surrender of registration.--Any money
4 transmitter registered pursuant to the code may voluntarily
5 surrender its registration at any time by giving written
6 notice to the office ~~department~~.

7 Section 699. Section 560.116, Florida Statutes, is
8 amended to read:

9 560.116 Civil immunity.--Any person having reason to
10 believe that a provision of the code is being violated, or has
11 been violated, or is about to be violated, may file a
12 complaint with the office ~~department~~ setting forth the details
13 of the alleged violation. An immunity from civil liability is
14 hereby granted to any person who furnishes such information,
15 unless the information provided is false and the person
16 providing the information does so with reckless disregard for
17 the truth.

18 Section 700. Section 560.117, Florida Statutes, is
19 amended to read:

20 560.117 Administrative fines; enforcement.--

21 (1) The office ~~department~~ may, by complaint, initiate
22 a proceeding pursuant to chapter 120 to impose an
23 administrative fine against any person found to have violated
24 any provision of the code or a cease and desist order of the
25 office ~~department~~ or any written agreement with the office
26 ~~department~~. However, the office ~~department~~ shall give notice,
27 in writing, if it suspects that the licensee has violated any
28 of the following provisions of the code and shall give the
29 licensee 15 days after actual notice is served on the person
30 within which to correct the violation before bringing
31 disciplinary action under the code:

1 (a) Failure to timely pay any fee, charge, or fine
2 under the code;

3 (b) Failure to pay any judgment entered by any court
4 within 30 days after the judgment becomes final;

5 (c) Failure to notify the office ~~department~~ of a
6 change of control of a money transmitter as required by s.
7 560.127; or

8 (d) Failure to notify the office ~~department~~ of any
9 change of address or fictitious name as required by s.
10 560.205.

11
12 Except as provided in this section, such fine may not exceed
13 \$100 a day for each violation. The office ~~department~~ may
14 excuse any such fine with a showing of good cause by the
15 person being fined.

16 (2) If the office ~~department~~ finds that one or more
17 grounds exist for the suspension, revocation, or refusal to
18 renew or continue a license or registration issued under this
19 chapter, the office ~~department~~ may, in addition to or in lieu
20 of suspension, revocation, or refusal to renew or continue a
21 license or registration, impose a fine in an amount up to
22 \$10,000 for each violation of this chapter.

23 (3) Notwithstanding any other provision of this
24 section, the office ~~department~~ may impose a fine not to exceed
25 \$1,000 per day for each day that a person violates the code by
26 engaging in the business of a money transmitter without being
27 registered.

28 (4) Any administrative fine levied by the office
29 ~~department~~ may be enforced by the office ~~department~~ by
30 appropriate proceedings in the circuit court of the county in
31 which such person resides or maintains a principal office. In

1 any administrative or judicial proceeding arising under this
2 section, a party may elect to correct the violation asserted
3 by the office ~~department~~ and, upon the party's doing so, any
4 fine ceases to accrue; however, an election to correct the
5 violation does not render moot any administrative or judicial
6 proceeding.

7 Section 701. Section 560.118, Florida Statutes, is
8 amended to read:

9 560.118 Examinations, reports, and internal audits;
10 penalty.--

11 (1)(a) The office ~~department~~ may conduct an
12 examination of a money transmitter or authorized vendor by
13 providing not less than 15 days' advance notice to the money
14 transmitter or authorized vendor. However, if the office
15 ~~department~~ suspects that the money transmitter or authorized
16 vendor has violated any provisions of this code or any
17 criminal laws of this state or of the United States or is
18 engaging in an unsafe and unsound practice, the office
19 ~~department~~ may, at any time without advance notice, conduct an
20 examination of all affairs, activities, transactions,
21 accounts, business records, and assets of any money
22 transmitter or any money transmitter-affiliated party for the
23 protection of the public. For the purpose of examinations, the
24 office ~~department~~ may administer oaths and examine a money
25 transmitter or any of its affiliated parties concerning their
26 operations and business activities and affairs. The office
27 ~~department~~ may accept an audit or examination from any
28 appropriate regulatory agency or from an independent third
29 party with respect to the operations of a money transmitter or
30 an authorized vendor. The office ~~department~~ may also make a
31 joint or concurrent examination with any state or federal

1 regulatory agency. The office ~~department~~ may furnish a copy of
2 all examinations made of such money transmitter or authorized
3 vendor to the money transmitter and any appropriate regulatory
4 agency provided that such agency agrees to abide by the
5 confidentiality provisions as set forth in chapter 119.

6 (b) Persons subject to this chapter who are examined
7 shall make available to the office ~~department~~ or its examiners
8 the accounts, records, documents, files, information, assets,
9 and matters which are in their immediate possession or control
10 and which relate to the subject of the examination. Those
11 accounts, records, documents, files, information, assets, and
12 matters not in their immediate possession shall be made
13 available to the office ~~department~~ or the office's
14 ~~department's~~ examiners within 10 days after actual notice is
15 served on such persons.

16 (c) The audit of a money transmitter required under
17 this section may be performed by an independent third party
18 that has been approved by the office ~~department~~ or by a
19 certified public accountant authorized to do business in the
20 United States. The examination of a money transmitter or
21 authorized vendor required under this section may be performed
22 by an independent third party that has been approved by the
23 office ~~department~~ or by a certified public accountant
24 authorized to do business in the United States. The cost of
25 such an independent examination or audit shall be directly
26 borne by the money transmitter or authorized vendor.

27 (2)(a) Annual financial reports that are required to
28 be filed under the code or any rules adopted thereunder must
29 be audited by an independent third party that has been
30 approved by the office ~~department~~ or by a certified public
31 accountant authorized to do business in the United States. The

1 money transmitter or authorized vendor shall directly bear the
2 cost of the audit. This paragraph does not apply to any seller
3 of payment instruments who can prove to the satisfaction of
4 the office ~~department~~ that it has a combined total of fewer
5 than 50 employees and authorized vendors or that its annual
6 payment instruments issued from its activities as a payment
7 instrument seller are less than \$200,000.

8 (b) The commission ~~department~~ may, by rule, require
9 each money transmitter or authorized vendor to submit
10 quarterly reports to the office ~~department~~. The commission
11 ~~department~~ may require that each report contain a declaration
12 by an officer, or any other responsible person authorized to
13 make such declaration, that the report is true and correct to
14 the best of her or his knowledge and belief. Such report must
15 include such information as the commission ~~department~~ by rule
16 requires for that type of money transmitter.

17 (c) The office ~~department~~ may levy an administrative
18 fine of up to \$100 per day for each day the report is past
19 due, unless it is excused for good cause. In excusing any such
20 administrative fine, the office ~~department~~ may consider the
21 prior payment history of the money transmitter or authorized
22 vendor.

23 (3) Any person who willfully violates this section or
24 fails to comply with any lawful written demand or order of the
25 office ~~department~~ made under this section commits a felony of
26 the third degree, punishable as provided in s. 775.082, s.
27 775.083, or s. 775.084.

28 Section 702. Section 560.119, Florida Statutes, is
29 amended to read:

30 560.119 Deposit of fees and assessments.--The
31 application fees, registration renewal fees, late payment

1 penalties, civil penalties, administrative fines, and other
2 fees or penalties provided for in the code shall, in all
3 cases, be paid directly to the office ~~department~~, which shall
4 deposit such proceeds into the Regulatory Trust Fund. Each
5 year, the Legislature shall appropriate from the trust fund to
6 the office ~~department~~ sufficient moneys to pay the office's
7 ~~department's~~ costs for administration of the code. The
8 Regulatory Trust Fund is subject to the service charge imposed
9 pursuant to chapter 215.

10 Section 703. Paragraph (a) of subsection (1) and
11 subsections (2) and (3) of section 560.121, Florida Statutes,
12 are amended to read:

13 560.121 Records; limited restrictions upon public
14 access.--

15 (1)(a) Orders of courts or of administrative law
16 judges for the production of confidential records or
17 information shall provide for inspection in camera by the
18 court or the administrative law judge and, after the court or
19 administrative law judge has made a determination that the
20 documents requested are relevant or would likely lead to the
21 discovery of admissible evidence, said documents shall be
22 subject to further orders by the court or the administrative
23 law judge to protect the confidentiality thereof. Any order
24 directing the release of information shall be immediately
25 reviewable, and a petition by the office ~~department~~ for review
26 of such order shall automatically stay further proceedings in
27 the trial court or the administrative hearing until the
28 disposition of such petition by the reviewing court. If any
29 other party files such a petition for review, it will operate
30 as a stay of such proceedings only upon order of the reviewing
31 court.

1 (2) Examination reports, investigatory records,
2 applications, and related information compiled by the office
3 ~~department~~, or photographic copies thereof, shall be retained
4 by the office ~~department~~ for a period of at least 10 years.

5 (3) A copy of any document on file with the office
6 ~~department~~ which is certified by the office ~~department~~ as
7 being a true copy may be introduced in evidence as if it were
8 the original. The commission ~~department~~ shall establish a
9 schedule of fees for preparing true copies of documents.

10 Section 704. Subsections (2), (4), (5), (6), and (7)
11 of section 560.123, Florida Statutes, are amended to read:

12 560.123 Florida control of money laundering in the
13 Money Transmitters' Code; reports of transactions involving
14 currency or monetary instruments; when required; purpose;
15 definitions; penalties; corpus delicti.--

16 (2) It is the purpose of this section to require the
17 submission to the office ~~department~~ of reports and the
18 maintenance of certain records of transactions involving
19 currency or monetary instruments which reports and records
20 deter the use of money transmitters to conceal proceeds from
21 criminal activity and are useful in criminal, tax, or
22 regulatory investigations or proceedings.

23 (a) Every money transmitter shall keep a record of
24 each financial transaction occurring in this state known to it
25 to involve currency or other monetary instrument, as the
26 commission ~~department~~ prescribes by rule, of a value in excess
27 of \$10,000, to involve the proceeds of specified unlawful
28 activity, or to be designed to evade the reporting
29 requirements of this section or chapter 896 and shall maintain
30 appropriate procedures to ensure compliance with this section
31 and chapter 896.

1 (b) Multiple financial transactions shall be treated
2 as a single transaction if the money transmitter has knowledge
3 that they are made by or on behalf of any person and result in
4 either cash in or cash out totaling more than \$10,000 during
5 any day.

6 (c) Any money transmitter may keep a record of any
7 financial transaction occurring in this state, regardless of
8 the value, if it suspects that the transaction involves the
9 proceeds of specified unlawful activity.

10 (d) A money transmitter, or officer, employee, or
11 agent thereof, that files a report in good faith pursuant to
12 this section is not liable to any person for loss or damage
13 caused in whole or in part by the making, filing, or
14 governmental use of the report, or any information contained
15 therein.

16 (4) In enforcing this section, the commission and
17 office ~~department~~ shall acknowledge and take into
18 consideration the requirements of Title 31, United States
19 Code, both to reduce the burden of fulfilling duplicate
20 requirements and to acknowledge the economic advantage of
21 having similar reporting and recordkeeping requirements
22 between state and federal regulatory authorities.

23 (5)(a) Each money transmitter must file a report with
24 the office ~~department~~ of the record required by this section.
25 Each record filed pursuant to this section must be filed at
26 such time and contain such information as the commission
27 ~~department~~ requires by rule.

28 (b) The timely filing of the report required by 31
29 U.S.C. s. 5313, with the appropriate federal agency is deemed
30 compliance with the reporting requirements of this subsection
31

1 unless the reports are not regularly and comprehensively
2 transmitted by the federal agency to the office ~~department~~.

3 (6) The office ~~department~~ must retain a copy of all
4 reports received under subsection (5) for a minimum of 5
5 calendar years after receipt of the report. However, if a
6 report or information contained in a report is known by the
7 office ~~department~~ to be the subject of an existing criminal
8 proceeding, the report must be retained for a minimum of 10
9 calendar years from the date of receipt.

10 (7) In addition to any other powers conferred upon the
11 office ~~department~~ to enforce and administer the code, the
12 office ~~department~~ may:

13 (a) Bring an action in any court of competent
14 jurisdiction to enforce or administer this section. In such
15 action, the office ~~department~~ may seek award of any civil
16 penalty authorized by law and any other appropriate relief at
17 law or equity.

18 (b) Issue and serve upon a person an order requiring
19 such person to cease and desist and take corrective action
20 whenever the office ~~department~~ finds that such person is
21 violating, has violated, or is about to violate any provision
22 of this section or chapter 896; any rule or order adopted
23 under this section or chapter 896; or any written agreement
24 related to this section or chapter 896 which is entered into
25 with the office ~~department~~.

26 (c) Issue and serve upon a person an order suspending
27 or revoking such person's money transmitter registration
28 whenever the office ~~department~~ finds that such person is
29 violating, has violated, or is about to violate any provision
30 of this section or chapter 896; any rule or order adopted
31 under this section or chapter 896; or any written agreement

1 related to this section or chapter 896 which is entered into
2 with the office ~~department~~.

3 (d) Issue and serve upon any person an order of
4 removal whenever the office ~~department~~ finds that such person
5 is violating, has violated, or is about to violate any
6 provision of this section or chapter 896; any rule or order
7 adopted under this section or chapter 896; or any written
8 agreement related to this section or chapter 896 which is
9 entered into with the office ~~department~~.

10 (e) Impose and collect an administrative fine against
11 any person found to have violated any provision of this
12 section or chapter 896; any rule or order adopted under this
13 section or chapter 896; or any written agreement related to
14 this section or chapter 896 which is entered into with the
15 office ~~department~~, in an amount not exceeding \$10,000 a day
16 for each willful violation or \$500 a day for each negligent
17 violation.

18 Section 705. Subsections (3) and (4) of section
19 560.125, Florida Statutes, are amended to read:

20 560.125 Money transmitter business by unauthorized
21 persons; penalties.--

22 (3) Any person whose substantial interests are
23 affected by a proceeding brought by the office ~~department~~
24 pursuant to the code may, pursuant to s. 560.113, petition any
25 court to enjoin the person or activity that is the subject of
26 the proceeding from violating any of the provisions of this
27 section. For the purpose of this subsection, any money
28 transmitter registered pursuant to the code, any person
29 residing in this state, and any person whose principal place
30 of business is in this state are presumed to be substantially
31 affected. In addition, the interests of a trade organization

1 or association are deemed substantially affected if the
2 interests of any of its members are so affected.

3 (4) The office ~~department~~ may issue and serve upon any
4 person who violates any of the provisions of this section a
5 complaint seeking a cease and desist order in accordance with
6 the procedures and in the manner prescribed by s. 560.112. The
7 office ~~department~~ may also impose an administrative fine
8 pursuant to s. 560.117(3) against any person who violates any
9 of the provisions of this section.

10 Section 706. Section 560.126, Florida Statutes, is
11 amended to read:

12 560.126 Significant events; notice required.--Unless
13 exempted by the office ~~department~~, every money transmitter
14 must provide the office ~~department~~ with a written notice
15 within 15 days after the occurrence or knowledge of, whichever
16 period of time is greater, any of the following events:

17 (1) The filing of a petition under the United States
18 Bankruptcy Code for bankruptcy or reorganization by the money
19 transmitter.

20 (2) The commencement of any registration suspension or
21 revocation proceeding, either administrative or judicial, or
22 the denial of any original registration request or a
23 registration renewal, by any state, the District of Columbia,
24 any United States territory, or any foreign country, in which
25 the money transmitter operates or plans to operate or has
26 registered to operate.

27 (3) A felony indictment relating to the money
28 transmission business involving the money transmitter or a
29 money transmitter-affiliated party of the money transmitter.

30 (4) The felony conviction, guilty plea, or plea of
31 nolo contendere, if the court adjudicates the nolo contendere

1 pleader guilty, or the adjudication of guilt of a money
2 transmitter or money transmitter-affiliated party.

3 (5) The interruption of any corporate surety bond
4 required by the code.

5 (6) Any suspected criminal act, as defined by the
6 commission ~~department~~ by rule, perpetrated in this state
7 against a money transmitter or authorized vendor.

8
9 However, no liability shall be incurred by any person as a
10 result of making a good faith effort to fulfill this
11 disclosure requirement.

12 Section 707. Section 560.127, Florida Statutes, is
13 amended to read:

14 560.127 Control of a money transmitter.--

15 (1) A person has control over a money transmitter if:

16 (a) The person directly or indirectly or acting
17 through one or more other persons owns, controls, or has power
18 to vote 25 percent or more of any class of voting securities
19 of the money transmitter; or

20 (b) The office ~~department~~ determines, after notice and
21 opportunity for hearing, that the person directly or
22 indirectly exercises a controlling influence over the
23 activities of the money transmitter.

24 (2) In any case in which a person or a group of
25 persons, directly or indirectly or acting by or through one or
26 more persons, proposes to purchase or acquire a controlling
27 interest in a money transmitter, and thereby to change the
28 control of that money transmitter, each person or group of
29 persons shall provide written notice to the office ~~department~~.

30 (a) A money transmitter whose stock is traded on an
31 organized stock exchange shall provide the office ~~department~~

1 with written notice within 15 days after knowledge of such
2 change in control.

3 (b) A money transmitter whose stock is not publicly
4 traded shall provide the office ~~department~~ with not less than
5 30 days' prior written notice of such proposed change in
6 control.

7 (3) After a review of the written notification, the
8 office ~~department~~ may require the money transmitter to provide
9 additional information relating to other and former addresses,
10 and the reputation, character, responsibility, and business
11 affiliations, of the proposed new owner or each of the
12 proposed new owners of the money transmitter.

13 (a) The office ~~department~~ may deny the person or group
14 of persons proposing to purchase, or who have acquired control
15 of, a money transmitter if, after investigation, the office
16 ~~department~~ determines that the person or persons are not
17 qualified by reputation, character, experience, or financial
18 responsibility to control or operate the money transmitter in
19 a legal and proper manner and that the interests of the other
20 stockholders, if any, or the interests of the public generally
21 may be jeopardized by the proposed change in ownership,
22 controlling interest, or management.

23 (b) The office ~~department~~ may disapprove any person
24 who has been convicted of, or pled guilty or nolo contendere
25 to, a violation of s. 560.123, s. 655.50, chapter 896, or any
26 similar state, federal, or foreign law.

27 Section 708. Section 560.128, Florida Statutes, is
28 amended to read:

29 560.128 Consumer disclosure.--

30 (1) Every money transmitter and authorized vendor
31 shall provide each consumer of a money transmitter transaction

1 a toll-free telephone number for the purpose of consumer
2 contacts; however, in lieu of such toll-free telephone number,
3 the money transmitter or authorized vendor may provide the
4 address and telephone number of the office and the Division of
5 Consumer Services of the Department of Financial Services
6 ~~department~~.

7 (2) The commission ~~department~~ may by rule require
8 every money transmitter to display its registration at each
9 location, including the location of each person designated by
10 the registrant as an authorized vendor, where the money
11 transmitter engages in the activities authorized by the
12 registration.

13 Section 709. Section 560.129, Florida Statutes, is
14 amended to read:

15 560.129 Confidentiality.--

16 ~~(1) For purposes of this section, the definitions~~
17 ~~contained in s. 560.103, as created by chapter 94-238, Laws of~~
18 ~~Florida, and chapter 94-354, Laws of Florida, apply.~~

19 (1)(2)(a) Except as otherwise provided in this
20 section, all information concerning an investigation or
21 examination by the office ~~department~~ pursuant to this chapter,
22 including any consumer complaint received by the office or the
23 Department of Financial Services, is confidential and exempt
24 from s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution until the investigation or examination ceases to
26 be active. For purposes of this section, an investigation or
27 examination is considered "active" so long as the office
28 ~~department~~ or any other administrative, regulatory, or law
29 enforcement agency of any jurisdiction is proceeding with
30 reasonable dispatch and has a reasonable good faith belief

31

1 that action may be initiated by the office ~~department~~ or other
2 administrative, regulatory, or law enforcement agency.

3 (b) Notwithstanding paragraph (a), all information
4 obtained by the office ~~department~~ in the course of its
5 investigation or examination which is a trade secret, as
6 defined in s. 688.002, or which is personal financial
7 information shall remain confidential. If any administrative,
8 civil, or criminal proceeding against the money transmitter or
9 a money transmitter-affiliated party is initiated and the
10 office ~~department~~ seeks to use matter that a registrant
11 believes to be a trade secret or personal financial
12 information, such records shall be subject to an in camera
13 review by the administrative law judge, if the matter is
14 before the Division of Administrative Hearings, or a judge of
15 any court of this state, any other state, or the United
16 States, as appropriate, for the purpose of determining if the
17 matter is a trade secret or is personal financial information.
18 If it is determined that the matter is a trade secret, the
19 matter shall remain confidential. If it is determined that the
20 matter is personal financial information, the matter shall
21 remain confidential unless the administrative law judge or
22 judge determines that, in the interests of justice, the matter
23 should become public.

24 (c) If any administrative, civil, or criminal
25 proceeding against the money transmitter or a money
26 transmitter-affiliated party results in an acquittal or the
27 dismissal of all of the allegations against the money
28 transmitter or a money transmitter-affiliated party, upon the
29 request of any party, the administrative law judge or the
30 judge may order all or a portion of the record of the
31 proceeding to be sealed, and it shall thereafter be

1 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
2 of the State Constitution.

3 (d) Except as necessary for the office ~~department~~ or
4 any other administrative, regulatory, or law enforcement
5 agency of any jurisdiction to enforce the provisions of this
6 chapter or the law of any other state or the United States, a
7 consumer complaint and other information concerning an
8 investigation or examination shall remain confidential and
9 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
10 Constitution after the investigation or examination ceases to
11 be active to the extent that disclosure would:

12 1. Jeopardize the integrity of another active
13 investigation;

14 2. Reveal personal financial information;

15 3. Reveal the identity of a confidential source; or

16 4. Reveal investigative techniques or procedures.

17 (2)~~(3)~~ This section does not prevent or restrict:

18 (a) Furnishing records or information to any
19 appropriate regulatory agency if such agency adheres to the
20 confidentiality provisions of the code;

21 (b) Furnishing records or information to an
22 independent third party or a certified public accountant who
23 has been approved by the office ~~department~~ to conduct an
24 examination under s. 560.118(1)(b), if the independent third
25 party or certified public accountant adheres to the
26 confidentiality provisions of the code; or

27 (c) Reporting any suspected criminal activity, with
28 supporting documents and information, to appropriate law
29 enforcement or prosecutorial agencies.

30 (3)~~(4)~~ All quarterly reports submitted by a money
31 transmitter to the office ~~department~~ under s. 560.118(2)(b)

1 are confidential and exempt from s. 119.07(1) and s. 24(a),
2 Art. I of the State Constitution.

3 (4)~~(5)~~ Examination reports, investigatory records,
4 applications, and related information compiled by the office
5 ~~department~~, or photographic copies thereof, shall be retained
6 by the office ~~department~~ for a period of at least 10 years.

7 (5)~~(6)~~ Any person who willfully discloses information
8 made confidential by this section commits a felony of the
9 third degree, punishable as provided in s. 775.082 or s.
10 775.083.

11 Section 710. Subsection (4) of section 560.202,
12 Florida Statutes, is amended to read:

13 560.202 Definitions.--In addition to the definitions
14 provided in s. 560.103, for purposes of this part, unless
15 otherwise clearly indicated by the context:

16 (4) "Registrant" means a person registered by the
17 office ~~department~~ pursuant to this part.

18 Section 711. Section 560.205, Florida Statutes, is
19 amended to read:

20 560.205 Qualifications of applicant for registration;
21 contents.--

22 (1) To qualify for registration under this part, an
23 applicant must demonstrate to the office ~~department~~ such
24 character and general fitness as to command the confidence of
25 the public and warrant the belief that the registered business
26 will be operated lawfully and fairly. The office ~~department~~
27 may investigate each applicant to ascertain whether the
28 qualifications and requirements prescribed by this part have
29 been met. The office's ~~department's~~ investigation may include
30 a criminal background investigation of all controlling
31 shareholders, principals, officers, directors, members, and

1 responsible persons of a funds transmitter and a payment
2 instrument seller and all persons designated by a funds
3 transmitter or payment instrument seller as an authorized
4 vendor. Each controlling shareholder, principal, officer,
5 director, member, and responsible person of a funds
6 transmitter or payment instrument seller, unless the applicant
7 is a publicly traded corporation, a subsidiary thereof, or a
8 subsidiary of a bank or bank holding company, shall file a
9 complete set of fingerprints taken by an authorized law
10 enforcement officer. Such fingerprints must be submitted to
11 the Department of Law Enforcement or the Federal Bureau of
12 Investigation for state and federal processing. The commission
13 ~~department~~ may waive by rule the requirement that applicants
14 file a set of fingerprints or the requirement that such
15 fingerprints be processed by the Department of Law Enforcement
16 or the Federal Bureau of Investigation.

17 (2) Each application for registration must be
18 submitted under oath to the office ~~department~~ on such forms as
19 the commission ~~department~~ prescribes by rule and must be
20 accompanied by a nonrefundable application fee. Such fee may
21 not exceed \$500 for each payment instrument seller or funds
22 transmitter and \$50 for each authorized vendor or location
23 operating within this state. The application forms shall set
24 forth such information as the commission ~~department~~ reasonably
25 requires, including, but not limited to:

26 (a) The name and address of the applicant, including
27 any fictitious or trade names used by the applicant in the
28 conduct of its business.

29 (b) The history of the applicant's material
30 litigation, criminal convictions, pleas of nolo contendere,
31 and cases of adjudication withheld.

1 (c) A description of the activities conducted by the
2 applicant, the applicant's history of operations, and the
3 business activities in which the applicant seeks to engage in
4 this state.

5 (d) A list identifying the applicant's proposed
6 authorized vendors in this state, including the location or
7 locations in this state at which the applicant and its
8 authorized vendors propose to conduct registered activities.

9 (e) A sample authorized vendor contract, if
10 applicable.

11 (f) A sample form of payment instrument, if
12 applicable.

13 (g) The name and address of the clearing financial
14 institution or financial institutions through which the
15 applicant's payment instruments will be drawn or through which
16 such payment instruments will be payable.

17 (h) Documents revealing that the net worth and bonding
18 requirements specified in s. 560.209 have been or will be
19 fulfilled.

20 (3) Each application for registration by an applicant
21 that is a corporation shall also set forth such information as
22 the commission ~~department~~ reasonably requires, including, but
23 not limited to:

24 (a) The date of the applicant's incorporation and
25 state of incorporation.

26 (b) A certificate of good standing from the state or
27 country in which the applicant was incorporated.

28 (c) A description of the corporate structure of the
29 applicant, including the identity of any parent or subsidiary
30 of the applicant, and the disclosure of whether any parent or
31 subsidiary is publicly traded on any stock exchange.

1 (d) The name, business and residence addresses, and
2 employment history for the past 5 years for each executive
3 officer, each director, each controlling shareholder, and the
4 responsible person who will be in charge of all the
5 applicant's business activities in this state.

6 (e) The history of material litigation and criminal
7 convictions, pleas of nolo contendere, and cases of
8 adjudication withheld for each executive officer, each
9 director, each controlling shareholder, and the responsible
10 person who will be in charge of the applicant's registered
11 activities.

12 (f) Copies of the applicant's audited financial
13 statements for the current year and, if available, for the
14 immediately preceding 2-year period. In cases where the
15 applicant is a wholly owned subsidiary of another corporation,
16 the parent's consolidated audited financial statements may be
17 submitted to satisfy this requirement. An applicant who is not
18 required to file audited financial statements may satisfy this
19 requirement by filing unaudited financial statements verified
20 under penalty of perjury, as provided by the commission
21 ~~department~~ by rule.

22 (g) An applicant who is not required to file audited
23 financial statements may file copies of the applicant's
24 unconsolidated, unaudited financial statements for the current
25 year and, if available, for the immediately preceding 2-year
26 period.

27 (h) If the applicant is a publicly traded company,
28 copies of all filings made by the applicant with the United
29 States Securities and Exchange Commission, or with a similar
30 regulator in a country other than the United States, within
31 the year preceding the date of filing of the application.

1 (4) Each application for registration submitted to the
2 office ~~department~~ by an applicant that is not a corporation
3 shall also set forth such information as the commission
4 ~~department~~ reasonably requires, including, but not limited to:

5 (a) Evidence that the applicant is registered to do
6 business in this state.

7 (b) The name, business and residence addresses,
8 personal financial statement and employment history for the
9 past 5 years for each individual having a controlling
10 ownership interest in the applicant, and each responsible
11 person who will be in charge of the applicant's registered
12 activities.

13 (c) The history of material litigation and criminal
14 convictions, pleas of nolo contendere, and cases of
15 adjudication withheld for each individual having a controlling
16 ownership interest in the applicant and each responsible
17 person who will be in charge of the applicant's registered
18 activities.

19 (d) Copies of the applicant's audited financial
20 statements for the current year, and, if available, for the
21 preceding 2 years. An applicant who is not required to file
22 audited financial statements may satisfy this requirement by
23 filing unaudited financial statements verified under penalty
24 of perjury, as provided by the commission ~~department~~ by rule.

25 (5) Each applicant shall designate and maintain an
26 agent in this state for service of process.

27 Section 712. Section 560.206, Florida Statutes, is
28 amended to read:

29 560.206 Investigation of applicants.--Upon the filing
30 of a properly completed application, accompanied by the
31 nonrefundable application fee and other required documents,

1 the office ~~department~~ shall investigate to ascertain whether
2 the qualifications and requirements prescribed by this part
3 have been met. If the office ~~department~~ finds that the
4 applicant meets such qualifications and requirements, the
5 office ~~department~~ shall issue the applicant a registration to
6 engage in the business of selling payment instruments and
7 transmitting funds in this state. Any registration issued
8 under this part shall remain effective through April 30 of the
9 second year following the date of issuance of the
10 registration, not to exceed 24 months, unless during such
11 period the registration is surrendered, suspended, or revoked.

12 Section 713. Subsections (1) and (2) of section
13 560.207, Florida Statutes, are amended to read:

14 560.207 Renewal of registration; registration fee.--

15 (1) Registration may be renewed for a 24-month period
16 or the remainder of any such period without proration
17 following the date of its expiration, upon the filing with the
18 office ~~department~~ of an application and other statements and
19 documents as may reasonably be required of registrants by the
20 commission ~~department~~. However, the registrant must remain
21 qualified for such registration under the provisions of this
22 part.

23 (2) All registration renewal applications shall be
24 accompanied by a renewal fee not to exceed \$1,000. All renewal
25 applications must be filed on or after January 1 of the year
26 in which the existing registration expires, but before the
27 expiration date of April 30. If the renewal application is
28 filed prior to the expiration date of an existing
29 registration, no late fee shall be paid in connection with
30 such renewal application. If the renewal application is filed
31 within 60 calendar days after the expiration date of an

1 existing registration, then, in addition to the \$1,000 renewal
2 fee, the renewal application shall be accompanied by a
3 nonrefundable late fee of \$500. If the registrant has not
4 filed a renewal application within 60 calendar days after the
5 expiration date of an existing registration, a new application
6 shall be filed with the office ~~department~~ pursuant to s.
7 560.205.

8 Section 714. Subsections (2) and (3) of section
9 560.208, Florida Statutes, are amended to read:

10 560.208 Conduct of business.--

11 (2) Within 60 days after the date a registrant either
12 opens a location within this state or authorizes an authorized
13 vendor to operate on the registrant's behalf within this
14 state, the registrant shall notify the office ~~department~~ on a
15 form prescribed by the commission ~~department~~ by rule. The
16 notification shall be accompanied by a nonrefundable \$50 fee
17 for each authorized vendor or location. Each notification
18 shall also be accompanied by a financial statement
19 demonstrating compliance with s. 560.209(1), unless compliance
20 has been demonstrated by a financial statement filed with the
21 registrant's quarterly report in compliance with s.
22 560.118(2). The financial statement must be dated within 90
23 days of the date of designation of the authorized vendor or
24 location. This subsection shall not apply to any authorized
25 vendor or location that has been designated by the registrant
26 before October 1, 2001.

27 (3) Within 60 days after the date a registrant closes
28 a location within this state or withdraws authorization for an
29 authorized vendor to operate on the registrant's behalf within
30 this state, the registrant shall notify the office ~~department~~
31 on a form prescribed by the commission ~~department~~ by rule.

1 Section 715. Subsections (2), (3), (4), (5), and (6)
2 of section 560.209, Florida Statutes, are amended to read:

3 560.209 Net worth; corporate surety bond; collateral
4 deposit in lieu of bond.--

5 (2) Before the office ~~department~~ may issue a
6 registration, the applicant must provide to the office
7 ~~department~~ a corporate surety bond, issued by a bonding
8 company or insurance company authorized to do business in this
9 state.

10 (a) The corporate surety bond shall be in such amount
11 as may be determined by commission ~~department~~ rule, but shall
12 not exceed \$250,000. However, the commission and office
13 ~~department~~ may consider extraordinary circumstances, such as
14 the registrant's financial condition, the number of locations,
15 and the existing or anticipated volume of outstanding payment
16 instruments or funds transmitted, and require an additional
17 amount above \$250,000, up to \$500,000.

18 (b) The corporate surety bond shall be in a form
19 satisfactory to the office ~~department~~ and shall run to the
20 state for the benefit of any claimants in this state against
21 the applicant or its authorized vendors to secure the faithful
22 performance of the obligations of the applicant and its
23 authorized vendors with respect to the receipt, handling,
24 transmission, and payment of funds. The aggregate liability of
25 the corporate surety bond in no event shall exceed the
26 principal sum of the bond. Such claimants against the
27 applicant or its authorized vendors may themselves bring suit
28 directly on the corporate surety bond, or the Department of
29 Legal Affairs may bring suit thereon on behalf of such
30 claimants, in either one action or in successive actions.

31

1 (c) A corporate surety bond filed with the office
2 ~~department~~ for purposes of compliance with this section may
3 not be canceled by either the registrant or the corporate
4 surety except upon written notice to the office ~~department~~ by
5 registered or certified mail with return receipt requested. A
6 cancellation shall not take effect less than 30 days after
7 receipt by the office ~~department~~ of such written notice.

8 (d) The corporate surety must, within 10 days after it
9 pays any claim to any claimant, give written notice to the
10 office ~~department~~ by registered or certified mail of such
11 payment with details sufficient to identify the claimant and
12 the claim or judgment so paid.

13 (e) Whenever the principal sum of such bond is reduced
14 by one or more recoveries or payments, the registrant must
15 furnish a new or additional bond so that the total or
16 aggregate principal sum of such bond equals the sum required
17 by the commission ~~department~~. Alternatively, a registrant may
18 furnish an endorsement executed by the corporate surety
19 reinstating the bond to the required principal sum thereof.

20 (3) In lieu of such corporate surety bond, or of any
21 portion of the principal thereof required by this section, the
22 applicant may deposit collateral cash, securities, or
23 alternative security devices approved by the commission
24 ~~department~~, with any federally insured financial institution.

25 (a) Acceptable collateral deposit items in lieu of a
26 bond include cash and interest-bearing stocks and bonds,
27 notes, debentures, or other obligations of the United States
28 or any agency or instrumentality thereof, or guaranteed by the
29 United States, or of this state.

30 (b) The collateral deposit must be in an aggregate
31 amount, based upon principal amount or market value, whichever

1 is lower, of not less than the amount of the required
2 corporate surety bond or portion thereof.

3 (c) Collateral deposits made under this subsection
4 shall be pledged to the office ~~department~~ and held by the
5 insured financial institution to secure the same obligations
6 as would the corporate surety bond, but the depositor is
7 entitled to receive all interest and dividends thereon and
8 may, with the approval of the office ~~department~~, substitute
9 other securities or deposits for those deposited. The
10 principal amount of the deposit shall be released only on
11 written authorization of the office ~~department~~ or on the order
12 of a court of competent jurisdiction.

13 (4) A registrant must at all times have and maintain
14 the bond or collateral deposit in the amount prescribed by the
15 commission ~~department~~. If the office ~~department~~ at any time
16 reasonably determines that the bond or elements of the
17 collateral deposit are insecure, deficient in amount, or
18 exhausted in whole or in part, the office ~~department~~ may, by
19 written order, require the filing of a new or supplemental
20 bond or the deposit of new or additional collateral deposit
21 items.

22 (5) The bond and collateral deposit shall remain in
23 place for 5 years after the registrant ceases registered
24 operations in this state. The office ~~department~~ may permit the
25 bond or collateral deposit to be reduced or eliminated prior
26 to that time to the extent that the amount of the registrant's
27 outstanding payment instruments or funds transmitted in this
28 state are reduced. The office ~~department~~ may also permit a
29 registrant to substitute a letter of credit or such other form
30 of acceptable security for the bond or collateral deposit at
31

1 the time the registrant ceases money transmission operations
2 in this state.

3 (6) The office ~~department~~ may waive or reduce a
4 registrant's net worth or bond or collateral deposit
5 requirement. Such waiver or modification must be requested by
6 the applicant or registrant, and may be granted upon a showing
7 by the applicant or registrant to the satisfaction of the
8 office ~~department~~ that:

9 (a) The existing net worth, bond, or collateral
10 deposit requirement is sufficiently in excess of the
11 registrant's highest potential level of outstanding payment
12 instruments or money transmissions in this state;

13 (b) The direct and indirect cost of meeting the net
14 worth, bond, or collateral deposit requirement will restrict
15 the ability of the money transmitter to effectively serve the
16 needs of its customers and the public; or

17 (c) The direct and indirect cost of meeting the net
18 worth, bond, or collateral requirement will not only have a
19 negative impact on the money transmitter but will severely
20 hinder the ability of the money transmitter to participate in
21 and promote the economic progress and welfare of this state or
22 the United States.

23 Section 716. Paragraph (i) of subsection (2) and
24 subsections (3) and (4) of section 560.210, Florida Statutes,
25 are amended to read:

26 560.210 Permissible investments.--

27 (2) Acceptable permissible investments include:

28 (i) Any other investment approved by the commission
29 ~~department~~.

30 (3) Notwithstanding any other provision of this part,
31 the office ~~department~~, with respect to any particular

1 registrant or all registrants, may limit the extent to which
2 any class of permissible investments may be considered a
3 permissible investment, except for cash and certificates of
4 deposit.

5 (4) The office ~~department~~ may waive the permissible
6 investments requirement if the dollar value of a registrant's
7 outstanding payment instruments and funds transmitted do not
8 exceed the bond or collateral deposit posted by the registrant
9 under s. 560.209.

10 Section 717. Subsection (2) of section 560.211,
11 Florida Statutes, is amended to read:

12 560.211 Records.--

13 (2) The records required to be maintained by the code
14 may be maintained by the registrant at any location, provided
15 that the registrant notifies the office ~~department~~ in writing
16 of the location of the records in its application or
17 otherwise. The registrant shall make such records available to
18 the office ~~department~~ for examination and investigation in
19 this state, as permitted by the code, within 7 days after
20 receipt of a written request.

21 Section 718. Subsection (2) of section 560.302,
22 Florida Statutes, is amended to read:

23 560.302 Definitions.--In addition to the definitions
24 provided in s. 560.103, unless otherwise clearly indicated by
25 the context, for purposes of this part:

26 (2) "Registrant" means a person authorized by the
27 office ~~department~~ pursuant to this part.

28 Section 719. Section 560.305, Florida Statutes, is
29 amended to read:

30 560.305 Application.--Each application for
31 registration shall be in writing and under oath to the office

1 ~~department~~, in such form as the commission prescribes
2 ~~department may prescribe~~. The application shall include the
3 following:

4 (1) The legal name and residence and business
5 addresses of the applicant if the applicant is a natural
6 person, or, if the applicant is a partnership, association, or
7 corporation, the name of every partner, officer, or director
8 thereof.

9 (2) The location of the principal office of the
10 applicant.

11 (3) The complete address of any other locations at
12 which the applicant proposes to engage in such activities
13 since the provisions of registration apply to each and every
14 operating location of a registrant.

15 (4) Such other information as the commission or office
16 ~~department may~~ reasonably requires ~~require~~ with respect to the
17 applicant or any money transmitter-affiliated party of the
18 applicant; however, the commission or office ~~department~~ may
19 not require more information than is specified in part II.

20 Section 720. Section 560.306, Florida Statutes, is
21 amended to read:

22 560.306 Standards.--

23 (1) In order to qualify for registration under this
24 part, an applicant must demonstrate to the office ~~department~~
25 that he or she has such character and general fitness as will
26 command the confidence of the public and warrant the belief
27 that the registered business will be operated lawfully and
28 fairly. The office ~~department~~ may investigate each applicant
29 to ascertain whether the qualifications and requirements
30 prescribed by this part have been met. The office's
31 ~~department's~~ investigation may include a criminal background

1 investigation of all controlling shareholders, principals,
2 officers, directors, members, and responsible persons of a
3 check casher and a foreign currency exchanger and all persons
4 designated by a foreign currency exchanger or check casher as
5 an authorized vendor. Each controlling shareholder, principal,
6 officer, director, member, and responsible person of a check
7 casher or foreign currency exchanger, unless the applicant is
8 a publicly traded corporation, a subsidiary thereof, or a
9 subsidiary of a bank or bank holding company, shall file a
10 complete set of fingerprints taken by an authorized law
11 enforcement officer. Such fingerprints must be submitted to
12 the Department of Law Enforcement or the Federal Bureau of
13 Investigation for state and federal processing. The commission
14 ~~department~~ may waive by rule the requirement that applicants
15 file a set of fingerprints or the requirement that such
16 fingerprints be processed by the Department of Law Enforcement
17 or the Federal Bureau of Investigation.

18 (2) The office ~~department~~ may deny registration if it
19 finds that the applicant, or any money transmitter-affiliated
20 party of the applicant, has been convicted of a crime
21 involving moral turpitude in any jurisdiction or of a crime
22 which, if committed in this state, would constitute a crime
23 involving moral turpitude under the laws of this state. For
24 the purposes of this part, a person shall be deemed to have
25 been convicted of a crime if such person has either pleaded
26 guilty to or been found guilty of a charge before a court or
27 federal magistrate, or by the verdict of a jury, irrespective
28 of the pronouncement of sentence or the suspension thereof.
29 The office ~~department~~ may take into consideration the fact
30 that such plea of guilty, or such decision, judgment, or
31 verdict, has been set aside, reversed, or otherwise abrogated

1 by lawful judicial process or that the person convicted of the
2 crime received a pardon from the jurisdiction where the
3 conviction was entered or received a certificate pursuant to
4 any provision of law which removes the disability under this
5 part because of such conviction.

6 (3) The office ~~department~~ may deny an application for
7 registration if the applicant or money transmitter-affiliated
8 party of the applicant is the subject of a pending criminal
9 prosecution or governmental enforcement action, in any
10 jurisdiction, until the conclusion of such criminal
11 prosecution or enforcement action.

12 (4) Each registration application and renewal
13 application must specify the location at which the applicant
14 proposes to establish its principal place of business and any
15 other location, including authorized vendors operating in this
16 state. The registrant shall notify the office ~~department~~ of
17 any changes to any such locations. Any registrant may satisfy
18 this requirement by providing the office ~~department~~ with a
19 list of such locations, including all authorized vendors
20 operating in this state, not less than annually. A registrant
21 may not transact business as a check casher or a foreign
22 currency exchanger except pursuant to the name under which it
23 is registered.

24 (5) Each applicant shall designate and maintain an
25 agent in this state for service of process.

26 Section 721. Subsections (2) and (3) of section
27 560.307, Florida Statutes, are amended to read:

28 560.307 Fees.--

29 (2) Within 60 days after the date a registrant either
30 opens a location within this state or authorizes an authorized
31 vendor to operate on the registrant's behalf within this

1 state, the registrant shall notify the office ~~department~~ on a
2 form prescribed by the commission ~~department~~ by rule. The
3 notification shall be accompanied by a nonrefundable \$50 fee
4 for each authorized vendor or location. This subsection shall
5 not apply to any authorized vendor or location that has been
6 designated by the registrant before October 1, 2001.

7 (3) Within 60 days after the date a registrant closes
8 a location within this state or withdraws authorization for an
9 authorized vendor to operate on the registrant's behalf within
10 this state, the registrant shall notify the office ~~department~~
11 on a form prescribed by the commission ~~department~~ by rule.

12 Section 722. Subsections (2) and (4) of section
13 560.308, Florida Statutes, are amended to read:

14 560.308 Registration terms; renewal; renewal fees.--

15 (2) The office ~~department~~ shall renew registration
16 upon receipt of a completed renewal form and payment of a
17 nonrefundable renewal fee not to exceed \$500. The completed
18 renewal form and payment of the renewal fee shall occur on or
19 after June 1 of the year in which the existing registration
20 expires.

21 (4) Registration that is not renewed on or before the
22 expiration date of the registration period automatically
23 expires. A renewal application and fee, and a late fee of
24 \$250, must be filed within 60 calendar days after the
25 expiration of an existing registration in order for the
26 registration to be reinstated. If the registrant has not filed
27 a renewal application within 60 days after the expiration date
28 of an existing registration, a new application must be filed
29 with the office ~~department~~ pursuant to s. 560.307.

30 Section 723. Subsections (3) and (4) of section
31 560.309, Florida Statutes, are amended to read:

1 560.309 Rules.--

2 (3) The commission ~~department~~ may by rule require
3 every check casher to display its registration and post a
4 notice containing its charges for cashing payment instruments.

5 (4) Exclusive of the direct costs of verification
6 which shall be established by commission ~~department~~ rule, no
7 check casher shall:

8 (a) Charge fees, except as otherwise provided by this
9 part, in excess of 5 percent of the face amount of the payment
10 instrument, or 6 percent without the provision of
11 identification, or \$5, whichever is greater;

12 (b) Charge fees in excess of 3 percent of the face
13 amount of the payment instrument, or 4 percent without the
14 provision of identification, or \$5, whichever is greater, if
15 such payment instrument is the payment of any kind of state
16 public assistance or federal social security benefit payable
17 to the bearer of such payment instrument; or

18 (c) Charge fees for personal checks or money orders in
19 excess of 10 percent of the face amount of those payment
20 instruments, or \$5, whichever is greater.

21 (d) As used in this subsection, "identification"
22 means, and is limited to, an unexpired and otherwise valid
23 driver license, a state identification card issued by any
24 state of the United States or its territories or the District
25 of Columbia, and showing a photograph and signature, a United
26 States Government Resident Alien Identification Card, a United
27 States passport, or a United States Military identification
28 card.

29 Section 724. Subsections (2) and (5) of section
30 560.310, Florida Statutes, are amended to read:

31

1 560.310 Records of check cashers and foreign currency
2 exchangers.--

3 (2) The records required to be maintained by the code
4 may be maintained by the registrant at any location, provided
5 that the registrant notifies the office ~~department~~, in
6 writing, of the location of the records in its application or
7 otherwise. The registrant shall make such records available to
8 the office ~~department~~ for examination and investigation in
9 this state, as permitted by the code, within 7 days after
10 receipt of a written request.

11 (5) Any person who willfully violates this section or
12 fails to comply with any lawful written demand or order of the
13 office ~~department~~ made pursuant to this section commits a
14 felony of the third degree, punishable as provided in s.
15 775.082, s. 775.083, or s. 775.084.

16 Section 725. Subsection (5) of section 560.402,
17 Florida Statutes, is amended to read:

18 560.402 Definitions.--In addition to the definitions
19 provided in ss. 560.103, 560.202, and 560.302 and unless
20 otherwise clearly indicated by the context, for purposes of
21 this part:

22 (5) "Deferred presentment provider" means a person who
23 engages in a deferred presentment transaction and is
24 registered under part II or part III of the code and has filed
25 a declaration of intent with the office ~~department~~.

26 Section 726. Subsections (1) and (4) of section
27 560.403, Florida Statutes, are amended to read:

28 560.403 Requirements of registration; declaration of
29 intent.--

30 (1) No person, unless otherwise exempt from this
31 chapter, shall engage in a deferred presentment transaction

1 unless the person is registered under the provisions of part
2 II or part III and has on file with the office ~~department~~ a
3 declaration of intent to engage in deferred presentment
4 transactions. The declaration of intent shall be under oath
5 and on such form as the commission ~~department~~ prescribes by
6 rule. The declaration of intent shall be filed together with
7 a nonrefundable filing fee of \$1,000. Any person who is
8 registered under part II or part III on the effective date of
9 this act and intends to engage in deferred presentment
10 transactions shall have 60 days after the effective date of
11 this act to file a declaration of intent.

12 (4) The notice of intent of a registrant under this
13 part who fails to timely renew his or her intent to engage in
14 the business of deferred presentment transactions or to act as
15 a deferred presentment provider on or before the expiration
16 date of the registration period automatically expires. A
17 renewal declaration of intent and fee, and a late fee of \$500,
18 must be filed within 60 calendar days after the expiration of
19 an existing registration in order for the declaration of
20 intent to be reinstated. If the registrant has not filed a
21 renewal declaration of intent within 60 days after the
22 expiration date of an existing registration, a new declaration
23 must be filed with the office ~~department~~.

24 Section 727. Subsection (3), paragraph (b) of
25 subsection (19), paragraph (b) of subsection (22), and
26 subsection (23) of section 560.404, Florida Statutes, are
27 amended to read:

28 560.404 Requirements for deferred presentment
29 transactions.--
30
31

1 (3) Each written agreement shall contain the following
2 information, in addition to any information the commission
3 ~~department~~ requires by rule:

4 (a) The name or trade name, address, and telephone
5 number of the deferred presentment provider and the name and
6 title of the person who signs the agreement on behalf of the
7 deferred presentment provider.

8 (b) The date the deferred presentment transaction was
9 made.

10 (c) The amount of the drawer's check.

11 (d) The length of deferral period.

12 (e) The last day of the deferment period.

13 (f) The address and telephone number of the office and
14 the Division of Consumer Services of the Department of
15 Financial Services ~~department~~.

16 (g) A clear description of the drawer's payment
17 obligations under the deferred presentment transaction.

18 (h) The transaction number assigned by the office's
19 ~~department's~~ database.

20 (19) A deferred presentment provider may not enter
21 into a deferred presentment transaction with a person who has
22 an outstanding deferred presentment transaction with that
23 provider or with any other deferred presentment provider, or
24 with a person whose previous deferred presentment transaction
25 with that provider or with any other provider has been
26 terminated for less than 24 hours. The deferred presentment
27 provider must verify such information as follows:

28 (b) The deferred presentment provider shall access the
29 office's ~~department's~~ database established pursuant to
30 subsection (23) and shall verify whether any other deferred
31 presentment provider has an outstanding deferred presentment

1 transaction with a particular person or has terminated a
2 transaction with that person within the previous 24 hours.
3 Prior to the time that the office department has implemented
4 such a database, the deferred presentment provider may rely
5 upon the written verification of the drawer as provided in
6 subsection (20).

7 (22)

8 (b) At the commencement of the grace period, the
9 deferred presentment provider shall provide the drawer:

10 1. Verbal notice of the availability of the grace
11 period consistent with the written notice in subsection (20).

12 2. A list of approved consumer credit counseling
13 agencies prepared by the office department. ~~The department~~
14 ~~shall prepare the list by October 1, 2001.~~ The office
15 ~~department~~ list shall include nonprofit consumer credit
16 counseling agencies affiliated with the National Foundation
17 for Credit Counseling which provide credit counseling services
18 to Florida residents in person, by telephone, or through the
19 Internet. The office department list must include phone
20 numbers for the agencies, the counties served by the agencies,
21 and indicate the agencies that provide telephone counseling
22 and those that provide Internet counseling. The office
23 ~~department~~ shall update the list at least once each year.

24 3. The following notice in at least 14-point type in
25 substantially the following form:

26

27 AS A CONDITION OF OBTAINING A GRACE PERIOD
28 EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT
29 AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL
30 [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST
31 COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY

1 AN AGENCY INCLUDED ON THE LIST THAT WILL BE
2 PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO
3 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
4 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY
5 BE IN PERSON, BY TELEPHONE, OR THROUGH THE
6 INTERNET. YOU MUST NOTIFY US WITHIN SEVEN (7)
7 DAYS, BY [DATE], THAT YOU HAVE MADE AN
8 APPOINTMENT WITH SUCH A CONSUMER CREDIT
9 COUNSELING AGENCY. YOU MUST ALSO NOTIFY US
10 WITHIN SIXTY (60) DAYS, BY [DATE], THAT YOU
11 HAVE COMPLETED THE CONSUMER CREDIT COUNSELING.
12 WE MAY VERIFY THIS INFORMATION WITH THE AGENCY.
13 IF YOU FAIL TO PROVIDE EITHER THE 7-DAY OR
14 60-DAY NOTICE, OR IF YOU HAVE NOT MADE THE
15 APPOINTMENT OR COMPLETED THE COUNSELING WITHIN
16 THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT
17 YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY
18 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT.

19 (23) ~~On or before March 1, 2002,~~The office department
20 shall implement a common database with real-time access
21 through an Internet connection for deferred presentment
22 providers, as provided in this subsection. The database must
23 be accessible to the office department and the deferred
24 presentment providers to verify whether any deferred
25 presentment transactions are outstanding for a particular
26 person. Deferred presentment providers shall submit such data
27 before entering into each deferred presentment transaction in
28 such format as the commission department shall require by
29 rule, including the drawer's name, social security number or
30 employment authorization alien number, address, driver's
31 license number, amount of the transaction, date of

1 transaction, the date that the transaction is closed, and such
2 additional information as is required by the commission
3 ~~department~~. The commission ~~department~~ may impose a fee not to
4 exceed \$1 per transaction for data required to be submitted by
5 a deferred presentment provider. A deferred presentment
6 provider may rely on the information contained in the database
7 as accurate and is not subject to any administrative penalty
8 or civil liability as a result of relying on inaccurate
9 information contained in the database. The commission
10 ~~department~~ may adopt rules to administer and enforce the
11 provisions of this section and to assure that the database is
12 used by deferred presentment providers in accordance with this
13 section.

14 Section 728. Section 560.4041, Florida Statutes, is
15 amended to read:

16 560.4041 Database for deferred presentment providers;
17 public-records exemption.--The identifying information
18 contained in the database for deferred presentment providers,
19 which is authorized under s. 560.404, is confidential and
20 exempt from s. 119.07(1), and s. 24(a), Art. I of the State
21 Constitution, except that the identifying information in the
22 database may be accessed by deferred presentment providers to
23 verify whether any deferred presentment transactions are
24 outstanding for a particular person and by the office
25 ~~Department of Banking and Finance~~ for the purpose of
26 maintaining the database. This section is subject to the Open
27 Government Sunset Review Act of 1995 in accordance with s.
28 119.15, and shall stand repealed October 2, 2006, unless
29 reviewed and saved from repeal through reenactment by the
30 Legislature.

31

1 Section 729. Subsections (1), (2), and (3) of section
2 560.407, Florida Statutes, are amended to read:

3 560.407 Records.--

4 (1) Each registrant under this part must maintain all
5 books, accounts, records, and documents necessary to determine
6 the registrant's compliance with the provisions of the code.
7 Such books, accounts, records, and documents shall be retained
8 for a period of at least 3 years unless a longer period is
9 expressly required by the commission ~~department~~, the laws of
10 this state, or any federal law.

11 (2) The records required to be maintained by the code
12 or any rule adopted pursuant thereto may be maintained by the
13 registrant at any location within this state, provided that
14 the registrant notifies the office ~~department~~, in writing, of
15 the location of the records in its application or otherwise.

16 (3) A registrant shall make records available to the
17 office ~~department~~ for examination and investigation in this
18 state, as permitted by the code, within 7 days after receipt
19 of a written request.

20 Section 730. Subsection (2) of section 560.408,
21 Florida Statutes, is amended to read:

22 560.408 Legislative intent; report.--

23 (2) The director of the office shall submit a report
24 on January 1, 2004, ~~Comptroller shall submit a report~~ to the
25 President of the Senate and the Speaker of the House of
26 Representatives ~~on January 1, 2003, and January 1, 2004,~~
27 containing findings and conclusions concerning the
28 effectiveness of this act in preventing fraud, abuse, and
29 other unlawful activity associated with deferred presentment
30 transactions. The report may contain legislative
31 recommendations addressing the prevention of fraud, abuse, and

1 other unlawful activity associated with deferred presentment
2 transactions. Prior to filing each ~~the~~ report, the Comptroller
3 and director of the office shall consult with the Attorney
4 General for the purpose of including any recommendations or
5 concerns expressed by the Attorney General.

6 Section 731. Section 561.051, Florida Statutes, is
7 amended to read:

8 561.051 Reporting requirements of director.--The
9 director of the division shall promptly report and remit to
10 the Chief Financial Officer ~~Treasurer~~ all taxes and fees
11 collected by him or her hereunder ~~and shall send copies of the~~
12 ~~reports to the Comptroller.~~

13 Section 732. Section 562.44, Florida Statutes, is
14 amended to read:

15 562.44 Donation of forfeited beverages or raw
16 materials to state institutions; sale of forfeited
17 beverages.--Any alcoholic beverage or raw materials used for
18 the manufacture of alcoholic beverages that may be seized and
19 forfeited under any of the provisions of the Beverage Law may,
20 with the approval and consent of the Department of Business
21 and Professional Regulation, be donated to any state-operated
22 or charitable institution that may have a legitimate use
23 therefor in the operation of such institution, or the division
24 may sell such beverage so seized and forfeited to any licensed
25 wholesaler in the state, upon the condition that all federal
26 and state taxes that may be due thereon shall be paid, that
27 such sale shall be made only upon submission by said division
28 of a request for bids to at least five wholesale dealers in
29 the state, and that such sale shall be made to the highest and
30 best bidder therefor. However, if no satisfactory bid from a
31 wholesaler is received, the division may then reject all bids

1 and sell such beverage so seized and forfeited to any
2 retailer, licensed in this state to sell such beverage, upon
3 the condition that all federal and state taxes that may be due
4 thereon shall have been paid, that such sale shall be made
5 only upon submission by said division of a request for bids to
6 at least five retail dealers in the state and that such sale
7 shall be to the highest and best bidder therefor. All moneys
8 received from such sales shall be paid by the division to the
9 Chief Financial Officer ~~State Treasurer~~ for the account of the
10 beverage fund and shall be subject to disbursement in
11 accordance with the law relating thereto.

12 Section 733. Section 567.08, Florida Statutes, is
13 amended to read:

14 567.08 Refund of unused portion of state license
15 tax.--When any county votes by an election to discontinue
16 permitting the sale of intoxicating liquors, wines, or beer,
17 prior to the date of expiration of any license issued by the
18 state for the sale of intoxicating liquors, wines, or beer in
19 such county, the fee for the unexpired and unused portion of
20 said license shall be refunded to the licensee by warrant
21 drawn by the Chief Financial Officer, ~~State Comptroller on the~~
22 ~~State Treasurer~~ who shall pay such warrants from any moneys in
23 the State Treasury not otherwise appropriated.

24 Section 734. Subsections (1) and (2) of section
25 569.205, Florida Statutes, are amended to read:

26 569.205 Department of Business and Professional
27 Regulation Tobacco Settlement Trust Fund.--

28 (1) The Department of Business and Professional
29 Regulation Tobacco Settlement Trust Fund is hereby created
30 within that department. Funds to be credited to the trust fund
31 shall consist of funds disbursed, by nonoperating transfer,

1 from the Department of Financial Services ~~Banking and Finance~~
2 Tobacco Settlement Clearing Trust Fund in amounts equal to the
3 annual appropriations made from this trust fund.

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

10 Section 735. Subsection (1) of section 569.215,
11 Florida Statutes, is amended to read:

12 569.215 Confidential records relating to tobacco
13 settlement agreement.--

14 (1) Proprietary confidential business information
15 received by the Governor, the Attorney General, or outside
16 counsel representing the State of Florida in negotiations for
17 settlement payments pursuant to the settlement agreement, as
18 amended, in the case of State of Florida et al. v. American
19 Tobacco Company et al., No. 95-1466AH, in the Circuit Court of
20 the Fifteenth Judicial Circuit, in and for Palm Beach County,
21 or received by the Chief Financial Officer ~~Comptroller~~ or the
22 Auditor General for any purpose relating to verifying
23 settlement payments made pursuant to the settlement agreement
24 is confidential and exempt from the provisions of s. 119.07(1)
25 and s. 24(a) of Art. I of the State Constitution. Any state or
26 federal agency that is authorized to have access to such
27 documents by any provision of law shall be granted such access
28 in furtherance of such agency's statutory duties,
29 notwithstanding the provisions of this section. Proprietary
30 confidential business information received under this section
31 shall not retain its confidential and exempt status if that

1 information is made public, including publicizing such
2 information in a Securities and Exchange Commission filing, an
3 annual financial statement, or other document or means. This
4 exemption is subject to the Open Government Sunset Review Act
5 of 1995 in accordance with s. 119.15, and shall stand repealed
6 on October 2, 2006, unless reviewed and saved from repeal
7 through reenactment by the Legislature.

8 Section 736. Subsection (2) of section 570.13, Florida
9 Statutes, is amended to read:

10 570.13 Salary of commissioner, officers, and
11 employees; expenses.--

12 (2) The reasonable and necessary travel and other
13 expenses of the commissioner, assistant commissioner, counsel,
14 directors, and other officers and employees of the department,
15 while actually engaged in the performance of their duties,
16 outside of the City of Tallahassee, or if any such officer or
17 employee be in charge of or regularly employed at a branch
18 office of the department, the reasonable and necessary travel
19 and other expenses outside the place such branch office is
20 located, shall be paid from the State Treasury after audit by
21 the Chief Financial Officer ~~Comptroller~~ of vouchers approved
22 by the department in the amount provided in s. 112.061.

23 Section 737. Subsection (1) of section 570.195,
24 Florida Statutes, is amended to read:

25 570.195 Tobacco farmers; assistance.--

26 (1) In order to assist Florida tobacco farmers in
27 reducing encumbered debt on stranded investment in equipment,
28 the nonrecurring sum of \$2.5 million is appropriated from the
29 Department of Financial Services ~~Banking and Finance~~ Tobacco
30 Settlement Clearing Trust Fund to the Department of
31 Agriculture and Consumer Services for the purchase at fair

1 market value of equipment associated with agricultural
2 production of tobacco from persons or entities that were using
3 such equipment for production of tobacco between April 1 and
4 October 1, 2000, on land within this state and sign a letter
5 of intent to cease tobacco production upon the development and
6 implementation of an alternative crop that would provide the
7 same net revenue and proportional costs as tobacco. The
8 department may adopt rules that, at a minimum, define and
9 describe the equipment to be purchased under this section,
10 prescribe criteria for identifying persons and entities who
11 are eligible to have such equipment purchased by the
12 department, and prescribe procedures to be followed for
13 equipment purchases. From the funds appropriated by this
14 section, the department is authorized to expend such sums as
15 are reasonable and necessary to administer the program.

16 Section 738. Section 570.20, Florida Statutes, is
17 amended to read:

18 570.20 General Inspection Trust Fund.--All donations
19 and all inspection fees and other funds authorized and
20 received from whatever source in the enforcement of the
21 inspection laws administered by the department shall be paid
22 into the General Inspection Trust Fund of Florida, which is
23 created in the office of the Chief Financial Officer
24 ~~Treasurer~~. All expenses incurred in carrying out the
25 provisions of the inspection laws shall be paid from this fund
26 as other funds are paid from the State Treasury. A percentage
27 of all revenue deposited in this fund, including transfers
28 from any subsidiary accounts, shall be deposited in the
29 General Revenue Fund pursuant to chapter 215, except that
30 funds collected for marketing orders shall pay at the rate of
31 3 percent.

1 Section 739. Subsection (6) of section 574.03, Florida
2 Statutes, is amended to read:

3 574.03 Warehouseman; licenses and fees.--

4 (6) As a prerequisite to the issuance of a license
5 under the provisions of this section, each applicant shall
6 furnish evidence to the Department of Agriculture and Consumer
7 Services that the applicant has in force a standard fire and
8 extended coverage insurance policy for the full market value
9 of the maximum amount of tobacco contained in his or her sales
10 warehouse at any one time during the marketing season for
11 which the license is sought. The insurance policy shall be
12 written by an insurance company of the warehouseman's choice
13 authorized to transact business in this state, and such
14 insurance coverage shall be approved in form by the Office of
15 Insurance Regulation of the Financial Services Commission
16 ~~Department of Insurance~~, and a copy of the insurance policy
17 shall be filed with the director of the Division of Marketing
18 and Development of the Department of Agriculture and Consumer
19 Services. The policy shall contain an endorsement requiring
20 notification to the director of the Division of Marketing and
21 Development of the Department of Agriculture and Consumer
22 Services by the insurance company at least 10 days prior to
23 cancellation of their intention to cancel the policy.

24 Section 740. Section 589.06, Florida Statutes, is
25 amended to read:

26 589.06 Warrants for payment of accounts.--Upon the
27 presentation to the Chief Financial Officer ~~Comptroller~~ of any
28 accounts duly approved by the Division of Forestry,
29 accompanied by such itemized vouchers or accounts as shall be
30 required by her or him, the Chief Financial Officer
31 ~~Comptroller~~ shall audit the same and draw a warrant ~~on the~~

1 ~~State Treasurer~~ for the amount for which the account is
2 audited, payable out of funds to the credit of the division.

3 Section 741. Paragraph (a) of subsection (7) of
4 section 597.010, Florida Statutes, is amended to read:

5 597.010 Shellfish regulation; leases.--

6 (7) SURCHARGE FOR IMPROVEMENT OR REHABILITATION.--A
7 surcharge of \$10 per acre, or any fraction of an acre, per
8 annum shall be levied upon each lease, other than a perpetual
9 lease granted pursuant to chapter 370 prior to 1985, and
10 deposited into the General Inspection Trust Fund. The purpose
11 of the surcharge is to provide a mechanism to have financial
12 resources immediately available for improvement of lease areas
13 and for cleanup and rehabilitation of abandoned or vacated
14 lease sites. The department is authorized to adopt rules
15 necessary to carry out the provisions of this subsection.

16 (a) Moneys in the fund that are not needed currently
17 for cleanup and rehabilitation of abandoned or vacated lease
18 sites shall be deposited with the Chief Financial Officer
19 ~~Treasurer~~ to the credit of the fund and may be invested in
20 such manner as is provided for by statute. Interest received
21 on such investment shall be credited to the fund.

22

23 The department shall recover to the use of the fund from the
24 person or persons abandoning or vacating the lease, jointly
25 and severally, all sums owed or expended from the fund.

26 Section 742. Subsections (9) and (10) of section
27 601.10, Florida Statutes, are amended to read:

28 601.10 Powers of the Department of Citrus.--The
29 Department of Citrus shall have and shall exercise such
30 general and specific powers as are delegated to it by this

31

1 chapter and other statutes of the state, which powers shall
2 include, but shall not be confined to, the following:

3 (9) When, in the opinion of the Department of Citrus,
4 the tax revenues collected pursuant to this chapter, whether
5 allocated for research, advertising or promotion, reserve
6 funds, advertising incentive plans, or other purposes, are not
7 immediately needed for the purpose for which such funds are
8 provided, the Chief Financial Officer ~~Treasurer~~ is authorized
9 and shall, upon the request and approval of the Department of
10 Citrus, or its general manager if she or he has been given
11 such authority, invest and reinvest the funds designated and
12 for the period of time specified in such request. In the
13 investment of such funds, the Chief Financial Officer
14 ~~Treasurer~~ shall have the powers and be subject to the
15 limitations provided for in s. 17.61 ~~s. 18.125~~.

16 (10) Subject to the concurrence of the Chief Financial
17 Officer ~~Treasurer~~, whenever the department contracts with a
18 foreign entity for performance of services or the purchase of
19 materials, and such contract requires payment in equivalent
20 foreign currency, the department may, for payment of such
21 contract obligation, deposit sufficient state funds in a
22 foreign bank, or purchase foreign currency at the current
23 market rate, up to an amount not in excess of the contract
24 obligation. All payments from these funds must have prior
25 audit approval from the office of the Chief Financial Officer
26 ~~Comptroller~~.

27 Section 743. Paragraph (c) of subsection (8) of
28 section 601.15, Florida Statutes, is amended to read:

29 601.15 Advertising campaign; methods of conducting;
30 excise tax; emergency reserve fund; citrus research.--

31 (8)

1 (c) All obligations, expenses, and costs incurred
2 under the provisions of this section shall be paid out of the
3 Citrus Advertising Fund upon warrant of the Chief Financial
4 Officer ~~Comptroller~~ when vouchers thereof, approved by the
5 Department of Citrus, are exhibited.

6 Section 744. Subsection (6) of section 601.28, Florida
7 Statutes, is amended to read:

8 601.28 Inspection fees.--

9 (6) When any portion of the revenues deposited to the
10 Citrus Inspection Trust Fund is not immediately needed for the
11 purpose for which such funds are appropriated, the Chief
12 Financial Officer ~~Treasurer~~ shall invest and reinvest such
13 funds, and the earnings thereon shall be deposited to and made
14 a part of the Citrus Inspection Trust Fund.

15 Section 745. Subsection (2) of section 607.0501,
16 Florida Statutes, is amended to read:

17 607.0501 Registered office and registered agent.--

18 (2) This section does not apply to corporations which
19 are required by law to designate the Chief Financial Officer
20 ~~Insurance Commissioner and Treasurer~~ as their attorney for the
21 service of process, associations subject to the provisions of
22 chapter 665, and banks and trust companies subject to the
23 provisions of the financial institutions codes.

24 Section 746. Section 607.14401, Florida Statutes, is
25 amended to read:

26 607.14401 Deposit with Department of Financial
27 Services ~~Banking and Finance~~.--Assets of a dissolved
28 corporation that should be transferred to a creditor,
29 claimant, or shareholder of the corporation who cannot be
30 found or who is not competent to receive them shall be
31 deposited, within 6 months from the date fixed for the payment

1 of the final liquidating distribution, with the Department of
2 Financial Services ~~Banking and Finance~~, where such assets
3 shall be held as abandoned property. When the creditor,
4 claimant, or shareholder furnishes satisfactory proof of
5 entitlement to the amount or assets deposited, the Department
6 of Financial Services ~~Banking and Finance~~ shall pay the
7 creditor, claimant, or shareholder or his or her
8 representative that amount or those assets.

9 Section 747. Section 609.05, Florida Statutes, is
10 amended to read:

11 609.05 Qualification with Office of Financial
12 Regulation ~~Department of Banking and Finance~~.--Before any
13 person may offer for sale, barter or sell any unit, share,
14 contract, note, bond, mortgage, oil or mineral lease or other
15 security of an association doing business under what is known
16 as a "declaration of trust" in this state, such person shall
17 procure from the Office of Financial Regulation of the
18 Financial Services Commission ~~Department of Banking and~~
19 ~~Finance~~ a permit to offer for sale and sell such securities,
20 which permit shall be applied for and granted under the same
21 conditions as like permits are applied for and granted to
22 corporations.

23 Section 748. Subsection (2) of section 617.0501,
24 Florida Statutes, is amended to read:

25 617.0501 Registered office and registered agent.--

26 (2) This section does not apply to corporations which
27 are required by law to designate the Chief Financial Officer
28 ~~Insurance Commissioner and Treasurer~~ as their attorney for the
29 service of process.

30 Section 749. Section 617.1440, Florida Statutes, is
31 amended to read:

1 617.1440 Deposit with Department of Financial Services
2 ~~Banking and Finance~~.--Assets of a dissolved corporation that
3 should be transferred to a creditor, claimant, member of the
4 corporation, or other person who cannot be found or who is not
5 competent to receive them shall be deposited, within 6 months
6 after the date fixed for the payment of the final liquidating
7 distribution, with the Department of Financial Services
8 ~~Banking and Finance~~, where such assets shall be held as
9 abandoned property. When the creditor, claimant, member, or
10 other person furnishes satisfactory proof of entitlement to
11 the amount or assets deposited, the Department of Financial
12 Services ~~Banking and Finance~~ shall pay him or her or his or
13 her representative that amount or those assets.

14 Section 750. Section 624.01, Florida Statutes, is
15 amended to read:

16 624.01 Short title.--Chapters 624-632, 634, 635, 636,
17 641, 642, 648, and 651 constitute the "Florida Insurance
18 Code."

19 Section 751. Section 624.05, Florida Statutes, is
20 amended to read:

21 624.05 "Department, "commission," and "office"
22 defined.--As used in the Insurance Code:

23 (1) "Department" means the Department of Financial
24 Services. The term does not mean the Financial Services
25 Commission or any office of the Financial Services Commission
26 ~~Insurance of this state, unless the context otherwise~~
27 ~~requires.~~

28 (2) "Commission" means the Financial Services
29 Commission.

30 (3) "Office" means the Office of Insurance Regulation
31 of the Financial Services Commission.

1 Section 752. Subsection (2) of section 624.07, Florida
2 Statutes, is amended to read:

3 624.07 "Domicile" defined.--Except as provided in s.
4 631.011, the "domicile" of an insurer means:

5 (2) As to other alien insurers authorized to transact
6 insurance in one or more states, the state designated by the
7 insurer in writing filed with the office ~~department~~ at the
8 time of admission to this state or within 6 months after the
9 effective date of this code, whichever date is the later, and
10 may be any of the following states:

11 (a) That in which the insurer was first authorized to
12 transact insurance if the insurer is still so authorized.

13 (b) That in which is located the insurer's principal
14 place of business in the United States.

15 (c) That in which is held the larger deposit of
16 trusted assets of the insurer for the protection of its
17 policyholders and creditors in the United States.

18
19 If the insurer makes no such designation, its domicile shall
20 be deemed to be that state in which is located its principal
21 place of business in the United States.

22 Section 753. Subsection (1) of section 624.09, Florida
23 Statutes, is amended to read:

24 624.09 "Authorized," "unauthorized" insurer defined.--

25 (1) An "authorized" insurer is one duly authorized by
26 a subsisting certificate of authority issued by the office
27 ~~department~~ to transact insurance in this state.

28 Section 754. Subsection (2) of section 624.11, Florida
29 Statutes, is amended to read:

30 624.11 Compliance required.--

31

1 (2) Any risk retention group organized and existing
2 under the provisions of the Product Liability Risk Retention
3 Act of 1981 (Pub. L. No. 97-45), which has been licensed as an
4 insurance company and authorized to engage in the business of
5 insurance may transact insurance in this state and shall be
6 subject to the provisions of ss. 624.15, 624.316, 624.418,
7 624.421, 624.4211, 624.422, 624.509, 626.112, 626.611,
8 626.621, 626.7315, 626.741, 626.932, 626.938, 626.9541,
9 627.351, and 627.915; part I of chapter 631; and all other
10 applicable provisions of the laws of this state. Any such
11 group formed in another jurisdiction shall furnish to the
12 office ~~department~~, upon request, a copy of any financial
13 report submitted by the group in the licensing jurisdiction.

14 Section 755. Section 624.124, Florida Statutes, is
15 amended to read:

16 624.124 Motor vehicle services; exemption from
17 code.--Any person may, in exchange for fees, dues, charges, or
18 other consideration, provide any of the following services
19 related to the ownership, operation, use, or maintenance of a
20 motor vehicle without being deemed an insurer and without
21 being subject to the provisions of this code:

22 (1) Towing service.

23 (2) Procuring from an insurer group coverage for bail
24 and arrest bonds or for accidental death and dismemberment.

25 (3) Emergency service.

26 (4) Procuring prepaid legal services, or providing
27 reimbursement for legal services, except that this shall not
28 be deemed to be an exemption from chapter 642.

29 (5) Offering assistance in locating or recovering
30 stolen or missing motor vehicles.

31

1 (6) Paying emergency living and transportation
2 expenses of the owner of a motor vehicle when the motor
3 vehicle is damaged.

4
5 For purposes of this section, "motor vehicle" has the same
6 meaning specified by s. 634.011(6)~~s. 634.011(7)~~.

7 Section 756. Subsection (3) of section 624.129,
8 Florida Statutes, is amended to read:

9 624.129 Certain location and recovery services;
10 exemption from code.--

11 (3) The written agreement or enrollment form used by
12 the provider of such services for subscribers in this state
13 shall contain a conspicuous legend to the effect that the
14 services are not regulated by either the department or the
15 office as insurance.

16 Section 757. Subsection (5) of section 624.155,
17 Florida Statutes, is amended to read:

18 624.155 Civil remedy.--

19 (5) This section shall not be construed to authorize a
20 class action suit against an insurer or a civil action against
21 the commission, the office, or the department or any of their,
22 ~~its employees, or the Insurance Commissioner,~~ or to create a
23 cause of action when a health insurer refuses to pay a claim
24 for reimbursement on the ground that the charge for a service
25 was unreasonably high or that the service provided was not
26 medically necessary.

27 Section 758. Section 624.19, Florida Statutes, is
28 amended to read:

29 624.19 Existing forms and filings.--Every form of
30 insurance document and every rate or other filing lawfully in
31 use immediately prior to October 1, 1959, may continue to be

1 so used or be effective until the commission or office
2 ~~department~~ otherwise prescribes pursuant to this code.

3 Section 759. Section 624.302, Florida Statutes, is
4 amended to read:

5 624.302 Offices.--The department shall establish and
6 maintain offices at the State Capitol in Tallahassee, and in
7 such other places throughout the state as it designates ~~may~~
8 ~~from time to time designate~~. The Office of Insurance
9 Regulation shall establish and maintain offices in Tallahassee
10 and in such other places throughout the state as it
11 designates.

12 Section 760. Section 624.303, Florida Statutes, is
13 amended to read:

14 624.303 Seal; certified copies as evidence.--

15 (1) The department, commission, and office shall each
16 have an official seal by which its respective proceedings are
17 authenticated.

18 (2) All certificates executed by the department or
19 office, other than licenses of agents, solicitors, or
20 adjusters or similar licenses or permits, shall bear its
21 respective seal.

22 (3) Any written instrument purporting to be a copy of
23 any action, proceeding, or finding of fact by the department,
24 commission, or office or any record of the department,
25 commission, or office or copy of any document on file in its
26 office when authenticated under hand of the respective agency
27 head or his or her designee ~~commissioner~~ by the seal shall be
28 accepted by all the courts of this state as prima facie
29 evidence of its contents.

30 Section 761. Section 624.307, Florida Statutes, is
31 amended to read:

1 624.307 General powers; duties.--

2 (1) The department and office shall enforce the
3 provisions of this code and shall execute the duties imposed
4 upon it by this code, within the respective jurisdiction of
5 each, as provided by law.

6 (2) The department shall have the powers and authority
7 expressly conferred upon it by, or reasonably implied from,
8 the provisions of this code. The office shall have the powers
9 and authority expressly conferred upon it by, or reasonably
10 implied from, the provisions of this code.

11 (3) The department or office may conduct such
12 investigations of insurance matters, in addition to
13 investigations expressly authorized, as it may deem proper to
14 determine whether any person has violated any provision of
15 this code within its respective regulatory jurisdiction or to
16 secure information useful in the lawful administration of any
17 such provision. The cost of such investigations shall be
18 borne by the state.

19 (4) The department and office may each collect,
20 propose, publish, and disseminate information relating to the
21 subject matter of any duties imposed upon it by law.

22 (5) The department and office shall each have such
23 additional powers and duties as may be provided by other laws
24 of this state.

25 (6) The department and office may each employ
26 actuaries who shall be at-will employees and who shall serve
27 at the pleasure of the Chief Financial Officer, in the case of
28 department employees, or at the pleasure of the director of
29 the office, in the case of office employees ~~insurance~~
30 ~~Commissioner~~. Actuaries employed pursuant to this paragraph
31 shall be members of the Society of Actuaries or the Casualty

1 Actuarial Society and shall be exempt from the Career Service
2 System established under chapter 110. The salaries of the
3 actuaries employed pursuant to this paragraph ~~by the~~
4 ~~department~~ shall be set in accordance with s. 216.251(2)(a)5.
5 and shall be set at levels which are commensurate with salary
6 levels paid to actuaries by the insurance industry.

7 (7) The office ~~department~~ shall, within existing
8 resources, develop and implement an outreach program for the
9 purpose of encouraging the entry of additional insurers into
10 the Florida market.

11 Section 762. Subsection (1) of section 624.308,
12 Florida Statutes, is amended to read:

13 624.308 Rules.--

14 (1) The department and the commission may each ~~has~~
15 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54
16 to implement provisions of law conferring duties upon the
17 department or the commission, respectively ~~it~~.

18 Section 763. Section 624.310, Florida Statutes, is
19 amended to read:

20 624.310 Enforcement; cease and desist orders; removal
21 of certain persons; fines.--

22 (1) DEFINITIONS.--For the purposes of this section,
23 the term:

24 (a) "Affiliated party" means any person who directs or
25 participates in the conduct of the affairs of a licensee and
26 who is:

27 1. A director, officer, employee, trustee, committee
28 member, or controlling stockholder of a licensee or a
29 subsidiary or service corporation of the licensee, other than
30 a controlling stockholder which is a holding company, or an
31

1 agent of a licensee or a subsidiary or service corporation of
2 the licensee;

3 2. A person who has filed or is required to file a
4 statement or any other information required to be filed under
5 s. 628.461 or s. 628.4615;

6 3. A stockholder, other than a stockholder that is a
7 holding company of the licensee, who participates in the
8 conduct of the affairs of the licensee; or

9 4. An independent contractor who:

10 a. Renders a written opinion required by the laws of
11 this state under her or his professional credentials on behalf
12 of the licensee, which opinion is reasonably relied on by the
13 department or office in the performance of its duties; or

14 b. Affirmatively and knowingly conceals facts, through
15 a written misrepresentation to the department or office, with
16 knowledge that such misrepresentation:

17 (I) Constitutes a violation of the insurance code or a
18 lawful rule or order of the department, commission, or office;
19 and

20 (II) Directly and materially endangers the ability of
21 the licensee to meet its obligations to policyholders.

22
23 For the purposes of this subparagraph, any representation of
24 fact made by an independent contractor on behalf of a
25 licensee, affirmatively communicated as a representation of
26 the licensee to the independent contractor, shall not be
27 considered a misrepresentation by the independent contractor
28 ~~to the department.~~

29 (b) "Licensee" means a person issued a license or
30 certificate of authority or approval under this code or a
31 person registered under a provision of this code.

1 (2) ENFORCEMENT GENERALLY.--

2 (a) The powers granted by this section to the office
3 apply only with respect to licensees of the office and their
4 affiliated parties and to unlicensed persons subject to the
5 regulatory jurisdiction of the office, and the powers granted
6 by this section to the department apply only with respect to
7 licensees of the department and their affiliated parties and
8 to unlicensed persons subject to regulatory jurisdiction of
9 the department.

10 (b) The department and office each may institute such
11 suits or other legal proceedings as may be required to enforce
12 any provision of this code within the respective regulatory
13 jurisdiction of each. If it appears that any person has
14 violated any provision of this code for which criminal
15 prosecution is provided, the department or office shall
16 provide the appropriate state attorney or other prosecuting
17 agency having jurisdiction with respect to such prosecution
18 with the relevant information in its possession.

19 (3) CEASE AND DESIST ORDERS.--

20 (a) The department or office may issue and serve a
21 complaint stating charges upon any licensee or upon any
22 affiliated party, whenever the department or office has
23 reasonable cause to believe that the person or individual
24 named therein is engaging in or has engaged in conduct that
25 is:

26 1. An act that demonstrates a lack of fitness or
27 trustworthiness to engage in the business of insurance, is
28 hazardous to the insurance buying public, or constitutes
29 business operations that are a detriment to policyholders,
30 stockholders, investors, creditors, or the public;

31

1 2. A violation of any provision of the Florida
2 Insurance Code;

3 3. A violation of any rule of the department or
4 commission;

5 4. A violation of any order of the department or
6 office; or

7 5. A breach of any written agreement with the
8 department or office.

9 (b) The complaint shall contain a statement of facts
10 and notice of opportunity for a hearing pursuant to ss.
11 120.569 and 120.57.

12 (c) If no hearing is requested within the time allowed
13 by ss. 120.569 and 120.57, or if a hearing is held and the
14 department or office finds that any of the charges are proven,
15 the department or office may enter an order directing the
16 licensee or the affiliated party named in the complaint to
17 cease and desist from engaging in the conduct complained of
18 and take corrective action to remedy the effects of past
19 improper conduct and assure future compliance.

20 (d) If the licensee or affiliated party named in the
21 order fails to respond to the complaint within the time
22 allotted by ss. 120.569 and 120.57, the failure constitutes a
23 default and justifies the entry of a cease and desist order.

24 (e) A contested or default cease and desist order is
25 effective when reduced to writing and served upon the licensee
26 or affiliated party named therein. An uncontested cease and
27 desist order is effective as agreed.

28 (f) Whenever the department or office finds that
29 conduct described in paragraph (a) is likely to cause
30 insolvency, substantial dissipation or misvaluation of assets
31 or earnings of the licensee, substantial inability to pay

1 claims on a timely basis, or substantial prejudice to
2 prospective or existing insureds, policyholders, subscribers,
3 or the public, it may issue an emergency cease and desist
4 order requiring the licensee or any affiliated party to
5 immediately cease and desist from engaging in the conduct
6 complained of and to take corrective and remedial action. The
7 emergency order is effective immediately upon service of a
8 copy of the order upon the licensee or affiliated party named
9 therein and remains effective for 90 days. If the department
10 or office begins nonemergency cease and desist proceedings
11 under this subsection, the emergency order remains effective
12 until the conclusion of the proceedings under ss. 120.569 and
13 120.57. Any emergency order entered under this subsection is
14 exempt from s. 119.07(1) and is confidential until it is made
15 permanent unless the department or office finds that the
16 confidentiality will result in substantial risk of financial
17 loss to the public. All emergency cease and desist orders
18 that are not made permanent are available for public
19 inspection 1 year from the date the emergency cease and desist
20 order expires; however, portions of an emergency cease and
21 desist order remain confidential and exempt from the
22 provisions of s. 119.07(1) if disclosure would:

- 23 1. Jeopardize the integrity of another active
24 investigation;
- 25 2. Impair the safety and financial soundness of the
26 licensee or affiliated party;
- 27 3. Reveal personal financial information;
- 28 4. Reveal the identity of a confidential source;
- 29 5. Defame or cause unwarranted damage to the good name
30 or reputation of an individual or jeopardize the safety of an
31 individual; or

- 1 6. Reveal investigative techniques or procedures.
- 2 (4) REMOVAL OF AFFILIATED PARTIES ~~BY THE DEPARTMENT.~~--
- 3 (a) The department or office may issue and serve a
- 4 complaint stating charges upon any affiliated party and upon
- 5 the licensee involved, whenever the department or office has
- 6 reason to believe that an affiliated party is engaging in or
- 7 has engaged in conduct that constitutes:
- 8 1. An act that demonstrates a lack of fitness or
- 9 trustworthiness to engage in the business of insurance through
- 10 engaging in illegal activity or mismanagement of business
- 11 activities;
- 12 2. A willful violation of any law relating to the
- 13 business of insurance; however, if the violation constitutes a
- 14 misdemeanor, no complaint shall be served as provided in this
- 15 section until the affiliated party is notified in writing of
- 16 the matter of the violation and has been afforded a reasonable
- 17 period of time, as set forth in the notice, to correct the
- 18 violation and has failed to do so;
- 19 3. A violation of any other law involving fraud or
- 20 moral turpitude that constitutes a felony;
- 21 4. A willful violation of any rule of the department
- 22 or commission;
- 23 5. A willful violation of any order of the department
- 24 or office;
- 25 6. A material misrepresentation of fact, made
- 26 knowingly and willfully or made with reckless disregard for
- 27 the truth of the matter; or
- 28 7. An act of commission or omission or a practice
- 29 which is a breach of trust or a breach of fiduciary duty.
- 30
- 31

1 (b) The complaint shall contain a statement of facts
2 and notice of opportunity for a hearing pursuant to ss.
3 120.569 and 120.57.

4 (c) If no hearing is requested within the time
5 allotted by ss. 120.569 and 120.57, or if a hearing is held
6 and the department or office finds that any of the charges in
7 the complaint are proven true and that:

8 1. The licensee has suffered or will likely suffer
9 loss or other damage;

10 2. The interests of the policyholders, creditors, or
11 public are, or could be, seriously prejudiced by reason of the
12 violation or act or breach of fiduciary duty;

13 3. The affiliated party has received financial gain by
14 reason of the violation, act, or breach of fiduciary duty; or

15 4. The violation, act, or breach of fiduciary duty is
16 one involving personal dishonesty on the part of the
17 affiliated party or the conduct jeopardizes or could
18 reasonably be anticipated to jeopardize the financial
19 soundness of the licensee,
20

21 The department or office may enter an order removing the
22 affiliated party or restricting or prohibiting participation
23 by the person in the affairs of that particular licensee or of
24 any other licensee.

25 (d) If the affiliated party fails to respond to the
26 complaint within the time allotted by ss. 120.569 and 120.57,
27 the failure constitutes a default and justifies the entry of
28 an order of removal, suspension, or restriction.

29 (e) A contested or default order of removal,
30 restriction, or prohibition is effective when reduced to
31 writing and served on the licensee and the affiliated party.

1 An uncontested order of removal, restriction, or prohibition
2 is effective as agreed.

3 (f)1. The chief executive officer, or the person
4 holding the equivalent office, of a licensee shall promptly
5 notify the department or office that issued the license if she
6 or he has actual knowledge that any affiliated party is
7 charged with a felony in a state or federal court.

8 2. Whenever any affiliated party is charged with a
9 felony in a state or federal court or with the equivalent of a
10 felony in the courts of any foreign country with which the
11 United States maintains diplomatic relations, and the charge
12 alleges violation of any law involving fraud, theft, or moral
13 turpitude, the department or office may enter an emergency
14 order suspending the affiliated party or restricting or
15 prohibiting participation by the affiliated party in the
16 affairs of the particular licensee or of any other licensee
17 upon service of the order upon the licensee and the affiliated
18 party charged. The order shall contain notice of opportunity
19 for a hearing pursuant to ss. 120.569 and 120.57, where the
20 affiliated party may request a postsuspension hearing to show
21 that continued service to or participation in the affairs of
22 the licensee does not pose a threat to the interests of the
23 licensee's policyholders or creditors and does not threaten to
24 impair public confidence in the licensee. In accordance with
25 applicable ~~departmental~~ rules, the department or office shall
26 notify the affiliated party whether the order suspending or
27 prohibiting the person from participation in the affairs of a
28 licensee will be rescinded or otherwise modified. The
29 emergency order remains in effect, unless otherwise modified
30 by the department or office, until the criminal charge is
31 disposed of. The acquittal of the person charged, or the

1 final, unappealed dismissal of all charges against the person,
2 dissolves the emergency order, but does not prohibit the
3 department or office from instituting proceedings under
4 paragraph (a). If the person charged is convicted or pleads
5 guilty or nolo contendere, whether or not an adjudication of
6 guilt is entered by the court, the emergency order shall
7 become final.

8 (g) Any affiliated party removed from office pursuant
9 to this section is not eligible for reelection or appointment
10 to the position or to any other official position in any
11 licensee in this state except upon the written consent of the
12 department or office. Any affiliated party who is removed,
13 restricted, or prohibited from participation in the affairs of
14 a licensee pursuant to this section may petition the
15 department or office for modification or termination of the
16 removal, restriction, or prohibition.

17 (h) Resignation or termination of an affiliated party
18 does not affect the department's or office's jurisdiction to
19 proceed under this subsection.

20 (5) ADMINISTRATIVE FINES; ENFORCEMENT.--

21 (a) The department or office may, in a proceeding
22 initiated pursuant to chapter 120, impose an administrative
23 fine against any person found in the proceeding to have
24 violated any provision of this code, a cease and desist order
25 of the department or office, or any written agreement with the
26 department or office. No proceeding shall be initiated and no
27 fine shall accrue until after the person has been notified in
28 writing of the nature of the violation and has been afforded a
29 reasonable period of time, as set forth in the notice, to
30 correct the violation and has failed to do so.

31

1 (b) A fine imposed under this subsection may not
2 exceed the amounts specified in s. 624.4211, per violation.

3 (c) The department or office may, in addition to the
4 imposition of an administrative fine under this subsection,
5 also suspend or revoke the license or certificate of authority
6 of the licensee fined under this subsection.

7 (d) Any administrative fine levied by the department
8 or office under this subsection may be enforced by the
9 department or office by appropriate proceedings in the circuit
10 court of the county in which the person resides or in which
11 the principal office of a licensee is located, or, in the case
12 of a foreign insurer or person not residing in this state, in
13 Leon County. In any administrative or judicial proceeding
14 arising under this section, a party may elect to correct the
15 violation asserted by the department or office, and, upon
16 doing so, any fine shall cease to accrue; however, the
17 election to correct the violation does not render any
18 administrative or judicial proceeding moot. All fines
19 collected under this section shall be paid to the Insurance
20 ~~Commissioner's~~ Regulatory Trust Fund.

21 (e) In imposing any administrative penalty or remedy
22 provided for under this section, the department or office
23 shall take into account the appropriateness of the penalty
24 with respect to the size of the financial resources and the
25 good faith of the person charged, the gravity of the
26 violation, the history of previous violations, and other
27 matters as justice may require.

28 (f) The imposition of an administrative fine under
29 this subsection may be in addition to any other penalty or
30 administrative fine authorized under this code.

31

1 (6) ADMINISTRATIVE PROCEDURES.--All administrative
2 proceedings under subsections (3), (4), and (5) shall be
3 conducted in accordance with chapter 120. Any service
4 required or authorized to be made by the department or office
5 under this code shall be made by certified mail, return
6 receipt requested, delivered to the addressee only; by
7 personal delivery; or in accordance with chapter 48. The
8 service provided for herein shall be effective from the date
9 of delivery.

10 (7) OTHER LAWS NOT SUPERSEDED.--The provisions of this
11 section are in addition to other provisions of this code, and
12 shall not be construed to curtail, impede, replace, or delete
13 any other similar provision or power of the department or
14 office under the insurance code as defined in s. 624.01 or any
15 power of the department or office which may exist under the
16 common law of this state. The procedures set forth in s.
17 626.9581 do not apply to regulatory action taken pursuant to
18 the provisions of this section.

19 Section 764. Section 624.3102, Florida Statutes, is
20 amended to read:

21 624.3102 Immunity from civil liability for providing
22 department, commission, or office with information about
23 condition of insurer.--A person, other than a person filing a
24 required report or other required information, who provides
25 the department, commission, or office with information about
26 the financial condition of an insurer is immune from civil
27 liability arising out of the provision of the information
28 unless the person acted with knowledge that the information
29 was false or with reckless disregard for the truth or falsity
30 of the information.

31

1 Section 765. Section 624.311, Florida Statutes, is
2 amended to read:

3 624.311 Records; reproductions; destruction.--

4 (1) Except as provided in this section, the
5 department, commission, and office shall each preserve in
6 permanent form records of its proceedings, hearings,
7 investigations, and examinations and shall file such records
8 in its office.

9 (2) The records of insurance claim negotiations of any
10 state agency or political subdivision are confidential and
11 exempt from s. 119.07(1) until termination of all litigation
12 and settlement of all claims arising out of the same incident.

13 (3) The department, commission, and office may each
14 photograph, microphotograph, or reproduce on film, whereby
15 each page will be reproduced in exact conformity with the
16 original, all financial records, financial statements of
17 domestic insurers, reports of business transacted in this
18 state by foreign insurers and alien insurers, reports of
19 examination of domestic insurers, and such other records and
20 documents on file in its office as it may in its discretion
21 select.

22 (4) To facilitate the efficient use of floor space and
23 filing equipment in its offices, the department, commission,
24 and office may each destroy the following records and
25 documents pursuant to chapter 257:

26 (a) General closed correspondence files over 3 years
27 old;

28 (b) Agent, adjuster, and similar license files,
29 including license files of the Division of State Fire Marshal,
30 over 2 years old; except that the department or office shall
31 preserve by reproduction or otherwise a copy of the original

1 records upon the basis of which each such licensee qualified
2 for her or his initial license, except a competency
3 examination, and of any disciplinary proceeding affecting the
4 licensee;

5 (c) All agent, adjuster, and similar license files and
6 records, including original license qualification records and
7 records of disciplinary proceedings 5 years after a licensee
8 has ceased to be qualified for a license;

9 (d) Insurer certificate of authority files over 2
10 years old, except that the office ~~department~~ shall preserve by
11 reproduction or otherwise a copy of the initial certificate of
12 authority of each insurer;

13 (e) All documents and records which have been
14 photographed or otherwise reproduced as provided in subsection
15 (3), if such reproductions have been filed and an audit of the
16 department or office has been completed for the period
17 embracing the dates of such documents and records; and

18 (f) All other records, documents, and files not
19 expressly provided for in paragraphs (a)-(e).

20 Section 766. Subsections (2) and (3) of section
21 624.312, Florida Statutes, are amended to read:

22 624.312 Reproductions and certified copies of records
23 as evidence.--

24 (2) Upon the request of any person and payment of the
25 applicable fee, the department, commission, or office shall
26 give a certified copy of any record in its office which is
27 then subject to public inspection.

28 (3) Copies of original records or documents in its
29 office certified by the department, commission, or office
30 shall be received in evidence in all courts as if they were
31 originals.

1 Section 767. Section 624.313, Florida Statutes, is
2 amended to read:

3 624.313 Publications.--

4 (1) As early as reasonably possible, the office
5 ~~department~~ shall annually have printed and made available a
6 statistical report which must include all of the following
7 information on either a calendar year or fiscal year basis:

8 (a) A summary of all information reported to the
9 office ~~department~~ under s. 627.915(1).

10 (b) The total amount of premiums written and earned by
11 line of insurance.

12 (c) The total amount of losses paid and losses
13 incurred by line of insurance.

14 (d) The ratio of premiums written to losses paid by
15 line of insurance.

16 (e) The ratio of premiums earned to losses incurred by
17 line of insurance.

18 (f) The market share of the 10 largest insurers or
19 insurer groups by line of insurance and of each insurer or
20 insurer group that has a market share of at least 1 percent of
21 a line of insurance in this state.

22 (g) The profitability of each major line of insurance.

23 (h) An analysis of the impact of the insurance
24 industry on the economy of the state.

25 (i) A complaint ratio by line of insurance for the
26 insurers referred to in paragraph (f), based upon information
27 provided to the office by the department. The office
28 ~~department~~ shall determine the most appropriate ratio or
29 ratios for quantifying complaints.

30
31

1 (j) An analysis of such lines or kinds of insurance
2 for which the office ~~department~~ determines that an
3 availability problem exists in this state.

4 (k) A summary of the findings of market examinations
5 performed by the office ~~department~~ under s. 624.3161 during
6 the preceding year.

7 (1) Such other information as the office ~~department~~
8 deems relevant.

9 (2)(a) The department may prepare and have printed and
10 published in pamphlet or book form the following:

11 1.(a) As needed, questions and answers for the use of
12 persons applying for an examination for licensing as agents or
13 solicitors for property, casualty, surety, health, and
14 miscellaneous insurers.

15 2.(b) As needed, questions and answers for the use of
16 persons applying for an examination for licensing as agents
17 for life and health insurers.

18 (b)(c) The office may prepare and have printed and
19 published in pamphlet or book form, as needed, questions and
20 answers for the use of persons applying for an examination for
21 licensing as adjusters.

22 (3) The department or office shall sell the
23 publications mentioned in subsections (1) and (2) to
24 purchasers at a price fixed by the department or office ~~it~~ at
25 not less than the cost of printing and binding such
26 publications, plus packaging and postage costs for mailing;
27 except that the department or office may deliver copies of
28 such publications free of cost to state agencies and officers;
29 insurance supervisory authorities of other states and
30 jurisdictions; institutions of higher learning located in
31 Florida; the Library of Congress; insurance officers of Naval,

1 Military, and Air Force bases located in Florida; and to
2 persons serving as advisers to the department or office in
3 preparation of the publications.

4 (4) The department or office may contract with outside
5 vendors, in accordance with chapter 287, to compile data in an
6 electronic data processing format that is compatible with the
7 systems of the department or office.

8 Section 768. Section 624.314, is amended to read:

9 624.314 Publications; Insurance ~~Commissioner's~~
10 Regulatory Trust Fund.--The department and office shall each
11 deposit all moneys received from the sale of publications
12 under s. 624.313 in the Insurance ~~Commissioner's~~ Regulatory
13 Trust Fund for the purpose of paying costs for the
14 preparation, printing, and delivery ~~to the department~~ of the
15 publications mentioned in s. 624.313(2), packaging and mailing
16 costs, and banking, accounting, and incidental expenses
17 connected with the sale and delivery of such publications ~~by~~
18 ~~the department~~. All moneys so deposited and all funds
19 hereafter transferred to the Insurance ~~Commissioner's~~
20 Regulatory Trust Fund are appropriated for the uses and
21 purposes above mentioned.

22 Section 769. Section 624.315, Florida Statutes, is
23 amended to read:

24 624.315 Department; annual report.--

25 (1) As early as reasonably possible, the office, with
26 such assistance from the department as requested, shall
27 annually prepare a report to the Speaker and Minority Leader
28 of the House of Representatives, the President and Minority
29 Leader of the Senate, the chairs of the legislative committees
30 with jurisdiction over matters of insurance, and the Governor
31 showing, with respect to the preceding calendar year:

1 (a) Names of the authorized insurers transacting
2 insurance in this state, with abstracts of their financial
3 statements including assets, liabilities, and net worth.

4 (b) Names of insurers whose business was closed during
5 the year, the cause thereof, and amounts of assets and
6 liabilities as ascertainable.

7 (c) Names of insurers against which delinquency or
8 similar proceedings were instituted, and a concise statement
9 of the circumstances and results of each such proceeding.

10 (d) The receipts and estimated expenses of the office
11 ~~department~~ for the year.

12 (e) Such other pertinent information and matters as
13 the office ~~department~~ deems to be in the public interest.

14 (f) Annually after each regular session of the
15 Legislature, a compilation of the laws of this state relating
16 to insurance. Any such publication may be printed, revised,
17 or reprinted upon the basis of the original low bid.

18 (g) An analysis and summary report of the state of the
19 insurance industry in this state evaluated as of the end of
20 the most recent calendar year.

21 (2) The office ~~department~~ shall maintain the following
22 information and make such information available upon request:

23 (a) Calendar year profitability, including investment
24 income from policyholders' unearned premium and loss reserves
25 (Florida and countrywide).

26 (b) Aggregate Florida loss reserves.

27 (c) Premiums written (Florida and countrywide).

28 (d) Premiums earned (Florida and countrywide).

29 (e) Incurred losses (Florida and countrywide).

30 (f) Paid losses (Florida and countrywide).

31 (g) Allocated Florida loss adjustment expenses.

1 (h) Renewal ratio (countrywide).

2 (i) Variation of premiums charged by the industry as
3 compared to rates promulgated by the Insurance Services Office
4 (Florida and countrywide).

5 (j) An analysis of policy size limits (Florida and
6 countrywide).

7 (k) Insureds' selection of claims-made versus
8 occurrence coverage (Florida and countrywide).

9 (l) A subreport on the involuntary market in Florida
10 encompassing such joint underwriting plans and assigned risk
11 plans operating in the state.

12 (m) A subreport providing information relevant to
13 emerging markets and alternate marketing mechanisms, such as
14 self-insured trusts, risk retention groups, purchasing groups,
15 and the excess-surplus lines market.

16 (n) Trends; emerging trends as exemplified by the
17 percentage change in frequency and severity of both paid and
18 incurred claims, and pure premium (Florida and countrywide).

19 (o) Fast track loss ratios as defined and assimilated
20 by the Insurance Services Office (Florida and countrywide).

21 (3) The office ~~department~~ may contract with outside
22 vendors, in accordance with chapter 287, to compile data in an
23 electronic data processing format that is compatible with the
24 systems of the office ~~department~~.

25 Section 770. Section 624.316, Florida Statutes, is
26 amended to read:

27 624.316 Examination of insurers.--

28 (1)(a) The office ~~department~~ shall examine the
29 affairs, transactions, accounts, records, and assets of each
30 authorized insurer and of the attorney in fact of a reciprocal
31 insurer as to its transactions affecting the insurer as often

1 as it deems advisable, except as provided in this section.
2 The examination may include examination of the affairs,
3 transactions, accounts, and records relating directly or
4 indirectly to the insurer and of the assets of the insurer's
5 managing general agents and controlling or controlled person,
6 as defined in s. 625.012. The examination shall be pursuant to
7 a written order of the office ~~department~~. Such order shall
8 expire upon receipt by the office ~~department~~ of the written
9 report of the examination.

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

13 (c) The office ~~department~~ shall examine each insurer
14 according to accounting procedures designed to fulfill the
15 requirements of generally accepted insurance accounting
16 principles and practices and good internal control and in
17 keeping with generally accepted accounting forms, accounts,
18 records, methods, and practices relating to insurers. To
19 facilitate uniformity in examinations, the commission
20 ~~department~~ may adopt, by rule, the Market ~~and Financial~~
21 Conduct Examiners Examination Handbook and the Financial
22 Condition Examiners Handbook of the National Association of
23 Insurance Commissioners, 2002 ~~1990~~, and may adopt subsequent
24 amendments thereto, if the examination methodology remains
25 substantially consistent.

26 (2)(a) Except as provided in paragraph (f), the office
27 ~~department~~ may examine each insurer as often as may be
28 warranted for the protection of the policyholders and in the
29 public interest, and shall examine each domestic insurer not
30 less frequently than once every 3 years. The examination shall
31 cover the preceding 3 fiscal years of the insurer and shall be

1 commenced within 12 months after the end of the most recent
2 fiscal year being covered by the examination. The examination
3 may cover any period of the insurer's operations since the
4 last previous examination. The examination may include
5 examination of events subsequent to the end of the most recent
6 fiscal year and the events of any prior period that affect the
7 present financial condition of the insurer. In lieu of making
8 its own examination, the office ~~department~~ may accept an
9 independent certified public accountant's audit report
10 prepared on a statutory basis consistent with the Florida
11 Insurance Code on that specific company. The office ~~department~~
12 may not accept the report in lieu of the requirement imposed
13 by paragraph (1)(b). When an examination is conducted by the
14 office ~~department~~ for the sole purpose of examining the 3
15 preceding fiscal years of the insurer within 12 months after
16 the opinion date of an independent certified public
17 accountant's audit report prepared on a statutory basis on
18 that specific company consistent with the Florida Insurance
19 Code, the cost of the examination as charged to the insurer
20 pursuant to s. 624.320 shall be reduced by the cost to the
21 insurer of the independent certified public accountant's audit
22 reports. Requests for the reduction in cost of examination
23 must be submitted to the office ~~department~~ in writing no later
24 than 90 days after the conclusion of the examination and shall
25 include sufficient documentation to support the charges
26 incurred for the statutory audit performed by the independent
27 certified public accountant.

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

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

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

9 (e) The commission ~~department~~ shall adopt rules
10 providing that, upon agreement between the office ~~department~~
11 and the insurer, an examination under this section may be
12 conducted by independent certified public accountants,
13 actuaries meeting criteria specified by rule, and reinsurance
14 specialists meeting criteria specified by rule. The rules
15 shall provide:

16 1. That the agreement of the insurer is not required
17 if the office ~~department~~ reasonably suspects criminal
18 misconduct on the part of the insurer.

19 2. That the office ~~department~~ shall provide the
20 insurer with a list of three firms acceptable to the office
21 ~~department~~, and that the insurer shall select the firm to
22 conduct the examination from the list provided by the office
23 ~~department~~.

24 3. That the insurer being examined must make payment
25 for the examination directly to the firm performing the
26 examination in accordance with the rates and terms agreed to
27 by the office ~~department~~, the insurer, and the firm performing
28 the examination.

29 4. That if the examination is conducted without the
30 consent of the insurer, the insurer must pay all reasonable
31 charges of the examining firm if the examination finds

1 impairment, insolvency, or criminal misconduct on the part of
2 the insurer.

3 (f)1.

4 a. An examination under this section must be conducted
5 at least once every year with respect to a domestic insurer
6 that has continuously held a certificate of authority for less
7 than 3 years. The examination must cover the preceding fiscal
8 year or the period since the last examination of the insurer.
9 The office ~~department~~ may limit the scope of the examination.

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

13 c. An insurer may not be required to pay more than
14 \$25,000 to cover the costs of any one examination under this
15 subparagraph.

16 2. An examination under this section must be conducted
17 not less frequently than once every 5 years with respect to an
18 insurer that has continuously held a certificate of authority,
19 without a change in ownership subject to s. 624.4245 or s.
20 628.461, for more than 15 years. The examination must cover
21 the preceding 5 fiscal years of the insurer or the period
22 since the last examination of the insurer. This subparagraph
23 does not limit the ability of the office ~~department~~ to conduct
24 more frequent examinations.

25 Section 771. Section 624.3161, Florida Statutes, is
26 amended to read:

27 624.3161 Market conduct examinations.--

28 (1) As often as it deems necessary, the office
29 ~~department~~ shall examine each licensed rating organization,
30 each advisory organization, each group, association, carrier,
31 as defined in s. 440.02, or other organization of insurers

1 which engages in joint underwriting or joint reinsurance, and
2 each authorized insurer transacting in this state any class of
3 insurance to which the provisions of chapter 627 are
4 applicable. The examination shall be for the purpose of
5 ascertaining compliance by the person examined with the
6 applicable provisions of chapters 440, 624, 626, 627, and 635.

7 (2) In lieu of any such examination, the office
8 ~~department~~ may accept the report of a similar examination made
9 by the insurance supervisory official of another state.

10 (3) The examination may be conducted by an independent
11 professional examiner under contract to the office ~~department~~,
12 in which case payment shall be made directly to the contracted
13 examiner by the insurer examined in accordance with the rates
14 and terms agreed to by the office ~~department~~ and the examiner.

15 (4) The reasonable cost of the examination shall be
16 paid by the person examined, and such person shall be subject,
17 as though an insurer, to the provisions of s. 624.320.

18 (5) Such examinations shall also be subject to the
19 applicable provisions of chapter 440 and ss. 624.318, 624.319,
20 624.321, and 624.322.

21 Section 772. Section 624.317, Florida Statutes, is
22 amended to read:

23 624.317 Investigation of agents, adjusters,
24 administrators, service companies, and others.--If it has
25 reason to believe that any person has violated or is violating
26 any provision of this code, or upon the written complaint
27 signed by any interested person indicating that any such
28 violation may exist:;

29 (1) The department shall conduct such investigation as
30 it deems necessary of the accounts, records, documents, and
31

1 transactions pertaining to or affecting the insurance affairs
2 of any+

3 ~~(1)~~ general agent, surplus line agent, managing
4 general agent, adjuster, administrator, service company, or
5 other person.

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

9 (2) The office shall conduct such investigation as it
10 deems necessary of the accounts, records, documents, and
11 transactions pertaining to or affecting the insurance affairs
12 of any:

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

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

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

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

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

22 3.~~(c)~~ A corporation to finance a domestic insurer or
23 in the production of the domestic insurer's business.

24 Section 773. Section 624.318, Florida Statutes, is
25 amended to read:

26 624.318 Conduct of examination or investigation;
27 access to records; correction of accounts; appraisals.--

28 (1) The examination or investigation may be conducted
29 by the accredited examiners or investigators of the department
30 or office at the offices wherever located of the person being
31 examined or investigated and at such other places as may be

1 required for determination of matters under examination or
2 investigation. In the case of alien insurers, the examination
3 may be so conducted in the insurer's offices and places in the
4 United States, except as otherwise required by the department
5 or office.

6 (2) Every person being examined or investigated, and
7 its officers, attorneys, employees, agents, and
8 representatives, shall make freely available to the department
9 or office or its examiners or investigators the accounts,
10 records, documents, files, information, assets, and matters in
11 their possession or control relating to the subject of the
12 examination or investigation. An agent who provides other
13 products or services or maintains customer information not
14 related to insurance must maintain records relating to
15 insurance products and transactions separately if necessary to
16 give the department or office access to such records. If
17 records relating to the insurance transactions are maintained
18 by an agent on premises owned or operated by a third party,
19 the agent and the third party must provide access to the
20 records by the department or office.

21 (3) If the department or office finds any accounts or
22 records to be inadequate, or inadequately kept or posted, it
23 may employ experts to reconstruct, rewrite, post, or balance
24 them at the expense of the person being examined if such
25 person has failed to maintain, complete, or correct such
26 records or accounting after the department or office has given
27 her or him notice and a reasonable opportunity to do so.

28 (4) If the office ~~department~~ deems it necessary to
29 value any asset involved in such an examination of an insurer,
30 it may make written request of the insurer to designate one or
31 more competent appraisers acceptable to the office ~~department~~,

1 who shall promptly make an appraisal of the asset and furnish
2 a copy thereof to the office ~~department~~. If the insurer fails
3 to designate such an appraiser or appraisers within 20 days
4 after the request of the office ~~department~~, the office
5 ~~department~~ may designate the appraiser or appraisers. The
6 reasonable expense of any such appraisal shall be a part of
7 the expense of examination, to be borne by the insurer.

8 (5) Neither the ~~department, the office,~~ nor any
9 examiner shall remove any record, account, document, file, or
10 other property of the person being examined from the offices
11 of such person except with the written consent of such person
12 given in advance of such removal or pursuant to an order of
13 court duly obtained.

14 (6) Any individual who willfully obstructs the
15 ~~department, the office, or the~~ ~~or its~~ examiner in the
16 examinations or investigations authorized by this part is
17 guilty of a misdemeanor and upon conviction shall be punished
18 as provided in s. 624.15.

19 Section 774. Section 624.319, Florida Statutes, is
20 amended to read:

21 624.319 Examination and investigation reports.--

22 (1) The ~~department~~ or office or its examiner shall
23 make a full and true written report of each examination. The
24 examination report shall contain only information obtained
25 from examination of the records, accounts, files, and
26 documents of or relative to the insurer examined or from
27 testimony of individuals under oath, together with relevant
28 conclusions and recommendations of the examiner based thereon.
29 The ~~department~~ or office shall furnish a copy of the
30 examination report to the insurer examined not less than 30
31 days prior to filing the examination report in its office. If

1 such insurer so requests in writing within such 30-day period,
2 the department or office shall grant a hearing with respect to
3 the examination report and shall not so file the examination
4 report until after the hearing and after such modifications
5 have been made therein as the department or office deems
6 proper.

7 (2) The examination report when so filed shall be
8 admissible in evidence in any action or proceeding brought by
9 the department or office against the person examined, or
10 against its officers, employees, or agents. In all other
11 proceedings, the admissibility of the examination report is
12 governed by the evidence code. The department or office or
13 its examiners may at any time testify and offer other proper
14 evidence as to information secured or matters discovered
15 during the course of an examination, whether or not a written
16 report of the examination has been either made, furnished, or
17 filed in the department or office.

18 (3)(a) Examination reports, until filed, are
19 confidential and exempt from the provisions of s. 119.07(1).
20 Investigation reports are confidential and exempt from the
21 provisions of s. 119.07(1) until the investigation is
22 completed or ceases to be active. For purposes of this
23 subsection, an investigation is active while it is being
24 conducted by the department or office with a reasonable, good
25 faith belief that it could lead to the filing of
26 administrative, civil, or criminal proceedings. An
27 investigation does not cease to be active if the department or
28 office is proceeding with reasonable dispatch and has a good
29 faith belief that action could be initiated by the department
30 or office or other administrative or law enforcement agency.
31 After an investigation is completed or ceases to be active,

1 portions of the investigation report relating to the
2 investigation remain confidential and exempt from the
3 provisions of s. 119.07(1) if disclosure would:
4 1. Jeopardize the integrity of another active
5 investigation;
6 2. Impair the safety and financial soundness of the
7 licensee or affiliated party;
8 3. Reveal personal financial information;
9 4. Reveal the identity of a confidential source;
10 5. Defame or cause unwarranted damage to the good name
11 or reputation of an individual or jeopardize the safety of an
12 individual; or
13 6. Reveal investigative techniques or procedures.
14 (b) Workpapers and other information held by the
15 department or office, and workpapers and other information
16 received from another governmental entity or the National
17 Association of Insurance Commissioners, for the department's
18 or office's use in the performance of its examination or
19 investigation duties pursuant to this section and ss. 624.316,
20 624.3161, 624.317, and 624.318 are confidential and exempt
21 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
22 the State Constitution. This exemption applies to workpapers
23 and other information held by the department or office before,
24 on, or after the effective date of this exemption. Such
25 confidential and exempt information may be disclosed to
26 another governmental entity, if disclosure is necessary for
27 the receiving entity to perform its duties and
28 responsibilities, and may be disclosed to the National
29 Association of Insurance Commissioners. The receiving
30 governmental entity or the association must maintain the
31 confidential and exempt status of the information. The

1 information made confidential and exempt by this paragraph may
2 be used in a criminal, civil, or administrative proceeding so
3 long as the confidential and exempt status of such information
4 is maintained. This paragraph is subject to the Open
5 Government Sunset Review Act of 1995 in accordance with s.
6 119.15 and shall stand repealed on October 2, 2007, unless
7 reviewed and saved from repeal through reenactment by the
8 Legislature.

9 (c) Lists of insurers or regulated companies are
10 confidential and exempt from the provisions of s. 119.07(1)
11 if:

12 1. The financial solvency, condition, or soundness of
13 such insurers or regulated companies is being monitored by the
14 office department;

15 2. The list is prepared to internally coordinate
16 regulation by the office department of the financial solvency,
17 condition, or soundness of the insurers or regulated
18 companies; and

19 3. The office determines ~~Insurance Commissioner and~~
20 ~~Treasurer determine~~ that public inspection of such list could
21 impair the financial solvency, condition, or soundness of such
22 insurers or regulated companies.

23 (4) After the examination report has been filed
24 pursuant to subsection (1), the department or office may
25 publish the results of any such examination in one or more
26 newspapers published in this state whenever it deems it to be
27 in the public interest.

28 (5) After the examination report of an insurer has
29 been filed pursuant to subsection (1), an affidavit shall be
30 filed with the office department, not more than 30 days after
31 the report has been filed, on a form furnished by the office

1 ~~department~~ and signed by the officer of the company in charge
2 of the insurer's business in this state, stating that she or
3 he has read the report and that the recommendations made in
4 the report will be considered within a reasonable time.

5 Section 775. Subsections (1), (2), (3), and (5) of
6 section 624.320, Florida Statutes, are amended to read:

7 624.320 Examination expenses.--

8 (1) Each insurer so examined shall pay to the office
9 ~~department~~ the expenses of the examination at the rates
10 adopted by the office ~~department~~. Such expenses shall include
11 actual travel expenses, reasonable living expense allowance,
12 compensation of the examiner or other person making the
13 examination, and necessary attendant administrative costs of
14 the office ~~department~~ directly related to the examination.
15 Such travel expense and living expense allowance shall be
16 limited to those expenses necessarily incurred on account of
17 the examination and shall be paid by the examined insurer
18 together with compensation upon presentation by the office
19 ~~department~~ to such insurer of a detailed account of such
20 charges and expenses after a detailed statement has been filed
21 by the examiner and approved by the office ~~department~~.

22 (2) All moneys collected from insurers for
23 examinations shall be deposited into the Insurance
24 ~~Commissioner's~~ Regulatory Trust Fund, and the office may
25 ~~department is authorized to~~ make deposits from time to time
26 into such fund from moneys appropriated for the operation of
27 the office ~~department~~.

28 (3) Notwithstanding the provisions of s. 112.061, the
29 office ~~may department is authorized to~~ pay to the examiner or
30 person making the examination out of such trust fund the
31 actual travel expenses, reasonable living expense allowance,

1 and compensation in accordance with the statement filed with
2 the office ~~department~~ by the examiner or other person, as
3 provided in subsection (1) upon approval by the office
4 ~~department~~.

5 (5) The office ~~may department is authorized to~~ pay to
6 regular insurance examiners, not residents of Leon County,
7 Florida, per diem for periods not exceeding 30 days for each
8 such examiner while at the Office of Insurance Regulation ~~the~~
9 ~~department~~ in Tallahassee, Florida, for the purpose of
10 auditing insurers' annual statements. Such expenses shall be
11 paid out of moneys budgeted for such purpose, as for regular
12 employees at rates provided in s. 112.061.

13 Section 776. Subsections (1) and (2) of section
14 624.321, Florida Statutes, are amended to read:

15 624.321 Witnesses and evidence.--

16 (1) As to any examination, investigation, or hearing
17 being conducted under this code, a person designated by the
18 department or office, respectively ~~the Insurance Commissioner~~
19 ~~and Treasurer or her or his designee~~:

20 (a) May administer oaths, examine and cross-examine
21 witnesses, receive oral and documentary evidence; and

22 (b) Shall have the power to subpoena witnesses, compel
23 their attendance and testimony, and require by subpoena the
24 production of books, papers, records, files, correspondence,
25 documents, or other evidence which is relevant to the inquiry.

26 (2) If any person refuses to comply with any such
27 subpoena or to testify as to any matter concerning which she
28 or he may be lawfully interrogated, the Circuit Court of Leon
29 County or of the county wherein such examination,
30 investigation, or hearing is being conducted, or of the county
31 wherein such person resides, may, on the application of the

1 department or office, issue an order requiring such person to
2 comply with the subpoena and to testify.

3 Section 777. Section 624.322, Florida Statutes, is
4 amended to read:

5 624.322 Testimony compelled; immunity from
6 prosecution.--

7 (1) If any natural person asks to be excused from
8 attending or testifying or from producing any books, papers,
9 records, contracts, documents, or other evidence in connection
10 with any examination, hearing, or investigation being
11 conducted by the department, commission, or office or its
12 examiner, on the ground that the testimony or evidence
13 required of her or him may tend to incriminate the person or
14 subject her or him to a penalty or forfeiture, and shall
15 notwithstanding be directed to give such testimony or produce
16 such evidence, the person must, if so directed by the
17 department, commission, or office and the Department of Legal
18 Affairs, nonetheless comply with such direction; but she or he
19 shall not thereafter be prosecuted or subjected to any penalty
20 or forfeiture for or on account of any transaction, matter, or
21 thing concerning which she or he may have so testified or
22 produced evidence; and no testimony so given or evidence
23 produced shall be received against the person upon any
24 criminal action, investigation, or proceeding. However, no
25 such person so testifying shall be exempt from prosecution or
26 punishment for any perjury committed by her or him in such
27 testimony, and the testimony or evidence so given or produced
28 shall be admissible against her or him upon any criminal
29 action, investigation, or proceeding concerning such perjury.
30 No license or permit conferred or to be conferred to such
31

1 person shall be refused, suspended, or revoked based upon the
2 use of such testimony.

3 (2) Any such individual may execute, acknowledge, and
4 file with the department, commission, or office, as
5 appropriate, in the office of the Department of Insurance a
6 statement expressly waiving such immunity or privilege in
7 respect to any transaction, matter, or thing specified in such
8 statement; and thereupon the testimony of such individual or
9 such evidence in relation to such transaction, matter, or
10 thing may be received or produced before any judge or justice,
11 court, tribunal, grand jury, or otherwise; and, if so received
12 or produced, such individual shall not be entitled to any
13 immunity or privileges on account of any testimony she or he
14 may so give or evidence so produced.

15 Section 778. Section 624.324, Florida Statutes, is
16 amended to read:

17 624.324 Hearings.--The department, commission, and
18 office may each hold hearings for any purpose within the scope
19 of this code deemed to be necessary.

20 Section 779. Section 624.33, Florida Statutes, is
21 amended to read:

22 624.33 Jurisdiction regarding health or life
23 coverage.--

24 (1) Notwithstanding any other provision of law, and
25 except as provided in this section, any person or other entity
26 which in this state provides life insurance coverage;
27 annuities; or coverage for medical, surgical, chiropractic,
28 physical therapy, speech-language pathology, audiology,
29 professional mental health, dental, hospital, or optometric
30 expenses, or any other health insurance coverage, whether such
31 coverage is by direct payment, reimbursement, or otherwise,

1 shall, upon request, file with the office ~~Department of~~
2 ~~Insurance~~ a copy of Internal Revenue Service form 5500 and
3 attached schedules as filed with the Internal Revenue Service
4 and the United States Department of Labor, and an annual
5 summary, as required by the Employee Retirement Income
6 Security Act of 1974, 29 U.S.C. ss. 1001 et seq., as amended.

7 (2) Any person or entity providing any of the
8 coverages or benefits referred to in subsection (1) which does
9 not meet the filing requirements referred to in subsection
10 (1), or which otherwise fails to demonstrate to the office
11 ~~department~~ that, while providing such services, it is exempt
12 from state law, shall submit to an examination by the office
13 ~~department~~ to determine the organization and solvency of the
14 person or entity and to determine whether or not such entity
15 is in compliance with the applicable provisions of chapters
16 624-651.

17 (3) A governmental trust which is established or
18 maintained entirely by the state, counties, municipalities, or
19 special taxing districts or any agency or instrumentality
20 thereof or any combination thereof exclusively for the benefit
21 of their employees is exempt from the terms of this section.

22 (4) Any licensed agent, administrator, service
23 company, or other person which, in connection with coverage
24 offered by an entity subject to examination by the office
25 ~~department~~ in accordance with subsection (2), is engaged in
26 this state in the solicitation, negotiation, or effectuation
27 of any such coverage or the inspection of risks or the setting
28 of rates, the investigation or adjustment of losses, the
29 collection of premiums, or any other function connected with
30 any such coverage is subject to the jurisdiction of the
31 department or office and to such examination as the department

1 or office deems necessary of the accounts, records, documents,
2 and transactions pertaining to or affecting such coverage to
3 the same extent as the person or entity affording such
4 coverage.

5 (5) This section does not apply to an insurer, health
6 maintenance organization, professional service plan
7 corporation, or person providing continuing care, which person
8 or entity possesses a valid certificate of authority issued by
9 the office ~~department~~, except to the extent that such person
10 or entity provides the coverages described in subsection (1)
11 to its employees other than under a policy or contract which
12 is otherwise subject to regulation under the Florida Insurance
13 Code.

14 Section 780. Subsections (2) and (3) of section
15 624.34, Florida Statutes, are amended to read:

16 624.34 Authority of Department of Law Enforcement to
17 accept fingerprints of, and exchange criminal history records
18 with respect to, certain persons.--

19 (2) The Department of Law Enforcement may accept
20 fingerprints of individuals who apply for a license as an
21 agent, customer representative, adjuster, service
22 representative, or managing general agent or the fingerprints
23 of the majority owner, sole proprietor, partners, officers,
24 and directors of a corporation or other legal entity that
25 applies for licensure with the department or office under the
26 provisions of the Florida Insurance Code.

27 (3) The Department of Law Enforcement may, to the
28 extent provided for by federal law, exchange state,
29 multistate, and federal criminal history records with the
30 department or office for the purpose of the issuance,

31

1 suspension, or revocation of a certificate of authority or
2 license to operate in this state.

3 Section 781. Subsections (1) and (2) of section
4 624.401, Florida Statutes, are amended to read:

5 624.401 Certificate of authority required.--

6 (1) No person shall act as an insurer, and no insurer
7 or its agents, attorneys, subscribers, or representatives
8 shall directly or indirectly transact insurance, in this state
9 except as authorized by a subsisting certificate of authority
10 issued to the insurer by the office ~~department~~, except as to
11 such transactions as are expressly otherwise provided for in
12 this code.

13 (2) No insurer shall from offices or by personnel or
14 facilities located in this state solicit insurance
15 applications or otherwise transact insurance in another state
16 or country unless it holds a subsisting certificate of
17 authority issued to it by the office ~~department~~ authorizing it
18 to transact the same kind or kinds of insurance in this state.

19 Section 782. Subsection (8) of section 624.4031,
20 Florida Statutes, is amended to read:

21 624.4031 Church benefit plans and church benefit
22 board.--

23 (8) The Florida Insurance Code does not apply to a
24 church benefits board that has operated more than 5 years in
25 its state of domicile and has more than \$2 million in
26 reserves. This exemption extends to the programs, plans,
27 benefits, activities, or affiliates of the church benefits
28 board. A church benefits board may qualify for this exemption
29 if an authorized representative of the church benefits board
30 submits to the office ~~department~~ an affidavit stating that the
31 church benefits board meets or exceeds the requirements of

1 this section. If the office ~~department~~ believes the
2 information provided on the affidavit is inaccurate, the
3 office ~~department~~ has the burden of proving that the church
4 benefits board fails to meet the requirements of this section.

5 Section 783. Subsections (2), (3), (4), (5), and (7)
6 of section 624.404, Florida Statutes, are amended to read:

7 624.404 General eligibility of insurers for
8 certificate of authority.--To qualify for and hold authority
9 to transact insurance in this state, an insurer must be
10 otherwise in compliance with this code and with its charter
11 powers and must be an incorporated stock insurer, an
12 incorporated mutual insurer, or a reciprocal insurer, of the
13 same general type as may be formed as a domestic insurer under
14 this code; except that:

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

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

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

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

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

29 (3)(a) The office ~~department~~ shall not grant or
30 continue authority to transact insurance in this state as to
31 any insurer the management, officers, or directors of which

1 are found by it to be incompetent or untrustworthy; or so
2 lacking in insurance company managerial experience as to make
3 the proposed operation hazardous to the insurance-buying
4 public; or so lacking in insurance experience, ability, and
5 standing as to jeopardize the reasonable promise of successful
6 operation; or which it has good reason to believe are
7 affiliated directly or indirectly through ownership, control,
8 reinsurance transactions, or other insurance or business
9 relations, with any person or persons whose business
10 operations are or have been marked, to the detriment of
11 policyholders or stockholders or investors or creditors or of
12 the public, by manipulation of assets, accounts, or
13 reinsurance or by bad faith.

14 (b) The office ~~department~~ shall not grant or continue
15 authority to transact insurance in this state as to any
16 insurer if any person, including any subscriber, stockholder,
17 or incorporator, who exercises or has the ability to exercise
18 effective control of the insurer, or who influences or has the
19 ability to influence the transaction of the business of the
20 insurer, does not possess the financial standing and business
21 experience for the successful operation of the insurer.

22 (c) The office ~~department~~ may deny, suspend, or revoke
23 the authority to transact insurance in this state of any
24 insurer if any person, including any subscriber, stockholder,
25 or incorporator, who exercises or has the ability to exercise
26 effective control of the insurer, or who influences or has the
27 ability to influence the transaction of the business of the
28 insurer, has been found guilty of, or has pleaded guilty or
29 nolo contendere to, any felony or crime punishable by
30 imprisonment of 1 year or more under the law of the United
31 States or any state thereof or under the law of any other

1 country which involves moral turpitude, without regard to
2 whether a judgment of conviction has been entered by the court
3 having jurisdiction in such case. However, in the case of an
4 insurer operating under a subsisting certificate of authority,
5 the insurer shall remove any such person immediately upon
6 discovery of the conditions set forth in this paragraph when
7 applicable to such person or upon the order of the office
8 ~~department~~, and the failure to so act by said insurer shall be
9 grounds for revocation or suspension of the insurer's
10 certificate of authority.

11 (d) The office ~~department~~ may deny, suspend, or revoke
12 the authority of an insurer to transact insurance in this
13 state if any person, including any subscriber, stockholder, or
14 incorporator, who exercises or has the ability to exercise
15 effective control of the insurer, or who influences or has the
16 ability to influence the transaction of the business of the
17 insurer, which person the office ~~department~~ has good reason to
18 believe is now or was in the past affiliated directly or
19 indirectly, through ownership interest of 10 percent or more,
20 control, or reinsurance transactions, with any business,
21 corporation, or other entity that has been found guilty of or
22 has pleaded guilty or nolo contendere to any felony or crime
23 punishable by imprisonment for 1 year or more under the laws
24 of the United States, any state, or any other country,
25 regardless of adjudication. However, in the case of an
26 insurer operating under a subsisting certificate of authority,
27 the insurer shall immediately remove such person or
28 immediately notify the office ~~department~~ of such person upon
29 discovery of the conditions set forth in this paragraph,
30 either when applicable to such person or upon order of the
31 office ~~department~~; the failure to remove such person, provide

1 such notice, or comply with such order constitutes grounds for
2 suspension or revocation of the insurer's certificate of
3 authority.

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

7 (b) A "fronting company" is an authorized insurer
8 which by reinsurance or otherwise generally transfers more
9 than 50 percent to one unauthorized insurer which does not
10 meet the requirements of s. 624.610(3)(a), (b), or (c), or
11 more than 75 percent to two or more unauthorized insurers
12 which do not meet the requirements of s. 624.610(3)(a), (b),
13 or (c), of the entire risk of loss on all of the insurance
14 written by it in this state, or on one or more lines of
15 insurance, on all of the business produced through one or more
16 agents or agencies, or on all of the business from a
17 designated geographical territory, without obtaining the prior
18 approval of the office ~~department~~.

19 (c) The office ~~department~~ may, in its discretion,
20 approve a transfer of risk in excess of the limits in
21 paragraph (b) upon presentation of evidence, satisfactory to
22 the office ~~department~~, that the transfer would be in the best
23 interests of the financial condition of the insurer and in the
24 best interests of the policyholders.

25 (5) No insurer shall be authorized to transact
26 insurance in this state which, during the 3 years immediately
27 preceding its application for a certificate of authority, has
28 violated any of the insurance laws of this state and after
29 being informed of such violation has failed to correct the
30 same; except that, if all other requirements are met, the
31 office ~~department~~ may nevertheless issue a certificate of

1 authority to such an insurer upon the filing by the insurer of
2 a sworn statement of all such insurance so written in
3 violation of law, and upon payment to the office department of
4 a sum of money as additional filing fee equivalent to all
5 premium taxes and other state taxes and fees as would have
6 been payable by the insurer if such insurance had been
7 lawfully written by an authorized insurer under the laws of
8 this state. This fee, when collected, shall be deposited to
9 the credit of the Insurance ~~Commissioner's~~ Regulatory Trust
10 Fund.

11 (7) For the purpose of satisfying the requirements of
12 ss. 624.407 and 624.408, the investment portfolio of an
13 insurer applying for an initial certificate of authority to do
14 business in this state shall value its bonds and stocks in
15 accordance with the provisions of the latest edition of the
16 publication "Purposes and Procedures Manual of the NAIC
17 Securities Valuation Office" ~~"Valuations of Securities"~~ by the
18 National Association of Insurance Commissioners, July 1, 2002
19 ~~1990~~, and subsequent amendments thereto, if the valuation
20 methodology remains substantially unchanged.

21 Section 784. Subsection (1) of section 624.4072,
22 Florida Statutes, is amended to read:

23 624.4072 Minority-owned property and casualty
24 insurers; limited exemption for taxation and assessments.--

25 (1) A minority business that is at least 51 percent
26 owned by minority persons, as defined in s. 288.703(3),
27 initially issued a certificate of authority in this state as
28 an authorized insurer after May 1, 1998, and before January 1,
29 2002, to write property and casualty insurance shall be
30 exempt, for a period not to exceed 10 years from the date of
31

1 receiving its certificate of authority, from the following
2 taxes and assessments:

3 (a) Taxes imposed under ss. 175.101, 185.08, and
4 624.509;

5 (b) Assessments by the Citizens Property Insurance
6 Corporation ~~Florida Residential Property and Casualty Joint~~
7 ~~Underwriting Association~~ or by the ~~Florida Windstorm~~
8 ~~Underwriting Association~~, as provided under ~~s. 627.351~~, except
9 for emergency assessments collected from policyholders
10 pursuant to s. 627.351(6)(b)3.d. ~~s. 627.351(2)(b)2.d.(III) and~~
11 ~~(6)(b)3.d.~~ Any such insurer shall be a member insurer of the
12 Citizens Property Insurance Corporation ~~Florida Windstorm~~
13 ~~Underwriting Association~~ and the ~~Florida Residential Property~~
14 ~~and Casualty Joint Underwriting Association~~. The premiums of
15 such insurer shall be included in determining, for the
16 Citizens Property Insurance Corporation ~~Florida Windstorm~~
17 ~~Underwriting Association~~, the aggregate statewide direct
18 ~~written premium for property insurance and in determining, for~~
19 ~~the Florida Residential Property and Casualty Joint~~
20 ~~Underwriting Association~~, the aggregate statewide direct
21 written premium for the subject lines of business for all
22 member insurers.

23 Section 785. Section 624.4085, Florida Statutes, is
24 amended to read:

25 624.4085 Risk-based capital requirements for
26 insurers.--

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

28 (a) "Adjusted risk-based capital report" means a
29 risk-based capital report that has been adjusted by the office
30 ~~department~~ in accordance with this section.

31

1 (b) "Authorized control level risk-based capital"
2 means the number determined under the risk-based capital
3 formula in the risk-based capital instructions.

4 (c) "Company action level risk-based capital" means
5 the product of 2.0 and an insurer's authorized control level
6 risk-based capital.

7 (d) "Corrective order" means an order issued by the
8 office ~~department~~ specifying corrective actions that the
9 office ~~department~~ has determined are required.

10 ~~(e) "Department" means the Department of Insurance.~~

11 (e)~~(f)~~ "Domestic insurer" means any insurer domiciled
12 in this state.

13 (f)~~(g)~~ "Foreign insurer" means any insurer that is
14 authorized or eligible to do business in this state but that
15 is not domiciled in this state.

16 (g)~~(h)~~ "Life and health insurer" means any insurer
17 authorized or eligible under the Florida Insurance Code to
18 underwrite life or health insurance. The term includes a
19 property and casualty insurer that writes accident and health
20 insurance only.

21 (h)~~(i)~~ "Mandatory control level risk-based capital"
22 means the product of 0.70 and the authorized control level
23 risk-based capital.

24 (i)~~(j)~~ "Negative trend" means, with respect to a life
25 and health insurer, a negative trend over a period of time, as
26 determined in accordance with the trend test calculation
27 included in the risk-based capital instructions.

28 (j)~~(k)~~ "Property and casualty insurer" means any
29 insurer licensed under the Florida Insurance Code, but does
30 not include a single-line mortgage guaranty insurer, financial
31

1 guaranty insurer, or title insurer or a life and health
2 insurer.

3 (k)~~(l)~~ "Regulatory action level risk-based capital"
4 means the product of 1.5 and an insurer's authorized control
5 level risk-based capital.

6 (l)~~(m)~~ "Revised risk-based capital plan" means the
7 revision of the risk-based capital plan which is prepared by
8 an insurer after the office ~~department~~ rejects the original
9 plan.

10 (m)~~(n)~~ "Risk-based capital instructions" means the
11 instructions for preparing a risk-based capital report as
12 adopted by the National Association of Insurance
13 Commissioners.

14 (n)~~(o)~~ "Risk-based capital level" means an insurer's
15 company action level risk-based capital, regulatory action
16 level risk-based capital, authorized control level risk-based
17 capital, or mandatory control level risk-based capital.

18 (o)~~(p)~~ "Risk-based capital plan" means a comprehensive
19 financial plan specified in paragraph (4)(b).

20 (p)~~(q)~~ "Risk-based capital report" means the report
21 required in subsection (2).

22 (q)~~(r)~~ "Total adjusted capital" means the sum of:

- 23 1. An insurer's statutory capital and surplus; and
- 24 2. Any other item required by the risk-based capital
25 instructions.

26 (2)(a) Each domestic insurer that is subject to this
27 section shall, on or before March 1 of each year, prepare and
28 file with the National Association of Insurance Commissioners
29 a report of its risk-based capital levels as of the end of the
30 calendar year just ended, in a form and containing the
31 information required in the risk-based capital instructions.

1 In addition, each domestic insurer shall file a printed copy
2 of its risk-based capital report:

3 1. With the office ~~department~~ on or before March 1 of
4 each year.

5 2. With the insurance department in any other state in
6 which the insurer is authorized to do business, if that
7 department has notified the insurer of its request in writing,
8 in which case the insurer shall file its risk-based capital
9 report not later than the later of:

10 a. Fifteen days after the receipt of notice to file
11 its risk-based capital report with that state; or
12 b. March 1.

13 (b) The comparison of an insurer's total adjusted
14 capital to any of its risk-based capital levels is a
15 regulatory tool that may indicate the need for possible
16 corrective action with respect to the insurer, and may not be
17 used as a means to rank insurers generally. Therefore, except
18 as otherwise required under this section, the making,
19 publishing, disseminating, circulating, or placing before the
20 public, or causing, directly or indirectly, to be made,
21 published, disseminated, circulated, or placed before the
22 public, in a newspaper, magazine, or other publication, or in
23 the form of a notice, circular, pamphlet, letter, or poster,
24 or over any radio or television station, or in any other way,
25 an advertisement, announcement, or statement containing an
26 assertion, representation, or statement with regard to the
27 risk-based capital levels of any insurer, or of any component
28 derived in the calculation, by any insurer, agent, broker, or
29 other person engaged in any manner in the insurance business
30 would be misleading and is therefore prohibited; however, if
31 any materially false statement with respect to the comparison

1 regarding an insurer's total adjusted capital to its
2 risk-based capital levels (or any of them) or an inappropriate
3 comparison of any other amount to the insurer's risk-based
4 capital levels is published in any written publication and the
5 insurer is able to demonstrate to the office ~~commissioner~~ with
6 substantial proof the falsity or inappropriateness of the
7 statement, the insurer may publish in a written publication an
8 announcement the sole purpose of which is to rebut the
9 materially false statement.

10 (c) The office ~~department~~ shall use the risk-based
11 capital instructions, risk-based capital reports, adjusted
12 risk-based capital reports, risk-based capital plans, and
13 revised risk-based capital plans solely for monitoring the
14 solvency of insurers and assessing the need for corrective
15 action with respect to insurers. The office ~~department~~ may not
16 use that information for ratemaking, as evidence in any rate
17 proceeding, or for calculating or deriving any elements of an
18 appropriate premium level or rate of return for any line of
19 insurance which an insurer or an affiliate of such insurer is
20 authorized to write.

21 (d) A life and health insurer's risk-based capital is
22 determined in accordance with the formula set forth in the
23 risk-based capital instructions. The formula takes into
24 account and may adjust for the covariance between:

- 25 1. The risk with respect to the insurer's assets;
- 26 2. The risk of adverse insurance experience with
27 respect to the insurer's liabilities and obligations;
- 28 3. The interest rate risk with respect to the
29 insurer's business; and
- 30 4. Any other business or other relevant risk set out
31 in the risk-based capital instructions,

1
2 determined in each case by applying the factors in the manner
3 set forth in the risk-based capital instructions.

4 (e) A property and casualty insurer's risk-based
5 capital is determined in accordance with the formula set forth
6 in the risk-based capital instructions. The formula takes into
7 account and may adjust for the covariance between:

- 8 1. The asset risk;
- 9 2. The credit risk;
- 10 3. The underwriting risk; and
- 11 4. Any other business or other relevant risk set out
12 in the risk-based capital instructions,

13
14 determined in each case by applying the factors in the manner
15 set forth in the risk-based capital instructions.

16 (f) The Legislature finds that an excess of capital
17 over the amount produced by the risk-based capital
18 requirements and the formulas, schedules, and instructions
19 specified in this section is a desirable goal with respect to
20 the business of insurance. Accordingly, insurers should seek
21 to maintain capital above the risk-based capital levels
22 required by this section. Additional capital is used and
23 useful in the insurance business and helps to secure an
24 insurer against various risks inherent in, or affecting, the
25 business of insurance and not accounted for or only partially
26 measured by the risk-based capital requirements contained in
27 this section.

28 (g) If a domestic insurer files a risk-based capital
29 report that the office ~~department~~ finds is inaccurate, the
30 office ~~department~~ shall adjust the risk-based capital report
31 to correct the inaccuracy and shall notify the insurer of the

1 adjustment. The notice must state the reason for the
2 adjustment. A risk-based capital report that is so adjusted
3 is referred to as the adjusted risk-based capital report. The
4 adjusted risk-based capital report must also be filed by the
5 insurer with the National Association of Insurance
6 Commissioners.

7 (3)(a) A company action level event includes:

8 1. The filing of a risk-based capital report by an
9 insurer which indicates that:

10 a. The insurer's total adjusted capital is greater
11 than or equal to its regulatory action level risk-based
12 capital but less than its company action level risk-based
13 capital; or

14 b. If a life and health insurer, the insurer has total
15 adjusted capital that is greater than or equal to its company
16 action level risk-based capital, but is less than the product
17 of its authorized control level risk-based capital and 2.5,
18 and has a negative trend;

19 2. The notification by the office ~~department~~ to the
20 insurer of an adjusted risk-based capital report that
21 indicates an event in subparagraph 1., unless the insurer
22 challenges the adjusted risk-based capital report under
23 subsection (7); or

24 3. If, under subsection (7), an insurer challenges an
25 adjusted risk-based capital report that indicates an event in
26 subparagraph 1., the notification by the office ~~department~~ to
27 the insurer that the office ~~department~~ has, after a hearing,
28 rejected the insurer's challenge.

29 (b) If a company action level event occurs, the
30 insurer shall prepare and submit to the office ~~department~~ a
31 risk-based capital plan, which must:

- 1 1. Identify the conditions that contribute to the
2 company action level event;
- 3 2. Contain proposals of corrective actions that the
4 insurer intends to take and that are reasonably expected to
5 result in the elimination of the company action level event;
- 6 3. Provide projections of the insurer's financial
7 results in the current year and at least the 4 succeeding
8 years, both in the absence of proposed corrective actions and
9 giving effect to the proposed corrective actions, including
10 projections of statutory operating income, net income,
11 capital, and surplus. The projections for both new and renewal
12 business may include separate projections for each major line
13 of business and, if separate projections are provided, must
14 separately identify each significant income, expense, and
15 benefit component;
- 16 4. Identify the key assumptions affecting the
17 insurer's projections and the sensitivity of the projections
18 to the assumptions; and
- 19 5. Identify the quality of, and problems associated
20 with, the insurer's business, including, but not limited to,
21 its assets, anticipated business growth and associated surplus
22 strain, extraordinary exposure to risk, mix of business, and
23 any use of reinsurance.
- 24 (c) The risk-based capital plan must be submitted:
- 25 1. Within 45 days after the company action level
26 event; or
- 27 2. If the insurer challenges an adjusted risk-based
28 capital report under subsection (7), within 45 days after
29 notification to the insurer that the office ~~department~~ has,
30 after a hearing, rejected the insurer's challenge.
- 31

1 (d) Within 60 days after the submission by an insurer
2 of a risk-based capital plan to the office ~~department~~, the
3 office ~~department~~ shall notify the insurer whether the
4 risk-based capital plan must be implemented or is, in the
5 judgment of the office ~~department~~, unsatisfactory. If the
6 office ~~department~~ determines that the risk-based capital plan
7 is unsatisfactory, the notification to the insurer must set
8 forth the reasons for the determination and may set forth
9 proposed revisions. Upon notification from the office
10 ~~department~~, the insurer shall prepare a revised risk-based
11 capital plan, which may incorporate by reference any revisions
12 proposed by the office ~~department~~, and shall submit the
13 revised risk-based capital plan to the office ~~department~~:

14 1. Within 45 days after the notification from the
15 office ~~department~~; or

16 2. If the insurer challenges the notification from the
17 office ~~department~~ under subsection (7), within 45 days after a
18 notification to the insurer that the office ~~department~~ has,
19 after a hearing, rejected the insurer's challenge.

20 (e) If the office ~~department~~ notifies an insurer that
21 the insurer's risk-based capital plan or revised risk-based
22 capital plan is unsatisfactory, the office ~~department~~ may, at
23 its discretion and subject to the insurer's right to a hearing
24 under subsection (7), specify in the notification that the
25 notification is a regulatory action level event.

26 (f) Each domestic insurer that files a risk-based
27 capital plan or a revised risk-based capital plan with the
28 office ~~department~~ shall file a copy of the risk-based capital
29 plan or the revised risk-based capital plan with the insurance
30 department in any other state in which the insurer is
31 authorized to do business if:

1 1. That state has a risk-based capital law that is
2 substantially similar to paragraph (8)(a); and

3 2. The insurance department of that state has notified
4 the insurer of its request for the filing in writing, in which
5 case the insurer shall file a copy of the risk-based capital
6 plan or the revised risk-based capital plan in that state no
7 later than the later of:

8 a. Fifteen days after the receipt of notice to file a
9 copy of its risk-based capital plan or revised risk-based
10 capital plan with the state; or

11 b. The date on which the risk-based capital plan or
12 the revised risk-based capital plan is filed under paragraph
13 (c) or paragraph (d).

14 (4)(a) A regulatory action level event includes:

15 1. The filing of a risk-based capital report by the
16 insurer which indicates that the insurer's total adjusted
17 capital is greater than or equal to its authorized control
18 level risk-based capital but is less than its regulatory
19 action level risk-based capital;

20 2. The notification by the office ~~department~~ to the
21 insurer of an adjusted risk-based capital report that
22 indicates the event described in subparagraph 1., unless the
23 insurer challenges the adjusted risk-based capital report
24 under subsection (7);

25 3. If, under subsection (7), the insurer challenges an
26 adjusted risk-based capital report that indicates the event
27 described in subparagraph 1., the notification by the office
28 ~~department~~ to the insurer that the office ~~department~~ has,
29 after a hearing, rejected the insurer's challenge;

30 4. The failure of the insurer to file a risk-based
31 capital report by the filing date, unless the insurer provides

1 an explanation for such failure which is satisfactory to the
2 office ~~department~~ and cures the failure within 10 days after
3 the filing date;

4 5. The failure of the insurer to submit a risk-based
5 capital plan to the office ~~department~~ within the time period
6 set forth in paragraph (3)(c);

7 6. Notification by the office ~~department~~ to the
8 insurer that:

9 a. The risk-based capital plan or the revised
10 risk-based capital plan submitted by the insurer is, in the
11 judgment of the office ~~department~~, unsatisfactory; and

12 b. This notification constitutes a regulatory action
13 level event with respect to the insurer, unless the insurer
14 challenges the determination under subsection (7);

15 7. If, under subsection (7), the insurer challenges a
16 determination by the office ~~department~~ under subparagraph 6.,
17 the notification by the office ~~department~~ to the insurer that
18 the office ~~department~~ has, after a hearing, rejected the
19 challenge;

20 8. Notification by the office ~~department~~ to the
21 insurer that the insurer has failed to adhere to its
22 risk-based capital plan or revised risk-based capital plan,
23 but only if this failure has a substantial adverse effect on
24 the ability of the insurer to eliminate the company action
25 level event in accordance with its risk-based capital plan or
26 revised risk-based capital plan and the office ~~department~~ has
27 so stated in the notification, unless the insurer challenges
28 the determination under subsection (7); or

29 9. If, under subsection (7), the insurer challenges a
30 determination by the office ~~department~~ under subparagraph 8.,
31 the notification by the office ~~department~~ to the insurer that

1 the office ~~department~~ has, after a hearing, rejected the
2 challenge.

3 (b) If a regulatory action level event occurs, the
4 office ~~department~~ shall:

5 1. Require the insurer to prepare and submit a
6 risk-based capital plan or, if applicable, a revised
7 risk-based capital plan;

8 2. Perform an examination pursuant to s. 624.316 or an
9 analysis, as the office ~~department~~ considers necessary, of the
10 assets, liabilities, and operations of the insurer, including
11 a review of the risk-based capital plan or the revised
12 risk-based capital plan; and

13 3. After the examination or analysis, issue a
14 corrective order specifying such corrective actions as the
15 office ~~department~~ determines are required.

16 (c) In determining corrective actions, the office
17 ~~department~~ shall consider any factor relevant to the insurer
18 based upon the office's ~~department's~~ examination or analysis
19 of the assets, liabilities, and operations of the insurer,
20 including, but not limited to, the results of any sensitivity
21 tests undertaken as provided in the risk-based capital
22 instructions. The risk-based capital plan or the revised
23 risk-based capital plan must be submitted:

24 1. Within 45 days after the occurrence of the
25 regulatory action level event;

26 2. If the insurer challenges an adjusted risk-based
27 capital report under subsection (7), within 45 days after the
28 notification to the insurer that the office ~~department~~ has,
29 after a hearing, rejected the insurer's challenge; or

30 3. If the insurer challenges a revised risk-based
31 capital plan under subsection (7), within 45 days after the

1 notification to the insurer that the office ~~department~~ has,
2 after a hearing, rejected the insurer's challenge.

3 (d) The office ~~department~~ may retain actuaries,
4 investment experts, and other consultants to review an
5 insurer's risk-based capital plan or revised risk-based
6 capital plan, examine or analyze the assets, liabilities, and
7 operations of an insurer, and formulate the corrective order
8 with respect to the insurer. The fees, costs, and expenses
9 relating to consultants must be borne by the affected insurer
10 or by any other party as directed by the office ~~department~~.

11 (5)(a) An authorized control level event includes:

12 1. The filing of a risk-based capital report by the
13 insurer which indicates that the insurer's total adjusted
14 capital is greater than or equal to its mandatory control
15 level risk-based capital but is less than its authorized
16 control level risk-based capital;

17 2. The notification by the office ~~department~~ to the
18 insurer of an adjusted risk-based capital report that
19 indicates the event in subparagraph 1., unless the insurer
20 challenges the adjusted risk-based capital report under
21 subsection (7);

22 3. If, under subsection (7), the insurer challenges an
23 adjusted risk-based capital report that indicates the event in
24 subparagraph 1., notification by the office ~~department~~ to the
25 insurer that the office ~~department~~ has, after a hearing,
26 rejected the insurer's challenge;

27 4. The failure of the insurer to respond, in a manner
28 satisfactory to the office ~~department~~, to a corrective order,
29 unless the insurer challenges the corrective order under
30 subsection (7); or

31

1 5. If the insurer challenges a corrective order under
2 subsection (7) and the office ~~department~~ has, after a hearing,
3 rejected the challenge or modified the corrective order, the
4 failure of the insurer to respond, in a manner satisfactory to
5 the office ~~department~~, to the corrective order after rejection
6 or modification by the office ~~department~~.

7 (b) If an authorized control level event occurs, the
8 office ~~department~~ shall:

9 1. Take any action required under subsection (4)
10 regarding the insurer with respect to which a regulatory
11 action level event has occurred; or

12 2. If the office ~~department~~ considers it to be in the
13 best interests of the policyholders and creditors of the
14 insurer and of the public, take any action as necessary to
15 cause the insurer to be placed under regulatory control under
16 chapter 631. An authorized control level event is sufficient
17 ground for the department to be appointed as receiver as
18 provided in chapter 631.

19 (6)(a) A mandatory control level event includes:

20 1. The filing of a risk-based capital report that
21 indicates that the insurer's total adjusted capital is less
22 than its mandatory control level risk-based capital;

23 2. Notification by the office ~~department~~ to the
24 insurer of an adjusted risk-based capital report that
25 indicates the event in subparagraph 1., unless the insurer
26 challenges the adjusted risk-based capital report under
27 subsection (7); or

28 3. If, under subsection (7), the insurer challenges an
29 adjusted risk-based capital report that indicates the event in
30 subparagraph 1., notification by the office ~~department~~ to the
31

1 insurer that the office ~~department~~ has, after a hearing,
2 rejected the insurer's challenge.

3 (b) If a mandatory control level event occurs:

4 1. With respect to a life and health insurer, the
5 office ~~department~~ shall, after due consideration of s.
6 624.408, take any action necessary to place the insurer under
7 regulatory control, including any remedy available under
8 chapter 631. A mandatory control level event is sufficient
9 ground for the department to be appointed as receiver as
10 provided in chapter 631. The office ~~department~~ may forego
11 taking action for up to 90 days after the mandatory control
12 level event if the office ~~department~~ finds there is a
13 reasonable expectation that the mandatory control level event
14 may be eliminated within the 90-day period.

15 2. With respect to a property and casualty insurer,
16 the office ~~department~~ shall, after due consideration of s.
17 624.408, take any action necessary to place the insurer under
18 regulatory control, including any remedy available under
19 chapter 631, or, in the case of an insurer that is not writing
20 new business, may allow the insurer to continue to operate
21 under the supervision of the office ~~department~~. In either
22 case, the mandatory control level event is sufficient ground
23 for the department to be appointed as receiver as provided in
24 chapter 631. The office ~~department~~ may forego taking action
25 for up to 90 days after the mandatory control level event if
26 the office ~~department~~ finds there is a reasonable expectation
27 that the mandatory control level event will be eliminated
28 within the 90-day period.

29 (7)(a) An insurer has a right to a hearing before the
30 office ~~department~~ upon:

31

1 1. Notification to an insurer by the office ~~department~~
2 of an adjusted risk-based capital report;

3 2. Notification to an insurer by the office ~~department~~
4 that the insurer's risk-based capital plan or revised
5 risk-based capital plan is unsatisfactory, and that the
6 notification constitutes a regulatory action level event with
7 respect to such insurer;

8 3. Notification to any insurer by the office
9 ~~department~~ that the insurer has failed to adhere to its
10 risk-based capital plan or revised risk-based capital plan and
11 that the failure has a substantial adverse effect on the
12 ability of the insurer to eliminate the company action level
13 event in accordance with its risk-based capital plan or its
14 revised risk-based capital plan; or

15 4. Notification to an insurer by the office ~~department~~
16 of a corrective order with respect to the insurer.

17 (b) At such hearing the insurer may challenge any
18 determination or action by the office ~~department~~. The insurer
19 shall notify the office ~~department~~ of its request for a
20 hearing within 5 days after receipt of the notification by the
21 office ~~department~~ under this subsection. Upon receipt of the
22 request for a hearing, the office ~~department~~ shall set a date
23 for the hearing, which date must be no fewer than 10 nor more
24 than 30 days after the date the office ~~department~~ receives the
25 insurer's request. The hearing must be conducted as provided
26 in s. 624.324, with the right to appellate review under s.
27 120.68.

28 (8)(a) Any foreign insurer shall, upon the written
29 request of the office ~~department~~, submit to the office
30 ~~department~~ a risk-based capital report, as of the end of the
31 calendar year just ended, no later than the later of:

1 1. The date a risk-based capital report is required to
2 be filed by a domestic insurer under this section; or

3 2. Fifteen days after the request is received by the
4 foreign insurer.

5 (b) Any foreign insurer shall, upon the written
6 request of the office ~~department~~, promptly submit to the
7 office ~~department~~ a copy of any risk-based capital plan that
8 is filed with the insurance department of another state.

9 (c) The office ~~department~~ may require a foreign
10 insurer to file a risk-based capital plan if:

11 1. A company action level event, regulatory action
12 level event, or authorized control level event occurs with
13 respect to any foreign insurer as determined under the
14 risk-based capital law of the state of domicile of the
15 insurer, or, if there is no risk-based capital law in that
16 state, under this section.

17 2. The insurance department of the state of domicile
18 of the foreign insurer fails to require the foreign insurer to
19 file a risk-based capital plan in the manner specified under
20 the risk-based capital law of that state, or, if there is no
21 risk-based capital law in that state, under subsection (3).

22
23 The failure of the foreign insurer to file a risk-based
24 capital plan with the office ~~department~~ when required under
25 this paragraph is a ground for the office ~~department~~ to take
26 any action under s. 624.418 which it determines is necessary.

27 (d) If a mandatory control level event occurs with
28 respect to any foreign insurer and a domiciliary receiver has
29 not been appointed with respect to the foreign insurer under
30 the rehabilitation and liquidation law of the state of
31 domicile of the foreign insurer, the office ~~department~~ may

1 apply to the Circuit Court of Leon County and such event
2 constitutes grounds for the department to be appointed as
3 receiver as provided in chapter 631 with respect to the
4 liquidation of property of foreign insurers found in this
5 state. The occurrence of a mandatory control level event is a
6 ground for such application.

7 (9) There shall be no liability on the part of, and no
8 cause of action shall arise against, the commission,
9 ~~commissioner, the department, or office, or their~~ its
10 employees or agents, for any action taken by them in the
11 performance of their powers and duties under this section.

12 (10) The office ~~department~~ shall transmit any notice
13 that may result in regulatory action by registered mail,
14 certified mail, or any other method of transmission. Notice
15 is effective when the insurer receives it.

16 ~~(11) For the purposes of the risk-based capital~~
17 ~~reports required to be filed by life and health insurers with~~
18 ~~respect to their 1997 annual statement data and the risk-based~~
19 ~~capital reports required to be filed by property and casualty~~
20 ~~insurers with respect to their 1997 annual statement data, the~~
21 ~~following requirements apply in lieu of the provisions of~~
22 ~~subsections (3), (4), (5), and (6):~~

23 ~~(a) If a company action level event occurs with~~
24 ~~respect to a domestic insurer, the department may not take any~~
25 ~~regulatory action.~~

26 ~~(b) If a regulatory action level event occurs under~~
27 ~~subparagraph (4)(a)1., 2., or 3., the department shall take~~
28 ~~the actions required under subsection (3).~~

29 ~~(c) If a regulatory action level event occurs under~~
30 ~~subparagraph (4)(a)4., 5., 6., 7., 8., or 9., or an authorized~~
31

1 ~~control level event occurs, the department shall take the~~
2 ~~actions required under subsection (4).~~

3 ~~(d) If a mandatory control level event occurs with~~
4 ~~respect to an insurer, the department shall take the actions~~
5 ~~required under subsection (5).~~

6 (11)~~(12)~~ This section is supplemental to the other
7 laws of this state and does not preclude or limit any power or
8 duty of the department or office under those laws or under the
9 rules adopted under those laws.

10 (12)~~(13)~~ This section does not apply to a domestic
11 property and casualty insurer that meets all of the following
12 conditions:

13 (a) Writes direct business only in this state;

14 (b) Writes direct annual premiums of \$2 million or
15 less; and

16 (c) Assumes no reinsurance in excess of 5 percent of
17 direct premiums written.

18 (13)~~(14)~~ The commission ~~department~~ may adopt rules to
19 administer this section, including, but not limited to, those
20 regarding risk-based capital reports, adjusted risk-based
21 capital reports, risk-based capital plans, corrective orders
22 and procedures to be followed in the event of a triggering of
23 a company action level event, a regulatory action level event,
24 an authorized control level event, or a mandatory control
25 level event.

26 Section 786. Subsections (1) and (2) of section
27 624.40851, Florida Statutes, are amended to read:

28 624.40851 Confidentiality of risk-based capital
29 information.--

30 (1) The initial risk-based capital report and any
31 adjusted risk-based capital report; any risk-based capital

1 plan and any revised risk-based capital plan; and working
2 papers and reports of examination or analysis of an insurer
3 performed pursuant to a plan or corrective order, or
4 regulatory action level event, with respect to any domestic
5 insurer or foreign insurer, held by the office ~~Department of~~
6 ~~Insurance~~, and transcripts of hearings made as required by
7 this section, are confidential and exempt from s. 119.07(1)
8 and s. 24(a), Art. I of the State Constitution.

9 (2) Hearings conducted pursuant to s. 624.4085
10 relating to the office's ~~department's~~ actions regarding any
11 insurer's risk-based capital plan, revised risk-based capital
12 plan, risk-based capital report, or adjusted risk-based
13 capital report, are exempt from s. 286.011 and s. 24(b), Art.
14 I of the State Constitution, except as otherwise provided in
15 this section. Such hearings shall be recorded by a court
16 reporter. The office ~~Department of Insurance~~ shall open such
17 hearings or provide a copy of the transcript of such hearings
18 or information otherwise made confidential and exempt pursuant
19 to this section to a department, agency, or instrumentality of
20 this or another state or of the United States if the office
21 ~~department~~ determines the disclosure is necessary or proper
22 for the enforcement of the laws of the United States or of
23 this or another state.

24 Section 787. Section 624.4094, Florida Statutes, is
25 amended to read:

26 624.4094 Bail bond premiums.--

27 (1) The Legislature finds that a significant portion
28 of bail bond premiums is retained by the licensed bail bond
29 agents or licensed managing general agents. For purposes of
30 reporting in financial statements required to be filed with
31 the office ~~department~~ pursuant to s. 624.424, direct written

1 premiums for bail bonds by a domestic insurer in this state
2 shall be reported net of any amounts retained by licensed bail
3 bond agents or licensed managing general agents. However, in
4 no case shall the direct written premiums for bail bonds be
5 less than 6.5 percent of the total consideration received by
6 the agent for all bail bonds written by the agent. This
7 subsection also applies to any determination of compliance
8 with s. 624.4095.

9 (2) Premiums assumed by a domestic insurer shall be
10 reported consistent with subsections (1) and (4) for purposes
11 of filing financial statements with the office ~~department~~.

12 (3) Each domestic bail bond insurer shall keep
13 complete and accurate records of the total consideration paid
14 for all bail bonds written by such insurer.

15 (4) Each domestic bail bond insurer shall disclose the
16 following information in the notes to the financial statement
17 in the insurer's annual statement filed with the office
18 ~~department~~.

19 (a) The gross bail bond premiums written in each state
20 by agents for the company.

21 (b) The amount of premium taxes incurred by the
22 company in each state.

23 (c) Total consideration withheld by agents and not
24 reported as an expense by the insurer in financial statements
25 filed with the office ~~department~~.

26 (d) The amount of bail bond premium included on the
27 surety line of the annual statement filed with the office
28 ~~department~~.

29 (5) This section does not affect the reporting or
30 payment of insurance premium taxes under ss. 624.509,
31 624.5091, and 624.5092, and the insurance premium tax and

1 related excise taxes shall continue to be calculated using
2 gross bail bond premiums.

3 Section 788. Subsection (1) of section 624.4095,
4 Florida Statutes, is amended to read:

5 624.4095 Premiums written; restrictions.--

6 (1) Whenever an insurer's ratio of actual or projected
7 annual written premiums as adjusted in accordance with
8 subsection (4) to current or projected surplus as to
9 policyholders as adjusted in accordance with subsection (6)
10 ~~(5)~~ exceeds 10 to 1 for gross written premiums or exceeds 4 to
11 1 for net written premiums, the office ~~department~~ shall
12 suspend the insurer's certificate of authority or establish by
13 order maximum gross or net annual premiums to be written by
14 the insurer consistent with maintaining the ratios specified
15 herein unless the insurer demonstrates to the office's
16 ~~department's~~ satisfaction that exceeding the ratios of this
17 section does not endanger the financial condition of the
18 insurer or endanger the interests of the insurer's
19 policyholders.

20 Section 789. Section 624.410, Florida Statutes, is
21 amended to read:

22 624.410 Permissible insuring combinations without
23 additional capital funds.--A property insurer may include such
24 amount and kind of insurance against legal liability for
25 injury, damage, or loss to the person or property of others,
26 and for medical, hospital, and surgical expense related to
27 such injury, as the office ~~department~~ deems to be reasonably
28 incidental to insurance of real property against fire and
29 other perils under policies covering residential properties
30 involving not more than four families, with or without
31 incidental office, professional, private school or studio

1 occupancy by an insured, whether or not the premium or rate
2 charged for certain perils so covered is specified in the
3 policy. Any provision of s. 624.609 to the contrary
4 notwithstanding, no insurer authorized as to property
5 insurance only shall, pursuant to this subsection, retain risk
6 as to any one subject of insurance as to hazards other than
7 property insurance hazards, in an amount exceeding 5 percent
8 of its surplus as to policyholders.

9 Section 790. Section 624.411, Florida Statutes, is
10 amended to read:

11 624.411 Deposit requirement; domestic insurers and
12 foreign insurers.--

13 (1) As to domestic insurers, the office ~~department~~
14 shall not issue or permit to exist a certificate of authority
15 unless such insurer has deposited and maintains deposited in
16 trust for the protection of the insurer's policyholders or its
17 policyholders and creditors with the department securities
18 eligible for such deposit under s. 625.52, having at all times
19 a value of not less than as follows:

20 (a) To transact casualty insurance, \$250,000.

21 (b) To transact all other kinds of insurance, \$100,000
22 per kind of insurance.

23 (c) A domestic insurer authorized to transact more
24 than one kind of insurance shall not be required to deposit
25 more than \$300,000 under this subsection.

26 (2) As to foreign insurers, the office ~~department~~,
27 upon issuing or permitting to exist a certificate of
28 authority, may require for good cause a deposit and
29 maintenance of the deposit in trust for the protection of the
30 insured's policyholders or its policyholders and creditors
31 with the department securities eligible for such deposit under

1 s. 625.52, having at all times a value of not less than as
2 follows:

3 (a) To transact casualty insurance, \$150,000.

4 (b) To transact all other kinds of insurance, \$100,000
5 per kind of insurance.

6 (c) A foreign insurer authorized to transact more than
7 one kind of insurance in this state shall not be required to
8 deposit more than \$200,000 under this subsection.

9 (d) A foreign insurer with surplus as to policyholders
10 of more than \$10 million according to its latest annual
11 statement shall not be required to make a deposit under this
12 subsection.

13 (3) Whenever the office ~~department~~ determines that the
14 financial condition of an insurer has deteriorated or that the
15 policyholders' best interests are not being preserved by the
16 activities of an insurer, the office ~~department~~ may require
17 such insurer to deposit and maintain deposited in trust with
18 the department for the protection of the insurer's
19 policyholders or its policyholders and creditors, for such
20 time as the office ~~department~~ deems necessary, securities
21 eligible for such deposit under s. 625.52, having a market
22 value of not less than the amount which the office ~~department~~
23 determines is necessary, which amount shall be not less than
24 \$100,000, or more than 25 percent of the insurer's obligations
25 in this state, as determined from the latest annual financial
26 statement of the insured. The deposit required under this
27 subsection shall not exceed \$2 million and is in addition to
28 any other deposits required of an insurer pursuant to
29 subsections (1) and (2) or any other provisions of the Florida
30 Insurance Code.

31

1 (4) All such deposits in this state are subject to the
2 applicable provisions of part III of chapter 625.

3 Section 791. Subsection (1) of section 624.412,
4 Florida Statutes, is amended to read:

5 624.412 Deposit of alien insurers.--

6 (1) An alien insurer shall not have authority to
7 transact insurance in this state unless it has and maintains
8 within the United States as trust deposits with public
9 officials having supervision over insurers, or with trustees,
10 public depositories, or trust institutions approved by the
11 office department, assets available for discharge of its
12 United States insurance obligations, which assets shall be in
13 amount not less than the outstanding reserves and other
14 liabilities of the insurer arising out of its insurance
15 transactions in the United States together with the amount of
16 surplus as to policyholders required by s. 624.408 of a
17 domestic stock insurer transacting like kinds of insurance.

18 Section 792. Subsection (1) of section 624.413,
19 Florida Statutes, is amended to read:

20 624.413 Application for certificate of authority.--

21 (1) To apply for a certificate of authority, an
22 insurer shall file its application therefor with the office
23 department, upon a form adopted by the commission and
24 furnished by the office it, showing its name; location of its
25 home office and, if an alien insurer, its principal office in
26 the United States; kinds of insurance to be transacted; state
27 or country of domicile; and such additional information as the
28 commission department may reasonably requires require,
29 together with the following documents:

30 (a) One copy of its corporate charter, articles of
31 incorporation, existing and proposed nonfacultative

1 reinsurance contracts, declaration of trust, or other charter
2 documents, with all amendments thereto, certified by the
3 public official with whom the originals are on file in the
4 state or country of domicile.

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

8 (c) If a foreign or alien reciprocal insurer, a copy
9 of the power of attorney of its attorney in fact and of its
10 subscribers' agreement, if any, certified by the attorney in
11 fact; and, if a domestic reciprocal insurer, the declaration
12 provided for in s. 629.081.

13 (d) A copy of its financial statement as of December
14 31 next preceding, containing information generally included
15 in insurer financial statements prepared in accordance with
16 generally accepted insurance accounting principles and
17 practices and in a form generally utilized by insurers for
18 financial statements, sworn to by at least two executive
19 officers of the insurer, or certified by the public official
20 having supervision of insurance in the insurer's state of
21 domicile or of entry into the United States. To facilitate
22 uniformity in financial statements, the commission ~~department~~
23 may by rule adopt the form for financial statements approved
24 by the National Association of Insurance Commissioners in 2002
25 ~~1990~~, and may adopt subsequent amendments thereto if the form
26 remains substantially consistent.

27 (e) Supplemental quarterly financial statements for
28 each calendar quarter since the beginning of the year of its
29 application for the certificate of authority, sworn to by at
30 least two of its executive officers. To facilitate uniformity
31 in financial statements, the commission ~~department~~ may by rule

1 adopt the form for quarterly financial statements approved by
2 the National Association of Insurance Commissioners in 2002
3 ~~1990~~, and may adopt subsequent amendments thereto if the form
4 remains substantially consistent.

5 (f) If a foreign or alien insurer, a copy of the
6 report of the most recent examination of the insurer certified
7 by the public official having supervision of insurance in its
8 state of domicile or of entry into the United States. The end
9 of the most recent year covered by the examination must be
10 within the 3-year period preceding the date of application.
11 In lieu of the certified examination report, the office
12 ~~department~~ may accept an audited certified public accountant's
13 report prepared on a basis consistent with the insurance laws
14 of the insurer's state of domicile, certified by the public
15 official having supervision of insurance in its state of
16 domicile or of entry into the United States.

17 (g) If a foreign or alien insurer, a certificate of
18 compliance from the public official having supervision of
19 insurance in its state or country of domicile showing that it
20 is duly organized and authorized to transact insurance therein
21 and the kinds of insurance it is so authorized to transact.

22 (h) If a foreign or alien insurer, a certificate of
23 the public official having custody of any deposit maintained
24 by the insurer in another state in lieu of a deposit or part
25 thereof required in this state under s. 624.411 or s. 624.412,
26 showing the amount of such deposit and the assets or
27 securities of which comprised.

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

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

1 Section 793. Section 624.4135, Florida Statutes, is
2 amended to read:

3 624.4135 Redomestication.--The commission ~~department~~
4 shall adopt rules establishing procedures and forms for a
5 foreign insurer to apply for a certificate of authority as a
6 domestic insurer.

7 Section 794. Section 624.414, Florida Statutes, is
8 amended to read:

9 624.414 Issuance or refusal of authority.--The fee for
10 filing application for a certificate of authority shall not be
11 subject to refund. The office ~~department~~ shall issue to the
12 applicant insurer a proper certificate of authority if it
13 finds that the insurer has met the requirements of this code,
14 exclusive of the requirements relative to the filing and
15 approval of an insurer's policy forms, riders, endorsements,
16 applications, and rates. If it does not so find, the office
17 ~~department~~ shall issue its order refusing the certificate.
18 The certificate, if issued, shall specify the kind or kinds
19 and line or lines of insurance the insurer is authorized to
20 transact in this state. The issuance of a certificate of
21 authority does not signify that an insurer has met the
22 requirements of this code relative to the filing and approval
23 of an insurer's policy forms, riders, endorsements,
24 applications, and rates which may be required prior to an
25 insurer actually writing any premiums.

26 Section 795. Section 624.415, Florida Statutes, is
27 amended to read:

28 624.415 Ownership of certificate of authority;
29 return.--Although issued to the insurer, the certificate of
30 authority is at all times the property of this state. Upon
31 any expiration, suspension, or termination thereof, the

1 insurer shall promptly deliver the certificate of authority to
2 the office ~~department~~.

3 Section 796. Subsections (2), (3), and (4) of section
4 624.416, Florida Statutes, are amended to read:

5 624.416 Continuance, expiration, reinstatement, and
6 amendment of certificate of authority.--

7 (2) If not so continued by the insurer, its
8 certificate of authority shall expire at midnight on the May
9 31 next following such failure of the insurer so to continue
10 it in force. The office ~~department~~ shall promptly notify the
11 insurer of the occurrence of any failure resulting in
12 impending expiration of its certificate of authority.

13 (3) The office ~~department~~ may, in its discretion,
14 reinstate a certificate of authority which the insurer has
15 inadvertently permitted to expire, after the insurer has fully
16 cured all its failures which resulted in the expiration, and
17 upon payment by the insurer of the fee for reinstatement, in
18 the amount provided in s. 624.501(1)(b). Otherwise, the
19 insurer shall be granted another certificate of authority only
20 after filing application therefor and meeting all other
21 requirements as for an original certificate of authority in
22 this state.

23 (4) The office ~~department~~ may amend a certificate of
24 authority at any time to accord with changes in the insurer's
25 charter or insuring powers.

26 Section 797. Section 624.418, Florida Statutes, is
27 amended to read:

28 624.418 Suspension, revocation of certificate of
29 authority for violations and special grounds.--

30
31

1 (1) The office ~~department~~ shall suspend or revoke an
2 insurer's certificate of authority if it finds that the
3 insurer:

4 (a) Is in unsound financial condition.

5 (b) Is using such methods and practices in the conduct
6 of its business as to render its further transaction of
7 insurance in this state hazardous or injurious to its
8 policyholders or to the public.

9 (c) Has failed to pay any final judgment rendered
10 against it in this state within 60 days after the judgment
11 became final.

12 (d) No longer meets the requirements for the authority
13 originally granted.

14 (2) The office ~~department~~ may, in its discretion,
15 suspend or revoke the certificate of authority of an insurer
16 if it finds that the insurer:

17 (a) Has violated any lawful order or rule of the
18 office or commission ~~department~~ or any provision of this code.

19 (b) Has refused to be examined or to produce its
20 accounts, records, and files for examination, or if any of its
21 officers have refused to give information with respect to its
22 affairs or to perform any other legal obligation as to such
23 examination, when required by the office ~~department~~.

24 (c) Has for any line, class, or combination thereof,
25 with such frequency as to indicate its general business
26 practice in this state, without just cause refused to pay
27 proper claims arising under its policies, whether any such
28 claim is in favor of an insured or is in favor of a third
29 person with respect to the liability of an insured to such
30 third person, or without just cause compels such insureds or
31 claimants to accept less than the amount due them or to employ

1 attorneys or to bring suit against the insurer or such an
2 insured to secure full payment or settlement of such claims.

3 (d) Is affiliated with and under the same general
4 management or interlocking directorate or ownership as another
5 insurer which transacts direct insurance in this state without
6 having a certificate of authority therefor, except as
7 permitted as to surplus lines insurers under part VIII of
8 chapter 626.

9 (e) Has been convicted of, or entered a plea of guilty
10 or nolo contendere to, a felony relating to the transaction of
11 insurance, in this state or in any other state, without regard
12 to whether adjudication was withheld.

13 (f) Has a ratio of net premiums written to surplus as
14 to policyholders that exceeds 4 to 1, and the office
15 ~~department~~ has reason to believe that the financial condition
16 of the insurer endangers the interests of the policyholders.
17 The ratio of net premiums written to surplus as to
18 policyholders shall be on an annualized actual or projected
19 basis. The ratio shall be based on the insurer's current
20 calendar year activities and experience to date or the
21 insurer's previous calendar year activities and experience, or
22 both, and shall be calculated to represent a 12-month period.
23 However, the provisions of this paragraph do not apply to any
24 insurance or insurer exempted from s. 624.4095.

25 (g) Is under suspension or revocation in another
26 state.

27 (3) The insolvency or impairment of an insurer
28 constitutes an immediate serious danger to the public health,
29 safety, or welfare; and the office ~~department~~ may, at its
30 discretion, without prior notice and the opportunity for
31

1 hearing immediately suspend the certificate of authority of an
2 insurer upon a determination that:

- 3 (a) The insurer is impaired or insolvent; or
4 (b) Receivership, conservatorship, rehabilitation, or
5 other delinquency proceedings have been initiated against the
6 insurer by the public insurance supervisory official of any
7 state.

8 Section 798. Section 624.420, Florida Statutes, is
9 amended to read:

10 624.420 Order, notice of suspension or revocation of
11 certificate of authority; effect; publication.--

12 (1) Suspension or revocation of an insurer's
13 certificate of authority shall be by the order of the office
14 ~~department~~. The office ~~department~~ shall promptly also give
15 notice of such suspension or revocation to the insurer's
16 agents in this state of record ~~in the office of the~~
17 ~~department~~. The insurer shall not solicit or write any new
18 coverages in this state during the period of any such
19 suspension and may renew coverages only upon a finding by the
20 office ~~department~~ that the insurer is capable of servicing the
21 renewal coverage. The insurer shall not solicit or write any
22 new or renewal coverages after any such revocation.

23 (2) In its discretion, the office ~~department~~ may cause
24 notice of any such suspension or revocation to be published in
25 one or more newspapers of general circulation published in
26 this state.

27 Section 799. Subsections (2), (3), (4), and (5) of
28 section 624.421, Florida Statutes, are amended to read:

29 624.421 Duration of suspension; insurer's obligations
30 during suspension period; reinstatement.--

31

1 (2) During the period of suspension, the insurer shall
2 file with the office ~~department~~ all documents and information
3 and pay all license fees and taxes as required under this code
4 as if the certificate had continued in full force.

5 (3) If the suspension of the certificate of authority
6 is for a fixed period of time and the certificate of authority
7 has not been otherwise terminated, upon expiration of the
8 suspension period the insurer's certificate of authority shall
9 be reinstated unless the office ~~department~~ finds that the
10 insurer is not in compliance with the requirements of this
11 code. The office ~~department~~ shall promptly notify the insurer
12 of such reinstatement, and the insurer shall not consider its
13 certificate of authority reinstated until so notified by the
14 office ~~department~~. If not reinstated, the certificate of
15 authority shall be deemed to have expired as of the end of the
16 suspension period or upon failure of the insurer to continue
17 the certificate during the suspension period in accordance
18 with subsection (2), whichever event first occurs.

19 (4) If the suspension of the certificate of authority
20 was until the occurrence of a specific event or events and the
21 certificate of authority has not been otherwise terminated,
22 upon the presentation of evidence satisfactory to the office
23 ~~department~~ that the specific event or events have occurred,
24 the insurer's certificate of authority shall be reinstated
25 unless the office ~~department~~ finds that the insurer is
26 otherwise not in compliance with the requirements of this
27 code. The office ~~department~~ shall promptly notify the insurer
28 of such reinstatement, and the insurer shall not consider its
29 certificate of authority reinstated until so notified by the
30 office ~~department~~. If satisfactory evidence as to the
31 occurrence of the specific event or events has not been

1 presented to the office ~~department~~ within 2 years of the date
2 of such suspension, the certificate of authority shall be
3 deemed to have expired as of 2 years from the date of
4 suspension or upon failure of the insurer to continue the
5 certificate during the suspension period in accordance with
6 subsection (2), whichever first occurs.

7 (5) Upon reinstatement of the insurer's certificate of
8 authority, the authority of its agents in this state to
9 represent the insurer shall likewise reinstate. The office
10 ~~department~~ shall promptly notify the insurer of such
11 reinstatement.

12 Section 800. Subsections (1), (3), and (4) of section
13 624.4211, Florida Statutes, are amended to read:

14 624.4211 Administrative fine in lieu of suspension or
15 revocation.--

16 (1) If the office ~~department~~ finds that one or more
17 grounds exist for the discretionary revocation or suspension
18 of a certificate of authority issued under this chapter, the
19 office ~~department~~ may, in lieu of such revocation or
20 suspension, impose a fine upon the insurer.

21 (3) With respect to any knowing and willful violation
22 of a lawful order or rule of the office or commission
23 ~~department~~ or a provision of this code, the office ~~department~~
24 may impose a fine upon the insurer in an amount not to exceed
25 \$20,000 for each such violation. In no event shall such fine
26 exceed an aggregate amount of \$100,000 for all knowing and
27 willful violations arising out of the same action. In
28 addition to such fines, such insurer shall make restitution
29 when due in accordance with the provisions of subsection (2).

30 (4) The failure of an insurer to make restitution when
31 due as required under this section constitutes a willful

1 violation of this code. However, if an insurer in good faith
2 is uncertain as to whether any restitution is due or as to the
3 amount of such restitution, it shall promptly notify the
4 office ~~department~~ of the circumstances; and the failure to
5 make restitution pending a determination thereof shall not
6 constitute a violation of this code.

7 Section 801. Section 624.422, Florida Statutes, is
8 amended to read:

9 624.422 Service of process; appointment of Chief
10 Financial Officer ~~Insurance Commissioner and Treasurer~~ as
11 process agent.--

12 (1) Each licensed insurer, whether domestic, foreign,
13 or alien, shall be deemed to have appointed the Chief
14 Financial Officer ~~Insurance Commissioner and Treasurer~~ and her
15 or his successors in office as its attorney to receive service
16 of all legal process issued against it in any civil action or
17 proceeding in this state; and process so served shall be valid
18 and binding upon the insurer.

19 (2) Prior to its authorization to transact insurance
20 in this state, each insurer shall file with the department
21 designation of the name and address of the person to whom
22 process against it served upon the Chief Financial Officer
23 ~~Insurance Commissioner and Treasurer~~ is to be forwarded. The
24 insurer may change the designation at any time by a new
25 filing.

26 (3) Service of process upon the Chief Financial
27 Officer ~~Insurance Commissioner and Treasurer~~ as the insurer's
28 attorney pursuant to such an appointment shall be the sole
29 method of service of process upon an authorized domestic,
30 foreign, or alien insurer in this state.

31

1 Section 802. Section 624.423, Florida Statutes, is
2 amended to read:

3 624.423 Serving process.--

4 (1) Service of process upon the Chief Financial
5 Officer ~~Insurance Commissioner and Treasurer~~ as process agent
6 of the insurer (under s. 624.422) shall be made by serving
7 copies in triplicate of the process upon the Chief Financial
8 Officer ~~Insurance Commissioner and Treasurer~~ or upon her or
9 his assistant, deputy, or other person in charge of her or his
10 office. Upon receiving such service, the Chief Financial
11 Officer ~~Insurance Commissioner and Treasurer~~ shall file one
12 copy in her or his office, return one copy with her or his
13 admission of service, and promptly forward one copy of the
14 process by registered or certified mail to the person last
15 designated by the insurer to receive the same, as provided
16 under s. 624.422(2).

17 (2) Where process is served upon the Chief Financial
18 Officer ~~Insurance Commissioner and Treasurer~~ as an insurer's
19 process agent, the insurer shall not be required to answer or
20 plead except within 20 days after the date upon which the
21 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
22 mailed a copy of the process served upon her or him as
23 required by subsection (1).

24 (3) Process served upon the Chief Financial Officer
25 ~~Insurance Commissioner and Treasurer~~ and copy thereof
26 forwarded as in this section provided shall for all purposes
27 constitute valid and binding service thereof upon the insurer.

28 Section 803. Section 624.424, Florida Statutes, is
29 amended to read:

30 624.424 Annual statement and other information.--

31

1 (1)(a) Each authorized insurer shall file with the
2 office ~~department~~ full and true statements of its financial
3 condition, transactions, and affairs. An annual statement
4 covering the preceding calendar year shall be filed on or
5 before March 1, and quarterly statements covering the periods
6 ending on March 31, June 30, and September 30 shall be filed
7 within 45 days after each such date. The office ~~department~~
8 may, for good cause, grant an extension of time for filing of
9 an annual or quarterly statement. The statements shall contain
10 information generally included in insurers' financial
11 statements prepared in accordance with generally accepted
12 insurance accounting principles and practices and in a form
13 generally utilized by insurers for financial statements, sworn
14 to by at least two executive officers of the insurer or, if a
15 reciprocal insurer, by the oath of the attorney in fact or its
16 like officer if a corporation. To facilitate uniformity in
17 financial statements and to facilitate office ~~department~~
18 analysis, the commission ~~department~~ may by rule adopt the form
19 for financial statements approved by the National Association
20 of Insurance Commissioners in 2002 ~~1990~~, and may adopt
21 subsequent amendments thereto if the methodology remains
22 substantially consistent, and may by rule require each insurer
23 to submit to the office ~~department~~ or such organization as the
24 office ~~department~~ may designate all or part of the information
25 contained in the financial statement in a computer-readable
26 form compatible with the electronic data processing system
27 specified by the office ~~department~~.

28 (b) Each insurer's annual statement must contain a
29 statement of opinion on loss and loss adjustment expense
30 reserves made by a member of the American Academy of Actuaries
31 or by a qualified loss reserve specialist, under criteria

1 established by rule of the commission department. In adopting
2 the rule, the commission department must consider any criteria
3 established by the National Association of Insurance
4 Commissioners. The office department may require semiannual
5 updates of the annual statement of opinion as to a particular
6 insurer if the office department has reasonable cause to
7 believe that such reserves are understated to the extent of
8 materially misstating the financial position of the insurer.
9 Workpapers in support of the statement of opinion must be
10 provided to the office department upon request. This paragraph
11 does not apply to life insurance or title insurance.

12 (c) The commission department may by rule require
13 reports or filings required under the insurance code to be
14 submitted by electronic means in a computer-readable form ~~on a~~
15 ~~computer-diskette~~ compatible with the electronic data
16 processing equipment specified by the commission department.

17 (2) The statement of an alien insurer shall be
18 verified by the insurer's United States manager or other
19 officer duly authorized. It shall be a separate statement, to
20 be known as its general statement, of its transactions,
21 assets, and affairs within the United States unless the office
22 ~~department~~ requires otherwise. If the office department
23 requires a statement as to the insurer's affairs elsewhere,
24 the insurer shall file such statement with the office
25 ~~department~~ as soon as reasonably possible.

26 (3) Each insurer having a deposit as required under s.
27 624.411 shall file with the office department annually with
28 its annual statement a certificate to the effect that the
29 assets so deposited have a market value equal to or in excess
30 of the amount of deposit so required.

31

1 (4) At the time of filing, the insurer shall pay the
2 fee for filing its annual statement in the amount specified in
3 s. 624.501.

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

8 (6) In addition to information called for and
9 furnished in connection with its annual or quarterly
10 statements, an insurer shall furnish to the office ~~department~~
11 as soon as reasonably possible such information as to its
12 transactions or affairs as the office ~~department~~ may from time
13 to time request in writing. All such information furnished
14 pursuant to the office's ~~department's~~ request shall be
15 verified by the oath of two executive officers of the insurer
16 or, if a reciprocal insurer, by the oath of the attorney in
17 fact or its like officers if a corporation.

18 (7) The signatures of all such persons when written on
19 annual or quarterly statements or other reports required by
20 this section shall be presumed to have been so written by
21 authority of the person whose signature is affixed thereon.
22 The affixing of any signature by anyone other than the
23 purported signer constitutes a felony of the second degree,
24 punishable as provided in s. 775.082, s. 775.083, or s.
25 775.084.

26 (8)(a) All authorized insurers must have conducted an
27 annual audit by an independent certified public accountant and
28 must file an audited financial report with the office
29 ~~department~~ on or before June 1 for the preceding year ending
30 December 31. The office ~~department~~ may require an insurer to
31 file an audited financial report earlier than June 1 upon 90

1 days' advance notice to the insurer. The office ~~department~~
2 may immediately suspend an insurer's certificate of authority
3 by order if an insurer's failure to file required reports,
4 financial statements, or information required by this
5 subsection or rule adopted pursuant thereto creates a
6 significant uncertainty as to the insurer's continuing
7 eligibility for a certificate of authority.

8 (b) Any authorized insurer otherwise subject to this
9 section having direct premiums written in this state of less
10 than \$1 million in any calendar year and fewer ~~less~~ than 1,000
11 policyholders or certificateholders of directly written
12 policies nationwide at the end of such calendar year is exempt
13 from this section for such year unless the office ~~department~~
14 makes a specific finding that compliance is necessary in order
15 for the office ~~department~~ to carry out its statutory
16 responsibilities. However, any insurer having assumed
17 premiums pursuant to contracts or treaties or reinsurance of
18 \$1 million or more is not exempt. Any insurer subject to an
19 exemption must submit by March 1 following the year to which
20 the exemption applies an affidavit sworn to by a responsible
21 officer of the insurer specifying the amount of direct
22 premiums written in this state and number of policyholders or
23 certificateholders.

24 (c) The board of directors of an insurer shall hire
25 the certified public accountant that prepares the audit
26 required by this subsection and the board shall establish an
27 audit committee of three or more directors of the insurer or
28 an affiliated company. The audit committee shall be
29 responsible for discussing audit findings and interacting with
30 the certified public accountant with regard to her or his
31 findings. The audit committee shall be comprised solely of

1 members who are free from any relationship that, in the
2 opinion of its board of directors, would interfere with the
3 exercise of independent judgment as a committee member. The
4 audit committee shall report to the board any findings of
5 adverse financial conditions or significant deficiencies in
6 internal controls that have been noted by the accountant. The
7 insurer may request the office ~~department~~ to waive this
8 requirement of the audit committee membership based upon
9 unusual hardship to the insurer.

10 (d) An insurer may not use the same accountant or
11 partner of an accounting firm responsible for preparing the
12 report required by this subsection for more than 7 consecutive
13 years. Following this period, the insurer may not use such
14 accountant or partner for a period of 2 years, but may use
15 another accountant or partner of the same firm. An insurer
16 may request the office ~~department~~ to waive this prohibition
17 based upon an unusual hardship to the insurer and a
18 determination that the accountant is exercising independent
19 judgment that is not unduly influenced by the insurer
20 considering such factors as the number of partners, expertise
21 of the partners or the number of insurance clients of the
22 accounting firm; the premium volume of the insurer; and the
23 number of jurisdictions in which the insurer transacts
24 business.

25 (e) The commission ~~department~~ shall adopt rules to
26 implement this subsection, which rules must be in substantial
27 conformity with the 1998 ~~1990~~ Model Rule Requiring Annual
28 Audited Financial Reports adopted by the National Association
29 of Insurance Commissioners, except where inconsistent with the
30 requirements of this subsection. Any exception to, waiver of,
31 or interpretation of accounting requirements of the commission

1 ~~department~~ must be in writing and signed by an authorized
2 representative of the office ~~department~~. No insurer may raise
3 as a defense in any action, any exception to, waiver of, or
4 interpretation of accounting requirements, unless previously
5 issued in writing by an authorized representative of the
6 office ~~department~~.

7 (9)(a) Each authorized insurer shall, pursuant to s.
8 409.910(20), provide records and information to the Agency for
9 Health Care Administration to identify potential insurance
10 coverage for claims filed with that agency and its fiscal
11 agents for payment of medical services under the Medicaid
12 program.

13 (b) Each authorized insurer shall, pursuant to s.
14 409.2561(5)(c), notify the Medicaid agency of a cancellation
15 or discontinuance of a policy within 30 days if the insurer
16 received notification from the Medicaid agency to do so.

17 (c) Any information provided by an insurer under this
18 subsection does not violate any right of confidentiality or
19 contract that the insurer may have with covered persons. The
20 insurer is immune from any liability that it may otherwise
21 incur through its release of such information to the Agency
22 for Health Care Administration.

23 (10) Each insurer or insurer group doing business in
24 this state shall file on a quarterly basis in conjunction with
25 financial reports required by paragraph (1)(a) a supplemental
26 report on an individual and group basis on a form prescribed
27 by the commission ~~department~~ with information on personal
28 lines and commercial lines residential property insurance
29 policies in this state. The supplemental report shall include
30 separate information for personal lines property policies and
31 for commercial lines property policies and totals for each

1 item specified, including premiums written for each of the
2 property lines of business as described in ss. 215.555(2)(c)
3 and 627.351(6)(a). The report shall include the following
4 information for each county on a monthly basis:

- 5 (a) Total number of policies in force at the end of
- 6 each month.
- 7 (b) Total number of policies canceled.
- 8 (c) Total number of policies nonrenewed.
- 9 (d) Number of policies canceled due to hurricane risk.
- 10 (e) Number of policies nonrenewed due to hurricane
- 11 risk.
- 12 (f) Number of new policies written.
- 13 (g) Total dollar value of structure exposure under
- 14 policies that include wind coverage.
- 15 (h) Number of policies that exclude wind coverage.

16 Section 804. Section 624.4241, Florida Statutes, is
17 amended to read:

18 624.4241 NAIC filing requirements.--

- 19 (1) Each domestic, foreign, and alien insurer who is
- 20 authorized to transact insurance in this state shall file one
- 21 extra copy of its annual statement convention blank, along
- 22 with such additional filings as prescribed by the commission
- 23 ~~department~~ for the preceding year. Such extra copy shall be
- 24 for the explicit purpose of allowing the office ~~department~~ to
- 25 forward it to the National Association of Insurance
- 26 Commissioners.
- 27 (2) Coincident with the filing of the documents
- 28 required in subsection (1), each insurer shall pay to the
- 29 office ~~department~~ a reasonable fee to cover the costs
- 30 associated with the filing and analysis of the documents by
- 31

1 the National Association of Insurance Commissioners and the
2 office ~~department~~.

3 (3) The provisions of this section shall not apply to
4 any foreign, domestic, or alien insurer which has filed such
5 documents directly with the National Association of Insurance
6 Commissioners if the National Association of Insurance
7 Commissioners has certified receipt of the required documents
8 to the office ~~department~~.

9 Section 805. Subsections (2) and (3) of section
10 624.4243, Florida Statutes, are amended to read:

11 624.4243 Reporting of premium growth.--

12 (2) Until an insurer has held a certificate of
13 authority in this state for 24 months, the insurer shall,
14 instead of making the calculations required under subsection
15 (1), report to the office ~~department~~ no later than the last
16 day of each month the insurer's direct and assumed written
17 premiums from the United States and its territories for the
18 previous month.

19 (3) If the amount of the premium growth calculated by
20 an insurer under this section exceeds 33 percent, the insurer
21 shall, within 30 days after the end of the 12-month period
22 ending on the last day of the previous month, file with the
23 office ~~department~~ a statement of the premium growth
24 calculations under this section. The commission ~~department~~
25 shall adopt rules specifying the form for the report. In
26 response to a report under this section, the office ~~department~~
27 may require the insurer to submit an explanation of the
28 insurer's pattern of premium growth.

29 Section 806. Section 624.4245, Florida Statutes, is
30 amended to read:

31

1 624.4245 Change in controlling interest of foreign or
2 alien insurer; report required.--In the event of a change in
3 the controlling capital stock or a change of 50 percent or
4 more of the assets of a foreign or alien insurer, such insurer
5 shall report such change in writing to the office ~~department~~
6 within 30 days of the effective date thereof. The report
7 shall contain the name and address of the new owner or owners
8 of the controlling stock or assets, the nature and value of
9 the new assets, and such other relevant information as the
10 commission or office ~~department~~ may reasonably require. For
11 the purposes of this section, the term "controlling capital
12 stock" means a sufficient number of shares of the issued and
13 outstanding capital stock of such insurer or person so as to
14 give the owner thereof power to exercise a controlling
15 influence over the management or policies of such insurer or
16 person.

17 Section 807. Subsections (1), (2), (3), (7), and (8)
18 of section 624.430, Florida Statutes, are amended to read:

19 624.430 Withdrawal of insurer or discontinuance of
20 writing certain kinds or lines of insurance.--

21 (1) Any insurer desiring to surrender its certificate
22 of authority, withdraw from this state, or discontinue the
23 writing of any one or multiple kinds or lines of insurance in
24 this state shall give 90 days' notice in writing to the office
25 ~~department~~ setting forth its reasons for such action. Any
26 insurer who does not write any premiums in a kind or line of
27 insurance within a calendar year shall have that kind or line
28 of insurance removed from its certificate of authority;
29 however, such line of insurance shall be restored to the
30 insurer's certificate upon the insurer demonstrating that it
31

1 has available the expertise necessary and meets the other
2 requirements of this code to write that line of insurance.

3 (2) If the office ~~department~~ determines, based upon
4 its review of the notice and other required information, that
5 the plan of an insurer withdrawing from this state makes
6 adequate provision for the satisfaction of the insurer's
7 obligations and is not hazardous to policyholders or the
8 public, the office ~~department~~ shall approve the surrender of
9 the insurer's certificate of authority. The office ~~department~~
10 shall, within 45 days from receipt of a complete notice and
11 all required or requested additional information, approve,
12 disapprove, or approve with conditions the plan submitted by
13 the insurer. Failure to timely take action with respect to the
14 notice shall be deemed an approval of the surrender of the
15 certificate of authority.

16 (3) Upon office ~~department~~ approval of the surrender
17 of the certificate of authority of a domestic property and
18 casualty insurer that is a corporation, the insurer may
19 initiate the dissolution of the corporation in accordance with
20 the applicable provisions of chapter 607.

21 (7) This section does not apply to insurers who have
22 discontinued writing in accordance with an order issued by the
23 office ~~department~~.

24 (8) The commission ~~department~~ may adopt rules to
25 administer this section.

26 Section 808. Subsections (5) and (6) of section
27 624.4361, Florida Statutes, are amended to read:

28 624.4361 Definitions.--As used in ss. 624.436-624.446:

29 (5) "Statutory accounting principles" means generally
30 accepted accounting principles, except as modified by part I
31 of chapter 625 and by rules adopted by the commission

1 ~~department~~ which recognize the difference between an
2 arrangement and an insurer.

3 (6) "Surplus notes" means funds borrowed by a
4 multiple-employer welfare arrangement which result in a
5 written instrument which includes all of the following:

6 (a) The effective date, amount, interest, and parties
7 involved are clearly set forth.

8 (b) The principal sum and any interest accrued thereon
9 are subject to and subordinate to all other liabilities of the
10 multiple-employer welfare arrangement.

11 (c) The instrument states that the parties agree that
12 the multiple-employer welfare arrangement shall satisfy the
13 office ~~department~~ that all claims of participants and general
14 creditors of the organization have been paid or otherwise
15 discharged prior to any payment of interest or repayment of
16 principal.

17 (d) The instrument is executed by both parties and a
18 certified copy of the instrument is filed with the office
19 ~~department~~.

20 (e) The parties agree not to modify, terminate, or
21 cancel the surplus note without the prior approval of the
22 office ~~department~~.

23 Section 809. Subsections (2) and (4) of section
24 624.437, Florida Statutes, are amended to read:

25 624.437 "Multiple-employer welfare arrangement"
26 defined; certificate of authority required; penalty.--

27 (2) No person shall operate, maintain, or, after
28 October 1, 1983, establish a multiple-employer welfare
29 arrangement unless such arrangement has a valid certificate of
30 authority issued by the office ~~department~~.

31

1 (4)(a) Any person failing to hold a subsisting
2 certificate of authority from the office ~~department~~ while
3 operating or maintaining a multiple-employer welfare
4 arrangement shall be subject to a fine of not less than \$5,000
5 or more than \$100,000 for each violation.

6 (b) Any person who operates or maintains a
7 multiple-employer welfare arrangement without a subsisting
8 certificate of authority from the office ~~department~~ shall be
9 subject to the cease and desist penalty powers of the office
10 ~~department~~ as set forth in ss. 626.9571, 626.9581, 626.9591,
11 and 626.9601.

12 (c)1. Any person who operates or maintains a
13 multiple-employer welfare arrangement without a subsisting
14 certificate of authority as required under this section
15 commits a felony of the third degree, punishable as provided
16 in s. 775.082 or s. 775.083.

17 2. Except as provided in subparagraph 1., any person
18 who violates the provisions of ss. 624.437-624.446 commits a
19 misdemeanor of the first degree, punishable as provided in s.
20 775.082 or s. 775.083.

21 (d) In addition to the penalties and other enforcement
22 provisions of the Florida Insurance Code, the office
23 ~~department~~ is vested with the power to seek both temporary and
24 permanent injunctive relief when:

25 1. A multiple-employer welfare arrangement is being
26 operated by any person or entity without a subsisting
27 certificate of authority.

28 2. Any person, entity, or multiple-employer welfare
29 arrangement has engaged in any activity prohibited by the
30 Florida Insurance Code or by any rule adopted pursuant
31 thereto.

1 3. Any multiple-employer welfare arrangement, person,
2 or entity is renewing, issuing, or delivering a policy,
3 contract, certificate, summary plan description, or other
4 evidence of the benefits and coverages provided to employees
5 or employee family members without a subsisting certificate of
6 authority.

7
8 The office's ~~department's~~ authority to seek injunctive relief
9 shall not be conditioned on having conducted any proceeding
10 pursuant to chapter 120. The authority vested in the office
11 ~~department~~ by virtue of the operation of this section shall
12 not act to reduce any other enforcement remedy or power to
13 seek injunctive relief that may otherwise be available to the
14 office ~~department~~.

15 Section 810. Subsections (5) and (6) of section
16 624.438, Florida Statutes, are amended to read:

17 624.438 General eligibility.--

18 (5) The office ~~department~~ shall not grant or continue
19 a certificate of authority for any arrangement if the office
20 ~~department~~ determines any trustee, manager, or administrator
21 to be incompetent, untrustworthy, or so lacking in insurance
22 expertise as to make the operations of the arrangement
23 hazardous to potential and existing insureds; that any
24 trustee, manager, or administrator has been found guilty of,
25 or has pled guilty or no contest to a felony, a crime
26 involving moral turpitude, or a crime punishable by
27 imprisonment of 1 year or more under the law of any state,
28 territory, or country, whether or not a judgment or conviction
29 has been entered; that any trustee, manager, or administrator
30 has had any type of insurance license revoked in this or any
31 other state; or that the business operations of the

1 arrangement are or have been marked, to the detriment of the
2 employers participating in the arrangement, of persons
3 receiving benefits from the arrangement, or of creditors or
4 the public, by the improper manipulation of assets, accounts,
5 or specific excess insurance or by bad faith.

6 (6) To qualify for and retain approval to transact
7 business, an arrangement shall make all contracts with
8 administrators or service companies available for inspection
9 by the office ~~department~~ initially, and annually thereafter
10 upon reasonable notice.

11 Section 811. Section 624.439, Florida Statutes, is
12 amended to read:

13 624.439 Filing of application.--The sponsoring
14 association shall file with the office ~~department~~ an
15 application for a certificate of authority upon a form to be
16 adopted by the commission and furnished by the office
17 ~~department~~, signed under oath by officers of the trust, which
18 shall include or have attached the following:

19 (1) A copy of the articles of incorporation,
20 constitution, and bylaws of the association, if any.

21 (2) A list of the names, addresses, and official
22 capacities within the arrangement of the individuals who are
23 to be responsible for the management of and the conduct of the
24 affairs of the arrangement, including all trustees, officers,
25 and directors. Such individuals shall fully disclose to the
26 office ~~department~~ the extent and nature of any contracts or
27 arrangements between themselves and the arrangement, including
28 any possible conflicts of interest.

29 (3) A copy of the articles of incorporation, bylaws,
30 or trust agreement which governs the operation of the
31 arrangement.

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

7 (a) The rates are not inadequate.

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

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

13 (5) A copy of the fidelity bond in an amount equal to
14 not less than 10 percent of the funds handled annually and
15 issued in the name of the arrangement covering its trustees,
16 directors, officers, employees, administrator, or other
17 individuals managing or handling the funds or assets of the
18 arrangement. In no case may such bond be less than \$50,000 or
19 more than \$500,000, except that the office ~~department~~, after
20 due notice to all interested parties and opportunity for
21 hearing, and after consideration of the record, may prescribe
22 an amount in excess of \$500,000, subject to the 10-percent
23 limitation of the preceding sentence.

24 (6)(a) A copy of the arrangement's excess insurance
25 agreement, which shall provide that the net retention level
26 for any one risk shall not exceed \$50,000, and which shall
27 otherwise be in accordance with sound actuarial principles.

28 (b) The office ~~department~~ may waive or modify the
29 maximum net retention requirement if:

30 1. The excess insurance is not available for a
31 reasonable cost; or

1 2. The arrangement:

2 a. Has 150 percent of the statutory reserve
3 requirement as specified in s. 624.441;

4 b. Has a fund balance in excess of that required by
5 statute; and

6 c. Has a ratio of current assets to current
7 liabilities of at least 2.0 to 1.0.

8 (7)(a) A feasibility study, done by an independent
9 qualified actuary and an independent certified public
10 accountant, determined by the office ~~department~~ to
11 satisfactorily address market potential, market penetration,
12 market competition, operating expenses, gross revenues, net
13 income, total assets and liabilities, cash flow, and such
14 other items as the office or commission ~~department~~ may
15 reasonably requires ~~require~~. The study shall be for the
16 greater of 3 years or until the arrangement has been projected
17 to be profitable for 12 consecutive months. The study must
18 show that the arrangement would not, at any month-end of the
19 projection period, have less than the minimum statutory
20 deposit as required by s. 624.441 or have a fund balance less
21 than the amount required by s. 624.4392.

22 (b) The feasibility study shall reflect and support
23 that initial gross premiums for the first year of operation
24 will be at least \$100,000.

25 (8) Evidencesatisfactory to the office ~~department~~
26 showing that the arrangement will be operated in accordance
27 with sound actuarial principles. The office ~~department~~ shall
28 not approve the arrangement unless the office ~~department~~
29 determines that the plan is designed to provide sufficient
30 revenues to pay current and future liabilities, as determined
31 in accordance with sound actuarial principles.

1 (9) Confirmation of insolvency protection as required
2 by s. 624.441.

3 (10) A copy of each contract between the arrangement
4 and any administrator or service company which may be made
5 available for review rather than filed or attached.

6 (11) Such additional information as the office or
7 commission ~~department~~ may reasonably requires ~~require~~.

8 Section 812. Subsections (1) and (3) of section
9 624.4392, Florida Statutes, are amended to read:

10 624.4392 Fund balance.--

11 (1) Each multiple-employer welfare arrangement
12 licensed on or after October 1, 1991, shall have a fund
13 balance equal to \$200,000 before a certificate of authority
14 may be issued by the office ~~department~~. After it has received
15 a certificate of authority, the arrangement must maintain a
16 fund balance equal to \$100,000 or 10 percent of total
17 liabilities, whichever is greater.

18 (3) The office ~~department~~ shall order the arrangement
19 to assess participating employers at any time the fund balance
20 does not meet the requirements of this section.

21 Section 813. Section 624.44, Florida Statutes, is
22 amended to read:

23 624.44 Examination by the office ~~department~~.--

24 (1)(a) The office ~~department~~ shall examine the
25 affairs, transactions, accounts, business records, and assets
26 of any multiple-employer welfare arrangement as often as it
27 deems necessary for the protection of the people of the state,
28 but not less frequently than once every 3 years. For the
29 purpose of examinations, the office ~~department~~ may administer
30 oaths and examine the trustees, directors, officers, and
31 agents of an arrangement concerning its business and affairs.

1 (b) The expenses of examination of each arrangement by
2 the office ~~are department shall be~~ subject to the same terms
3 and conditions as apply to insurers under part II.

4 (c) The office ~~department~~ may contract, at reasonable
5 fees for work performed, with qualified, impartial, outside
6 sources to perform audits or examinations or portions thereof
7 to determine continued compliance with the requirements of ss.
8 624.436-624.446. Any contracted assistance shall be under
9 direct supervision of the office ~~department~~. The results of
10 any contracted assistance shall be subject to review,
11 approval, disapproval, or modification by the office
12 ~~department~~.

13 (2) If the office ~~department~~ preliminarily finds that
14 an arrangement is insolvent, the office ~~department~~ shall
15 notify the arrangement of such insolvency. Upon being so
16 notified, the arrangement shall within 15 days file with the
17 office ~~department~~ all information that proves that the
18 arrangement is not insolvent.

19 (3) If the arrangement fails within the 15-day period
20 provided in subsection (2) to supply information showing to
21 the satisfaction of the office ~~department~~ that the arrangement
22 is not insolvent, the office ~~department~~ may:

- 23 (a)1. Suspend any new enrollment;
24 2. Suspend or revoke the arrangement's certificate of
25 authority; or
26 3. Place the arrangement in administrative supervision
27 under s. 624.80; or

28 (b) For the purposes of dissolution, liquidation, or
29 rehabilitation, place the arrangement under the supervision of
30 the department pursuant to chapter 631.

31

1 Section 814. Subsections (2) and (3) of section
2 624.441, Florida Statutes, are amended to read:

3 624.441 Insolvency protection.--

4 (2) All income from deposits shall belong to the
5 depositing arrangement and shall be paid to it as it becomes
6 available. An arrangement that has made a securities deposit
7 may withdraw that deposit, or any part thereof, after making a
8 substitute deposit of cash, securities, or any combination of
9 these or other measures of equal amount and value, upon
10 approval by the office and department. No judgment creditor
11 or other claimant of a multiple-employer welfare association
12 shall have the right to levy upon any of the assets or
13 securities held in this state as a deposit under this section.

14 (3) Deposits of securities or cash pursuant to this
15 section shall be administered by the office and department in
16 accordance with part III of chapter 625.

17 Section 815. Section 624.4411, Florida Statutes, is
18 amended to read:

19 624.4411 Administrative, provider, and management
20 contracts.--

21 (1) The office ~~department~~ may require a
22 multiple-employer welfare arrangement to submit any contract
23 for administrative services, contract with a provider other
24 than an individual physician, contract for management
25 services, or contract with an affiliated person to the office
26 ~~department~~, if the office ~~department~~ has reason to believe
27 that the arrangement has entered into a contract which
28 requires it to pay a fee which is unreasonably high in
29 relation to the services provided. Multiple-employer welfare
30 arrangements are prohibited from paying a fee to a sponsoring
31

1 association unless such fee is directly related to services
2 provided by the association for the arrangement.

3 (2) After review of a contract, the office ~~department~~
4 may order the arrangement to cancel the contract in accordance
5 with the terms of the contract and applicable law if the
6 office ~~department~~ determines that the fees to be paid by the
7 arrangement under the contract are so unreasonably high in
8 relation to the services provided that the contract is
9 detrimental to the policyholders or certificateholders of the
10 arrangement.

11 (3) All contracts for administrative services,
12 management services, and provider services other than
13 individual physician contracts, and all contracts with
14 affiliated entities, entered into or renewed by an arrangement
15 on or after October 1, 1991, shall contain a provision that
16 the contract shall be canceled upon issuance of an order by
17 the office ~~department~~ pursuant to this section.

18 Section 816. Section 624.4412, Florida Statutes, is
19 amended to read:

20 624.4412 Policy forms.--

21 (1) No policy or contract form, application form,
22 certificate, rider, endorsement, summary plan description, or
23 other evidence of coverage shall be issued by an arrangement
24 unless the form and all changes thereto have been filed with
25 the office ~~department at its offices in Tallahassee~~ by or on
26 behalf of the arrangement which proposes to use such form and
27 have been approved by the office ~~department~~. Filing of all
28 forms shall be in accordance with the provisions of s.
29 627.410(2).

30
31

1 (2) The office ~~department~~ shall disapprove any form
2 filed under this section, or withdraw any previous approval
3 thereof, only if the form:

4 (a) Is in any respect in violation of, or does not
5 comply with, this code;

6 (b) Contains or incorporates by reference, where such
7 incorporation is otherwise permissible, any inconsistent,
8 ambiguous, or misleading clauses, or exceptions and conditions
9 which deceptively affect the risk purported to be assumed in
10 the general coverage of the contract;

11 (c) Has any title, heading, or other indication of its
12 provisions which is misleading;

13 (d) Is printed or otherwise reproduced in such manner
14 as to render any material provision of the form substantially
15 illegible; or

16 (e) Contains provisions which are unfair or
17 inequitable, or contrary to the public policy of this state or
18 which encourage misrepresentation.

19 Section 817. Section 624.442, Florida Statutes, is
20 amended to read:

21 624.442 Annual reports; actuarial certification;
22 quarterly reports; penalties.--

23 (1) Every arrangement shall, annually within 3 months
24 after the end of the fiscal year or within such extension of
25 time therefor as the office ~~department~~ for good cause may
26 grant, file a report with the office ~~department~~, on forms
27 prescribed by the commission ~~department~~, verified by the oath
28 of a member of the board of trustees and by an administrative
29 executive appointed by the board, showing its condition on the
30 last day of the preceding fiscal year. The report shall
31 contain an audited financial statement of the arrangement

1 prepared in accordance with statutory accounting principles,
2 including its balance sheet and a statement of operations for
3 the preceding year certified by an independent certified
4 public accountant. The report shall also include an analysis
5 of the adequacy of reserves and contributions or premiums
6 charged, based on a review of past and projected claims and
7 expenses.

8 (2) In addition to information called for and
9 furnished in connection with the annual report, if reasonable
10 grounds exist, the office ~~department~~ may request information
11 which summarizes paid and incurred expenses, and contributions
12 or premiums received, and may request evidence satisfactory to
13 the office ~~department~~ that the arrangement is actuarially
14 sound. Such information and evidence shall be furnished to
15 the office ~~department~~ by the arrangement as soon as reasonably
16 possible after requested by the office ~~department~~, but not
17 later than 30 days after such request, unless the office
18 ~~department~~, for good cause, grants an extension.

19 (3) Annually, in conjunction with the annual report
20 required by subsection (1), each arrangement shall submit an
21 actuarial certification prepared by an independent actuary
22 certifying that:

23 (a) The arrangement is actuarially sound. The
24 certification shall consider the rates, benefits, and expenses
25 of, and any other funds available for the payment of the
26 obligations of, the arrangement.

27 (b) The rates being charged and to be charged for
28 contracts are actuarially adequate through the end of the
29 period for which rates have been guaranteed.

30 (c) Incurred but not reported claims and claims
31 reported but not fully paid have been adequately provided for.

1 (d) Such other information relating to the performance
2 of the arrangement as the commission or office ~~department~~
3 requires.

4 (4) Each arrangement shall file quarterly, within 45
5 days after the end of each of its four quarterly reporting
6 periods, an unaudited financial statement of the arrangement
7 on forms prescribed by the commission ~~department~~, verified
8 according to the best of their information, knowledge, and
9 belief by the oath of a member of the board of trustees and by
10 an administrative executive appointed by the board showing its
11 condition on the last day of the preceding quarter.

12 (5) Any arrangement that fails to file an annual
13 financial report, actuarial report, or quarterly financial
14 report in the form and within the time required by this
15 section shall forfeit to the office ~~department~~ an amount set
16 by order of the office ~~department~~ which does not exceed \$1,000
17 for each of the first 10 days of noncompliance and does not
18 exceed \$2,000 for each subsequent day of noncompliance. Upon
19 notice by the office ~~department~~ that the arrangement is not in
20 compliance with this section, the arrangement's authority to
21 enroll new enrollees or to do business in this state ceases
22 until the office ~~department~~ determines the arrangement to be
23 in compliance. The office ~~department~~ may not collect more
24 than \$100,000 under this paragraph with respect to any
25 particular report.

26 (6) All moneys collected by the office ~~department~~
27 under this section shall be deposited to the credit of the
28 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

29 (7) Each authorized arrangement must retain an
30 independent certified public accountant, referred to in this
31 subsection as "CPA," who agrees by written contract with the

1 arrangement to comply with ss. 624.436-624.445. The contract
2 must state that:

3 (a) The CPA will provide to the arrangement audited
4 financial statements consistent with ss. 624.436-624.445.

5 (b) Any determination by the CPA that the arrangement
6 does not meet the minimum surplus requirements set forth in
7 ss. 624.436-624.445 will be stated by the CPA, in writing, in
8 the audited financial statement.

9 (c) The completed workpapers and any written
10 communications between the CPA and the arrangement will be
11 made available for review on a visual inspection-only basis by
12 the office department at the location offices of the
13 arrangement, the office department, or any other reasonable
14 place agreeable to both the office department and the
15 arrangement.

16 (d) The CPA will retain for review the workpapers and
17 written communications with the arrangement for not less than
18 6 years.

19 Section 818. Section 624.443, Florida Statutes, is
20 amended to read:

21 624.443 Place of business; maintenance of
22 records.--Each arrangement shall have and maintain its
23 principal place of business in this state and shall therein
24 make available to the office department complete records of
25 its assets, transactions, and affairs in accordance with such
26 methods and systems as are customary for, or suitable to, the
27 kind or kinds of business transacted.

28 Section 819. Section 624.4431, Florida Statutes, is
29 amended to read:

30 624.4431 Administration; rules.--The administration of
31 ss. 624.436-624.446 is vested in the commission and office

1 ~~department~~. The commission may ~~department has authority to~~
2 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
3 the provisions of ss. 624.436-624.446.

4 Section 820. Section 624.444, Florida Statutes, is
5 amended to read:

6 624.444 Suspension, revocation of approval.--

7 (1) The office ~~department~~ shall deny, suspend, or
8 revoke an arrangement's certificate of authority if it finds
9 that the arrangement:

10 (a) Is insolvent;

11 (b) Is using such methods and practices in the conduct
12 of its business as to render its further transaction of
13 business in this state hazardous or injurious to its
14 participating employers, covered employees and dependents, or
15 to the public;

16 (c) Has failed to pay any final judgment rendered
17 against it in this state within 60 days after the judgment
18 became final;

19 (d) Is in violation of any provision of this chapter,
20 including any requirements for the granting of a certificate
21 of authority;

22 (e) Is no longer actuarially sound or the arrangement
23 does not have the minimum surplus required by this chapter; or

24 (f) The existing contract rates are inadequate.

25 (2) The office ~~department~~ may, in its discretion,
26 deny, suspend, or revoke the certificate of authority of any
27 arrangement if it finds that the arrangement:

28 (a) Has violated any lawful order or rule of the
29 office or commission ~~department~~ or any applicable provision of
30 the Florida Insurance Code; or

31

1 (b) Has refused to be examined or to produce its
2 accounts, records, and files for examination, or if any of its
3 officers have refused to give information with respect to its
4 affairs or to perform any other legal obligation as to such
5 examination, when required by the office ~~department~~.

6 (3) Whenever the financial condition of the
7 arrangement is such that, if not modified or corrected, its
8 continued operation would result in impairment or insolvency,
9 the department may order the arrangement to file with the
10 office ~~department~~ and implement a corrective action plan
11 designed to do one or more of the following:

12 (a) Reduce the total amount of present potential
13 liability for benefits by reinsurance or other means.

14 (b) Reduce the volume of new business being accepted.

15 (c) Reduce the expenses of the arrangement by
16 specified methods.

17 (d) Suspend or limit the writing of new business for a
18 specified period of time.

19 (e) Require an increase in the arrangement's net
20 worth.

21
22 If the arrangement fails to submit a plan within 30 days after
23 the office's ~~department's~~ order, or if the plan submitted is
24 insufficient to correct the arrangement's financial condition,
25 the office ~~department~~ may order the arrangement to implement
26 one or more of the corrective actions specified in this
27 subsection.

28 (4) In any order to suspend the authority of an
29 arrangement to enroll new subscribers, the office ~~department~~
30 shall specify the period during which the suspension is to be
31 in effect and the conditions, if any, which must be met by the

1 arrangement prior to reinstatement of its authority to enroll
2 new subscribers. The order of suspension is subject to
3 rescission or modification by further order of the office
4 ~~department~~ prior to the expiration of the suspension period.
5 An arrangement's authority to enroll new subscribers shall not
6 be reinstated unless it requests reinstatement, and shall not
7 be reinstated if the office ~~department~~ finds that the
8 circumstances that gave rise to the suspension still exist.

9 Section 821. Subsection (2) of section 624.445,
10 Florida Statutes, is amended to read:

11 624.445 Order, notice, duration, effect of suspension
12 or revocation; administrative fine.--

13 (2) If the office ~~department~~ finds that one or more
14 grounds exist for the discretionary revocation or suspension
15 of an arrangement's certificate of authority under ss.
16 624.436-624.446, the office ~~department~~ may, in lieu of or in
17 addition to such revocation or suspension, impose a fine upon
18 such arrangement, in accordance with s. 624.4211.

19 Section 822. Section 624.4435, Florida Statutes, is
20 transferred, renumbered as section 624.448, Florida Statutes,
21 and amended to read:

22 624.448 ~~624.4435~~ Assets of insurers; reporting
23 requirements.--

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

25 (a) "Material acquisition of assets" or "material
26 disposition of assets" means one or more transactions
27 occurring during any 30-day period which are nonrecurring and
28 not in the ordinary course of business and involve more than 5
29 percent of the reporting insurer's total admitted assets as
30 reported in its most recent statutory statement filed with the
31 insurance department of the insurer's state of domicile.

- 1 (b) "Material nonrenewal, cancellation, or revision of
2 a ceded reinsurance agreement" is one that affects:
- 3 1. With respect to property and casualty business,
4 including accident and health business written by a property
5 and casualty insurer:
- 6 a. More than 50 percent of the insurer's total ceded
7 written premium; or
- 8 b. More than 50 percent of the insurer's total ceded
9 indemnity and loss adjustment reserves.
- 10 2. With respect to life, annuity, and accident and
11 health business, more than 50 percent of the total reserve
12 credit taken for business ceded, on an annualized basis, as
13 indicated in the insurer's most recent annual statement.
- 14 3. With respect to property and casualty business or
15 life, annuity, and accident and health business, a material
16 revision includes:
- 17 a. The replacement of an authorized reinsurer
18 representing more than 10 percent of a total cession by one or
19 more unauthorized reinsurers; or
- 20 b. The reduction or waiver, with respect to one or
21 more unauthorized insurers, of previously established
22 collateral requirements representing more than 10 percent of a
23 total cession.
- 24 (2) Each domestic insurer shall file a report with the
25 office ~~Department of Insurance~~ disclosing a material
26 acquisition of assets, a material disposition of assets, or a
27 material nonrenewal, cancellation, or revision of a ceded
28 reinsurance agreement, unless the material acquisition or
29 disposition of assets or the material nonrenewal,
30 cancellation, or revision of a ceded reinsurance agreement has
31 been submitted to the office ~~department~~ for review, approval,

1 or informational purposes under another section of the Florida
2 Insurance Code or a rule adopted thereunder. A copy of the
3 report and each exhibit or other attachment must be filed by
4 the insurer with the National Association of Insurance
5 Commissioners. The report required in this section is due
6 within 15 days after the end of the calendar month in which
7 the transaction occurs.

8 (3) An immaterial acquisition or disposition of assets
9 need not be reported under this section.

10 (4)(a) Acquisitions of assets which are subject to
11 this section include each purchase, lease, exchange, merger,
12 consolidation, succession, or other acquisition of assets.
13 Asset acquisitions for the construction or development of real
14 property by or for the reporting insurer and the acquisition
15 of construction materials for this purpose are not subject to
16 this section.

17 (b) Dispositions of assets which are subject to this
18 section include each sale, lease, exchange, merger,
19 consolidation, mortgage, hypothecation, assignment for the
20 benefit of a creditor or otherwise, abandonment, destruction,
21 or other disposition of assets.

22 (5)(a) The following information must be disclosed in
23 any report of a material acquisition or disposition of assets:

- 24 1. The date of the transaction;
- 25 2. The manner of acquisition or disposition;
- 26 3. The description of the assets involved;
- 27 4. The nature and amount of the consideration given or
28 received;
- 29 5. The purpose of, or reason for, the transaction;
- 30 6. The manner by which the amount of consideration was
31 determined;

1 7. The gain or loss recognized or realized as a result
2 of the transaction; and

3 8. The name of the person from whom the assets were
4 acquired or to whom they were disposed.

5 (b) Insurers must report material acquisitions or
6 dispositions on a nonconsolidated basis unless the insurer is
7 part of a consolidated group of insurers which uses a pooling
8 arrangement or a 100-percent reinsurance agreement that
9 affects the solvency and integrity of the insurer's reserves
10 and the insurer has ceded substantially all of its direct and
11 assumed business to the pool. An insurer is deemed to have
12 ceded substantially all of its direct and assumed business to
13 a pool if the insurer has less than \$1 million in total direct
14 and assumed written premiums during a calendar year which are
15 not subject to a pooling arrangement and if the net income of
16 the business which is not subject to the pooling arrangement
17 represents less than 5 percent of the insurer's capital and
18 surplus.

19 (6) The nonrenewal, cancellation, or revision of a
20 ceded reinsurance agreement need not be reported if the
21 renewal or the revision is not material or if:

22 (a) With respect to property and casualty business,
23 including accident and health business written by a property
24 and casualty insurer, the insurer's total ceded written
25 premium represents, on an annualized basis, less than 10
26 percent of its total written premium for direct and assumed
27 business; or

28 (b) With respect to life, annuity, and accident and
29 health business, the total reserve credit taken for business
30 ceded represents, on an annualized basis, less than 10 percent
31 of the statutory reserve requirement before the cession.

1 (7)(a) The following information must be disclosed in
2 any report of a material nonrenewal, cancellation, or revision
3 of a ceded reinsurance agreement:

4 1. The effective date of the nonrenewal, cancellation,
5 or revision;

6 2. The description of the transaction and the
7 identification of the initiator of the transaction;

8 3. The purpose of, or reason for, the transaction; and

9 4. If applicable, the identity of each replacement
10 reinsurer.

11 (b) Insurers shall report the material nonrenewal,
12 cancellation, or revision of a ceded reinsurance agreement on
13 a nonconsolidated basis unless the insurer is part of a
14 consolidated group of insurers which uses a pooling
15 arrangement or a 100-percent reinsurance agreement that
16 affects the solvency and integrity of the insurer's reserves
17 and the insurer has ceded substantially all of its direct and
18 assumed business to the pool. An insurer is deemed to have
19 ceded substantially all of its direct and assumed business to
20 a pool if the insurer has less than \$1 million in total direct
21 and assumed written premiums during a calendar year which are
22 not subject to a pooling arrangement and if the net income of
23 the business not subject to the pooling arrangement represents
24 less than 5 percent of the insurer's capital and surplus.

25 Section 823. Subsection (1) of section 624.45, Florida
26 Statutes, is amended to read:

27 624.45 Participation of financial institutions in
28 reinsurance and in insurance exchanges.--Subject to applicable
29 laws relating to financial institutions and to any other
30 applicable provision of the Florida Insurance Code, any
31 financial institution or aggregation of such institutions may:

1 (1) Own or control, directly or indirectly, any
2 insurer which is authorized or approved by the office
3 ~~department~~, which insurer transacts only reinsurance in this
4 state and which actively engages in reinsuring risks located
5 in this state.

6
7 Nothing in this section shall be deemed to prohibit a
8 financial institution from engaging in any presently
9 authorized insurance activity.

10 Section 824. Subsections (1), (2), (3), (4), (5), and
11 (6) of section 624.4621, Florida Statutes, are amended to
12 read:

13 624.4621 Group self-insurance funds.--

14 (1) The commission ~~department~~ shall adopt rules that
15 allow two or more employers to enter into agreements to pool
16 their liabilities under chapter 440 for the purpose of
17 qualifying as a group self-insurer's fund, which shall be
18 classified as a self-insurer, and each employer member of such
19 approved group shall be known as a group self-insurer's fund
20 member and shall be classified as a self-insurer as defined in
21 chapter 440. The agreement entered into under this section may
22 provide that the pool will be liable for 80 percent, and the
23 employer member will be liable for 20 percent, of the medical
24 benefits due any employee for an injury compensable under this
25 chapter up to the amount of \$5,000. One hundred percent of the
26 medical benefits above \$5,000 due to an employee for one
27 injury shall be paid by the pool. The agreement may also
28 provide that each employer member will be responsible for up
29 to the first \$500 of medical benefits due each of its
30 employees for each injury. The claim shall be paid by the
31 pool, regardless of its size, which shall be reimbursed by the

1 employer for any amounts required to be paid by the employer
2 under the agreement.

3 (2) The commission ~~department~~ shall adopt rules:

4 (a) Requiring monetary reserves to be maintained by
5 such self-insurers to insure their financial solvency; and

6 (b) Governing their organization and operation to
7 assure compliance with such requirements.

8 (3) The commission ~~department~~ shall adopt rules
9 implementing the reserve requirements in accordance with
10 accepted actuarial techniques.

11 (4) Any self-insurer established under this section,
12 except for self-insurers that are state or local governmental
13 entities, is required to carry reinsurance in accordance with
14 rules adopted by the commission ~~department~~.

15 (5) A dividend or premium refund of any self-insurer
16 established under this section, otherwise earned, may not be
17 made contingent upon continued membership in the fund, renewal
18 of any policy, or the payment of renewal premiums for
19 membership in the fund or on any policy issued by such
20 self-insurer. Before making any dividend or premium refund,
21 the group self-insurer shall submit to the office ~~department~~
22 the following information:

23 (a) An audited certified financial statement.

24 (b) An annual report of financial condition.

25 (c) A loss reserve review by a qualified actuary.

26
27 The required information listed in paragraphs (a)-(c) shall be
28 submitted annually, no later than 7 months after the end of
29 the group self-insurer's fund year. A request for such
30 dividend or premium refund may not be made before the required
31 information is filed. The request for such dividend or premium

1 refund must include a resolution of the board of trustees of
2 the group self-insurer requesting approval of a specific
3 amount to be distributed. A dividend, premium refund, or
4 premium discount or credit must not discriminate on the basis
5 of continued coverage or continued membership in the group
6 self-insurer. The office ~~department~~ shall review the request
7 and shall issue a decision within 60 days after the filing.
8 Failure to issue a decision within 60 days constitutes an
9 approval of the request. Any dividend or premium refund
10 approved by the office ~~department~~ for distribution which
11 cannot be paid to the applicable member or policyholder or
12 former member or policyholder of the group self-insurer
13 because the former member or policyholder cannot be reasonably
14 located shall become the property of the group self-insurer.

15 (6) The office ~~department~~ may impose civil penalties
16 not to exceed \$100 per occurrence for violations of the
17 provisions of this chapter or rules adopted pursuant hereto.

18 Section 825. Section 624.4622, Florida Statutes, is
19 amended to read:

20 624.4622 Local government self-insurance funds.--

21 (1) Any two or more local governmental entities may
22 enter into interlocal agreements for the purpose of securing
23 the payment of benefits under chapter 440, provided the local
24 government self-insurance fund that is created must:

25 (a) Have annual normal premiums in excess of \$5
26 million;

27 (b) Maintain a continuing program of excess insurance
28 coverage and reserve evaluation to protect the financial
29 stability of the fund in an amount and manner determined by a
30 qualified and independent actuary;

31

1 (c) Submit annually an audited fiscal year-end
2 financial statement by an independent certified public
3 accountant within 6 months after the end of the fiscal year to
4 the office ~~department~~; and

5 (d) Have a governing body which is comprised entirely
6 of local elected officials.

7 (2) A local government self-insurance fund that meets
8 the requirements of this section is not subject to s. 624.4621
9 and is not required to file any report with the office
10 ~~department~~ under s. 440.38(2)(b) which is uniquely required of
11 group self-insurer funds qualified under s. 624.4621. If any
12 of the requirements of this section are not met, the local
13 government self-insurance fund is subject to the requirements
14 of s. 624.4621.

15 Section 826. Section 624.464, Florida Statutes, is
16 amended to read:

17 624.464 Certificate of authority required;
18 penalties.--

19 (1) No person shall establish a commercial
20 self-insurance fund unless such fund is issued a certificate
21 of authority by the office ~~department~~ pursuant to s. 624.466.

22 (2)(a) Any person failing to hold a subsisting
23 certificate of authority from the office ~~department~~ while
24 operating or maintaining a commercial self-insurance fund
25 shall be subject to a fine of not less than \$5,000 or more
26 than \$10,000 for each violation.

27 (b) Any person who operates or maintains a commercial
28 self-insurance fund without a subsisting certificate of
29 authority from the office ~~department~~ shall be subject to the
30 cease and desist penalty powers of the office ~~department~~ as
31 set forth in ss. 626.9571, 626.9581, 626.9591, and 626.9601.

1 (c) In addition to the penalties and other enforcement
2 provisions of the Florida Insurance Code, the office
3 ~~department~~ is vested with the power to seek both temporary and
4 permanent injunctive relief when:

5 1. A commercial self-insurance fund is being operated
6 by any person or entity without a subsisting certificate of
7 authority.

8 2. Any person, entity, or commercial self-insurance
9 fund has engaged in any activity prohibited by the Florida
10 Insurance Code made applicable by ss. 624.460-624.488 or by
11 any rule adopted pursuant thereto.

12 3. Any commercial self-insurance fund, person, or
13 entity is renewing, issuing, or delivering a policy, contract,
14 certificate, summary plan description, or other evidence of
15 the benefits and coverages provided to members without a
16 subsisting certificate of authority.

17
18 The office's ~~department's~~ authority to seek injunctive relief
19 shall not be conditioned on having conducted any proceeding
20 pursuant to chapter 120. The authority vested in the office
21 ~~department~~ by virtue of the operation of this section shall
22 not act to reduce any other enforcement remedy or power to
23 seek injunctive relief that may otherwise be available to the
24 office ~~department~~.

25 Section 827. Section 624.466, Florida Statutes, is
26 amended to read:

27 624.466 Application requirements for certificate of
28 authority.--All applications for a certificate of authority
29 for a commercial self-insurance fund shall be on a form
30 adopted by the commission and furnished by the office
31 ~~department~~ and shall include or have attached the following:

1 (1) The name of the fund and the location of the
2 fund's principal office, which shall be maintained within this
3 state.

4 (2) The kinds of insurance initially proposed to be
5 transacted and a copy of each policy, endorsement, and
6 application form it initially proposes to issue or use.

7 (3) A copy of the constitution, bylaws, or trust
8 agreement which governs the operation of the fund. The
9 constitution, bylaws, or trust agreement shall contain a
10 provision prohibiting any distribution of surplus funds or
11 profit except to members of the fund, as approved by the
12 office ~~department~~ pursuant to s. 624.473.

13 (4) The names and addresses of the trustees of the
14 fund. The office ~~department~~ shall not grant or continue
15 approval as to any fund if the office ~~department~~ determines
16 any trustee to be incompetent or untrustworthy; that any
17 trustee has been found guilty of, or has pled guilty or no
18 contest to, a felony, a crime involving moral turpitude, or a
19 crime punishable by imprisonment of 1 year or more under the
20 law of any state, territory, or country, whether or not a
21 judgment or conviction has been entered; or that any trustee
22 has had any type of insurance license revoked in this or any
23 other state.

24 (5) A copy of a properly executed indemnity agreement
25 binding each fund member to individual, several, and
26 proportionate liability as set forth in ss. 624.472 and
27 624.474.

28 (6) A plan of risk management which has established
29 measures and procedures to minimize both the frequency and
30 severity of losses.

31

1 (7) Proof of competent and trustworthy persons to
2 administer or service the fund in the areas of claims
3 adjusting, underwriting, risk management, and loss control.

4 (8) Membership applications and the name and address
5 of each member applying for coverage and a current financial
6 statement on each member applying for coverage showing the
7 aggregate net worth of all members to be not less than
8 \$500,000, a combined ratio of current assets to current
9 liabilities of more than 1 to 1, and a combined working
10 capital of an amount establishing financial strength and
11 liquidity of the businesses to promptly provide for payment of
12 the normal property or casualty claims proposed to be
13 self-insured.

14 (9)(a) An initial deposit of cash or securities of the
15 type eligible for deposit by insurers under s. 625.52 in the
16 amount of \$100,000.

17 1. All income from deposits shall belong to the fund
18 and shall be transmitted to the fund as it becomes available.

19 2. No judgment creditor or other claimant of the fund
20 shall have the right to levy upon any of the assets or
21 securities held as a deposit under this section.

22 (b) In lieu of the deposit of cash or securities, a
23 fund may file with the office ~~department~~ a surety bond in like
24 amount. The bond shall be one issued by an authorized surety
25 insurer, shall be for the same purpose as the deposit in lieu
26 of which it is filed, and shall be subject to the office's
27 ~~department's~~ approval.

28 1. No bond shall be approved unless it covers
29 liabilities arising from all policies and contracts issued and
30 entered into during the time the bond is in effect and unless
31 the office ~~department~~ is satisfied that the bond provides the

1 same degree of security as would be provided by a deposit of
2 securities.

3 2. No bond shall be canceled or subject to
4 cancellation unless at least 60 days' advance notice thereof
5 in writing is filed with the office ~~department~~.

6 (c) Deposits of securities or cash pursuant to this
7 section shall be administered by the office and department in
8 accordance with part III of chapter 625.

9 (10)(a) Copies of acceptable excess insurance policies
10 written by an insurer or insurers authorized or approved to
11 transact insurance in this state, which excess insurance
12 provides specific and aggregate limits and retention levels
13 satisfactory to the office ~~department~~ in accordance with sound
14 actuarial principles. The office ~~department~~ may waive this
15 requirement if the fund demonstrates to the satisfaction of
16 the office ~~department~~ that its operation is and will be
17 actuarially sound without obtaining excess insurance.

18 (b) At least 10 days prior to the proposed effective
19 date of the issuance of any policy, the trustees shall submit
20 proof that the members have paid into a common claims fund in
21 a designated depository cash premiums in an amount of not less
22 than \$50,000 or 10 percent of the estimated annual premium of
23 the members at the inception, whichever is greater.

24 (11) A copy of a fidelity bond or insurance policy
25 from an authorized insurer providing coverage in an amount
26 equal to not less than 10 percent of the funds handled
27 annually and issued in the name of the fund covering its
28 trustees, employees, administrator, or other individuals
29 managing or handling the funds or assets of the fund. In no
30 case may such bond or policy be less than \$1,000 or more than
31 \$500,000, except that the office ~~department~~ may for good cause

1 prescribe an amount in excess of \$500,000, subject to the
2 10-percent limitation of the preceding sentence.

3 (12)(a) A plan of operation designed to provide
4 sufficient revenues to pay current and future liabilities, as
5 determined in accordance with sound actuarial principles.

6 (b) A statement prepared by an actuary who is a member
7 of the American Academy of Actuaries or the Casualty Actuarial
8 Society establishing that the fund has prepared a plan of
9 operation which is based on sound actuarial principles. The
10 office department shall not approve the fund unless the office
11 ~~department~~ determines that the plan established by the fund is
12 designed to provide sufficient revenues to pay current and
13 future liabilities, as determined in accordance with sound
14 actuarial principles.

15 (13) Such additional information as the commission or
16 office department ~~may reasonably requires~~ require.

17 Section 828. Subsections (1), (4), (6), (8), (9),
18 (10), and (12) of section 624.468, Florida Statutes, are
19 amended to read:

20 624.468 Continuing requirements for certificate of
21 authority.--After issuance of its initial certificate of
22 authority a commercial self-insurance fund shall thereafter
23 meet the following requirements as a condition of maintaining
24 its certificate of authority:

25 (1) Maintenance of competent and trustworthy persons
26 to service the program, as further specified in s. 624.466(7).
27 Written notice shall be provided to the office department
28 before changing the fund's method of fulfilling its servicing
29 requirements.

30
31

1 (4) Maintenance of excess insurance in accordance with
2 sound actuarial principles, unless waived by the office
3 ~~department~~, as further specified in s. 624.466(10).

4 (6) Maintenance of appropriate funded loss reserves
5 determined in accordance with sound actuarial principles
6 satisfactory to the office ~~department~~.

7 (8) Each fund shall have and maintain its principal
8 place of business in this state and shall therein make
9 available to the office ~~department~~ upon reasonable notice
10 complete records of its assets, transactions, and affairs in
11 accordance with such methods and systems as are customary for,
12 or suitable to, the kind or kinds of business transacted.

13 (9) A fund shall file such reports with the office
14 ~~department~~ as are required by s. 624.470.

15 (10) A fund shall report to the office ~~department~~
16 within 15 days of a determination that the actual premiums
17 written or liability assumed or any other factor which
18 substantially contributes to the financial condition of the
19 plan deviates by more than 25 percent from the projections
20 used in the most recent annual report, as required by s.
21 624.470 or, if the first annual report has not yet been filed,
22 projections used in the initial plan of operation.

23 (12) A fund shall maintain records which will confirm
24 that membership in the fund is in accordance with the
25 constitution or bylaws of the association as required by s.
26 624.462(3). The office ~~department~~ may request from the fund,
27 not more than annually, a certification which confirms that
28 all members of the fund are members of the association and are
29 in compliance with the constitution or bylaws of the
30 association and may require that the fund submit a plan,
31

1 acceptable to the office ~~department~~, to eliminate membership
2 that does not comply with s. 624.462(3).

3 Section 829. Paragraph (b) of subsection (1) and
4 subsection (2) of section 624.470, Florida Statutes, are
5 amended to read:

6 624.470 Annual reports.--

7 (1)

8 (b) For financial statements filed on or after January
9 1, 1998, future investment income may only be reported as an
10 admitted asset by an Assessable Mutual or Self-Insurance Fund
11 which reported future investment income in financial
12 statements filed with the Department of Insurance prior to
13 January 1, 1998.

14 (2) Every fund shall, annually within 6 months of the
15 end of the fiscal year, file a report with the office
16 ~~department~~ verified by the oath of a member of the board of
17 trustees or by an administrative executive appointed by the
18 board, containing the following information:

19 (a) A financial statement of the fund, including its
20 balance sheet and a statement of operations for the preceding
21 year certified by an independent certified public accountant.

22 (b) A report prepared by an actuary who is a member of
23 the American Academy of Actuaries as to the actuarial
24 soundness of the fund. The report shall consist of, but shall
25 not be limited to, the following:

26 1. Adequacy of premiums or contributions in paying
27 claims and changes, if any, needed in the contribution rates
28 to achieve or preserve a level of funding deemed adequate,
29 which shall include a valuation of present assets, based on
30 statement value, and prospective assets and liabilities of the
31 plan and the extent of any unfunded accrued liabilities.

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

3 3. A description and explanation of actuarial
4 assumptions.

5 4. A schedule illustrating the amortization of any
6 unfunded liabilities.

7 5. A comparative review illustrating the level of
8 funds available to the commercial self-insurance fund from
9 rates, investment income, and other sources realized over the
10 period covered by the report, indicating the assumptions used.

11 6. A projection of the following year's plan of
12 operation, including additional number of members, gross
13 premiums to be written, and projected liabilities.

14 7. A statement by the actuary that the report is
15 complete and accurate and that in her or his opinion the
16 techniques and assumptions used are reasonable and meet the
17 requirements of this subsection.

18 8. Other factors or statements as may be reasonably
19 required by the office or commission ~~department~~ in order to
20 determine the actuarial soundness of the plan.

21 (c) Any changes in the constitution, bylaws, or trust
22 agreement of the fund.

23 Section 830. Section 624.473, Florida Statutes, is
24 amended to read:

25 624.473 Dividends.--A commercial self-insurance fund
26 shall obtain the approval of the office ~~department~~ prior to
27 paying any dividend or refund to its members. No such dividend
28 or refund may be approved until 12 months after the last day
29 of the fiscal year for which the dividend or refund is
30 payable, or such later time as the office ~~department~~ may
31 require in accordance with sound actuarial principles.

1 Section 831. Section 624.4741, Florida Statutes, is
2 amended to read:

3 624.4741 Venue in assessment actions.--In any action
4 brought by a self-insurance fund to collect assessments levied
5 under this chapter, venue lies where the fund maintains its
6 principal place of business or, if the department, the office,
7 or the Florida Group Self-Insurers Guaranty Association is a
8 party to such action, in the Circuit Court of Leon County.

9 Section 832. Subsections (2), (3), and (4) of section
10 624.476, Florida Statutes, are amended to read:

11 624.476 Impaired self-insurance funds.--

12 (2) If any fund levies an assessment pursuant to
13 subsection (1), the office ~~department~~ shall require the fund
14 to consent to administrative supervision under part VI of this
15 chapter. The office ~~department~~ may waive the requirement to
16 consent to administrative supervision for good cause.

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

23 (4) Notwithstanding the requirement of the fund to
24 make an assessment pursuant to subsection (1) or subsection
25 (3), the office ~~department~~ may at any time request that the
26 department ~~to~~ be appointed receiver for purposes of
27 rehabilitation or liquidation if it is able to demonstrate
28 that any grounds for rehabilitation or liquidation exist
29 pursuant to s. 631.051 or s. 631.061.

30 Section 833. Section 624.477, Florida Statutes, is
31 amended to read:

1 624.477 Liquidation, rehabilitation, reorganization,
2 and conservation.--Any rehabilitation, liquidation,
3 conservation, or dissolution of a self-insurance fund shall be
4 conducted under the supervision of the office and department,
5 which shall each have all power with respect thereto granted
6 to the fund under part I of chapter 631 governing the
7 rehabilitation, liquidation, conservation, or dissolution of
8 insurers and including all grounds for the appointment of a
9 receiver contained in ss. 631.051 and 631.061.

10 Section 834. Section 624.480, Florida Statutes, is
11 amended to read:

12 624.480 Filing, approval, and disapproval of forms.--

13 (1) A basic insurance policy or application form for
14 which written application is required and is to be a part of
15 the policy or contract or printed rider or endorsement form
16 may not be issued by a self-insurance fund unless the form has
17 been filed with and approved by the office ~~department~~.

18 (2) Every such filing shall be made not less than 30
19 days in advance of any such use or delivery. At the expiration
20 of such 30 days, the form so filed shall be deemed approved
21 unless prior thereto it has been affirmatively approved or
22 disapproved by order of the office ~~department~~. The office
23 ~~department~~ may extend by not more than an additional 15 days
24 the period within which it may so affirmatively approve or
25 disapprove any such form, by giving notice of such extension
26 before expiration of the initial 30-day period. At the
27 expiration of any such period as so extended, and in the
28 absence of such prior affirmative approval or disapproval, any
29 such form must be deemed approved.

30 (3) The office ~~department~~ shall disapprove any form or
31 withdraw any previous approval thereof only, if the form:

1 (a) Is in any respect in violation of, or does not
2 comply with, this code.

3 (b) Contains or incorporates by reference, when such
4 incorporation is otherwise permissible, any inconsistent,
5 ambiguous, or misleading clauses, or any exceptions and
6 conditions which deceptively affect the risk purported to be
7 assumed in the general coverage of the contract.

8 (c) Has any title, heading, or other indication of its
9 provisions which is misleading.

10 (d) Is printed or otherwise reproduced in such manner
11 as to render any material provision of such form substantially
12 illegible.

13 Section 835. Subsections (1), (5), (6), (7), and (8)
14 of section 624.482, Florida Statutes, are amended to read:

15 624.482 Making and use of rates.--

16 (1) With respect to all classes of insurance which a
17 self-insurance fund underwrites, the rates must not be
18 excessive, inadequate, or unfairly discriminatory. In
19 determining what rates, including credits and surcharges, are
20 excessive, inadequate, or unfairly discriminatory, the office
21 ~~department~~ shall apply the same standards applicable to other
22 insurers regulated by the office ~~department~~.

23 (5) If the office ~~department~~ determines that the
24 continued use of a rate for a coverage endangers the solvency
25 of the fund, it may issue an order requiring the rate to be
26 increased or requiring the fund to limit or cease writing the
27 coverage.

28 (6) A fund shall have the burden of proving that a
29 rate filed is adequate if, during the first 5 years of issuing
30 policies, the fund files a rate that is below the rate for
31 loss and loss adjustment expenses for the same type and

1 classification of insurance that has been filed by the
2 Insurance Services Office and approved by the office
3 ~~department~~.

4 (7) Nothing herein shall be construed to prohibit the
5 office ~~department~~ from examining a fund pursuant to s.
6 624.3161.

7 (8) A self-insurance fund shall file its rates,
8 including credits and surcharge schedules, with the office
9 ~~department~~ for approval pursuant to the standards of this
10 section and the procedures of s. 624.480(2).

11 Section 836. Section 624.484, Florida Statutes, is
12 amended to read:

13 624.484 Registration of agent.--A self-insurance fund
14 shall register with and designate the Chief Financial Officer
15 ~~Insurance Commissioner~~ as its agent solely for the purpose of
16 receiving service of legal documents or process.

17 Section 837. Section 624.486, Florida Statutes, is
18 amended to read:

19 624.486 Examination.--Self-insurance funds licensed
20 under ss. 624.460-624.488 are subject to periodic examination
21 by the office ~~department~~ in the same manner and subject to the
22 same terms and conditions applicable to insurers under part II
23 of this chapter.

24 Section 838. Section 624.487, Florida Statutes, is
25 amended to read:

26 624.487 Enforcement of specified insurance provisions;
27 adoption of rules.--The office ~~department~~ may enforce, with
28 respect to group self-insurance funds established or operated
29 under s. 624.4621, the provisions of s. 624.316, s. 624.424,
30 s. 625.091, or s. 625.305 as they relate to workers'

31

1 compensation insurers, and the commission may adopt rules to
2 implement the enforcement authority granted by this section.

3 Section 839. Section 624.501, Florida Statutes, is
4 amended to read:

5 624.501 Filing, license, appointment, and
6 miscellaneous fees.--The department, commission, or office, as
7 appropriate, shall collect in advance, and persons so served
8 shall pay to it in advance, fees, licenses, and miscellaneous
9 charges as follows:

- 10 (1) Certificate of authority of insurer.
- 11 (a) Filing application for original certificate of
- 12 authority or modification thereof as a result of a merger,
- 13 acquisition, or change of controlling interest due to a sale
- 14 or exchange of stock, including all documents required to be
- 15 filed therewith, filing fee.....\$1,500.00
- 16 (b) Reinstatement fee.....\$50.00
- 17 (2) Charter documents of insurer.
- 18 (a) Filing articles of incorporation or other charter
- 19 documents, other than at time of application for original
- 20 certificate of authority, filing fee.....\$10.00
- 21 (b) Filing amendment to articles of incorporation or
- 22 charter, other than at time of application for original
- 23 certificate of authority, filing fee.....\$5.00
- 24 (c) Filing bylaws, when required, or amendments
- 25 thereof, filing fee.....\$5.00
- 26 (3) Annual license tax of insurer, each domestic
- 27 insurer, foreign insurer, and alien insurer (except that, as
- 28 to fraternal benefit societies insuring less than 200 members
- 29 in this state and the members of which as a prerequisite to
- 30 membership possess a physical handicap or disability, such
- 31 license tax shall be \$25).....\$1,000.00

1 (4) Statements of insurer, filing (except when filed
2 as part of application for original certificate of authority),
3 filing fees:
4 (a) Annual statement.....\$250.00
5 (b) Quarterly statement.....\$250.00
6 (5) All insurance representatives, application for
7 license, each filing, filing fee.....\$50.00
8 (6) Insurance representatives, property, marine,
9 casualty, and surety insurance.
10 (a) Agent's original appointment and biennial renewal
11 or continuation thereof, each insurer:
12 Appointment fee.....\$42.00
13 State tax.....12.00
14 County tax.....6.00
15 Total.....\$60.00
16 (b) Solicitor's or customer representative's original
17 appointment and biennial renewal or continuation thereof:
18 Appointment fee.....\$42.00
19 State tax.....12.00
20 County tax.....6.00
21 Total.....\$60.00
22 (c) Nonresident agent's original appointment and
23 biennial renewal or continuation thereof, appointment fee,
24 each insurer.....\$60.00
25 (d) Service representatives; managing general agents.
26 Original appointment and biennial renewal or
27 continuation thereof, each insurer or managing general agent,
28 whichever is applicable.....\$60.00
29 (7) Life insurance agents.
30 (a) Agent's original appointment and biennial renewal
31 or continuation thereof, each insurer:

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1	Appointment fee.....	\$42.00
2	State tax.....	12.00
3	County tax.....	6.00
4	Total.....	\$60.00
5	(b) Nonresident agent's original appointment and	
6	biennial renewal or continuation thereof, appointment fee,	
7	each insurer.....	\$60.00
8	(8) Health insurance agents.	
9	(a) Agent's original appointment and biennial renewal	
10	or continuation thereof, each insurer:	
11	Appointment fee.....	\$42.00
12	State tax.....	12.00
13	County tax.....	6.00
14	Total.....	\$60.00
15	(b) Nonresident agent's original appointment and	
16	biennial renewal or continuation thereof, appointment fee,	
17	each insurer.....	\$60.00
18	(9) All limited appointments as agent, as provided for	
19	in s. 626.321. Agent's original appointment and biennial	
20	renewal or continuation thereof, each insurer:	
21	Appointment fee.....	\$42.00
22	State tax.....	12.00
23	County tax.....	6.00
24	Total.....	\$60.00
25	(10) Fraternal benefit society agents. Original	
26	appointment and biennial renewal or continuation thereof, each	
27	insurer:	
28	Appointment fee.....	\$42.00
29	State tax.....	12.00
30	County tax.....	6.00
31	Total.....	\$60.00

- 1 (11) Surplus lines agent. Agent's appointment and
2 biennial renewal or continuation thereof, appointment fee
3\$150.00
- 4 (12) Adjusters:
 - 5 (a) Adjuster's original appointment and biennial
6 renewal or continuation thereof, appointment fee.....\$60.00
 - 7 (b) Nonresident adjuster's original appointment and
8 biennial renewal or continuation thereof, appointment fee
9\$60.00
 - 10 (c) Emergency adjuster's license, appointment fee
11\$10.00
 - 12 (d) Fee to cover actual cost of credit report, when
13 such report must be secured by office ~~department~~.
- 14 (13) Examination--Fee to cover actual cost of
15 examination.
- 16 (14) Temporary license and appointment as agent or
17 adjuster, where expressly provided for, rate of fee for each
18 month of the period for which the license and appointment is
19 issued.....\$5.00
- 20 (15) Issuance, reissuance, reinstatement, modification
21 resulting in a modified license being issued, duplicate copy
22 of any insurance representative license, or an appointment
23 being reinstated.....\$5.00
- 24 (16) Additional appointment continuation fees as
25 prescribed in chapter 626.....\$5.00
- 26 (17) Filing application for permit to form insurer as
27 referred to in chapter 628, filing fee.....\$25.00
- 28 (18) Annual license fee of rating organization, each
29 domestic or foreign organization.....\$25.00
- 30 (19) Miscellaneous services:
31

- 1 (a) For copies of documents or records on file with
- 2 the department, commission, or office per page.....\$.50
- 3 (b) For each certificate of the department, commission, or office
- 4 under its seal, authenticating any
- 5 document or other instrument (other than a license or
- 6 certificate of authority).....\$5.00
- 7 (c) For preparing lists of agents, solicitors,
- 8 adjusters, and other insurance representatives, and for other
- 9 miscellaneous services, such reasonable charge as may be fixed
- 10 by the office or department.
- 11 (d) For processing requests for approval of continuing
- 12 education courses, processing fee.....\$100.00
- 13 (e) Insurer's registration fee for agent exchanging
- 14 business more than 24 times in calendar year under s. 626.752,
- 15 s. 626.793, or s. 626.837, registration fee per agent per year
- 16\$30.00
- 17 (20) Insurance agency or adjusting firm, 3-year
- 18 license.....\$60.00
- 19 (21) Limited surety agent or professional bail bond
- 20 agent, as defined in s. 648.25, each agent and each insurer
- 21 represented. Original appointment and biennial renewal or
- 22 continuation thereof, each agent or insurer, whichever is
- 23 applicable:
- 24 Appointment fee.....\$44.00
- 25 State tax.....24.00
- 26 County tax.....12.00
- 27 Total.....\$80.00
- 28 (22) Certain military installations, as authorized
- 29 under s. 626.322: original appointment and biennial renewal
- 30 or continuation thereof, each insurer.....\$20.00
- 31

1 (23) Filing application for original certificate of
2 authority for third-party administrator or original
3 certificate of approval for a service company, including all
4 documents required to be filed therewith, filing fee...\$100.00
5 (24) Fingerprinting processing fee--Fee to cover
6 fingerprint processing.
7 (25) Sales representatives, miscellaneous lines.
8 Original appointment and biennial renewal or continuation
9 thereof, appointment fee.....\$60.00
10 (26) Reinsurance intermediary:
11 (a) Application filing and license fee.....\$50.00
12 (b) Original appointment and biennial renewal or
13 continuation thereof, appointment fee.....\$60.00
14 (27) Title insurance agents:
15 (a) Agent's original appointment or biennial renewal
16 or continuation thereof, each insurer:
17 Appointment fee.....\$42.00
18 State tax.....12.00
19 County tax.....6.00
20 Total.....\$60.00
21 (b) Agency original appointment or biennial renewal or
22 continuation thereof, each insurer:
23 Appointment fee.....\$42.00
24 State tax.....12.00
25 County tax.....6.00
26 Total.....\$60.00
27 (c) Filing for title insurance agent's license:
28 Application for filing, each filing, filing fee..\$10.00
29 (d) Additional appointment continuation fee as
30 prescribed by s. 626.843.....\$5.00
31

1 (e) Title insurer and title insurance agency
2 administrative surcharge:

3 1. On or before January 30 of each calendar year, each
4 title insurer shall pay to the office ~~department~~ for each
5 licensed title insurance agency appointed by the title insurer
6 and for each retail office of the insurer on January 1 of that
7 calendar year an administrative surcharge of \$200.00.

8 2. On or before January 30 of each calendar year, each
9 licensed title insurance agency shall remit to the department
10 an administrative surcharge of \$200.00.

11
12 The administrative surcharge may be used solely to defray the
13 costs to the department and office in their ~~its~~ examination or
14 audit of title insurance agencies and retail offices of title
15 insurers and to gather title insurance data for statistical
16 purposes to be furnished to and used by the office in its
17 regulation of title insurance.

18 Section 840. Subsection (1) of section 624.5015,
19 Florida Statutes, is amended to read:

20 624.5015 Advance collection of fees and taxes; title
21 insurers not to pay without reimbursement.--

22 (1) The department or the office ~~of Insurance~~ shall
23 collect in advance from the applicant or licensee fees and
24 taxes as provided in s. 624.501.

25 Section 841. Section 624.502, Florida Statutes, is
26 amended to read:

27 624.502 Service of process fee.--In all instances as
28 provided in any section of the insurance code and s. 48.151(3)
29 in which service of process is authorized to be made upon the
30 Chief Financial Officer or the director of the office
31 ~~Insurance Commissioner and Treasurer~~, the plaintiff shall pay

1 to the department or office a fee of \$15 for such service of
2 process, which fee shall be deposited into the Insurance
3 ~~Commissioner's~~ Regulatory Trust Fund.

4 Section 842. Subsections (1) and (3) of section
5 624.506, Florida Statutes, are amended to read:

6 624.506 County tax; deposit and remittance.--

7 (1) The department ~~Insurance Commissioner and~~
8 ~~Treasurer~~ shall deposit in the Agents and Solicitors County
9 Tax Trust Fund all moneys accepted as county tax under this
10 part. She or he shall keep a separate account for all moneys
11 so collected for each county and, after deducting therefrom
12 the service charges provided for in s. 215.20, shall remit the
13 balance to the counties.

14 (3) The Chief Financial Officer ~~Comptroller~~ shall
15 annually, as of January 1 following the date of collection,
16 and thereafter at such other times as she or he ~~the Insurance~~
17 ~~Commissioner and Treasurer~~ may elect, draw her or his warrants
18 on the State Treasury payable to the respective counties
19 entitled to receive the same for the full net amount of such
20 taxes to each county.

21 Section 843. Paragraph (b) of subsection (5) of
22 section 624.509, Florida Statutes, is amended to read:

23 624.509 Premium tax; rate and computation.--

24 (5) There shall be allowed a credit against the net
25 tax imposed by this section equal to 15 percent of the amount
26 paid by the insurer in salaries to employees located or based
27 within this state and who are covered by the provisions of
28 chapter 443. For purposes of this subsection:

29 (b) The term "employees" does not include independent
30 contractors or any person whose duties require that the person
31

1 hold a valid license under the Florida Insurance Code, except
2 persons defined in s. 626.015(1), ~~(15)(16)~~, and ~~(17)(18)~~.

3 Section 844. Subsection (5) of section 624.5091,
4 Florida Statutes, is amended to read:

5 624.5091 Retaliatory provision, insurers.--

6 (5) The excess amount of all fees, licenses, and taxes
7 collected by the Department of Revenue under this section over
8 the amount of similar fees, licenses, and taxes provided for
9 in this part, together with all fines, penalties, or other
10 monetary obligations collected under this section and ss.
11 626.711 and 626.743 exclusive of such fees, licenses, and
12 taxes, shall be deposited by the Department of Revenue to the
13 credit of the Insurance ~~Commissioner's~~ Regulatory Trust Fund;
14 provided that such excess amount shall not exceed \$125,000 for
15 1992, and for any subsequent year shall not exceed \$125,000
16 adjusted annually by the lesser of 20 percent or the growth in
17 the total of such excess amount. The remainder of such excess
18 amount shall be deposited into the General Revenue Fund.

19 Section 845. Subsection (1) of section 624.5092,
20 Florida Statutes, is amended to read:

21 624.5092 Administration of taxes; payments.--

22 (1) The Department of Revenue shall administer, audit,
23 and enforce the assessment and collection of those taxes to
24 which this section is applicable. The office and department
25 may ~~Department of Insurance is authorized to~~ share information
26 with the Department of Revenue as necessary to verify premium
27 tax or other tax liability arising under such taxes and
28 credits which may apply thereto.

29 Section 846. Section 624.516, Florida Statutes, is
30 amended to read:

31

1 624.516 State Fire Marshal regulatory assessment and
2 surcharge; deposit and use of funds.--

3 (1) The regulatory assessment imposed under s.
4 624.515(1) and the surcharge imposed under s. 624.515(2) shall
5 be deposited by the Department of Revenue, when received and
6 audited, into the Insurance ~~Commissioner's~~ Regulatory Trust
7 Fund.

8 (2) The moneys received and deposited in the funds, as
9 provided in subsection (1), are appropriated for use by the
10 Chief Financial Officer ~~State Treasurer~~ as ex officio State
11 Fire Marshal, hereinafter referred to as "State Fire Marshal,"
12 to defray the expenses of the State Fire Marshal in the
13 discharge of her or his administrative and regulatory powers
14 and duties as prescribed by law, including the maintaining of
15 offices and necessary supplies therefor, essential equipment
16 and other materials, salaries and expenses of required
17 personnel, and all other legitimate expenses relating to the
18 discharge of the administrative and regulatory powers and
19 duties imposed in and charged to her or him under such laws.

20 (3) If, at the end of any fiscal year, a balance of
21 funds remains in the Insurance ~~Commissioner's~~ Regulatory Trust
22 Fund, such balance shall not revert to the general fund of the
23 state, but shall be retained in the Insurance ~~Commissioner's~~
24 Regulatory Trust Fund to be used for the purposes for which
25 the moneys are appropriated as set forth in subsection (2).

26 Section 847. Section 624.517, Florida Statutes, is
27 amended to read:

28 624.517 State Fire Marshal regulatory assessment;
29 reduction of assessment.--

30 (1) The office ~~Department of Insurance~~ shall ascertain
31 on or before December 1 of each year whether the amounts

1 estimated to be received from the regulatory assessment
2 imposed under s. 624.515 for that calendar year, payable on or
3 before the following March 1, as herein prescribed, shall
4 result in an accumulation of funds in excess of the just
5 requirements for which the assessment is imposed as set forth
6 in s. 624.516; and if it determines that the imposition of the
7 full amount of the assessment would result in such excess, it
8 may reduce the percentage amount of the assessment for that
9 calendar year to such percentage as may be necessary to meet
10 the just requirements for which the assessment is imposed.

11 (2) When a determination is made so reducing the
12 amount of the assessment, the department shall make and issue
13 its order setting forth such determination and fixing the
14 amount of assessment for that calendar year, payable on or
15 before March 1 of the following year, and shall mail a copy of
16 such order to each insurer who, according to the records of
17 the office ~~department~~, is subject to the assessment.

18 Section 848. Section 624.519, Florida Statutes, is
19 amended to read:

20 624.519 Nonpayment of premium tax or fire marshal
21 assessment; penalty.--If any insurer fails to pay to the
22 Department of Revenue on or before March 1 in each and every
23 year any premium taxes required of it under s. 624.509 or s.
24 624.510, or any state fire marshal regulatory assessment
25 required of it under s. 624.515 or s. 624.517, the office
26 ~~Department of Insurance~~ may revoke its certificate of
27 authority.

28 Section 849. Subsection (1) of section 624.521,
29 Florida Statutes, is amended to read:

30 624.521 Deposit of certain tax receipts; refund of
31 improper payments.--

1 (1) The Department of Financial Services ~~Insurance~~
2 shall promptly deposit in the State Treasury to the credit of
3 the Insurance ~~Commissioner's~~ Regulatory Trust Fund all "state
4 tax" portions of agents' and solicitors' licenses collected
5 under s. 624.501 necessary to fund the Division of Insurance
6 Fraud. The balance of the tax shall be credited to the General
7 Fund. All moneys received by the Department of Financial
8 Services or the office ~~Insurance~~ not in accordance with the
9 provisions of this code or not in the exact amount as
10 specified by the applicable provisions of this code shall be
11 returned to the remitter. The records of the department or
12 office shall show the date and reason for such return.

13 Section 850. Section 624.523, Florida Statutes, is
14 amended to read:

15 624.523 Insurance ~~Commissioner's~~ Regulatory Trust
16 Fund.--

17 (1) There is created in the State Treasury a trust
18 fund designated "Insurance ~~Commissioner's~~ Regulatory Trust
19 Fund" to which shall be credited all payments received on
20 account of the following items:

21 (a) All fines, monetary penalties, and costs imposed
22 upon persons by the department or the office as authorized by
23 law for violation of the laws of this state.

24 (b) Any sums received for copies of the stenographic
25 record of hearings, as authorized by law.

26 (c) All sums received under s. 624.404(5).

27 (d) All sums received under s. 624.5091, as provided
28 in subsection (5) thereof.

29 (e) All payments received on account of items provided
30 for under respective provisions of s. 624.501, as follows:

31

- 1 1. Subsection (1) (certificate of authority of
2 insurer).
- 3 2. Subsection (2) (charter documents of insurer).
- 4 3. Subsection (3) (annual license tax of insurer).
- 5 4. Subsection (4) (annual statement of insurer).
- 6 5. Subsection (5) (application fee for insurance
7 representatives).
- 8 6. The "appointment fee" portion of any appointment
9 provided for under paragraphs (6)(a) and (b) (insurance
10 representatives, property, marine, casualty and surety
11 insurance, and agents).
- 12 7. Paragraph (6)(c) (nonresident agents).
- 13 8. Paragraph (6)(d) (service representatives).
- 14 9. The "appointment fee" portion of any appointment
15 provided for under paragraph (7)(a) (life insurance agents,
16 original appointment, and renewal or continuation of
17 appointment).
- 18 10. Paragraph (7)(b) (nonresident agent license).
- 19 11. The "appointment fee" portion of any appointment
20 provided for under paragraph (8)(a) (health insurance agents,
21 agent's appointment, and renewal or continuation fee).
- 22 12. Paragraph (8)(b) (nonresident agent appointment).
- 23 13. The "appointment fee" portion of any appointment
24 provided for under subsections (9) and (10) (limited licenses
25 and fraternal benefit society agents).
- 26 14. Subsection (11) (vending machines).
- 27 15. Subsection (12) (surplus lines agent).
- 28 16. Subsection (13) (adjusters' appointment).
- 29 17. Subsection (14) (examination fee).
- 30 18. Subsection (15) (temporary license and appointment
31 as agent or adjuster).

1 19. Subsection (16) (reissuance, reinstatement, etc.).

2 20. Subsection (17) (additional license continuation
3 fees).

4 21. Subsection (18) (filing application for permit to
5 form insurer).

6 22. Subsection (19) (license fee of rating
7 organization).

8 23. Subsection (20) (miscellaneous services).

9 24. Subsection (21) (insurance agencies).

10 (f) All payments received on account of actuarial and
11 other services in the valuation or computation of the reserves
12 of life insurers pursuant to s. 625.121(2).

13 (g) All sums received under ss. 626.711 and 626.743.

14 (h) Sums received under s. 626.932, as provided in
15 subsection (5) thereof.

16 (i) Sums received under s. 626.938, as provided in
17 subsection (7) thereof.

18 (j) All sums received under s. 627.828.

19 (k) All sums received from motor vehicle service
20 agreement companies under s. 634.221.

21 (l) All sums received under s. 648.27 (bail bond
22 agent, limited surety agent, continuation fee), the
23 "appointment fee" portion of any license or permit provided
24 for under s. 648.31, and the application fees provided for
25 under s. 648.34(3)~~ss. 648.34(3) and 648.37(3)~~.

26 (m) All sums received under s. 651.015.

27 (n) All sums received by the Chief Financial Officer
28 or the director of the office ~~Insurance Commissioner and~~
29 ~~Treasurer~~ as fees for her or his services as
30 service-of-process agent.

31

1 (o) All state tax portions of agents' licenses
2 collected under s. 624.501.

3 (2) The moneys so received and deposited in this
4 regulatory trust fund are hereby appropriated for use by the
5 department and the office to defray the expenses of the
6 department and the office in the discharge of their ~~its~~
7 administrative and regulatory powers and duties as prescribed
8 by law.

9 Section 851. Paragraph (q) of section 624.6012,
10 Florida Statutes, is amended to read:

11 624.6012 "Lines of insurance" defined.--Kinds of
12 insurance shall be classified into "lines of insurance." The
13 commission ~~department~~ shall adopt by rule the lines of
14 insurance to be utilized. Such lines of insurance shall be
15 consistent with the reporting requirements of the National
16 Association of Insurance Commissioners.

17 Section 852. Paragraph (q) of subsection (1) of
18 section 624.605, Florida Statutes, is amended to read:

19 624.605 "Casualty insurance" defined.--

20 (1) "Casualty insurance" includes:

21 (q) Miscellaneous.--When first approved by the office
22 ~~department~~ as not being contrary to law or public policy nor
23 covered by any other kind of insurance as defined in the code,
24 insurance against liability for any other kind of loss or
25 damage to person or property, properly a subject of insurance
26 and not within any other kind of insurance as defined in this
27 code.

28 Section 853. Subsection (3) of section 624.607,
29 Florida Statutes, is amended to read:

30
31

1 624.607 "Marine insurance," "wet marine and
2 transportation insurance," and "inland marine insurance"
3 defined.--

4 (3) For the purposes of this code, "inland marine
5 insurance" is as established by general custom of the
6 insurance business and promulgated by rule of the commission
7 ~~department~~.

8 Section 854. Subsection (6) of section 624.609,
9 Florida Statutes, is amended to read:

10 624.609 Limit of risk.--

11 (6) "Surplus to policyholders" for the purposes of
12 this section, in addition to the insurer's capital and
13 surplus, shall be deemed to include any voluntary reserves
14 which are not required pursuant to law and shall be determined
15 from the last sworn statement of the insurer on file with the
16 office ~~department~~, or by the last report of examination of the
17 insurer, whichever is the more recent at time of assumption of
18 risk.

19 Section 855. Subsections (1), (3), (4), (5), (7),
20 (11), (12), and (14) of section 624.610, Florida Statutes, are
21 amended to read:

22 624.610 Reinsurance.--

23 (1) The purpose of this section is to protect the
24 interests of insureds, claimants, ceding insurers, assuming
25 insurers, and the public. It is the intent of the Legislature
26 to ensure adequate regulation of insurers and reinsurers and
27 adequate protection for those to whom they owe obligations.
28 In furtherance of that state interest, the Legislature
29 requires that upon the insolvency of a non-United States
30 insurer or reinsurer which provides security to fund its
31 United States obligations in accordance with this section,

1 such security shall be maintained in the United States and
2 claims shall be filed with and valued by the state insurance
3 regulator ~~Commissioner~~ with regulatory oversight, and the
4 assets shall be distributed in accordance with the insurance
5 laws of the state in which the trust is domiciled that are
6 applicable to the liquidation of domestic United States
7 insurance companies. The Legislature declares that the
8 matters contained in this section are fundamental to the
9 business of insurance in accordance with 15 U.S.C. ss.
10 1011-1012.

11 (3)(a) Credit must be allowed when the reinsurance is
12 ceded to an assuming insurer that is authorized to transact
13 insurance or reinsurance in this state.

14 (b)1. Credit must be allowed when the reinsurance is
15 ceded to an assuming insurer that is accredited as a reinsurer
16 in this state. An accredited reinsurer is one that:

17 a. Files with the office ~~department~~ evidence of its
18 submission to this state's jurisdiction;

19 b. Submits to this state's authority to examine its
20 books and records;

21 c. Is licensed or authorized to transact insurance or
22 reinsurance in at least one state or, in the case of a United
23 States branch of an alien assuming insurer, is entered
24 through, licensed, or authorized to transact insurance or
25 reinsurance in at least one state;

26 d. Files annually with the office ~~department~~ a copy of
27 its annual statement filed with the insurance department of
28 its state of domicile any quarterly statements if required by
29 its state of domicile or such quarterly statements if
30 specifically requested by the office ~~department~~, and a copy of
31 its most recent audited financial statement; and

1 (I) Maintains a surplus as regards policyholders in an
2 amount not less than \$20 million and whose accreditation has
3 not been denied by the office ~~department~~ within 90 days after
4 its submission; or

5 (II) Maintains a surplus as regards policyholders in
6 an amount not less than \$20 million and whose accreditation
7 has been approved by the office ~~department~~.

8 2. The office ~~department~~ may deny or revoke an
9 assuming insurer's accreditation if the assuming insurer does
10 not submit the required documentation pursuant to subparagraph
11 1., if the assuming insurer fails to meet all of the standards
12 required of an accredited reinsurer, or if the assuming
13 insurer's accreditation would be hazardous to the
14 policyholders of this state. In determining whether to deny or
15 revoke accreditation, the office ~~department~~ may consider the
16 qualifications of the assuming insurer with respect to all the
17 following subjects:

- 18 a. Its financial stability;
19 b. The lawfulness and quality of its investments;
20 c. The competency, character, and integrity of its
21 management;
22 d. The competency, character, and integrity of persons
23 who own or have a controlling interest in the assuming
24 insurer; and
25 e. Whether claims under its contracts are promptly and
26 fairly adjusted and are promptly and fairly paid in accordance
27 with the law and the terms of the contracts.

28 3. Credit must not be allowed a ceding insurer if the
29 assuming insurer's accreditation has been revoked by the
30 office ~~department~~ after notice and the opportunity for a
31 hearing.

1 4. The actual costs and expenses incurred by the
2 office department to review a reinsurer's request for
3 accreditation and subsequent reviews must be charged to and
4 collected from the requesting reinsurer. If the reinsurer
5 fails to pay the actual costs and expenses promptly when due,
6 the office department may refuse to accredit the reinsurer or
7 may revoke the reinsurer's accreditation.

8 (c)1. Credit must be allowed when the reinsurance is
9 ceded to an assuming insurer that maintains a trust fund in a
10 qualified United States financial institution, as defined in
11 paragraph (5)(b), for the payment of the valid claims of its
12 United States ceding insurers and their assigns and successors
13 in interest. To enable the office department to determine the
14 sufficiency of the trust fund, the assuming insurer shall
15 report annually to the office department information
16 substantially the same as that required to be reported on the
17 NAIC Annual Statement form by authorized insurers. The
18 assuming insurer shall submit to examination of its books and
19 records by the office department and bear the expense of
20 examination.

21 2.a. Credit for reinsurance must not be granted under
22 this subsection unless the form of the trust and any
23 amendments to the trust have been approved by:

24 (I) The insurance regulator ~~commissioner~~ of the state
25 in which the trust is domiciled; or

26 (II) The insurance regulator ~~commissioner~~ of another
27 state who, pursuant to the terms of the trust instrument, has
28 accepted principal regulatory oversight of the trust.

29 b. The form of the trust and any trust amendments must
30 be filed with the insurance regulator ~~commissioner~~ of every
31 state in which the ceding insurer beneficiaries of the trust

1 are domiciled. The trust instrument must provide that
2 contested claims are valid and enforceable upon the final
3 order of any court of competent jurisdiction in the United
4 States. The trust must vest legal title to its assets in its
5 trustees for the benefit of the assuming insurer's United
6 States ceding insurers and their assigns and successors in
7 interest. The trust and the assuming insurer are subject to
8 examination as determined by the insurance regulator
9 ~~commissioner~~.

10 c. The trust remains in effect for as long as the
11 assuming insurer has outstanding obligations due under the
12 reinsurance agreements subject to the trust. No later than
13 February 28 of each year, the trustee of the trust shall
14 report to the insurance regulator ~~commissioner~~ in writing the
15 balance of the trust and list the trust's investments at the
16 preceding year end, and shall certify that the trust will not
17 expire prior to the following December 31.

18 3. The following requirements apply to the following
19 categories of assuming insurer:

20 a. The trust fund for a single assuming insurer
21 consists of funds in trust in an amount not less than the
22 assuming insurer's liabilities attributable to reinsurance
23 ceded by United States ceding insurers, and, in addition, the
24 assuming insurer shall maintain a trusteed surplus of not less
25 than \$20 million. The funds in the trust and trusteed surplus
26 consist of assets of a quality substantially similar to that
27 required in part II of chapter 625.

28 b.(I) In the case of a group including incorporated
29 and individual unincorporated underwriters:

30 (A) For reinsurance ceded under reinsurance agreements
31 with an inception, amendment, or renewal date on or after

1 August 1, 1995, the trust consists of a trustee account in an
2 amount not less than the group's several liabilities
3 attributable to business ceded by United States domiciled
4 ceding insurers to any member of the group;

5 (B) For reinsurance ceded under reinsurance agreements
6 with an inception date on or before July 31, 1995, and not
7 amended or renewed after that date, notwithstanding the other
8 provisions of this section, the trust consists of a trustee
9 account in an amount not less than the group's several
10 insurance and reinsurance liabilities attributable to business
11 written in the United States; and

12 (C) In addition to these trusts, the group shall
13 maintain in trust a trustee surplus of which \$100 million
14 must be held jointly for the benefit of the United States
15 domiciled ceding insurers of any member of the group for all
16 years of account.

17 (II) The incorporated members of the group must not be
18 engaged in any business other than underwriting of a member of
19 the group, and are subject to the same level of regulation and
20 solvency control by the group's domiciliary regulator as the
21 unincorporated members.

22 (III) Within 90 days after its financial statements
23 are due to be filed with the group's domiciliary regulator,
24 the group shall provide to the insurance regulator
25 ~~commissioner~~ an annual certification by the group's
26 domiciliary regulator of the solvency of each underwriter
27 member or, if a certification is unavailable, financial
28 statements, prepared by independent public accountants, of
29 each underwriter member of the group.

30 (d) Credit must be allowed when the reinsurance is
31 ceded to an assuming insurer not meeting the requirements of

1 paragraph (a), paragraph (b), or paragraph (c), but only as to
2 the insurance of risks located in jurisdictions in which the
3 reinsurance is required to be purchased by a particular entity
4 by applicable law or regulation of that jurisdiction.

5 (e) If the assuming insurer is not authorized or
6 accredited to transact insurance or reinsurance in this state
7 pursuant to paragraph (a) or paragraph (b), the credit
8 permitted by paragraph (c) must not be allowed unless the
9 assuming insurer agrees in the reinsurance agreements:

10 1.a. That in the event of the failure of the assuming
11 insurer to perform its obligations under the terms of the
12 reinsurance agreement, the assuming insurer, at the request of
13 the ceding insurer, shall submit to the jurisdiction of any
14 court of competent jurisdiction in any state of the United
15 States, will comply with all requirements necessary to give
16 the court jurisdiction, and will abide by the final decision
17 of the court or of any appellate court in the event of an
18 appeal; and

19 b. To designate the Chief Financial Officer
20 ~~commissioner~~, pursuant to s. 48.151, or a designated attorney
21 as its true and lawful attorney upon whom may be served any
22 lawful process in any action, suit, or proceeding instituted
23 by or on behalf of the ceding company.

24 2. This paragraph is not intended to conflict with or
25 override the obligation of the parties to a reinsurance
26 agreement to arbitrate their disputes, if this obligation is
27 created in the agreement.

28 (f) If the assuming insurer does not meet the
29 requirements of paragraph (a) or paragraph (b), the credit
30 permitted by paragraph (c) is not allowed unless the assuming
31

1 insurer agrees in the trust agreements, in substance, to the
2 following conditions:

3 1. Notwithstanding any other provisions in the trust
4 instrument, if the trust fund is inadequate because it
5 contains an amount less than the amount required by paragraph
6 (c), or if the grantor of the trust has been declared
7 insolvent or placed into receivership, rehabilitation,
8 liquidation, or similar proceedings under the laws of its
9 state or country of domicile, the trustee shall comply with an
10 order of the insurance regulator ~~commissioner~~ with regulatory
11 oversight over the trust or with an order of a United States
12 court of competent jurisdiction directing the trustee to
13 transfer to the insurance regulator ~~commissioner~~ with
14 regulatory oversight all of the assets of the trust fund.

15 2. The assets must be distributed by and claims must
16 be filed with and valued by the insurance regulator
17 ~~commissioner~~ with regulatory oversight in accordance with the
18 laws of the state in which the trust is domiciled which are
19 applicable to the liquidation of domestic insurance companies.

20 3. If the insurance regulator ~~commissioner~~ with
21 regulatory oversight determines that the assets of the trust
22 fund or any part thereof are not necessary to satisfy the
23 claims of the United States ceding insurers of the grantor of
24 the trust, the assets or part thereof must be returned by the
25 insurance regulator ~~commissioner~~ with regulatory oversight to
26 the trustee for distribution in accordance with the trust
27 agreement.

28 4. The grantor shall waive any right otherwise
29 available to it under United States law which is inconsistent
30 with this provision.

31

1 (4) An asset allowed or a deduction from liability
2 taken for the reinsurance ceded by an insurer to an assuming
3 insurer not meeting the requirements of subsections (2) and
4 (3) is allowed in an amount not exceeding the liabilities
5 carried by the ceding insurer. The deduction must be in the
6 amount of funds held by or on behalf of the ceding insurer,
7 including funds held in trust for the ceding insurer, under a
8 reinsurance contract with the assuming insurer as security for
9 the payment of obligations thereunder, if the security is held
10 in the United States subject to withdrawal solely by, and
11 under the exclusive control of, the ceding insurer, or, in the
12 case of a trust, held in a qualified United States financial
13 institution, as defined in paragraph (5)(b). This security may
14 be in the form of:

15 (a) Cash in United States dollars;

16 (b) Securities listed by the Securities Valuation
17 Office of the National Association of Insurance Commissioners
18 and qualifying as admitted assets pursuant to part II of
19 chapter 625;

20 (c) Clean, irrevocable, unconditional letters of
21 credit, issued or confirmed by a qualified United States
22 financial institution, as defined in paragraph (5)(a),
23 effective no later than December 31 of the year for which the
24 filing is made, and in the possession of, or in trust for, the
25 ceding company on or before the filing date of its annual
26 statement; or

27 (d) Any other form of security acceptable to the
28 office ~~department~~.

29 (5)(a) For purposes of paragraph (4)(c) regarding
30 letters of credit, a "qualified United States financial
31 institution" means an institution that:

1 1. Is organized or, in the case of a United States
2 office of a foreign banking organization, is licensed under
3 the laws of the United States or any state thereof;

4 2. Is regulated, supervised, and examined by United
5 States or state authorities having regulatory authority over
6 banks and trust companies; and

7 3. Has been determined by either the office ~~department~~
8 or the Securities Valuation Office of the National Association
9 of Insurance Commissioners to meet such standards of financial
10 condition and standing as are considered necessary and
11 appropriate to regulate the quality of financial institutions
12 whose letters of credit will be acceptable to the office
13 ~~department~~.

14 (b) For purposes of those provisions of this law which
15 specify institutions that are eligible to act as a fiduciary
16 of a trust, a "qualified United States financial institution"
17 means an institution that is a member of the Federal Reserve
18 System or that has been determined by the office ~~department~~ to
19 meet the following criteria:

20 1. Is organized or, in the case of a United States
21 branch or agency office of a foreign banking organization, is
22 licensed under the laws of the United States or any state
23 thereof and has been granted authority to operate with
24 fiduciary powers; and

25 2. Is regulated, supervised, and examined by federal
26 or state authorities having regulatory authority over banks
27 and trust companies.

28 (7) After notice and an opportunity for a hearing, the
29 office ~~department~~ may disallow any credit that it finds would
30 be contrary to the proper interests of the policyholders or
31 stockholders of a ceding domestic insurer.

1 (11)(a) Any domestic or commercially domiciled insurer
2 ceding directly written risks of loss under this section
3 shall, within 30 days after receipt of a cover note or similar
4 confirmation of coverage, or, without exception, no later than
5 6 months after the effective date of the reinsurance treaty,
6 file with the office ~~department~~ one copy of a summary
7 statement containing the following information about each
8 treaty:

- 9 1. The contract period;
- 10 2. The nature of the reinsured's business;
- 11 3. An indication as to whether the treaty is
12 proportional, nonproportional, coinsurance, modified
13 coinsurance, or indemnity, as applicable;
- 14 4. The ceding company's loss retention per risk;
- 15 5. The reinsured limits;
- 16 6. Any special contract restrictions;
- 17 7. A schedule of reinsurers assuming the risks of
18 loss;
- 19 8. An indication as to whether payments to the
20 assuming insurer are based on written premiums or earned
21 premiums;
- 22 9. Identification of any intermediary or broker used
23 in obtaining the reinsurance and the commission paid to such
24 intermediary or broker if known; and
- 25 10. Ceding commissions and allowances.

26 (b) The summary statement must be signed and attested
27 to by either the chief executive officer or the chief
28 financial officer of the reporting insurer. In addition to the
29 summary statement, the office ~~Insurance Commissioner~~ may
30 require the filing of any supporting information relating to
31 the ceding of such risks as it ~~she or he~~ deems necessary. If

1 the summary statement prepared by the ceding insurer discloses
2 that the net effect of a reinsurance treaty or treaties (or
3 series of treaties with one or more affiliated reinsurers
4 entered into for the purpose of avoiding the following
5 threshold amount) at any time results in an increase of more
6 than 25 percent to the insurer's surplus as to policyholders,
7 then the insurer shall certify in writing to the office
8 ~~department~~ that the relevant reinsurance treaty or treaties
9 comply with the accounting requirements contained in any rule
10 adopted by the commission ~~department~~ under subsection (14). If
11 such certificate is filed after the summary statement of such
12 reinsurance treaty or treaties, the insurer shall refile the
13 summary statement with the certificate. In any event, the
14 certificate must state that a copy of the certificate was sent
15 to the reinsurer under the reinsurance treaty.

16 (c) This subsection applies to cessions of directly
17 written risk or loss. This subsection does not apply to
18 contracts of facultative reinsurance or to any ceding insurer
19 with surplus as to policyholders that exceeds \$100 million as
20 of the immediately preceding December 31. Additionally, any
21 ceding insurer otherwise subject to this section with less
22 than \$500,000 in direct premiums written in this state during
23 the preceding calendar year or with less than 1,000
24 policyholders at the end of the preceding calendar year is
25 exempt from the requirements of this subsection. However, any
26 ceding insurer otherwise subject to this section with more
27 than \$250,000 in direct premiums written in this state during
28 the preceding calendar quarter is not exempt from the
29 requirements of this subsection.

30 (d) An authorized insurer not otherwise exempt from
31 the provisions of this subsection shall provide the

1 information required by this subsection with underlying and
2 supporting documentation upon written request of the office
3 ~~department~~.

4 (e) The office ~~department~~ may, upon a showing of good
5 cause, waive the requirements of this subsection.

6 (12) If the office ~~department~~ finds that a reinsurance
7 agreement creates a substantial risk of insolvency to either
8 insurer entering into the reinsurance agreement, the office
9 ~~department~~ may by order require a cancellation of the
10 reinsurance agreement.

11 (14) The commission ~~department~~ may adopt rules
12 implementing the provisions of this section. Rules are
13 authorized to protect the interests of insureds, claimants,
14 ceding insurers, assuming insurers, and the public. These
15 rules shall be in substantial compliance with:

16 (a) The National Association of Insurance
17 Commissioners model regulations relating to credit for
18 reinsurance;

19 (b) ~~Version 2001 of~~ The National Association of
20 Insurance Commissioners Accounting Practices and Procedures
21 Manual as of March 2002 and subsequent amendments thereto if
22 the methodology remains substantially consistent; and

23 (c) The National Association of Insurance
24 Commissioners model regulation for Credit for Reinsurance and
25 Life and Health Reinsurance Agreements.

26
27 The commission ~~department~~ may further adopt rules to provide
28 for transition from existing requirements for the approval of
29 reinsurers to the accreditation of reinsurers pursuant to this
30 section.

31

1 Section 856. Subsections (2) and (3) of section
2 624.80, Florida Statutes, are amended to read:

3 624.80 Definitions.--As used in this part:

4 (2) "Unsound condition" means that the office
5 ~~department~~ has determined that one or more of the following
6 conditions exist with respect to an insurer:

7 (a) The insurer's required surplus, capital, or
8 capital stock is impaired to an extent prohibited by law;

9 (b) The insurer continues to write new business when
10 it has not maintained the required surplus or capital;

11 (c) The insurer attempts to dissolve or liquidate
12 without first having made provisions, satisfactory to the
13 office ~~department~~, for liabilities arising from insurance
14 policies issued by the insurer; or

15 (d) The insurer meets one or more of the grounds in s.
16 631.051 for the appointment of the department as receiver.

17 (3) "Exceeded its powers" means the following
18 conditions:

19 (a) The insurer has refused to permit examination by
20 the office ~~department~~ of its books, papers, accounts, records,
21 or business practices;

22 (b) An insurer organized in this state has unlawfully
23 removed from this state books, papers, accounts, or records
24 necessary for an examination of the insurer by the office
25 ~~department~~;

26 (c) The insurer has failed to promptly comply with the
27 applicable financial reporting statutes and office
28 ~~departmental~~ requests relating thereto;

29 (d) The insurer has neglected or refused to observe an
30 order of the office ~~department~~ to correct a deficiency in its
31 capital or surplus; or

1 (e) The insurer has unlawfully or in violation of an
2 office ~~a department~~ order:

3 1. Totally reinsured its entire outstanding business;
4 or

5 2. Merged or consolidated substantially its entire
6 property or business with another insurer.

7 Section 857. Section 624.81, Florida Statutes, is
8 amended to read:

9 624.81 Notice to comply with written requirements of
10 office ~~department~~; noncompliance.--

11 (1) If the office ~~department~~ determines that the
12 conditions set forth in subsection (2) exist, the office
13 ~~department~~ shall issue an order placing the insurer in
14 administrative supervision, setting forth the reasons giving
15 rise to the determination, and specifying that the office
16 ~~department~~ is applying and effectuating the provisions of this
17 part. An order issued by the office ~~department~~ pursuant to
18 this subsection entitles the insurer to request a proceeding
19 under ss. 120.569 and 120.57, and such a request shall stay
20 the action pending such proceeding.

21 (2) An insurer shall be subject to administrative
22 supervision by the office ~~department~~ if upon examination or at
23 any other time the office ~~department~~ determines that:

24 (a) The insurer is in unsound condition;

25 (b) The insurer's methods or practices render the
26 continuance of its business hazardous to the public or to its
27 insureds; or

28 (c) The insurer has exceeded its powers granted under
29 its certificate of authority and applicable law.

30 (3) Within 15 days of receipt of notice of the
31 office's ~~department's~~ determination to proceed under this

1 part, an insurer shall submit to the office ~~department~~ a plan
2 to correct the conditions set forth in the notice. For good
3 cause shown, the office ~~department~~ may extend the 15-day time
4 period for submission of the plan. If the office ~~department~~
5 and the insurer agree on a corrective plan, a written
6 agreement shall be entered into to carry out the plan.

7 (4) If an insurer fails to timely submit a plan, the
8 office ~~department~~ may specify the requirements of a plan to
9 address the conditions giving rise to imposition of
10 administrative supervision under this part. In addition,
11 failure of the insurer to timely submit a plan is a violation
12 of the provisions of this code punishable in accordance with
13 s. 624.418.

14 (5) The plan shall address, but shall not be limited
15 to, each of the activities of the insurer's business which are
16 set forth in s. 624.83.

17 (6) If the office ~~department~~ and the insurer are
18 unable to agree on the provisions of the plan, the office
19 ~~department~~ may require the insurer to take such corrective
20 action as may be reasonably necessary to remove the causes and
21 conditions giving rise to the need for administrative
22 supervision.

23 (7) The insurer shall have 60 days, or a longer period
24 of time as designated by the office ~~department~~ but not to
25 exceed 120 days, after the date of the written agreement or
26 the receipt of the office's ~~department's~~ plan within which to
27 comply with the requirements of the office ~~department~~. At the
28 conclusion of the initial period of supervision, the office
29 ~~department~~ may extend the supervision in increments of 60 days
30 or longer, not to exceed 120 days, if conditions justifying
31

1 supervision exist. Each extension of supervision shall provide
2 the insurer with a point of entry pursuant to chapter 120.

3 (8) The initiation or pendency of administrative
4 proceedings arising from actions taken under this section
5 shall not preclude the office ~~department~~ from initiating
6 judicial proceedings to place an insurer in conservation,
7 rehabilitation, or liquidation or initiating other delinquency
8 proceedings however designated under the laws of this state.

9 (9) If it is determined that the conditions giving
10 rise to administrative supervision have been remedied so that
11 the continuance of its business is no longer hazardous to the
12 public or to its insureds, the office ~~department~~ shall release
13 the insurer from supervision.

14 (10) The commission ~~department~~ may adopt rules to
15 define standards of hazardous financial condition and
16 corrective action substantially similar to that indicated in
17 the National Association of Insurance Commissioners' 1997
18 "Model Regulation to Define Standards and Commissioner's
19 Authority for Companies Deemed to be in Hazardous Financial
20 Condition," which are necessary to implement the provisions of
21 this part.

22 Section 858. Subsections (1), (2), (3), and (4) of
23 section 624.82, Florida Statutes, are amended to read:

24 624.82 Confidentiality of certain proceedings and
25 records.--

26 (1) Orders, notices, correspondence, reports, records,
27 and other information in the possession of the office
28 ~~department~~ relating to the supervision of any insurer are
29 confidential and exempt from the provisions of s. 119.07(1),
30 except as otherwise provided in this section. Proceedings and
31 hearings relating to the office's ~~department's~~ supervision of

1 any insurer are exempt from the provisions of s. 286.011,
2 except as otherwise provided in this section.

3 (2) The personnel of the department and the office
4 shall have access to proceedings, hearings, notices,
5 correspondence, reports, records, or other information as
6 permitted by the office ~~department~~.

7 (3) The office ~~department~~ may open the proceedings or
8 hearings or disclose the contents of the notices,
9 correspondence, reports, records, or other information to a
10 department, agency, or instrumentality of this or another
11 state or the United States if it determines that the
12 disclosure is necessary or proper for the enforcement of the
13 laws of the United States or of this or another state of the
14 United States.

15 (4) The office ~~department~~ may open the proceedings or
16 hearings or make public the notices, correspondence, reports,
17 records, or other information if the office ~~department~~ finds
18 that it is in the best interest of the public, the insurer in
19 supervision, or its insureds.

20 Section 859. Section 624.83, Florida Statutes, is
21 amended to read:

22 624.83 Prohibited acts during period of
23 supervision.--The office ~~department~~ may provide that the
24 insurer may not conduct the following activities during the
25 period of supervision, without prior approval by the office
26 ~~department~~:

27 (1) Dispose of, convey, or encumber any of its assets
28 or its business in force;

29 (2) Withdraw any of its bank accounts;

30 (3) Lend any of its funds;

31 (4) Invest any of its funds;

- 1 (5) Transfer any of its property;
- 2 (6) Incur any debt, obligation, or liability;
- 3 (7) Merge or consolidate with another company;
- 4 (8) Enter into any new reinsurance contract or treaty;
- 5 (9) Terminate, surrender, forfeit, convert, or lapse
- 6 any insurance policy, certificate, or contract of insurance,
- 7 except for nonpayment of premiums due;
- 8 (10) Release, pay, or refund premium deposits, accrued
- 9 cash or loan values, unearned premiums, or other reserves on
- 10 any insurance policy or certificate; or
- 11 (11) Make any material change in management.

12 Section 860. Section 624.84, Florida Statutes, is

13 amended to read:

14 624.84 Review.--During the period of supervision, the

15 insurer may contest an action taken or proposed to be taken by

16 the supervisor, specifying the manner wherein the action

17 complained of would not result in improving the condition of

18 the insurer. Such request shall not stay the action specified

19 pending reconsideration of the action by the office

20 ~~department~~. Denial of the insurer's request upon

21 reconsideration entitles the insurer to request a proceeding

22 under ss. 120.569 and 120.57.

23 Section 861. Section 624.85, Florida Statutes, is

24 amended to read:

25 624.85 Administrative election of proceedings.--If the

26 office ~~department~~ determines to act under authority of this

27 part, the sequence of its acts and proceedings shall be as set

28 forth herein. However, it is a purpose and substance of this

29 part to allow the office ~~department~~ administrative discretion

30 in the event of insurer delinquencies and, in furtherance of

31 that purpose, the office ~~department~~ is hereby authorized, in

1 respect to insurer delinquencies or suspected delinquencies,
2 to proceed and administer either under the provisions of this
3 part or under any other applicable law, or under the
4 provisions of this part in conjunction with other applicable
5 law, and it is so provided. Nothing contained in this part or
6 in any other provision of law shall preclude the office
7 ~~department~~ from initiating judicial proceedings to place an
8 insurer in conservation, rehabilitation, or liquidation
9 proceedings or other delinquency proceedings however
10 designated under the laws of this state, regardless of whether
11 the office ~~department~~ has previously initiated administrative
12 supervision proceedings under this part against the insurer.
13 The entry of an order of seizure, rehabilitation, or
14 liquidation pursuant to chapter 631 shall terminate all
15 proceedings pending pursuant to this part.

16 Section 862. Section 624.86, Florida Statutes, is
17 amended to read:

18 624.86 Other laws; conflicts; meetings between the
19 office ~~department~~ and the supervisor.--During the period of
20 administrative supervision, the office ~~department~~ may meet
21 with a supervisor appointed under this part and with the
22 attorney or other representative of the supervisor and such
23 meetings are exempt from the provisions of s. 286.011.

24 Section 863. Section 624.87, Florida Statutes, is
25 amended to read:

26 624.87 Administrative supervision; expenses.--

27 (1) During the period of supervision the office
28 ~~department~~ by contract or otherwise may appoint a deputy
29 supervisor to supervise the insurer.

30 (2) Each insurer which is subject to administrative
31 supervision by the office ~~department~~ shall pay to the office

1 ~~department~~ the expenses of its administrative supervision at
2 the rates adopted by the office department. Expenses shall
3 include actual travel expenses, a reasonable living expense
4 allowance, compensation of the deputy supervisor or other
5 person employed or appointed by the office department for
6 purposes of the supervision, and necessary attendant
7 administrative costs of the office department directly related
8 to the supervision. The travel expense and living expense
9 allowance shall be limited to those expenses necessarily
10 incurred on account of the administrative supervision and
11 shall be paid by the insurer together with compensation upon
12 presentation by the office department to the insurer of a
13 detailed account of the charges and expenses after a detailed
14 statement has been filed by the deputy supervisor or other
15 person employed or appointed by the office department and
16 approved by the office department.

17 (3) All moneys collected from insurers for the
18 expenses of administrative supervision shall be deposited into
19 the Insurance ~~Commissioner's~~ Regulatory Trust Fund, and the
20 office department is authorized to make deposits from time to
21 time into this fund from moneys appropriated for the operation
22 of the office department.

23 (4) Notwithstanding the provisions of s. 112.061, the
24 office department is authorized to pay to the deputy
25 supervisor or person employed or appointed by the office
26 ~~department~~ for purposes of the supervision out of such trust
27 fund the actual travel expenses, reasonable living expense
28 allowance, and compensation in accordance with the statement
29 filed with the office department by the deputy supervisor or
30 other person, as provided in subsection (2), upon approval by
31 the office department.

1 (5) The office ~~department~~ may in whole or in part
2 defer payment of expenses due from the insurer pursuant to
3 this section upon a showing that payment would adversely
4 impact on the financial condition of the insurer and
5 jeopardize its rehabilitation. The payment shall be made by
6 the insurer when the condition is removed and the payment
7 would no longer jeopardize the insurer's financial condition.

8 Section 864. Section 625.01115, Florida Statutes, is
9 amended to read:

10 625.01115 Definitions.--As used in this chapter, the
11 term "statutory accounting principles" means accounting
12 principles as defined in the National Association of Insurance
13 Commissioners Accounting Practices and Procedures Manual as of
14 March 2002 and subsequent amendments thereto if the
15 methodology remains substantially consistent ~~effective January~~
16 ~~1, 2001.~~

17 Section 865. Paragraph (d) of subsection (2),
18 paragraphs (a) and (c) of subsection (5), and subsections
19 (10), (13), and (16) of section 625.012, Florida Statutes, are
20 amended to read:

21 625.012 "Assets" defined.--In any determination of the
22 financial condition of an insurer, there shall be allowed as
23 "assets" only such assets as are owned by the insurer and
24 which consist of:

25 (2) Investments, securities, properties, and loans
26 acquired or held in accordance with this code, and in
27 connection therewith the following items:

28 (d) Interest due or accrued on deposits in solvent
29 banks, savings and loan associations, and trust companies, and
30 interest due or accrued on other assets, if such interest is
31 in the judgment of the office ~~department~~ a collectible asset.

1 (5)(a) Premiums in the course of collection, other
2 than for life insurance, not more than 3 months past due, less
3 commissions payable thereon. The foregoing limitation shall
4 not apply to premiums payable directly or indirectly by the
5 United States Government or by any of its instrumentalities.
6 All premiums, excluding commissions payable thereon, due from
7 a controlling or controlled person shall not be allowed as an
8 asset to the extent that:

9 1. The premiums collected by the controlling or
10 controlled person and not remitted to the insurer are not held
11 in a trust account with a bank or other depository approved by
12 the office ~~department~~. Such funds shall be held as trust funds
13 and may not be commingled with any other funds of the
14 controlling or controlled person. Disbursements from the trust
15 account may be made only to the insurer, the insured, or, for
16 the purpose of returning premiums, an entity who is entitled
17 to returned premiums on behalf of the insured. A written copy
18 of the trust agreement must be filed with and approved by the
19 office ~~department~~ prior to its becoming effective. However,
20 the investment income derived from the trust may be allocated
21 as the parties deem proper. A controlling or controlled person
22 shall deposit premiums collected into the trust account within
23 15 working days after collection;

24 2. The controlling or controlled person has not
25 provided to the insurer and the insurer has not maintained in
26 its possession an unexpired, clean irrevocable letter of
27 credit, payable to the insurer, issued for a term of not less
28 than 1 year and in conformity with the requirements set forth
29 in this subparagraph, the amount of which equals or exceeds
30 the liability of the controlling or controlled person to the
31 insurer, at all times during the period which the letter of

1 credit is in effect, for premiums collected by the controlling
2 or controlled person. The requirements are that such letter of
3 credit be issued under arrangements satisfactory to the office
4 ~~department~~ and that the letter be issued by a banking
5 institution which is a member of the Federal Reserve System
6 and which has a financial standing satisfactory to the office
7 ~~department~~;

8 3. The controlling or controlled person has not
9 provided to the insurer and the insurer maintained in its
10 possession evidence that the controlling or controlled person
11 has purchased and has currently in effect a financial guaranty
12 bond, payable to the insurer, issued for a term of not less
13 than 1 year and which is in conformity with the requirements
14 set forth in this subparagraph, the amount of which equals or
15 exceeds the liability of the controlling or controlled person
16 to the insurer, at all times during which the financial
17 guaranty bond is in effect, for the premiums collected by the
18 controlling or controlled person. The requirements are that
19 such a financial guaranty bond shall be issued under an
20 arrangement satisfactory to the office ~~department~~ and that the
21 financial guaranty bond be issued by an insurer authorized to
22 transact such business in Florida and which has a financial
23 standing satisfactory to the office ~~department~~ and which is
24 neither controlled nor controlling in relation to either the
25 insurer or the person for whom the bond is purchased; or

26 4. A financial evaluation indicates that the
27 controlling or controlled person is unlikely to have the
28 ability to pay such premiums as they become due. The financial
29 evaluation shall be based on a review of the books and records
30 of the controlling or controlled person.

31

1 (c) The office ~~department~~ shall disapprove any trust
2 agreement filed pursuant to paragraph (a) which does not
3 assure the safety of the premiums collected.

4 (10) Deposits or equities recoverable from
5 underwriting associations, syndicates, and reinsurance funds,
6 or from any suspended banking institution, to the extent
7 deemed by the office ~~department~~ available for the payment of
8 losses and claims and at values to be determined by it.

9 (13) Loans or advances by an insurer to its parent or
10 principal owner if approved by the office ~~department~~.

11 (16) Other assets, not inconsistent with the
12 provisions of this section, deemed by the office ~~department~~ to
13 be available for the payment of losses and claims, at values
14 to be determined by it.

15 Section 866. Paragraph (d) of subsection (2) of
16 section 625.041, Florida Statutes, is amended to read:

17 625.041 Liabilities, in general.--In any determination
18 of the financial condition of an insurer, liabilities to be
19 charged against its assets shall include:

20 (2) With reference to life and health insurance and
21 annuity contracts:

22 (d) Any additional reserves that may be required by
23 the office ~~department~~ consistent with practice formulated or
24 approved by the National Association of Insurance
25 Commissioners or its successor organization, on account of
26 such insurance, including contract and premium deficiency
27 reserves.

28 Section 867. Subsection (2) of section 625.051,
29 Florida Statutes, is amended to read:

30 625.051 Unearned premium reserve.--

31

1 (2) The office ~~department~~ may require that such
 2 reserves be equal to the unearned portions of the gross
 3 premiums in force after deducting applicable reinsurance in
 4 solvent insurers as computed on each respective risk from the
 5 date of issue of the policy. If the office ~~department~~ does not
 6 so require, the portions of the gross premium in force, less
 7 applicable reinsurance in solvent insurers, to be held as an
 8 unearned premium reserve, shall be computed according to the
 9 following table:

11 Term for which policy	Reserve for unearned
12 was written	premium
14 1 year or less.....	1/2
15 2 years.....	1st year-- 3/4
	2nd year-- 1/4
17 3 years.....	1st year-- 5/6
	2nd year-- 1/2
	3rd year-- 1/6
20 4 years.....	1st year-- 7/8
	2nd year-- 5/8
	3rd year-- 3/8
	4th year-- 1/8
24 5 years.....	1st year-- 9/10
	2nd year-- 7/10
	3rd year-- 1/2
	4th year-- 3/10
	5th year-- 1/10
29 Over 5 years.....	pro rata

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 Section 868. Section 625.061, Florida Statutes, is
2 amended to read:

3 625.061 Unearned premium reserve for marine and
4 transportation insurance.--As to marine and transportation
5 insurance, the entire amount of premiums on trip risks not
6 terminated shall be deemed unearned; and the office ~~department~~
7 may require the insurer to carry a reserve equal to 100
8 percent of premiums on trip risks written during the month
9 ended as of the date of statement.

10 Section 869. Section 625.071, Florida Statutes, is
11 amended to read:

12 625.071 Special reserve for bail and judicial
13 bonds.--In lieu of the unearned premium reserve required on
14 surety bonds under s. 625.051, the office ~~department~~ may
15 require any surety insurer or limited surety insurer to set up
16 and maintain a reserve on all bail bonds or other
17 single-premium bonds without definite expiration date,
18 furnished in judicial proceedings, equal to the lesser of 35
19 percent of the bail premiums in force or \$7 per \$1,000 of bail
20 liability. Such reserve shall be reported as a liability in
21 financial statements required to be filed with the office
22 ~~department~~. Each insurer shall file a supplementary schedule
23 showing bail premiums in force and bail liability and the
24 associated special reserve for bail and judicial bonds with
25 financial statements required by s. 624.424. Bail premiums in
26 force do not include amounts retained by licensed bail bond
27 agents or licensed managing general agents, but may not be
28 less than 6.5 percent of the total consideration received for
29 all bail bonds in force.

30 Section 870. Section 625.081, Florida Statutes, is
31 amended to read:

1 625.081 Reserve for health insurance.--For all health
2 insurance policies, the insurer shall maintain an active life
3 reserve which places a sound value on the insurer's
4 liabilities under such policies; is not less than the reserve
5 according to appropriate standards set forth in rules issued
6 by the commission ~~department~~; and, in no event, is less in the
7 aggregate than the pro rata gross unearned premiums for such
8 policies.

9 Section 871. Paragraph (d) of subsection (4) of
10 section 625.091, Florida Statutes, is amended to read:

11 625.091 Losses and loss adjustment expense reserves;
12 liability insurance and workers' compensation insurance.--The
13 reserve liabilities recorded in the insurer's annual statement
14 and financial statements for unpaid losses and loss adjustment
15 expenses shall be the estimated value of its claims when
16 ultimately settled and shall be computed as follows:

17 (4)

18 (d)1. Beginning in calendar year 1998, each insurer
19 shall separately identify anticipated recoveries from the
20 Special Disability Trust Fund on the annual statement required
21 to be filed pursuant to s. 624.424.

22 2. For all financial statements filed with the office
23 ~~department~~ beginning in calendar year 1998, each insurer shall
24 disclose in the notes to the financial statements of any
25 financial statement required to be filed pursuant to s.
26 624.424 any credit in loss reserves taken for anticipated
27 recoveries from the Special Disability Trust Fund. That
28 disclosure shall include:

29 a. The amount of credit taken by the insurer in the
30 determination of its loss reserves for the prior calendar year
31 and the current reporting period on a year-to-date basis.

1 b. The amount of payments received by the insurer from
2 the Special Disability Trust Fund during the prior calendar
3 year and the year-to-date recoveries for the current year.

4 c. The amount the insurer was assessed by the Special
5 Disability Trust Fund during the prior calendar year and
6 during the current calendar year.

7 Section 872. Section 625.101, Florida Statutes, is
8 amended to read:

9 625.101 Increase of inadequate loss reserves.--If loss
10 experience shows that an insurer's loss reserves, however
11 computed or estimated, are inadequate, the office ~~department~~
12 shall require the insurer to maintain loss reserves in such
13 additional amount as is needed to make them adequate. This
14 section does not apply as to life insurance.

15 Section 873. Subsections (2), (3), and (4), paragraphs
16 (c), (d), (g), (h), (i), and (j) of subsection (5), paragraph
17 (e) of subsection (6), subsection (10), paragraph (b) of
18 subsection (12), and subsection (14) of section 625.121,
19 Florida Statutes, are amended to read:

20 625.121 Standard Valuation Law; life insurance.--

21 (2) ANNUAL VALUATION.--The office ~~department~~ shall
22 annually value, or cause to be valued, the reserve
23 liabilities, hereinafter called "reserves," for all
24 outstanding life insurance policies and annuity and pure
25 endowment contracts of every life insurer doing business in
26 this state, and may certify the amount of any such reserves,
27 specifying the mortality table or tables, rate or rates of
28 interest, and methods, net-level premium method or others,
29 used in the calculation of such reserves. In the case of an
30 alien insurer, such valuation shall be limited to its
31 insurance transactions in the United States. In calculating

1 such reserves, the office ~~department~~ may use group methods and
2 approximate averages for fractions of a year or otherwise. It
3 may accept in its discretion the insurer's calculation of such
4 reserves. In lieu of the valuation of the reserves herein
5 required of any foreign or alien insurer, it may accept any
6 valuation made or caused to be made by the insurance
7 supervisory official of any state or other jurisdiction when
8 such valuation complies with the minimum standard herein
9 provided and if the official of such state or jurisdiction
10 accepts as sufficient and valid for all legal purposes the
11 certificate of valuation of the office ~~department~~ when such
12 certificate states the valuation to have been made in a
13 specified manner according to which the aggregate reserves
14 would be at least as large as if they had been computed in the
15 manner prescribed by the law of that state or jurisdiction.
16 When any such valuation is made by the office ~~department~~, it
17 may use the actuary of the office ~~department~~ or employ an
18 actuary for the purpose; and the reasonable compensation of
19 the actuary, at a rate approved by the office ~~department~~, and
20 reimbursement of travel expenses pursuant to s. 624.320 upon
21 demand by the office ~~department~~, supported by an itemized
22 statement of such compensation and expenses, shall be paid by
23 the insurer. When a domestic insurer furnishes the office
24 ~~department~~ with a valuation of its outstanding policies as
25 computed by its own actuary or by an actuary deemed
26 satisfactory for the purpose by the office ~~department~~, the
27 valuation shall be verified by the actuary of the office
28 ~~department~~ without cost to the insurer.

29 (3) ACTUARIAL OPINION OF RESERVES.--

30 (a)1. Each life insurance company doing business in
31 this state shall annually submit the opinion of a qualified

1 actuary as to whether the reserves and related actuarial items
2 held in support of the policies and contracts specified by the
3 commission ~~department~~ by rule are computed appropriately, are
4 based on assumptions which satisfy contractual provisions, are
5 consistent with prior reported amounts, and comply with
6 applicable laws of this state. The commission ~~department~~ by
7 rule shall define the specifics of this opinion and add any
8 other items determined to be necessary to its scope.

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

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

16 4. The commission ~~department~~ may adopt rules providing
17 the standards of the actuarial opinion consistent with
18 standards adopted by the Actuarial Standards Board on December
19 31, 2002 ~~October 1, 1991~~, and subsequent revisions thereto,
20 provided that the standards remain substantially consistent.

21 5. In the case of an opinion required to be submitted
22 by a foreign or alien company, the office ~~department~~ may
23 accept the opinion filed by that company with the insurance
24 supervisory official of another state if the office ~~department~~
25 determines that the opinion reasonably meets the requirements
26 applicable to a company domiciled in this state.

27 6. For the purposes of this subsection, "qualified
28 actuary" means a member in good standing of the American
29 Academy of Actuaries who also meets the requirements specified
30 by rule of the commission ~~department~~.

31

1 7. Disciplinary action by the office ~~department~~
2 against the company or the qualified actuary shall be in
3 accordance with the insurance code and related rules adopted
4 by the commission ~~department~~.

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

7 9. If the insurance company fails to provide a
8 supporting memorandum at the request of the office ~~department~~
9 within a period specified by rule of the commission, or if the
10 office ~~department~~ determines that the supporting memorandum
11 provided by the insurance company fails to meet the standards
12 prescribed by rule of the commission, the office ~~department~~
13 may engage a qualified actuary at the expense of the company
14 to review the opinion and the basis for the opinion and
15 prepare such supporting memorandum as is required by the
16 office ~~department~~.

17 10. Except as otherwise provided in this paragraph,
18 any memorandum or other material in support of the opinion is
19 confidential and exempt from the provisions of s. 119.07(1);
20 however, the memorandum or other material may be released by
21 the office ~~department~~ with the written consent of the company,
22 or to the American Academy of Actuaries upon request stating
23 that the memorandum or other material is required for the
24 purpose of professional disciplinary proceedings and setting
25 forth procedures satisfactory to the office ~~department~~ for
26 preserving the confidentiality of the memorandum or other
27 material. If any portion of the confidential memorandum is
28 cited by the company in its marketing or is cited before any
29 governmental agency other than a state insurance department or
30 is released by the company to the news media, no portion of
31 the memorandum is confidential.

1 (b) In addition to the opinion required by
2 subparagraph (a)1., the office department may, pursuant to
3 commission ~~by rule~~, require an opinion of the same qualified
4 actuary as to whether the reserves and related actuarial items
5 held in support of the policies and contracts specified by the
6 commission ~~department~~ by rule, when considered in light of the
7 assets held by the company with respect to the reserves and
8 related actuarial items, including but not limited to the
9 investment earnings on the assets and considerations
10 anticipated to be received and retained under the policies and
11 contracts, make adequate provision for the company's
12 obligations under the policies and contracts, including, but
13 not limited to, the benefits under, and expenses associated
14 with, the policies and contracts.

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

19 (4) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
20 CONTRACTS ISSUED BEFORE OPERATIVE DATE OF STANDARD
21 NONFORFEITURE LAW.--The minimum standard for the valuation of
22 all such policies and contracts issued prior to the operative
23 date of s. 627.476 (Standard Nonforfeiture Law) shall be any
24 basis satisfactory to the office department. Any basis
25 satisfactory to the former Department of Insurance on the
26 effective date of this code shall be deemed to meet such
27 minimum standards.

28 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
29 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF STANDARD
30 NONFORFEITURE LAW.--Except as otherwise provided in paragraph
31 (h) and subsections (6), (11), and (14), the minimum standard

1 for the valuation of all such policies and contracts issued on
2 or after the operative date of s. 627.476 (Standard
3 Nonforfeiture Law for Life Insurance) shall be the
4 commissioners' reserve valuation method defined in subsections
5 (7), (11), and (14); 5 percent interest for group annuity and
6 pure endowment contracts and 3.5 percent interest for all
7 other such policies and contracts, or in the case of life
8 insurance policies and contracts, other than annuity and pure
9 endowment contracts, issued on or after July 1, 1973, 4
10 percent interest for such policies issued prior to October 1,
11 1979, and 4.5 percent interest for such policies issued on or
12 after October 1, 1979; and the following tables:

13 (c) For individual annuity and pure endowment
14 contracts, excluding any disability and accidental death
15 benefits in such policies, the 1937 Standard Annuity Mortality
16 Table or, at the option of the insurer, the Annuity Mortality
17 Table for 1949, Ultimate, or any modification of either of
18 these tables approved by the office ~~department~~.

19 (d) For group annuity and pure endowment contracts,
20 excluding any disability and accidental death benefits in such
21 policies, the Group Annuity Mortality Table for 1951; any
22 modification of such table approved by the office ~~department~~;
23 or, at the option of the insurer, any of the tables or
24 modifications of tables specified for individual annuity and
25 pure endowment contracts.

26 (g) For group life insurance, life insurance issued on
27 the substandard basis, and other special benefits, such tables
28 as may be approved by the office ~~department~~ as being
29 sufficient with relation to the benefits provided by such
30 policies.

31

1 (h) Except as provided in subsection (6), the minimum
2 standard for the valuation of all individual annuity and pure
3 endowment contracts issued on or after the operative date of
4 this paragraph and for all annuities and pure endowments
5 purchased on or after such operative date under group annuity
6 and pure endowment contracts shall be the commissioners'
7 reserve valuation method defined in subsection (7) and the
8 following tables and interest rates:

9 1. For individual annuity and pure endowment contracts
10 issued prior to October 1, 1979, excluding any disability and
11 accidental death benefits in such contracts, the 1971
12 Individual Annuity Mortality Table, or any modification of
13 this table approved by the office ~~department~~, and 6 percent
14 interest for single-premium immediate annuity contracts and 4
15 percent interest for all other individual annuity and pure
16 endowment contracts.

17 2. For individual single-premium immediate annuity
18 contracts issued on or after October 1, 1979, and prior to
19 October 1, 1986, excluding any disability and accidental death
20 benefits in such contracts, the 1971 Individual Annuity
21 Mortality Table, or any modification of this table approved by
22 the office ~~department~~, and 7.5 percent interest. For such
23 contracts issued on or after October 1, 1986, the 1983
24 Individual Annual Mortality Table, or any modification of such
25 table approved by the office ~~department~~, and the applicable
26 calendar year statutory valuation interest rate as described
27 in subsection (6).

28 3. For individual annuity and pure endowment contracts
29 issued on or after October 1, 1979, and prior to October 1,
30 1986, other than single-premium immediate annuity contracts,
31 excluding any disability and accidental death benefits in such

1 contracts, the 1971 Individual Annuity Mortality Table, or any
2 modification of this table approved by the office ~~department~~,
3 and 5.5 percent interest for single-premium deferred annuity
4 and pure endowment contracts and 4.5 percent interest for all
5 other such individual annuity and pure endowment contracts.
6 For such contracts issued on or after October 1, 1986, the
7 1983 Individual Annual Mortality Table, or any modification of
8 such table approved by the office ~~department~~, and the
9 applicable calendar year statutory valuation interest rate as
10 described in subsection (6).

11 4. For all annuities and pure endowments purchased
12 prior to October 1, 1979, under group annuity and pure
13 endowment contracts, excluding any disability and accidental
14 death benefits purchased under such contracts, the 1971 Group
15 Annuity Mortality Table, or any modification of this table
16 approved by the office ~~department~~, and 6 percent interest.

17 5. For all annuities and pure endowments purchased on
18 or after October 1, 1979, and prior to October 1, 1986, under
19 group annuity and pure endowment contracts, excluding any
20 disability and accidental death benefits purchased under such
21 contracts, the 1971 Group Annuity Mortality Table, or any
22 modification of this table approved by the office ~~department~~,
23 and 7.5 percent interest. For such contracts purchased on or
24 after October 1, 1986, the 1983 Group Annuity Mortality Table,
25 or any modification of such table approved by the office
26 ~~department~~, and the applicable calendar year statutory
27 valuation interest rate as described in subsection (6).

28
29 After July 1, 1973, any insurer may have filed ~~file~~ with the
30 former Department of Insurance a written notice of its
31 election to comply with the provisions of this paragraph after

1 a specified date before January 1, 1979, which shall be the
2 operative date of this paragraph for such insurer. However, an
3 insurer may elect a different operative date for individual
4 annuity and pure endowment contracts from that elected for
5 group annuity and pure endowment contracts. If an insurer
6 makes no such election, the operative date of this paragraph
7 for such insurer shall be January 1, 1979.

8 (i) In lieu of the mortality tables specified in this
9 subsection, and subject to rules previously adopted by the
10 former Department of Insurance, the insurance company may, at
11 its option:

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

16 2. Substitute the applicable 1980 CSO or CET Smoker
17 and Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET
18 mortality table standard;

19 3. Use the Annuity 2000 Mortality Table for
20 determining the minimum standard of valuation for individual
21 annuity and pure endowment contracts issued on or after
22 January 1, 1998, and before July 1, 1998 ~~the operative date of~~
23 ~~this section until the department, on a date certain that is~~
24 ~~on or after January 1, 1998, adopts by rule that table for~~
25 ~~determining the minimum standard for valuation purposes.~~

26 4. Use the 1994 GAR Table for determining the minimum
27 standard of valuation for annuities and pure endowments
28 purchased on or after January 1, 1998, and before July 1,
29 1998, ~~the operative date of this section under group annuity~~
30 ~~and pure endowment contracts until the department, on a date~~
31 ~~certain that is on or after January 1, 1998, adopts by rule~~

1 ~~that table for determining the minimum standard for valuation~~
2 ~~purposes.~~

3 (j) The commission ~~department~~ may adopt by rule the
4 model regulation for valuation of life insurance policies as
5 approved by the National Association of Insurance
6 Commissioners in March 1999, including tables of select
7 mortality factors, and may make the regulation effective for
8 policies issued on or after January 1, 2000.

9 (6) MINIMUM STANDARD OF VALUATION.--

10 (e) The interest rate index shall be the Moody's
11 Corporate Bond Yield Average-Monthly Average Corporates as
12 published by Moody's Investors Service, Inc., as long as this
13 index is calculated by using substantially the same
14 methodology as used by it on January 1, 1981. If Moody's
15 corporate bond yield average ceases to be calculated in this
16 manner, the interest rate index shall be the index approved by
17 rule promulgated by the commission ~~department~~. The methodology
18 used in determining the index approved by rule shall be
19 substantially the same as the methodology employed on January
20 1, 1981, for determining Moody's Corporate Bond Yield
21 Average-Monthly Average Corporates as published by Moody's
22 Investors Services, Inc.

23 (10) LOWER VALUATIONS.--An insurer which at any time
24 had adopted any standard of valuation producing greater
25 aggregate reserves than those calculated according to the
26 minimum standard herein provided may, with the approval of the
27 office ~~department~~, adopt any lower standard of valuation, but
28 not lower than the minimum herein provided; however, for the
29 purposes of this subsection, the holding of additional
30 reserves previously determined by a qualified actuary to be
31 necessary to render the opinion required by subsection (3)

1 shall not be deemed to be the adoption of a higher standard of
2 valuation.

3 (12) ALTERNATE METHOD FOR DETERMINING RESERVES IN
4 CERTAIN CASES.--In the case of any plan of life insurance
5 which provides for future premium determination, the amounts
6 of which are to be determined by the insurer based on then
7 estimates of future experience, or in the case of any plan of
8 life insurance or annuity which is of such a nature that the
9 minimum reserves cannot be determined by the methods described
10 in subsection (7), the reserves which are held under any such
11 plan shall:

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

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

19 Section 874. Subsection (2) of section 625.131,
20 Florida Statutes, is amended to read:

21 625.131 Credit life and disability policies, special
22 reserve bases.--

23 (2) As to single-premium credit life insurance
24 policies, the insurer shall establish and maintain reserves
25 which are not less than the value, at the valuation date, of
26 the risk for the unexpired portion of the period for which the
27 premium has been paid as computed on the basis of the
28 commissioners' 1980 Standard Ordinary Mortality Table and 3.5
29 percent interest. At the discretion of the office ~~department~~,
30 the insurer may make a reasonable assumption as to the ages at
31 which net premiums are to be determined. In lieu of the

1 foregoing basis, reserves based upon unearned gross premiums
2 may be used at the option of the insurer.

3 Section 875. Section 625.141, Florida Statutes, is
4 amended to read:

5 625.141 Valuation of bonds.--

6 (1) All bonds or other evidences of debt having a
7 fixed term and rate of interest held by an insurer may, if
8 amply secured and not in default as to principal or interest,
9 be valued as follows:

10 (a) If purchased at par, at the par value.

11 (b) If purchased above or below par, on the basis of
12 the purchase price adjusted so as to bring the value to par at
13 maturity and so as to yield in the meantime the effective rate
14 of interest at which the purchase was made, or in lieu of such
15 method, according to such accepted method of valuation as is
16 approved by the commission ~~department~~.

17 (c) Purchase price shall in no case be taken at a
18 higher figure than the actual market value at the time of
19 purchase, plus actual brokerage, transfer, postage, or express
20 charges paid in the acquisition of such securities.

21 (2) The office ~~department~~ shall have full discretion
22 in determining the method of calculating values according to
23 the rules set forth in this section, but no such method or
24 valuation shall be inconsistent with the method formulated or
25 approved by the National Association of Insurance
26 Commissioners or its successor organization and set forth in
27 the latest edition of its publication "Valuation of
28 Securities"; provided that such valuation methodology is
29 substantially similar to the methodology used by the National
30 Association of Insurance Commissioners in its July 1, 2002,
31 ~~2001~~ edition of such publication. Amortization of bond premium

1 or discount must be calculated using the scientific (constant
2 yield) interest method taking into consideration specified
3 interest and principal provisions over the life of the bond.
4 Bonds containing call provisions shall be amortized to the
5 call or maturity value or date that produces the lowest asset
6 value.

7 Section 876. Subsections (1), (2), and (4) of section
8 625.151, Florida Statutes, are amended to read:

9 625.151 Valuation of other securities.--

10 (1) Securities, other than those referred to in s.
11 625.141, held by an insurer shall be valued, in the discretion
12 of the office ~~department~~, at their market value, or at their
13 appraised value, or at prices determined by it as representing
14 their fair market value.

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

20 (4) No valuations under this section shall be
21 inconsistent with any applicable valuation or method contained
22 in the latest edition of the publication "Valuation of
23 Securities" published by the National Association of Insurance
24 Commissioners or its successor organization; provided that
25 such valuation methodology is substantially similar to the
26 methodology used by the National Association of Insurance
27 Commissioners in its July 1, 2002, 1988 edition of such
28 publication.

29 Section 877. Subsections (1), (2), (3), and (5) of
30 section 625.161, Florida Statutes, are amended to read:

31 625.161 Valuation of property.--

1 (1) Real property owned by an insurer which is
2 reported in financial statements filed with the office
3 ~~department~~ shall be valued at the lower of depreciated cost or
4 fair market value.

5 (2) Real property acquired pursuant to a mortgage loan
6 or contract for sale, in the absence of a recent appraisal
7 deemed by the office ~~department~~ to be reliable, shall not be
8 valued at an amount greater than the unpaid principal and
9 accrued interest of the defaulted loan or contract at the date
10 of such acquisition, together with any taxes and expenses paid
11 or incurred in connection with such acquisition, and the cost
12 of improvements thereafter made by the insurer and any amounts
13 thereafter paid by the insurer on assessments levied for
14 improvements in connection with the property.

15 (3) Other real property held by an insurer shall not
16 be valued at an amount in excess of fair value as determined
17 by recent appraisal. If the valuation of real property is
18 based on an appraisal more than 5 years old, the office
19 ~~department~~ may, at its discretion, call for and require a new
20 appraisal in order to determine fair market value.

21 (5) In carrying out its responsibilities under this
22 section, in the event that the office ~~department~~ and the
23 insurer do not agree on the value of real or personal property
24 of such insurer, the office ~~department~~ may retain the services
25 of a qualified real or personal property appraiser. In the
26 event it is subsequently determined that the insurer has
27 overvalued assets, the office ~~department~~ shall be reimbursed
28 for the costs of the services of any such appraiser incurred
29 with respect to its responsibilities under this section
30 regarding an insurer by said insurer and any reimbursement

31

1 shall be deposited in the Insurance ~~Commissioner's~~ Regulatory
2 Trust Fund.

3 Section 878. Section 625.172, Florida Statutes, is
4 amended to read:

5 625.172 Replacing certain assets; reporting certain
6 liabilities.--

7 (1) The office department, upon determining that an
8 insurer's asset has not been evaluated according to applicable
9 law or that it does not qualify as an asset, shall require the
10 insurer to properly reevaluate the asset or replace the asset
11 with an asset suitable to the office department.

12 (2) The office department, upon determining that an
13 insurer has failed to report certain liabilities that should
14 have been reported, shall require that the insurer report such
15 liabilities to the office department within 90 days.

16 (3) If it is determined that the proper valuation of
17 an asset or the establishment of certain liabilities would
18 place the insurer in financial impairment or insolvency, the
19 office department may, at its discretion, immediately suspend
20 the certificate of authority of an insurer or take other
21 action it deems appropriate to protect the interests of
22 policyholders or the general public.

23 Section 879. Section 625.181, Florida Statutes, is
24 amended to read:

25 625.181 Assets received as capital or surplus
26 contributions.--Assets received by an insurer as a capital or
27 surplus contribution shall, for purposes of this code, be
28 deemed to be purchased by the insurer at a cost equal to, in
29 the discretion of the office department, their market value,
30 their appraised value, or prices determined by the office
31 ~~department~~ as representing their fair market value. Assets so

1 acquired shall be valued in accordance with the appropriate
2 sections of this code as if the insurer had purchased such
3 assets directly.

4 Section 880. Subsection (2) of section 625.303,
5 Florida Statutes, is amended to read:

6 625.303 General qualifications.--

7 (2) No security or investment shall be eligible for
8 purchase at a price above its market value unless it is
9 approved by the office ~~department~~ and is made in accordance
10 with valuation procedures of the National Association of
11 Insurance Commissioners which have been adopted by the
12 commission ~~department~~.

13 Section 881. Subsections (3) and (9) of section
14 625.305, Florida Statutes, are amended, subsection (7) of that
15 section is repealed, and present subsection (9) of that
16 section is amended to read:

17 625.305 Diversification.--

18 (3) The cost of investments made by insurers in a
19 mortgage loan authorized by s. 625.327 shall not exceed the
20 lesser of 5 percent of the insurer's admitted assets or 10
21 percent of the insurer's capital and surplus. An insurer shall
22 not invest in additional mortgage loans without the consent of
23 the office ~~department~~ if the admitted value of all mortgage
24 loans held by the insurer exceeds:

25 (a) With respect to life and health insurers, 40
26 percent of the admitted assets of the insurer.

27 (b) With respect to property and casualty insurers, 10
28 percent of the admitted assets of the insurer.

29

30 ~~An insurer that, as of October 1, 1991, has mortgage~~
31 ~~investments that exceed the aggregate limitation specified in~~

1 ~~this subsection shall submit to the department no later than~~
2 ~~January 31, 1992, a plan to bring the amount of mortgage~~
3 ~~investments into compliance with such limitations by January~~
4 ~~1, 2001.~~

5 (8)~~(9)~~ The office ~~department~~ may limit the extent of
6 an insurer's deposits with any financial institution which
7 does not meet its regulatory capital requirement if the office
8 ~~department~~ determines that the financial solvency of the
9 insurer is threatened by a deposit in excess of such limit.

10 Section 882. Section 625.317, Florida Statutes, is
11 amended to read:

12 625.317 Corporate bonds and debentures.--An insurer
13 may invest in bonds, notes, or other interest-bearing or
14 interest-accruing obligations of any solvent corporation
15 organized under the laws of the United States or Canada or
16 under the laws of any state, the District of Columbia, any
17 territory or possession of the United States, or any Province
18 of Canada or in bonds or notes issued by the Citizens Property
19 Insurance Corporation as authorized by s. 627.351(6) ~~Florida~~
20 ~~Windstorm Underwriting Association or a private nonprofit~~
21 ~~corporation, a private nonprofit unincorporated association,~~
22 ~~or a nonprofit mutual company organized by that association,~~
23 ~~all as authorized in s. 627.351(2)(c), or any subsidiary or~~
24 ~~affiliate thereof authorized by the Department of Insurance to~~
25 ~~issue such bonds or notes.~~

26 Section 883. Section 625.322, Florida Statutes, is
27 amended to read:

28 625.322 Collateral loans.--An insurer may invest in
29 loans with a maturity not in excess of 12 years from the date
30 thereof which are secured by the pledge of assets permitted by
31 part I of this chapter. Loans made pursuant to this section

1 shall not be admitted as an asset when it is considered
2 probable that any portion of the amounts due under the
3 contractual terms of the loan will not be collected.
4 Collateral loans reported in financial statements filed with
5 the office ~~department~~ shall not exceed the value of the
6 collateral held by the company.

7 Section 884. Section 625.324, Florida Statutes, is
8 amended to read:

9 625.324 Corporate stocks.--An insurer may invest in
10 stocks, common or preferred, of any corporation created or
11 existing under the laws of the United States or of any state
12 or Canada or any province thereof. An insurer may invest in
13 stocks, common or preferred, of any corporation created or
14 existing under the laws of any foreign country other than
15 Canada if such stocks are listed and traded on a national
16 securities exchange in the United States or, in the
17 alternative, if such investment in stocks of any corporation
18 created or existing under the laws of any foreign country are
19 first approved by the office ~~department~~. Nothing in this
20 section shall apply to qualifying investments made by an
21 insurer in a foreign country under authority of s. 625.326.

22 Section 885. Subsection (4) of section 625.325,
23 Florida Statutes, is amended to read:

24 625.325 Investments in subsidiaries and related
25 corporations.--

26 (4) DEBT OBLIGATIONS.--Debt obligations, other than
27 mortgage loans, made under the authority of this section must
28 meet amortization requirements in accordance with the latest
29 edition of the publication "Valuation of Securities" by the
30 National Association of Insurance Commissioners or its
31 successor organization; provided that such amortization

1 methodology is substantially similar to the methodology used
2 by the National Association of Insurance Commissioners in its
3 July 1, 2002, 1988 edition of such publication.

4 Section 886. Section 625.326, Florida Statutes, is
5 amended to read:

6 625.326 Foreign investments.--An insurer authorized to
7 transact insurance in a foreign country may have funds
8 invested in such securities as may be required for such
9 authority and for the transaction of such business. Canadian
10 securities eligible for investment under other provisions of
11 this part are not subject to this section. Subject to the
12 approval of the office ~~department~~:

13 (1) An insurer may invest in eurodollar certificates
14 of deposit issued by foreign branches of United States
15 commercial banks.

16 (2) In addition to Canadian securities eligible for
17 investment and to investments in countries in which an insurer
18 transacts insurance, an insurer may invest in bonds, notes, or
19 stocks of any foreign country or corporation if such security
20 meets the general requirements of s. 625.303 and does not
21 exceed, in total, 5 percent of admitted assets.

22 Section 887. Subsection (1) of section 625.330,
23 Florida Statutes, is amended to read:

24 625.330 Special investments by title insurer.--

25 (1) In addition to other investments eligible under
26 this part, a title insurer may invest and have invested an
27 amount not exceeding the greater of \$300,000 or 50 percent of
28 that part of its surplus as to policyholders which exceeds the
29 minimum surplus required by s. 624.408 in its abstract plant
30 and equipment, in loans secured by mortgages on abstract
31 plants and equipment, and, with the consent of the office

1 ~~department~~, in stocks of abstract companies. If the insurer
2 transacts kinds of insurance in addition to title insurance,
3 for the purposes of this section its paid-in capital stock
4 shall be prorated between title insurance and such other
5 insurances upon the basis of the reserves maintained by the
6 insurer for the various kinds of insurance; but the capital so
7 assigned to title insurance shall in no event be less than
8 \$100,000.

9 Section 888. Subsection (1) of section 625.331,
10 Florida Statutes, is amended to read:

11 625.331 Special consent investments.--

12 (1) After satisfying the requirements of this part,
13 any funds of an insurer in excess of its reserves and
14 policyholders' surplus required to be maintained may be
15 invested:

16 (a) Without limitation in any investments otherwise
17 authorized by this part; or

18 (b) In such other investments not specifically
19 authorized by this part as long as such investments do not
20 exceed the lesser of 5 percent of the insurer's total admitted
21 assets or 25 percent of the amount by which the insurer's
22 policyholders' surplus exceeds the minimum required to be
23 maintained.

24

25 The limitations in paragraph (b) may be exceeded if consented
26 to in writing by the office ~~department~~.

27 Section 889. Paragraphs (a) and (b) of subsection (1)
28 of section 625.332, Florida Statutes, are amended to read:

29 625.332 Prohibited investments and investment
30 underwriting.--

31

1 (1) In addition to investments excluded pursuant to
2 other provisions of this code, an insurer shall not directly
3 or indirectly invest in or lend its funds upon the security
4 of:

5 (a) Issued shares of its own capital stock, except for
6 the purpose of mutualization under s. 628.431, or in
7 connection with a plan approved by the office ~~department~~ for
8 purchase of such shares by the insurer's officers, employees,
9 or agents. No such stock shall, however, constitute an asset
10 of the insurer in any determination of its financial
11 condition.

12 (b) Except with the consent of the office ~~department~~,
13 securities issued by any corporation or enterprise the
14 controlling interest of which is, or will after such
15 acquisition by the insurer be, held directly or indirectly by
16 the insurer or any combination of the insurer and the
17 insurer's directors, officers, parent corporation,
18 subsidiaries, or controlling stockholders. Investments in
19 subsidiaries under s. 625.325 shall not be subject to this
20 provision.

21 Section 890. Paragraph (e) of subsection (1) and
22 subsection (3) of section 625.333, Florida Statutes, are
23 amended to read:

24 625.333 Real estate, in general.--An insurer shall not
25 directly or indirectly acquire or hold real estate except as
26 authorized in this section.

27 (1) An insurer may acquire and hold:

28 (e) Additional real property and equipment incident to
29 real property, if necessary or convenient for the enhancement
30 of the marketability or sale value of real property previously
31

1 acquired or held by it under paragraphs (b)-(d), but subject
2 to the prior written approval of the office ~~department~~.

3 (3) The amount in real property acquired and held by
4 an insurer shall not exceed 15 percent of the insurer's
5 admitted assets, but the office ~~department~~ may grant
6 permission to the insurer to invest in real property in such
7 increased amount as it may deem proper.

8 Section 891. Section 625.338, Florida Statutes, is
9 amended to read:

10 625.338 Time limit for disposal of ineligible property
11 and securities; effect of failure to dispose.--

12 (1) Any property or securities lawfully acquired by an
13 insurer which it could not otherwise have invested in or
14 loaned its funds upon at the time of such acquisition shall be
15 disposed of within 3 years from the date of acquisition,
16 unless within such period the security has attained to the
17 standard of eligibility except that any security or property
18 acquired under any agreement of bulk reinsurance, merger, or
19 consolidation may be retained for a longer period if so
20 provided in the plan for such reinsurance, merger, or
21 consolidation as approved by the office ~~department~~ under
22 chapter 628. Upon application by the insurer and proof that
23 forced sale of any such property or security would materially
24 injure the interests of the insurer, the office ~~department~~ may
25 extend the disposal period for an additional reasonable time.

26 (2) Any property or securities lawfully acquired and
27 held by an insurer after expiration of the period for disposal
28 thereof or any extension of such period granted by the office
29 ~~department~~ shall not be allowed as an asset of the insurer.

30
31

1 Section 892. Paragraph (d) of subsection (3) and
2 subsection (4) of section 625.52, Florida Statutes, are
3 amended to read:

4 625.52 Securities eligible for deposit.--

5 (3) To be eligible for deposit under paragraph (1)(h),
6 any certificate of deposit must have the following
7 characteristics:

8 (d) The issuing bank, savings bank, or savings
9 association must agree to the terms and conditions of the
10 department ~~State Treasurer~~ regarding the rights to the
11 certificate of deposit and must have executed a written
12 certificate of deposit agreement with the department ~~State~~
13 ~~Treasurer~~. The terms and conditions of such agreement shall
14 include, but need not be limited to:

15 1. Exclusive authorized signature authority for the
16 Chief Financial Officer ~~State Treasurer~~.

17 2. Agreement to pay, without protest, the proceeds of
18 its certificate of deposit to the department within 30
19 business days after presentation.

20 3. Prohibition against levies, setoffs, survivorship,
21 or other conditions that might hinder the department's ability
22 to recover the full face value of a certificate of deposit.

23 4. Instructions regarding interest payments, renewals,
24 taxpayer identification, and early withdrawal penalties.

25 5. Agreement to be subject to the jurisdiction of the
26 courts of this state, or those of the United States which are
27 located in this state, for the purposes of any litigation
28 arising out of this section.

29 6. Such other conditions as the department requires.

30 (4) The office or department may refuse to accept
31 certain securities or refuse to accept the reported market

1 value of certain securities offered pursuant to this section
2 in order to ensure that sufficient cash and securities are on
3 hand to meet the purposes of the deposit. In making a refusal
4 under this subsection, the guidelines for use of the office or
5 department may include, but need not be limited to, whether
6 the market value of the securities cannot be readily
7 ascertained and the lack of liquidity of the securities.
8 Securities refused under this subsection are not acceptable as
9 deposits.

10 Section 893. Subsection (2) of section 625.53, Florida
11 Statutes, is amended to read:

12 625.53 Depository.--

13 (2) The department shall hold all such deposits in
14 safekeeping in the vaults located in the offices of the
15 department ~~Treasurer~~.

16 Section 894. Subsections (5) of section 625.55,
17 Florida Statutes, is amended to read:

18 625.55 Custodial arrangements.--

19 (5) The department or office may at any time, in its
20 discretion, terminate any such custodial arrangement and
21 require the deposit represented thereby to be made with it
22 directly as otherwise provided for under this code.

23 Section 895. Subsection (1) of section 625.56, Florida
24 Statutes, is amended to read:

25 625.56 Registration, conveyance of assets or
26 securities.--

27 (1) The insurer shall duly register in the name of the
28 Chief Financial Officer ~~department~~ all securities being
29 deposited with the department under this code which are not
30 negotiable by delivery.

31

1 Section 896. Section 625.57, Florida Statutes, is
2 amended to read:

3 625.57 Appraisal.--The office or department may, in
4 its discretion, prior to acceptance for deposit of any
5 particular asset or security, or at any time thereafter while
6 so deposited, have the same appraised or valued by competent
7 appraisers. The reasonable costs of any such appraisal or
8 valuation shall be borne by the insurer.

9 Section 897. Section 625.58, Florida Statutes, is
10 amended to read:

11 625.58 Excess and deficit deposits.--

12 (1) If securities or assets deposited by an insurer
13 under this part are subject to material fluctuations in market
14 value, the office or department may, in its discretion,
15 require the insurer to deposit and maintain on deposit
16 additional securities or assets in an amount as may be
17 reasonably necessary to assure that the deposit will at all
18 times have a market value of not less than the amount
19 specified under or pursuant to the law by which the deposit is
20 required.

21 (2) The insurer is responsible at all times for having
22 deposited with, or pledged to, if custodial arrangements are
23 used, the department eligible securities which have a market
24 value of not less than the amount specified pursuant to the
25 law by which the deposit is required. If for any reason the
26 market value of assets and securities of an insurer held on
27 deposit in this state under this code falls below the amount
28 required, the insurer shall promptly deposit other or
29 additional assets or securities eligible for deposit
30 sufficient to cure such deficiency. If the insurer has failed
31 to cure the deficiency within 30 days after receipt of notice

1 thereof by registered or certified mail from the office
2 ~~department~~, the office ~~department~~ shall revoke the insurer's
3 certificate of authority or may take such other administrative
4 action as provided by law.

5 (3) An insurer may at its option deposit assets or
6 securities in an amount exceeding its deposit required or
7 otherwise permitted under this code by not more than 3 times
8 the amount of the required or permitted deposit for the
9 purpose of satisfying the office ~~department~~ that the insurer's
10 obligations in this state will be met. During the solvency of
11 the insurer, the amount of any excess or a portion thereof
12 shall be released to the insurer if the office ~~department~~ is
13 satisfied that the insurer's obligations in this state will be
14 met. During the insolvency of the insurer, the amount of any
15 excess deposit shall be released only as provided in s.
16 625.62.

17 Section 898. Paragraph (c) of subsection (2) of
18 section 625.62, Florida Statutes, is amended to read:

19 625.62 Duration and release of deposit.--

20 (2) Any such deposit, whether in the form of a
21 certificate of deposit or otherwise, shall be released and
22 returned:

23 (c) To the insurer, during solvency, upon its written
24 request, when such insurer has met all requirements and the
25 office ~~department~~ is satisfied, or, for deposits made under s.
26 625.51(2) or (3), the department is satisfied, that the
27 deposit is no longer necessary.

28 Section 899. Section 625.63, Florida Statutes, is
29 amended to read:

30 625.63 Proofs for release of deposit.--

31

1 (1) Before authorizing the release of any deposit or
2 excess portion thereof to the insurer, as provided in s.
3 625.62, the office or department shall require the insurer to
4 file with the office or department a written statement in such
5 form and with such verification as the office or department
6 deems advisable setting forth the facts upon which it bases
7 its entitlement to such release.

8 (2) If release of the deposit is claimed by the
9 insurer upon the ground that its liabilities in this state, as
10 to which the deposit was originally made and is held, have
11 been assumed by another insurer authorized to transact
12 insurance in this state, the insurer shall file with the
13 office ~~department~~ a duly attested copy of the contract or
14 agreement of such reinsurance.

15 (3) Upon being satisfied by such statement and such
16 other information and evidence as the office or department may
17 reasonably require, and by such examination, if any, of the
18 affairs of the insurer as it deems advisable to make, that the
19 insurer is entitled to the release of its deposits or excess
20 portions thereof as provided in s. 625.62, the office or
21 department shall release, or authorize the custodian bank or
22 trust company in the case of deposits made under s. 625.55 to
23 release, the deposit or excess portion thereof to the insurer
24 or its authorized representative. The office and department
25 shall have no liability as to any such release so made or
26 authorized by it in good faith.

27 (4) The department may release a deposit upon sending
28 notification by certified mail to the public official having
29 supervision over insurers in another state, province, or
30 country that has filed a notification of reliance on a deposit
31 made pursuant to s. 625.51(2) unless the release is denied in

1 writing to the department by another state, province, or
2 country within 90 days. The department has no liability as to
3 any such release so made or authorized by it in good faith.

4 (5) Upon the failure of the office or department to
5 release any deposit whether in the form of a certificate of
6 deposit or otherwise or any excess portion thereof, requested
7 as provided in s. 625.62 upon compliance by the insurer with
8 the requirements of this section or within 90 days after
9 receipt of the insurer's written request, whichever is later,
10 the office or department shall, upon petition by the insurer,
11 post or cause to be posted a notice of pendency of the
12 insurer's request, at the place customarily used for the
13 posting of public notices, at the courthouse of each county,
14 and shall make a copy of such notice available to the
15 established news agencies having offices at Tallahassee,
16 Florida. The commission or department may by rule prescribe
17 the general form of such notice, shall specify the insurer's
18 name, or may list such names when more than one request is
19 pending at the same time. Such notice shall state therein
20 that such insurer or insurers have petitioned for the release
21 and return of deposits pursuant to and in compliance with s.
22 625.62 and this section; that the office or department has no
23 information upon which to base a finding that the insurer or
24 insurers named in the notice are not lawfully entitled to
25 obtain the release and return of such deposits; and that,
26 unless such information is presented to it within 90 days from
27 the date specified in the notice, such deposits must be
28 returned to the insurer or insurers. In the event that no such
29 information is presented to the office or department within
30 such 90-day period, it shall thereupon release and return the
31 deposit or deposits as requested by the insurer or insurers

1 whose request was not challenged. In the event that such
2 information is presented to the office or department within
3 that period, it shall refuse to release or return the deposit
4 of the insurer or insurers concerned and shall hold a hearing
5 with respect thereto upon the request of such insurer or
6 insurers.

7 Section 900. Section 625.75, Florida Statutes, is
8 amended to read:

9 625.75 Certain persons and directors and officers of
10 domestic stock insurer to file statements.--Every person who
11 is directly or indirectly the beneficial owner of more than 10
12 percent of any class of any equity security of a domestic
13 stock insurer, or who is a director or an officer of a
14 domestic stock insurer, shall file with ~~in~~ the office ~~of the~~
15 ~~department~~ within 10 days after becoming such beneficial
16 owner, director, or officer a statement, in such form as the
17 commission ~~department~~ may by rule prescribe, of the amount of
18 all equity securities of such insurer of which he or she is
19 the beneficial owner; within 10 days after the close of each
20 calendar month thereafter, if there has been a change in such
21 ownership during such month, he or she shall file with ~~in~~ the
22 office ~~of the department~~ a statement, in such form as the
23 commission ~~department~~ may by rule prescribe, indicating his or
24 her ownership of such equity securities at the close of the
25 calendar month and such changes in his or her ownership of
26 such equity securities as have occurred during such calendar
27 month.

28 Section 901. Section 625.765, Florida Statutes, is
29 amended to read:

30 625.765 Exemptions from ss. 625.75 and 625.76.--The
31 commission ~~department~~ may adopt by rule exemptions from ss.

1 625.75 and 625.76 for transactions that are not subject to s.
2 628.461 and that are the result of proceedings in probate,
3 incompetency, or bankruptcy; sales of securities by odd-lot
4 securities dealers; small transactions by gift which do not
5 exceed \$3,000 over any 6-month period; transactions that are
6 effected in connection with the distribution of a substantial
7 block of securities; acquisitions of shares of stock and stock
8 options under a stock bonus plan, stock option plan, or
9 similar plan; securities acquired by redeeming other
10 securities by an insurer; consolidations or mergers of
11 insurers that hold over 85 percent of the companies being
12 merged or consolidated; acquisitions or dispositions of an
13 equity security involved in the deposit of the security under,
14 or the withdrawal of the security from, a voting trust or
15 deposit agreement; and conversions of an insurer's equity
16 securities into another equity security of the same insurer.
17 The commission ~~department~~ may limit by rule the scope of
18 exemptions and provide conditions for exemptions as necessary
19 to maintain the purpose and intent of ss. 625.75 and 625.76
20 and prevent the circumvention of ss. 625.75 and 625.76.

21 Section 902. Section 625.78, Florida Statutes, is
22 amended to read:

23 625.78 Certain sale and purchase exempted; investment
24 account.--The provisions of s. 625.76 do not apply to any
25 purchase and sale, or sale and purchase, and the provisions of
26 s. 625.77 do not apply to any sale, of an equity security of a
27 domestic stock insurer not then or theretofore held by a
28 person required to report under s. 625.75 in an investment
29 account, which transaction is by a dealer in the ordinary
30 course of business and incident to the establishment or
31 maintenance by him or her of a primary or secondary market,

1 other than on an exchange as defined in the Securities
2 Exchange Act of 1934, for such security. The commission
3 ~~department~~ may, by such rules as it deems necessary or
4 appropriate in the public interest, define and prescribe terms
5 and conditions with respect to securities held in an
6 investment account and transactions made in the ordinary
7 course of business and incident to the establishment or
8 maintenance of a primary or secondary market.

9 Section 903. Section 625.79, Florida Statutes, is
10 amended to read:

11 625.79 Certain foreign or domestic arbitrage
12 transactions exempted.--The provisions of ss. 625.75-625.77 do
13 not apply to foreign or domestic arbitrage transactions unless
14 made in contravention of rules that ~~which~~ the commission has
15 adopted ~~department may adopt~~.

16 Section 904. Section 625.80, Florida Statutes, is
17 amended to read:

18 625.80 "Equity security" defined.--The term "equity
19 security" when used in this part means:

20 (1) Any stock or similar security;

21 (2) Any security convertible, with or without
22 consideration, into such a security, or carrying any warrant
23 or right to subscribe to or purchase such a security;

24 (3) Any such warrant or right; or

25 (4) Any other security which the commission ~~department~~
26 deems to be of similar nature and considers necessary or
27 appropriate, by such rules as it may prescribe in the public
28 interest or for the protection of investors, to treat as an
29 equity security.

30 Section 905. Section 625.82, Florida Statutes, is
31 amended to read:

1 625.82 Rules.--The commission may adopt ~~department~~
2 ~~shall have the power to make~~ such rules as are ~~may be~~
3 necessary for the execution of the functions vested in it by
4 ss. 625.75-625.81 and may for such purpose classify domestic
5 stock insurers, securities, and other persons or matters
6 within its jurisdiction. No provision of ss. 625.75-625.77
7 imposing any liability shall apply to any act done or omitted
8 in good faith in conformity with any rule of the commission
9 ~~department~~, notwithstanding that such rule may, after such act
10 or omission, be amended or rescinded or determined by judicial
11 or other authority to be invalid for any reason.

12 Section 906. Section 625.83, Florida Statutes, is
13 amended to read:

14 625.83 Failure to file reporting forms.--Any insurer
15 who knowingly fails to file information, documents, or reports
16 required to be filed under s. 625.75 or any rule thereunder
17 shall forfeit to the state the sum of \$100 for each day such
18 failure to file continues. Such forfeiture shall be payable
19 to the office ~~Treasurer~~ to be deposited in the Insurance
20 ~~Commissioner's~~ Regulatory Trust Fund and shall be recoverable
21 in a civil suit in the name of the state. A time for filing
22 may be extended for a reasonable period by the office
23 ~~department~~.

24 Section 907. Subsection (6) of section 626.015,
25 Florida Statutes, is repealed and present subsection (11) of
26 that section is amended to read:

27 626.015 Definitions.--As used in this part:
28 (10)~~(11)~~ "License" means a document issued by the
29 department or office authorizing a person to be appointed to
30 transact insurance or adjust claims for the kind, line, or
31 class of insurance identified in the document.

1 Section 908. Section 626.016, Florida Statutes, is
2 created to read:

3 626.016 Powers and duties of department, commission,
4 and office.--

5 (1) The powers and duties of the Chief Financial
6 Officer and the department specified in part I of this chapter
7 apply only with respect to insurance agents, managing general
8 agents, reinsurance intermediaries, viatical settlement
9 brokers, customer representatives, service representatives,
10 and agencies.

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

15 (3) The department has jurisdiction to enforce
16 provisions of parts VIII and IX of this chapter with respect
17 to persons who engage in actions for which a license issued by
18 the department is legally required. The office has
19 jurisdiction to enforce provisions of parts VIII and IX of
20 this chapter with respect to persons who engage in actions for
21 which a license or certificate of authority issued by the
22 office is legally required. For persons who violate a
23 provision of this chapter for whom a license or certificate of
24 authority issued by either the department or office is not
25 required, either the department or office may take
26 administrative action against such person as authorized by
27 this chapter, pursuant to agreement between the office and
28 department.

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

1 Section 909. Subsection (16) of section 626.025,
2 Florida Statutes, is amended to read:

3 626.025 Consumer protections.--To transact insurance,
4 agents shall comply with consumer protection laws, including
5 the following, as applicable:

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

11 Section 910. Paragraph (a) of subsection (1) of
12 section 626.112, Florida Statutes, is amended to read:

13 626.112 License and appointment required; agents,
14 customer representatives, adjusters, insurance agencies,
15 service representatives, managing general agents.--

16 (1)(a) No person may be, act as, or advertise or hold
17 himself or herself out to be an insurance agent, or customer
18 representative, ~~or adjuster~~ unless he or she is currently
19 licensed by the department and appointed by one or more
20 insurers. No person may be, act as, or advertise or hold
21 himself or herself out to be an insurance adjuster unless he
22 or she is currently licensed by the office and appointed by
23 one or more insurers.

24
25 However, an employee leasing company licensed pursuant to
26 chapter 468 which is seeking to enter into a contract with an
27 employer that identifies products and services offered to
28 employees may deliver proposals for the purchase of employee
29 leasing services to prospective clients of the employee
30 leasing company setting forth the terms and conditions of
31 doing business; classify employees as permitted by s. 468.529;

1 collect information from prospective clients and other sources
2 as necessary to perform due diligence on the prospective
3 client and to prepare a proposal for services; provide and
4 receive enrollment forms, plans, and other documents; and
5 discuss or explain in general terms the conditions,
6 limitations, options, or exclusions of insurance benefit plans
7 available to the client or employees of the employee leasing
8 company were the client to contract with the employee leasing
9 company. Any advertising materials or other documents
10 describing specific insurance coverages must identify and be
11 from a licensed insurer or its licensed agent or a licensed
12 and appointed agent employed by the employee leasing company.
13 The employee leasing company may not advise or inform the
14 prospective business client or individual employees of
15 specific coverage provisions, exclusions, or limitations of
16 particular plans. As to clients for which the employee leasing
17 company is providing services pursuant to s. 468.525(4), the
18 employee leasing company may engage in activities permitted by
19 ss. 626.7315, 626.7845, and 626.8305, subject to the
20 restrictions specified in those sections. If a prospective
21 client requests more specific information concerning the
22 insurance provided by the employee leasing company, the
23 employee leasing company must refer the prospective business
24 client to the insurer or its licensed agent or to a licensed
25 and appointed agent employed by the employee leasing company.

26 Section 911. Section 626.161, Florida Statutes, is
27 amended to read:

28 626.161 Licensing forms.--The department shall
29 prescribe and furnish all printed forms required in connection
30 with the application for issuance of and termination of all
31 licenses and appointments, except that, with respect to

1 adjusters, the commission shall prescribe and the office shall
2 furnish such forms.

3 Section 912. Subsections (1), (2), and (5) of section
4 626.171, Florida Statutes, are amended to read:

5 626.171 Application for license.--

6 (1) The department or office shall not issue a license
7 as agent, customer representative, adjuster, insurance agency,
8 service representative, managing general agent, or reinsurance
9 intermediary to any person except upon written application
10 therefor filed with it, qualification therefor, and payment in
11 advance of all applicable fees. Any such application shall be
12 made under the oath of the applicant and be signed by the
13 applicant. Beginning November 1, 2002, the department shall
14 accept the uniform application for nonresident agent
15 licensing. The department may adopt revised versions of the
16 uniform application by rule.

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

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

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

22 (c) Whether he or she has been refused or has
23 voluntarily surrendered or has had suspended or revoked a
24 license to solicit insurance by the department or by the
25 supervising officials of any state.

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

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

1 (f) Such other or additional information as the
2 department or office may deem proper to enable it to determine
3 the character, experience, ability, and other qualifications
4 of the applicant to hold himself or herself out to the public
5 as an insurance representative.

6 (5) An application for a license as an agent, customer
7 representative, adjuster, insurance agency, service
8 representative, managing general agent, or reinsurance
9 intermediary must be accompanied by a set of the individual
10 applicant's fingerprints, or, if the applicant is not an
11 individual, by a set of the fingerprints of the sole
12 proprietor, majority owner, partners, officers, and directors,
13 on a form adopted by rule of the department or commission and
14 accompanied by the fingerprint processing fee set forth in s.
15 624.501. The fingerprints shall be certified by a law
16 enforcement officer.

17 Section 913. Section 626.181, Florida Statutes, is
18 amended to read:

19 626.181 Number of applications for licensure
20 required.--After a license as agent, customer representative,
21 or adjuster has been issued to an individual, the same
22 individual shall not be required to take another examination
23 for a similar license, regardless, in the case of an agent, of
24 the number of insurers to be represented by him or her as
25 agent, unless:

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

28 (2) During any period of 48 months since the filing of
29 the original license application, such individual was not
30 appointed as an agent, customer representative, or adjuster,
31 unless the failure to be so appointed was due to military

1 service, in which event the period within which a new
2 application is not required may, in the discretion of the
3 department or office, be extended to 12 months following the
4 date of discharge from military service if the military
5 service does not exceed 3 years, but in no event to extend
6 under this clause for a period of more than 6 years from the
7 date of filing of the original application for license.

8 Section 914. Section 626.191, Florida Statutes, is
9 amended to read:

10 626.191 Repeated applications.--The failure of an
11 applicant to secure a license upon an application shall not
12 preclude him or her from applying again as many times as
13 desired, but the department or office shall not give
14 consideration to or accept any further application by the same
15 individual for a similar license dated or filed within 30 days
16 subsequent to the date the department or office denied the
17 last application, except as provided in s. 626.281.

18 Section 915. Section 626.201, Florida Statutes, is
19 amended to read:

20 626.201 Investigation.--The department or office may
21 propound any reasonable interrogatories in addition to those
22 contained in the application, to any applicant for license or
23 appointment, or on any renewal, reinstatement, or continuation
24 thereof, relating to his or her qualifications, residence,
25 prospective place of business, and any other matter which, in
26 the opinion of the department or office, is deemed necessary
27 or advisable for the protection of the public and to ascertain
28 the applicant's qualifications. The department or office may,
29 upon completion of the application, make such further
30 investigation as it may deem advisable of the applicant's
31 character, experience, background, and fitness for the license

1 or appointment. Such an inquiry or investigation shall be in
2 addition to any examination required to be taken by the
3 applicant as hereinafter in this chapter provided.

4 Section 916. Section 626.202, Florida Statutes, is
5 amended to read:

6 626.202 Fingerprinting requirements.--If there is a
7 change in ownership or control of any entity licensed under
8 this chapter, or if a new partner, officer, or director is
9 employed or appointed, a set of fingerprints of the new owner,
10 partner, officer, or director must be filed with the
11 department or office within 30 days after the change. The
12 acquisition of 10 percent or more of the voting securities of
13 a licensed entity is considered a change of ownership or
14 control. The fingerprints must be certified by a law
15 enforcement officer and be accompanied by the fingerprint
16 processing fee in s. 624.501.

17 Section 917. Section 626.211, Florida Statutes, is
18 amended to read:

19 626.211 Approval, disapproval of application.--

20 (1) If upon the basis of a completed application for
21 license and such further inquiry or investigation as the
22 department or office may make concerning an applicant the
23 department or office is satisfied that, subject to any
24 examination required to be taken and passed by the applicant
25 for a license, the applicant is qualified for the license
26 applied for and that all pertinent fees have been paid, it
27 shall approve the application. The department or office shall
28 not deny, delay, or withhold approval of an application due to
29 the fact that it has not received a criminal history report
30 based on the applicant's fingerprints.

31

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

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

9 (4) If upon the basis of the completed application and
10 such further inquiry or investigation the department or office
11 deems the applicant to be lacking in any one or more of the
12 required qualifications for the license applied for, the
13 department or office shall disapprove the application and
14 notify the applicant, stating the grounds of disapproval.

15 Section 918. Section 626.221, Florida Statutes, is
16 amended to read:

17 626.221 Examination requirement; exemptions.--

18 (1) The department or office shall not issue any
19 license as agent, customer representative, or adjuster to any
20 individual who has not qualified for, taken, and passed to the
21 satisfaction of the department or office a written examination
22 of the scope prescribed in s. 626.241.

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

25 (a) An applicant for renewal of appointment as an
26 agent, customer representative, or adjuster, unless the
27 department or office determines that an examination is
28 necessary to establish the competence or trustworthiness of
29 such applicant.

30 (b) An applicant for limited license as agent for
31 personal accident insurance, baggage and motor vehicle excess

1 liability insurance, credit life or disability insurance,
2 credit insurance, credit property insurance, in-transit and
3 storage personal property insurance, or communications
4 equipment property insurance or communication equipment inland
5 marine insurance.

6 (c) In the discretion of the department or office, an
7 applicant for reinstatement of license or appointment as an
8 agent, customer representative, or adjuster whose license has
9 been suspended within 2 years prior to the date of application
10 or written request for reinstatement.

11 (d) An applicant who, within 2 years prior to
12 application for license and appointment as an agent, customer
13 representative, or adjuster, was a full-time salaried employee
14 of the department or office and had continuously been such an
15 employee with responsible insurance duties for not less than 2
16 years and who had been a licensee within 2 years prior to
17 employment by the department or office with the same class of
18 license as that being applied for.

19 (e) An individual who qualified as a managing general
20 agent, service representative, customer representative, or
21 all-lines adjuster by passing a general lines agent's
22 examination and subsequently was licensed and appointed and
23 has been actively engaged in all lines of property and
24 casualty insurance may, upon filing an application for
25 appointment, be licensed and appointed as a general lines
26 agent for the same kinds of business without taking another
27 examination if he or she holds any such currently effective
28 license referred to in this paragraph or held the license
29 within 24 months prior to the date of filing the application
30 with the department.

31

1 (f) A person who has been licensed and appointed ~~by~~
2 ~~the department~~ as a public adjuster or independent adjuster,
3 or licensed and appointed either as an agent or company
4 adjuster as to all property, casualty, and surety insurances,
5 may be licensed and appointed as a company adjuster as to any
6 of such insurances, or as an independent adjuster or public
7 adjuster, without additional written examination if an
8 application for appointment is filed with the office
9 ~~department~~ within 24 months following the date of cancellation
10 or expiration of the prior appointment.

11 (g) A person who has been licensed ~~by the department~~
12 as an adjuster for motor vehicle, property and casualty,
13 workers' compensation, and health insurance may be licensed as
14 such an adjuster without additional written examination if his
15 or her application for appointment is filed with the office
16 ~~department~~ within 24 months after cancellation or expiration
17 of the prior license.

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

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

26 (j) An applicant for license as a general lines agent,
27 customer representative, or adjuster who has received the
28 designation of chartered property and casualty underwriter
29 (CPCU) from the American Institute for Property and Liability
30 Underwriters and who has been engaged in the insurance
31 business within the past 4 years, except that such an

1 individual may be examined on pertinent provisions of this
2 code.

3 (k) An applicant for license as a customer
4 representative who has the designation of Accredited Advisor
5 in Insurance (AAI) from the Insurance Institute of America,
6 the designation of Certified Insurance Counselor (CIC) from
7 the Society of Certified Insurance Service Counselors, the
8 designation of Accredited Customer Service Representative
9 (ACSR) from the Independent Insurance Agents of America, the
10 designation of Certified Professional Service Representative
11 (CPSR) from the National Association of Professional Insurance
12 Agents, the designation of Certified Insurance Service
13 Representative (CISR) from the Society of Certified Insurance
14 Service Representatives. Also, an applicant for license as a
15 customer representative who has the designation of Certified
16 Customer Service Representative (CCSR) from the Florida
17 Association of Insurance Agents, or the designation of
18 Registered Customer Service Representative (RCSR) from a
19 regionally accredited postsecondary institution in this state,
20 or the designation of Professional Customer Service
21 Representative (PCSR) from the Professional Career Institute,
22 whose curriculum has been approved by the department and whose
23 curriculum includes comprehensive analysis of basic property
24 and casualty lines of insurance and testing at least equal to
25 that of standard department testing for the customer
26 representative license. The department shall adopt rules
27 establishing standards for the approval of curriculum.

28 (l) An applicant for license as an adjuster who has
29 the designation of Accredited Claims Adjuster (ACA) from a
30 regionally accredited postsecondary institution in this state,
31 or the designation of Professional Claims Adjuster (PCA) from

1 the Professional Career Institute, whose curriculum has been
2 approved by the office ~~department~~ and whose curriculum
3 includes comprehensive analysis of basic property and casualty
4 lines of insurance and testing at least equal to that of
5 standard office ~~department~~ testing for the all-lines adjuster
6 license. The commission ~~department~~ shall adopt rules
7 establishing standards for the approval of curriculum.

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

10 1. Has successfully completed the prelicensing
11 examination requirements in the applicant's previous state
12 which are substantially equivalent to the examination
13 requirements in this state, as determined by the department
14 ~~Insurance Commissioner of this state;~~

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

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

25 (n) An applicant for a nonresident agent license, if
26 the applicant:

27 1. Has successfully completed prelicensing examination
28 requirements in the applicant's home state which are
29 substantially equivalent to the examination requirements in
30 this state, as determined by the department ~~Insurance~~

31

1 ~~Commissioner of this state~~, as a requirement for obtaining a
2 resident license in his or her home state;

3 2. Held a general lines agent license, life agent
4 license, or health agent license prior to the time a written
5 examination was required;

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

12 4. Has received the designation of chartered life
13 underwriter (CLU) from the American College of Life
14 Underwriters and has been in the insurance business within the
15 past 4 years, if an applicant for a nonresident license as a
16 life agent or health agent.

17 (3) An individual who is already licensed as a
18 customer representative shall not be licensed as a general
19 lines agent without application and examination for such
20 license.

21 Section 919. Section 626.231, Florida Statutes, is
22 amended to read:

23 626.231 Eligibility for examination.--No person shall
24 be permitted to take an examination for license until his or
25 her application for the license has been approved and the
26 required fees have been received by the department or office
27 or a person designated by the department or office to
28 administer the examination.

29 Section 920. Subsection (1) of section 626.241,
30 Florida Statutes, is amended to read:

31 626.241 Scope of examination.--

1 (1) Each examination for a license as agent, customer
2 representative, or adjuster shall be of such scope as is
3 deemed by the department or office to be reasonably necessary
4 to test the applicant's ability and competence and knowledge
5 of the kinds of insurance and transactions to be handled under
6 the license applied for, of the duties and responsibilities of
7 such a licensee, and of the pertinent provisions of the laws
8 of this state.

9 Section 921. Section 626.251, Florida Statutes, is
10 amended to read:

11 626.251 Time and place of examination; notice.--

12 (1) The department or office or a person designated by
13 the department or office shall mail written notice of the time
14 and place of the examination to each applicant for license
15 required to take an examination who will be eligible to take
16 the examination as of the examination date. The notice shall
17 be so mailed, postage prepaid, and addressed to the applicant
18 at his or her address shown on the application for license or
19 at such other address as requested by the applicant in writing
20 filed with the department or office prior to the mailing of
21 the notice. Notice shall be deemed given when so mailed.

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

24 (3) The department or office shall make an examination
25 available to the applicant, to be taken as soon as reasonably
26 possible after the applicant is eligible therefor. Any
27 examination required under this part shall be available in
28 this state at a designated examination center.

29 Section 922. Section 626.261, Florida Statutes, is
30 amended to read:

31 626.261 Conduct of examination.--

1 (1) The applicant for license shall appear in person
2 and personally take the examination for license at the time
3 and place specified by the department or office or by a person
4 designated by the department or office.

5 (2) The examination shall be conducted by an employee
6 of the department or office or a person designated by the
7 department or office for that purpose.

8 (3) The questions propounded shall be as prepared by
9 the department or office, or by a person designated by the
10 department or office for that purpose, consistent with the
11 applicable provisions of this code.

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

15 Section 923. Section 626.266, Florida Statutes, is
16 amended to read:

17 626.266 Printing of examinations or related materials
18 to preserve examination security.--A contract let for the
19 development, administration, or grading of examinations or
20 related materials by the department or office ~~of Insurance~~
21 pursuant to the various agent, customer representative,
22 solicitor, or adjuster licensing and examination provisions of
23 this code may include the printing or furnishing of these
24 examinations or related materials in order to preserve
25 security. Any such contract shall be let as a contract for a
26 contractual service pursuant to s. 287.057.

27 Section 924. Subsection (1) of section 626.271,
28 Florida Statutes, is amended to read:

29 626.271 Examination fee; determination, refund.--

30 (1) Prior to being permitted to take an examination,
31 each applicant who is subject to examination shall pay to the

1 department or office or a person designated by the department
2 or office an examination fee. A separate and additional
3 examination fee shall be payable for each separate class of
4 license applied for, notwithstanding that all such
5 examinations are taken on the same date and at the same place.

6 Section 925. Section 626.281, Florida Statutes, is
7 amended to read:

8 626.281 Reexamination.--

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

10 (a) Taken an examination and failed to make a passing
11 grade, or

12 (b) Failed to appear for the examination or to take or
13 complete the examination at the time and place specified in
14 the notice of the department or office,

15
16 may take additional examinations, after filing with the
17 department or office an application for reexamination together
18 with applicable fees. The failure of an applicant to pass an
19 examination or the failure to appear for the examination or to
20 take or complete the examination does not preclude the
21 applicant from taking subsequent examinations.

22 (2) The department or office may require any
23 individual whose license as an agent, customer representative,
24 or adjuster has expired or has been suspended to pass an
25 examination prior to reinstating or relicensing the individual
26 as to any class of license. The examination fee shall be paid
27 as to each examination.

28 Section 926. Subsections (5) and (6) of section
29 626.2815, Florida Statutes, are amended to read:

30 626.2815 Continuing education required; application;
31 exceptions; requirements; penalties.--

1 (5) The department ~~of insurance~~ shall refuse to renew
2 the appointment of any agent who has not had his or her
3 continuing education requirements certified unless the agent
4 has been granted an extension by the department. The
5 department may not issue a new appointment of the same or
6 similar type, with any insurer, to an agent who was denied a
7 renewal appointment for failure to complete continuing
8 education as required until the agent completes his or her
9 continuing education requirement.

10 (6)(a) There is created an 11-member continuing
11 education advisory board to be appointed by the Chief
12 Financial Officer ~~Insurance Commissioner and Treasurer~~.
13 Appointments shall be for terms of 4 years. The purpose of
14 the board is to advise the department in determining standards
15 by which courses may be evaluated and categorized as basic,
16 intermediate, or advanced. ~~The board shall establish such~~
17 ~~criteria and the department shall implement such criteria by~~
18 ~~January 1, 1997~~. The board shall submit recommendations to
19 the department of changes needed in such criteria not less
20 frequently than every 2 years ~~thereafter~~. The department shall
21 require all approved course providers to submit courses for
22 approval to the department using the criteria. All materials,
23 brochures, and advertisements related to the approved courses
24 must specify the level assigned to the course.

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

26 1. Seven members representing agents of which at least
27 one must be a representative from each of the following
28 organizations: the Florida Association of Insurance Agents;
29 the Florida Association of Life Underwriters; the Professional
30 Insurance Agents of Florida, Inc.; the Florida Association of
31 Health Underwriters; the Specialty Agents' Association; the

1 Latin American Agents' Association; and the National
2 Association of Insurance Women. Such board members must
3 possess at least a bachelor's degree or higher from an
4 accredited college or university with major coursework in
5 insurance, risk management, or education or possess the
6 designation of CLU, CPCU, CHFC, CFP, AAI, or CIC. In
7 addition, each member must possess 5 years of classroom
8 instruction experience or 5 years of experience in the
9 development or design of educational programs or 10 years of
10 experience as a licensed resident agent. Each organization
11 may submit to the department a list of recommendations for
12 appointment. If one organization does not submit a list of
13 recommendations, the Chief Financial Officer ~~Insurance~~
14 ~~Commissioner~~ may select more than one recommended person from
15 a list submitted by other eligible organizations.

16 2. Two members representing insurance companies at
17 least one of whom must represent a Florida Domestic Company
18 and one of whom must represent the Florida Insurance Council.
19 Such board members must be employed within the training
20 department of the insurance company. At least one such member
21 must be a member of the Society of Insurance Trainers and
22 Educators.

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

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

30 (c) The members of the board shall serve at the
31 pleasure of the Chief Financial Officer ~~Insurance Commissioner~~

1 ~~and Treasurer~~. Each board member shall be entitled to
2 reimbursement for expenses pursuant to s. 112.061. The board
3 shall designate one member as chair. The board shall meet at
4 the call of the chair or the Chief Financial Officer ~~Insurance~~
5 ~~Commissioner and Treasurer~~.

6 Section 927. Section 626.2817, Florida Statutes, is
7 amended to read:

8 626.2817 Regulation of course providers, instructors,
9 school officials, and monitor groups involved in prelicensure
10 education for insurance agents and other licensees.--

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

15 (2) The department or commission shall adopt rules
16 establishing standards for the approval, registration,
17 discipline, or removal from registration of course providers,
18 instructors, school officials, and monitor groups. The
19 standards must be designed to ensure that such persons have
20 the knowledge, competence, and integrity to fulfill the
21 educational objectives of the prelicensure requirements of
22 this chapter and chapter 648 and to assure that insurance
23 agents and licensees are competent to engage in the activities
24 authorized under the license.

25 (3) The department or commission shall adopt rules to
26 establish a process for determining compliance with the
27 prelicensure requirements of this chapter and chapter 648 and
28 shall establish a prelicensure cycle for insurance agents and
29 other licensees. The department or commission shall adopt
30 rules prescribing the forms necessary to administer the
31 prelicensure requirements.

1 Section 928. Section 626.291, Florida Statutes, is
2 amended to read:

3 626.291 Denial, issuance of license.--

4 (1) Within 30 days after the applicant has completed
5 any examination required under s. 626.221, the department or
6 office or its designee shall provide a score report; and, if
7 it finds that the applicant has received a passing grade, the
8 department or office shall within such period notify the
9 applicant and issue and transmit the license to which such
10 examination related. If it finds that the applicant did not
11 make a passing grade on the examination for a particular
12 license, the department or office or its designee shall within
13 this period provide notice to the applicant to that effect and
14 of its denial of the license.

15 (2) As to an applicant for a license for which no
16 examination is required, the department or office shall
17 promptly issue the license applied for as soon as it has
18 approved the application.

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

23 Section 929. Paragraph (d) of subsection (2) of
24 section 626.292, Florida Statutes, is amended to read:

25 626.292 Transfer of license from another state.--

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

28 (d) The individual shall satisfy prelicensing
29 education requirements in this state, unless the completion of
30 prelicensing education requirements was a prerequisite for
31 licensure in the other state and the prelicensing education

1 requirements in the other state are substantially equivalent
2 to the prelicensing requirements of this state as determined
3 by the department ~~Insurance Commissioner of this state.~~

4 Section 930. Section 626.301, Florida Statutes, is
5 amended to read:

6 626.301 Form and contents of licenses, in
7 general.--Each license issued by the department or office
8 shall be in such form as the department or commission may
9 designate and contain the licensee's name, lines of authority
10 the licensee is authorized to transact, the licensee's
11 personal identification number, the date of issuance, and any
12 other information the department or commission deems necessary
13 to fully identify the licensee and the authority being
14 granted. The department or commission may by rule require
15 photographs of applicants as a part of the licensing process.

16 Section 931. Section 626.322, Florida Statutes, is
17 amended to read:

18 626.322 License, appointment; certain military
19 installations.--A natural person, not a resident of this
20 state, may be licensed and appointed to represent an
21 authorized life insurer domiciled in this state or an
22 authorized foreign life insurer which maintains a regional
23 home office in this state, provided such person represents
24 such insurer exclusively at a United States military
25 installation located in a foreign country. The department may,
26 upon request of the applicant and the insurer on application
27 forms furnished by the department and upon payment of fees as
28 prescribed in s. 624.501, issue a license and appointment to
29 such person. The insurer shall certify to the department that
30 the applicant has the necessary training to hold himself or
31 herself out as a life insurance representative, and the

1 insurer shall further certify that it is willing to be bound
2 by the acts of such applicant within the scope of his or her
3 employment. Appointments shall be continued as prescribed in
4 s. 626.381 and upon payment of a fee as prescribed in s.
5 624.501, unless sooner terminated. Such fees received shall
6 be credited to the Insurance ~~Commissioner's~~ Regulatory Trust
7 Fund as provided for in s. 624.523.

8 Section 932. Section 626.361, Florida Statutes, is
9 amended to read:

10 626.361 Effective date of appointments.--All
11 appointments shall be submitted to the department or office on
12 a monthly basis no later than 45 days after the date of
13 appointment. All appointments shall be effective as of the
14 date requested on the appointment form.

15 Section 933. Section 626.371, Florida Statutes, is
16 amended to read:

17 626.371 Payment of fees, taxes for appointment period
18 without appointment.--If, upon application and qualification
19 for an appointment and such investigation as the department or
20 office may make, it appears to the department or office that
21 an individual who was formerly appointed has been actively
22 engaged or is currently actively engaged as such an appointee,
23 but without being appointed as required, the department or
24 office may, if it finds that such failure to be appointed was
25 an inadvertent error on the part of the insurer or employer so
26 represented, nevertheless issue the appointment as applied for
27 but subject to the condition that, before the appointment is
28 issued, all fees and taxes which would have been due had the
29 applicant been so appointed during such current and prior
30 periods, together with a continuation fee for such current and
31

1 prior terms of appointment, shall be paid to the department or
2 office.

3 Section 934. Subsections (2), (3), and (4), of section
4 626.381, Florida Statutes, are amended to read:

5 626.381 Renewal, continuation, reinstatement, or
6 termination of appointment.--

7 (2) Each appointing entity shall file with the
8 department or office the lists, statements, and information as
9 to appointees whose appointments are being renewed or
10 terminated, accompanied by payment of the applicable renewal
11 fees and taxes as prescribed in s. 624.501, by a date set
12 forth by the department or office following the month during
13 which the appointments will expire.

14 (3) Renewal of an appointment which is received on a
15 date set forth by the department or office in the succeeding
16 month may be renewed by the department or office without
17 penalty and shall be effective as of the day the appointment
18 would have expired.

19 (4) Renewal of an appointment which is received by the
20 department or office after the date set by the department or
21 office may be accepted and effectuated by the department or
22 office in its discretion if an additional appointment,
23 continuation, and reinstatement fee accompanies the renewal
24 pursuant to s. 624.501.

25 Section 935. Subsection (2) of section 626.431,
26 Florida Statutes, is amended to read:

27 626.431 Effect of expiration of license and
28 appointment.--

29 (2) When a licensee's last appointment for a
30 particular class of insurance has been terminated or not
31 renewed, the department or office must notify the licensee

1 that his or her eligibility for appointment as such an
2 appointee will expire unless he or she is appointed prior to
3 expiration of the 48-month period referred to in subsection
4 (3).

5 Section 936. Section 626.451, Florida Statutes, is
6 amended to read:

7 626.451 Appointment of agent or other
8 representative.--

9 (1) Each appointing entity appointing an agent,
10 adjuster, service representative, customer representative, or
11 managing general agent in this state shall file the
12 appointment with the department or office and, at the same
13 time, pay the applicable appointment fee and taxes. Every
14 appointment shall be subject to the prior issuance of the
15 appropriate agent's, adjuster's, service representative's,
16 customer representative's, or managing general agent's
17 license.

18 (2) As a part of each appointment there shall be a
19 certified statement or affidavit of an appropriate officer or
20 official of the appointing entity stating what investigation
21 the appointing entity has made concerning the proposed
22 appointee and his or her background and the appointing
23 entity's opinion to the best of its knowledge and belief as to
24 the moral character, fitness, and reputation of the proposed
25 appointee and any other information the department or office
26 may reasonably require relative to the proposed appointee.

27 (3) In the appointment of an agent, adjuster, service
28 representative, customer representative, or managing general
29 agent the appointing entity shall also certify therein that it
30 is willing to be bound by the acts of the agent, adjuster,
31

1 service representative, customer representative, or managing
2 general agent, within the scope of his or her employment.

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

8 (5) Any law enforcement agency or state attorney's
9 office that is aware that an agent, adjuster, service
10 representative, customer representative, or managing general
11 agent has pleaded guilty or nolo contendere to or has been
12 found guilty of a felony shall notify the department or office
13 of such fact.

14 (6) Upon the filing of an information or indictment
15 against an agent, adjuster, service representative, customer
16 representative, or managing general agent, the state attorney
17 shall immediately furnish the department or office a certified
18 copy of the information or indictment.

19 Section 937. Section 626.461, Florida Statutes, is
20 amended to read:

21 626.461 Continuation of appointment of agent or other
22 representative.--Subject to renewal or continuation by the
23 appointing entity, the appointment of the agent, adjuster,
24 solicitor, service representative, customer representative, or
25 managing general agent shall continue in effect until the
26 person's license is revoked or otherwise terminated, unless
27 written notice of earlier termination of the appointment is
28 filed with the department or office by either the appointing
29 entity or the appointee.

30 Section 938. Subsections (2), (3), (4), and (5) of
31 section 626.471, Florida Statutes, are amended to read:

1 626.471 Termination of appointment.--

2 (2) As soon as possible and at all events within 30
3 days after terminating the appointment of an appointee, other
4 than as to an appointment terminated by the appointing
5 entity's failure to continue or renew it, the appointing
6 entity shall file written notice thereof with the department
7 or office, together with a statement that it has given the
8 appointee notice thereof as provided in subsection (1) and
9 shall file with the department or office the reasons and facts
10 involved in such termination as required under s. 626.511.

11 (3) Upon termination of the appointment of an
12 appointee, whether by failure to renew or continue the
13 appointment, the appointing entity shall:

14 (a) File with the department or office the information
15 required under s. 626.511.

16 (b) Subject to the exceptions provided under
17 subsection (1), continue the outstanding contracts transacted
18 by an agent until the expiration date or anniversary date when
19 the policy is a continuous policy with no expiration date.
20 This paragraph shall not be construed to prohibit the
21 cancellation of such contracts when not otherwise prohibited
22 by law.

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

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

30 Section 939. Section 626.511, Florida Statutes, is
31 amended to read:

1 626.511 Reasons for termination; confidential
2 information.--

3 (1) Any insurer terminating the appointment of an
4 agent; any general lines agent terminating the appointment of
5 a customer representative or a crop hail or multiple-peril
6 crop insurance agent; and any employer terminating the
7 appointment of an adjuster, service representative, or
8 managing general agent, whether such termination is by direct
9 action of the appointing insurer, agent, or employer or by
10 failure to renew or continue the appointment as provided,
11 shall file with the department or office a statement of the
12 reasons, if any, for and the facts relative to such
13 termination. In the case of termination of the appointment of
14 an agent, such information may be filed by the insurer or by
15 the general agent of the insurer.

16 (2) In the case of terminations by failure to renew or
17 continue the appointment, the information required under
18 subsection (1) shall be filed with the department or office as
19 soon as possible, and at all events within 30 days, after the
20 date notice of intention not to so renew or continue was filed
21 with the department or office as required in this chapter. In
22 all other cases, the information required under subsection (1)
23 shall be filed with the department or office at the time, or
24 at all events within 10 days after, notice of the termination
25 was filed with the department or office.

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

29 Section 940. Subsections (2), (3), and (5) of section
30 626.521, Florida Statutes, are amended to read:

31 626.521 Character, credit reports.--

1 (2) If requested by the department or office, the
2 insurer, manager, general agent, general lines agent, or
3 employer, as the case may be, shall furnish to the department
4 or office on a form adopted by the department or commission
5 and furnished by the department or office, such information as
6 it may reasonably require relative to such individual and
7 investigation.

8 (3) As to an applicant for an adjuster's or
9 reinsurance intermediary's license who is to be self-employed,
10 the department or office may secure, at the cost of the
11 applicant, a full detailed credit and character report made by
12 an established and reputable independent reporting service
13 relative to the applicant.

14 (5) Information contained in credit or character
15 reports furnished to or secured by the department or office
16 under this section is confidential and exempt from the
17 provisions of s. 119.07(1).

18 Section 941. Subsections (1) and (2) of section
19 626.541, Florida Statutes, are amended to read:

20 626.541 Firm, corporate, and business names; officers;
21 associates; notice of changes.--

22 (1) Any licensed agent or adjuster doing business
23 under a firm or corporate name or under any business name
24 other than his or her own individual name shall, within 30
25 days after the initial transaction of insurance under such
26 business name, file with the department or office, on forms
27 adopted by the department or commission and furnished by the
28 department or office ~~it~~, a written statement of the firm,
29 corporate, or business name being so used, the address of any
30 office or offices or places of business making use of such
31 name, and the name and social security number of each officer

1 and director of the corporation and of each individual
2 associated in such firm or corporation as to the insurance
3 transactions thereof or in the use of such business name.

4 (2) In the event of any change of such name, or of any
5 of the officers and directors, or of any of such addresses, or
6 in the personnel so associated, written notice of such change
7 must be filed with the department or office within 30 days by
8 or on behalf of those licensees terminating any such firm,
9 corporate, or business name or continuing to operate
10 thereunder.

11 Section 942. Section 626.551, Florida Statutes, is
12 amended to read:

13 626.551 Notice of change of address, name.--Every
14 licensee shall notify the department or office in writing
15 within 60 days after a change of name, residence address,
16 principal business street address, or mailing address. Any
17 licensed agent who has moved his or her residence from this
18 state shall have his or her license and all appointments
19 immediately terminated by the department or office. Failure to
20 notify the department or office within the required time
21 period shall result in a fine not to exceed \$250 for the first
22 offense and, for subsequent offenses, a fine of not less than
23 \$500 or suspension or revocation of the license pursuant to s.
24 626.611 or s. 626.621.

25 Section 943. Subsections (1) and (2) of section
26 626.561, Florida Statutes, are amended to read:

27 626.561 Reporting and accounting for funds.--

28 (1) All premiums, return premiums, or other funds
29 belonging to insurers or others received by an agent, customer
30 representative, or adjuster in transactions under his or her
31 license are trust funds received by the licensee in a

1 fiduciary capacity. An agent shall keep the funds belonging to
2 each insurer for which he or she is not appointed, other than
3 a surplus lines insurer, in a separate account so as to allow
4 the department or office to properly audit such funds. The
5 licensee in the applicable regular course of business shall
6 account for and pay the same to the insurer, insured, or other
7 person entitled thereto.

8 (2) The licensee shall keep and make available to the
9 department or office books, accounts, and records as will
10 enable the department or office to determine whether such
11 licensee is complying with the provisions of this code. Every
12 licensee shall preserve books, accounts, and records
13 pertaining to a premium payment for at least 3 years after
14 payment; provided, however, the preservation of records by
15 computer or photographic reproductions or records in
16 photographic form shall constitute compliance with this
17 requirement. All other records shall be maintained in
18 accordance with s. 626.748. The 3-year requirement shall not
19 apply to insurance binders when no policy is ultimately issued
20 and no premium is collected.

21 Section 944. Section 626.591, Florida Statutes, is
22 amended to read:

23 626.591 Penalty for violation of s. 626.581.--

24 (1) If any ~~insurer or~~ agent is found by the department
25 to be in violation of s. 626.581, the department may, in its
26 discretion, suspend or revoke ~~the insurer's certificate of~~
27 ~~authority and~~ the agent's license. If any insurer is found by
28 the office to be in violation of s. 626.581, the office may,
29 in its discretion, suspend or revoke the insurer's certificate
30 of authority.

31

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

7 Section 945. Subsection (1) of section 626.592,
8 Florida Statutes, is amended to read:

9 626.592 Primary agents.--

10 (1) Each person operating an insurance agency and each
11 location of a multiple location agency shall designate a
12 primary agent for each insurance agency location and shall
13 file the name of the person so designated, and the address of
14 the insurance agency location where he or she is primary
15 agent, with the department ~~of Insurance~~, on a form approved by
16 the department. The designation of the primary agent may be
17 changed at the option of the agency, and any change shall be
18 effective upon notification to the department. Notice of
19 change must be sent to the department within 30 days after
20 such change.

21 Section 946. Section 626.601, Florida Statutes, is
22 amended to read:

23 626.601 Improper conduct; inquiry; fingerprinting.--

24 (1) The department or office may, upon its own motion
25 or upon a written complaint signed by any interested person
26 and filed with the department or office, inquire into any
27 alleged improper conduct of any licensed agent, adjuster,
28 service representative, managing general agent, customer
29 representative, title insurance agent, title insurance agency,
30 continuing education course provider, instructor, school
31 official, or monitor group under this code. The department or

1 office may thereafter initiate an investigation of any such
2 licensee if it has reasonable cause to believe that the
3 licensee has violated any provision of the insurance code.
4 During the course of its investigation, the department or
5 office shall contact the licensee being investigated unless it
6 determines that contacting such person could jeopardize the
7 successful completion of the investigation or cause injury to
8 the public.

9 (2) In the investigation by the department or office
10 of the alleged misconduct, the licensee shall, whenever so
11 required by the department or office, cause his or her books
12 and records to be open for inspection for the purpose of such
13 inquiries.

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

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

20 (5) If the department or office, after investigation,
21 has reason to believe that a licensee may have been found
22 guilty of or pleaded guilty or nolo contendere to a felony or
23 a crime related to the business of insurance in this or any
24 other state or jurisdiction, the department or office may
25 require the licensee to file with the department or office a
26 complete set of his or her fingerprints, which shall be
27 accompanied by the fingerprint processing fee set forth in s.
28 624.501. The fingerprints shall be certified by an authorized
29 law enforcement officer.

30 (6) The complaint and any information obtained
31 pursuant to the investigation by the department or office are

1 confidential and are exempt from the provisions of s. 119.07,
2 unless the department or office files a formal administrative
3 complaint, emergency order, or consent order against the
4 licensee. Nothing in this subsection shall be construed to
5 prevent the department or office from disclosing the complaint
6 or such information as it deems necessary to conduct the
7 investigation, to update the complainant as to the status and
8 outcome of the complaint, or to share such information with
9 any law enforcement agency.

10 Section 947. Section 626.611, Florida Statutes, is
11 amended to read:

12 626.611 Grounds for compulsory refusal, suspension, or
13 revocation of agent's, title agency's, adjuster's, customer
14 representative's, service representative's, or managing
15 general agent's license or appointment.--The department or
16 office shall deny an application for, suspend, revoke, or
17 refuse to renew or continue the license or appointment of any
18 applicant, agent, title agency, adjuster, customer
19 representative, service representative, or managing general
20 agent, and it shall suspend or revoke the eligibility to hold
21 a license or appointment of any such person, if it finds that
22 as to the applicant, licensee, or appointee any one or more of
23 the following applicable grounds exist:

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

26 (2) Material misstatement, misrepresentation, or fraud
27 in obtaining the license or appointment or in attempting to
28 obtain the license or appointment.

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

31

1 (4) If the license or appointment is willfully used,
2 or to be used, to circumvent any of the requirements or
3 prohibitions of this code.

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

8 (6) If, as an adjuster, or agent licensed and
9 appointed to adjust claims under this code, he or she has
10 materially misrepresented to an insured or other interested
11 party the terms and coverage of an insurance contract with
12 intent and for the purpose of effecting settlement of claim
13 for loss or damage or benefit under such contract on less
14 favorable terms than those provided in and contemplated by the
15 contract.

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

18 (8) Demonstrated lack of reasonably adequate knowledge
19 and technical competence to engage in the transactions
20 authorized by the license or appointment.

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

23 (10) Misappropriation, conversion, or unlawful
24 withholding of moneys belonging to insurers or insureds or
25 beneficiaries or to others and received in conduct of business
26 under the license or appointment.

27 (11) Unlawfully rebating, attempting to unlawfully
28 rebate, or unlawfully dividing or offering to divide his or
29 her commission with another.

30 (12) Having obtained or attempted to obtain, or having
31 used or using, a license or appointment as agent or customer

1 representative for the purpose of soliciting or handling
2 "controlled business" as defined in s. 626.730 with respect to
3 general lines agents, s. 626.784 with respect to life agents,
4 and s. 626.830 with respect to health agents.

5 (13) Willful failure to comply with, or willful
6 violation of, any proper order or rule of the department,
7 commission, or office or willful violation of any provision of
8 this code.

9 (14) Having been found guilty of or having pleaded
10 guilty or nolo contendere to a felony or a crime punishable by
11 imprisonment of 1 year or more under the law of the United
12 States of America or of any state thereof or under the law of
13 any other country which involves moral turpitude, without
14 regard to whether a judgment of conviction has been entered by
15 the court having jurisdiction of such cases.

16 (15) Fraudulent or dishonest practice in submitting or
17 aiding or abetting any person in the submission of an
18 application for workers' compensation coverage under chapter
19 440 containing false or misleading information as to employee
20 payroll or classification for the purpose of avoiding or
21 reducing the amount of premium due for such coverage.

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

24 Section 948. Section 626.621, Florida Statutes, is
25 amended to read:

26 626.621 Grounds for discretionary refusal, suspension,
27 or revocation of agent's, adjuster's, customer
28 representative's, service representative's, or managing
29 general agent's license or appointment.--The department or
30 office may, in its discretion, deny an application for,
31 suspend, revoke, or refuse to renew or continue the license or

1 appointment of any applicant, agent, adjuster, customer
2 representative, service representative, or managing general
3 agent, and it may suspend or revoke the eligibility to hold a
4 license or appointment of any such person, if it finds that as
5 to the applicant, licensee, or appointee any one or more of
6 the following applicable grounds exist under circumstances for
7 which such denial, suspension, revocation, or refusal is not
8 mandatory under s. 626.611:

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

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

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

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

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

22 (6) In the conduct of business under the license or
23 appointment, engaging in unfair methods of competition or in
24 unfair or deceptive acts or practices, as prohibited under
25 part IX of this chapter, or having otherwise shown himself or
26 herself to be a source of injury or loss to the public or
27 detrimental to the public interest.

28 (7) Willful overinsurance of any property or health
29 insurance risk.

30 (8) Having been found guilty of or having pleaded
31 guilty or nolo contendere to a felony or a crime punishable by

1 imprisonment of 1 year or more under the law of the United
2 States of America or of any state thereof or under the law of
3 any other country, without regard to whether a judgment of
4 conviction has been entered by the court having jurisdiction
5 of such cases.

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

7 (10) Cheating on an examination required for licensure
8 or violating test center or examination procedures published
9 orally, in writing, or electronically at the test site by
10 authorized representatives of the examination program
11 administrator. Communication of test center and examination
12 procedures must be clearly established and documented.

13 (11) Failure to inform the department or office in
14 writing within 30 days after pleading guilty or nolo
15 contendere to, or being convicted or found guilty of, any
16 felony or a crime punishable by imprisonment of 1 year or more
17 under the law of the United States or of any state thereof, or
18 under the law of any other country without regard to whether a
19 judgment of conviction has been entered by the court having
20 jurisdiction of the case.

21 (12) Knowingly aiding, assisting, procuring, advising,
22 or abetting any person in the violation of or to violate a
23 provision of the insurance code or any order or rule of the
24 department, commission, or office.

25 Section 949. Section 626.631, Florida Statutes, is
26 amended to read:

27 626.631 Procedure for refusal, suspension, or
28 revocation of license.--

29 (1) If any licensee is convicted by a court of a
30 violation of this code or a felony, the licenses and
31 appointments of such person shall be immediately revoked by

1 the department or office. The licensee may subsequently
2 request a hearing pursuant to ss. 120.569 and 120.57, and the
3 department or office shall expedite any such requested
4 hearing. The sole issue at such hearing shall be whether the
5 revocation should be rescinded because such person was not in
6 fact convicted of a violation of this code or a felony.

7 (2) The papers, documents, reports, or evidence of the
8 department or office relative to a hearing for revocation or
9 suspension of a license or appointment pursuant to the
10 provisions of this chapter and chapter 120 are confidential
11 and exempt from the provisions of s. 119.07(1) until after the
12 same have been published at the hearing. However, such papers,
13 documents, reports, or items of evidence are subject to
14 discovery in a hearing for revocation or suspension of a
15 license or appointment.

16 Section 950. Subsections (1) and (2) of section
17 626.641, Florida Statutes, are amended to read:

18 626.641 Duration of suspension or revocation.--

19 (1) The department or office shall, in its order
20 suspending a license or appointment or in its order suspending
21 the eligibility of a person to hold or apply for such license
22 or appointment, specify the period during which the suspension
23 is to be in effect; but such period shall not exceed 2 years.
24 The license, appointment, or eligibility shall remain
25 suspended during the period so specified, subject, however, to
26 any rescission or modification of the order by the department
27 or office, or modification or reversal thereof by the court,
28 prior to expiration of the suspension period. A license,
29 appointment, or eligibility which has been suspended shall not
30 be reinstated except upon request for such reinstatement; but
31 the department or office shall not grant such reinstatement if

1 it finds that the circumstance or circumstances for which the
2 license, appointment, or eligibility was suspended still exist
3 or are likely to recur.

4 (2) No person or appointee under any license or
5 appointment revoked by the department or office, nor any
6 person whose eligibility to hold same has been revoked by the
7 department or office, shall have the right to apply for
8 another license or appointment under this code within 2 years
9 from the effective date of such revocation or, if judicial
10 review of such revocation is sought, within 2 years from the
11 date of final court order or decree affirming the revocation.
12 The department or office shall not, however, grant a new
13 license or appointment or reinstate eligibility to hold such
14 license or appointment if it finds that the circumstance or
15 circumstances for which the eligibility was revoked or for
16 which the previous license or appointment was revoked still
17 exist or are likely to recur; if an individual's license as
18 agent or customer representative or eligibility to hold same
19 has been revoked upon the ground specified in s. 626.611(12),
20 the department or office shall refuse to grant or issue any
21 new license or appointment so applied for.

22 Section 951. Subsection (2) of section 626.661,
23 Florida Statutes, is amended to read:

24 626.661 Surrender of license.--

25 (2) This section shall not be deemed to require the
26 surrender to the department or office of any license unless
27 such surrender has been requested by the department or office.

28 Section 952. Section 626.681, Florida Statutes, is
29 amended to read:

30
31

1 626.681 Administrative fine in lieu of or in addition
2 to suspension, revocation, or refusal of license, appointment,
3 or disapproval.--

4 (1) Except as to insurance agencies, if the department
5 or office finds that one or more grounds exist for the
6 suspension, revocation, or refusal to issue, renew, or
7 continue any license or appointment issued under this chapter,
8 or disapproval of a continuing education course provider,
9 instructor, school official, or monitor groups, the department
10 or office may, in its discretion, in lieu of or in addition to
11 such suspension or revocation, or in lieu of such refusal, or
12 disapproval, and except on a second offense or when such
13 suspension, revocation, or refusal is mandatory, impose upon
14 the licensee, appointee, course provider, instructor, school
15 official, or monitor group an administrative penalty in an
16 amount up to \$500 or, if the department or office has found
17 willful misconduct or willful violation on the part of the
18 licensee, appointee, course provider, instructor, school
19 official, or monitor group up to \$3,500. The administrative
20 penalty may, in the discretion of the department or office, be
21 augmented by an amount equal to any commissions received by or
22 accruing to the credit of the licensee or appointee in
23 connection with any transaction as to which the grounds for
24 suspension, revocation, or refusal related.

25 (2) With respect to insurance agencies, if the
26 department finds that one or more grounds exist for the
27 suspension, revocation, or refusal to issue, renew, or
28 continue any license issued under this chapter, the department
29 may, in its discretion, in lieu of or in addition to such
30 suspension or revocation, or in lieu of such refusal, impose
31 upon the licensee an administrative penalty in an amount not

1 to exceed \$10,000 per violation. The administrative penalty
2 may, in the discretion of the department, be augmented by an
3 amount equal to any commissions received by or accruing to the
4 credit of the licensee in connection with any transaction as
5 to which the grounds for suspension, revocation, or refusal
6 related.

7 (3) The department or office may allow the licensee,
8 appointee, or continuing education course provider,
9 instructor, school official, or monitor group a reasonable
10 period, not to exceed 30 days, within which to pay to the
11 department or office the amount of the penalty so imposed. If
12 the licensee, appointee, course provider, instructor, school
13 official, or monitor group fails to pay the penalty in its
14 entirety to the department or office within the period so
15 allowed, the license, appointments, approval, or status of
16 that person shall stand suspended or revoked or issuance,
17 renewal, or continuation shall be refused, as the case may be,
18 upon expiration of such period.

19 Section 953. Section 626.691, Florida Statutes, is
20 amended to read:

21 626.691 Probation.--

22 (1) If the department or office finds that one or more
23 grounds exist for the suspension, revocation, or refusal to
24 renew or continue any license or appointment issued under this
25 part, the department or office may, in its discretion, except
26 when an administrative fine is not permissible under s.
27 626.681 or when such suspension, revocation, or refusal is
28 mandatory, in lieu of or in addition to such suspension or
29 revocation, or in lieu of such refusal, or in connection with
30 any administrative monetary penalty imposed under s. 626.681,
31 place the offending licensee or appointee on probation for a

1 period, not to exceed 2 years, as specified by the department
2 or office in its order.

3 (2) As a condition to such probation or in connection
4 therewith, the department or office may specify in its order
5 reasonable terms and conditions to be fulfilled by the
6 probationer during the probation period. If during the
7 probation period the department or office has good cause to
8 believe that the probationer has violated a term or condition,
9 it shall suspend, revoke, or refuse to issue, renew, or
10 continue the license or appointment of the probationer, as
11 upon the original grounds referred to in subsection (1).

12 Section 954. Section 626.692, Florida Statutes, is
13 amended to read:

14 626.692 Restitution.--If any ground exists for the
15 suspension, revocation, or refusal of a license or
16 appointment, the department or office may, in addition to any
17 other penalty authorized under this chapter, order the
18 licensee to pay restitution to any person who has been
19 deprived of money by the licensee's misappropriation,
20 conversion, or unlawful withholding of moneys belonging to
21 insurers, insureds, beneficiaries, or others. In no instance
22 shall the amount of restitution required to be paid under this
23 section exceed the amount of money misappropriated, converted,
24 or unlawfully withheld. Nothing in this section limits or
25 restricts a person's right to seek other remedies as provided
26 for by law.

27 Section 955. Section 626.7315, Florida Statutes, is
28 amended to read:

29 626.7315 Prohibition against the unlicensed
30 transaction of general lines insurance.--With respect to any
31

1 line of authority as defined in s. 626.015(6)~~s. 626.015(7)~~,
2 no individual shall, unless licensed as a general lines agent:
3 (1) Solicit insurance or procure applications
4 therefor;
5 (2) In this state, receive or issue a receipt for any
6 money on account of or for any insurer, or receive or issue a
7 receipt for money from other persons to be transmitted to any
8 insurer for a policy, contract, or certificate of insurance or
9 any renewal thereof, even though the policy, certificate, or
10 contract is not signed by him or her as agent or
11 representative of the insurer;
12 (3) Directly or indirectly represent himself or
13 herself to be an agent of any insurer or as an agent, to
14 collect or forward any insurance premium, or to solicit,
15 negotiate, effect, procure, receive, deliver, or forward,
16 directly or indirectly, any insurance contract or renewal
17 thereof or any endorsement relating to an insurance contract,
18 or attempt to effect the same, of property or insurable
19 business activities or interests, located in this state;
20 (4) In this state, engage or hold himself or herself
21 out as engaging in the business of analyzing or abstracting
22 insurance policies or of counseling or advising or giving
23 opinions, other than as a licensed attorney at law, relative
24 to insurance or insurance contracts, for fee, commission, or
25 other compensation, other than as a salaried bona fide
26 full-time employee so counseling and advising his or her
27 employer relative to the insurance interests of the employer
28 and of the subsidiaries or business affiliates of the
29 employer;
30
31

1 (5) In any way, directly or indirectly, make or cause
2 to be made, or attempt to make or cause to be made, any
3 contract of insurance for or on account of any insurer;

4 (6) Solicit, negotiate, or in any way, directly or
5 indirectly, effect insurance contracts, if a member of a
6 partnership or association, or a stockholder, officer, or
7 agent of a corporation which holds an agency appointment from
8 any insurer; or

9 (7) Receive or transmit applications for suretyship,
10 or receive for delivery bonds founded on applications
11 forwarded from this state, or otherwise procure suretyship to
12 be effected by a surety insurer upon the bonds of persons in
13 this state or upon bonds given to persons in this state.

14 Section 956. Subsection (3) of section 626.732,
15 Florida Statutes, is amended to read:

16 626.732 Requirement as to knowledge, experience, or
17 instruction.--

18 (3) An individual who was or became qualified to sit
19 for an agent's, customer representative's, or adjuster's
20 examination at or during the time he or she was employed by
21 the department or office and who, while so employed, was
22 employed in responsible insurance duties as a full-time bona
23 fide employee shall be permitted to take an examination if
24 application for such examination is made within 90 days after
25 the date of termination of his or her employment with the
26 department or office.

27 Section 957. Section 626.742, Florida Statutes, is
28 amended to read:

29 626.742 Nonresident agents; service of process.--

30 (1) Each licensed nonresident agent shall appoint the
31 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~

1 as his or her attorney to receive service of legal process
2 issued against the agent in this state, upon causes of action
3 arising within this state out of transactions under the
4 agent's license and appointment. Service upon the Chief
5 Financial Officer ~~Insurance Commissioner and Treasurer~~ as
6 attorney shall constitute effective legal service upon the
7 agent.

8 (2) The appointment of the Chief Financial Officer
9 ~~Insurance Commissioner and Treasurer~~ for service of process
10 shall be irrevocable for as long as there could be any cause
11 of action against the agent arising out of his or her
12 insurance transactions in this state.

13 (3) Duplicate copies of such legal process against
14 such agent shall be served upon the Chief Financial Officer
15 ~~Insurance Commissioner and Treasurer~~ by a person competent to
16 serve a summons.

17 (4) Upon receiving such service, the Chief Financial
18 Officer ~~Insurance Commissioner and Treasurer~~ shall forthwith
19 send one of the copies of the process, by registered mail with
20 return receipt requested, to the defendant agent at his or her
21 last address of record with the department.

22 (5) The Chief Financial Officer ~~Insurance Commissioner~~
23 ~~and Treasurer~~ shall keep a record of the day and hour of
24 service upon him or her of all such legal process.

25 Section 958. Subsections (4) and (7) of section
26 626.7451, Florida Statutes, are amended to read:

27 626.7451 Managing general agents; required contract
28 provisions.--No person acting in the capacity of a managing
29 general agent shall place business with an insurer unless
30 there is in force a written contract between the parties which
31 sets forth the responsibility for a particular function,

1 specifies the division of responsibilities, and contains the
2 following minimum provisions:

3 (4) Separate records of business written by the
4 managing general agent shall be maintained unless the managing
5 general agent is a controlled or controlling person. The
6 insurer shall have access and the right to copy all accounts
7 and records related to its business in a form usable by the
8 insurer, and the department and office shall have access to
9 all books, bank accounts, and records of the managing general
10 agent in a form usable to the department and office. The
11 records shall be retained according to s. 626.561.

12 (7) If the contract permits the managing general agent
13 to settle claims on behalf of the insurer:

14 (a) All claims must be reported to the company in a
15 timely manner and all claims must be adjusted by properly
16 licensed persons.

17 (b) Notice shall be sent by the managing general agent
18 to the insurer as soon as it becomes known that the claim:

- 19 1. Exceeds the limit set by the insurer;
- 20 2. Involves a coverage dispute;
- 21 3. Exceeds the managing general agent's claims
22 settlement authority;
- 23 4. Is open for more than 6 months; or
- 24 5. Is closed by payment of an amount set by the office
25 ~~department~~ or an amount set by the insurer, whichever is less.

26 (c) All claims files shall be the joint property of
27 the insurer and managing general agent. However, upon an
28 order of liquidation of the insurer the claims and related
29 application files shall become the sole property of the
30 insurer or its estate. The managing general agent shall have

31

1 reasonable access to and the right to copy the files on a
2 timely basis.

3 (d) Any settlement authority granted to the managing
4 general agent may be terminated for cause upon the insurer's
5 written notice to the managing general agent or upon the
6 termination of the contract. The insurer may suspend the
7 settlement authority during the pendency of any dispute
8 regarding the cause for termination.

9
10 For the purposes of this section and ss. 626.7453 and
11 626.7454, the term "controlling person" or "controlling" has
12 the meaning set forth in s. 625.012(5)(b)1., and the term
13 "controlled person" or "controlled" has the meaning set forth
14 in s. 625.012(5)(b)2.

15 Section 959. Subsections (1), (5), and (6) of section
16 626.7454, Florida Statutes, are amended to read:

17 626.7454 Managing general agents; duties of
18 insurers.--

19 (1) The insurer shall have on file for each managing
20 general agent with which it has done business an independent
21 financial examination in a form acceptable to the office
22 ~~department~~.

23 (5) Within 30 days after entering into or terminating
24 a contract with a managing general agent, the insurer shall
25 provide written notification of the appointment or termination
26 to the department and office. Notices of appointment of a
27 managing general agent shall include a statement of duties
28 which the applicant is expected to perform on behalf of the
29 insurer, the lines of insurance for which the applicant is to
30 be authorized to act, and any other information the department
31 or office may request.

1 (6) An insurer shall review its books and records on a
2 quarterly basis to determine if any producer has become a
3 managing general agent as defined in s. 626.015. If the
4 insurer determines that a producer has become a managing
5 general agent, the insurer shall promptly notify the producer
6 and the department and office of such determination and the
7 insurer and producer must fully comply with the provisions of
8 this section and ss. 626.7451, 626.7452, and 626.7453 within
9 30 days after such determination.

10
11 Subsections (1), (3), and (4) do not apply to a managing
12 general agent that is a controlled or controlling person.

13 Section 960. Subsections (6), (7), and (8) of section
14 626.7491, Florida Statutes, are amended to read:

15 626.7491 Business transacted with producer controlled
16 property and casualty insurer.--

17 (6) AUDIT COMMITTEE.--Every controlled insurer shall
18 have an audit committee of the board of directors composed of
19 independent directors. The audit committee shall annually meet
20 with management, the insurer's independent certified public
21 accountants, and an independent casualty actuary or other
22 independent loss reserve specialist acceptable to the office
23 ~~department~~ to review the adequacy of the insurer's loss
24 reserves.

25 (7) REPORTING REQUIREMENTS.--

26 (a) In addition to any other required loss reserve
27 certification, the controlled insurer shall, on April 1 of
28 each year, file with the office ~~department~~ the opinion of an
29 independent casualty actuary, or such other independent loss
30 reserve specialist acceptable to the office ~~department~~,
31 reporting loss ratios for each line of business written and

1 attesting to the adequacy of loss reserves established for
2 losses incurred and outstanding as of the year end, including
3 incurred but not reported losses, on business placed by the
4 producer.

5 (b) The controlled insurer shall annually report to
6 the office ~~department~~ the amount of commissions paid to the
7 producer, the percentage such amount represents of the net
8 premiums written, and comparable amounts and percentages paid
9 to noncontrolling producers for placements of the same kinds
10 of insurance.

11 (8) PENALTIES.--

12 (a) If the department believes that the controlling
13 producer or any other person has not materially complied with
14 this section, or any rule adopted or order issued hereunder,
15 the department may order the controlling producer to cease
16 placing business with the controlled insurer.

17 (b) If, due to such material noncompliance, the
18 controlled insurer or any policyholder thereof has suffered
19 any loss or damage, the department or office may maintain a
20 civil action or intervene in an action brought by or on behalf
21 of the insurer or policyholder for recovery of compensatory
22 damages for the benefit of the insurer or policyholder or
23 other appropriate relief.

24 (c) If an order for liquidation or rehabilitation of
25 the controlled insurer has been entered pursuant to chapter
26 631 and the receiver appointed under such order believes that
27 the controlling producer or any other person has not
28 materially complied with this section or any rule adopted or
29 order issued hereunder and the insurer has suffered any loss
30 or damage therefrom, the receiver may maintain a civil action
31

1 for recovery of damages or other appropriate sanctions for the
2 benefit of the insurer.

3 (d) Nothing contained in this section shall affect the
4 right of the department or office to impose any other
5 penalties provided for in the Florida Insurance Code.

6 (e) Nothing contained in this section is intended to
7 or shall in any manner alter or affect the rights of
8 policyholders, claimants, creditors, or other third parties.

9 Section 961. Paragraph (e) of subsection (3) and
10 subsections (11) and (12) of section 626.7492, Florida
11 Statutes, are amended to read:

12 626.7492 Reinsurance intermediaries.--

13 (3) LICENSURE.--

14 (e) If the applicant for a reinsurance intermediary
15 license is a nonresident, the applicant, as a condition
16 precedent to receiving or holding a license, must designate
17 the Chief Financial Officer ~~Insurance Commissioner~~ as agent
18 for service of process in the manner, and with the same legal
19 effect, provided for by this section for designation of
20 service of process upon unauthorized insurers. Such applicant
21 shall also furnish the department with the name and address of
22 a resident of this state upon whom notices or orders of the
23 department or process affecting the nonresident reinsurance
24 intermediary may be served. The licensee shall promptly notify
25 the department in writing of each change in its designated
26 agent for service of process, and the change shall not become
27 effective until acknowledged by the department.

28 (11) PENALTIES AND LIABILITIES.--

29 (a) A reinsurance intermediary found by the
30 department, or an insurer, or reinsurer found by the office,

31

1 ~~department~~ to be in violation of any provision of this section
2 must:

3 1. For each separate violation pay a penalty in an
4 amount not to exceed \$5,000;

5 2. Be subject to revocation or suspension of its
6 license; and

7 3. If a violation was committed by the reinsurance
8 intermediary, the reinsurance intermediary must make
9 restitution to the insurer, reinsurer, rehabilitator, or
10 liquidator of the insurer or reinsurer for the net losses
11 incurred by the insurer or reinsurer attributable to the
12 violation.

13 (b) Nothing contained in this section shall affect the
14 right of the office or department to impose any other
15 penalties provided in the Florida Insurance Code.

16 (c) Nothing contained in this section is intended to
17 or shall in any manner limit or restrict the rights of
18 policyholders, claimants, creditors, or other third parties or
19 confer any rights to these persons.

20 ~~(12) No insurer or reinsurer may continue to use the
21 services of a reinsurance intermediary on or after April 8,
22 1992, unless such use is in compliance with this section.~~

23 Section 962. Subsection (5) of section 626.752,
24 Florida Statutes, is amended to read:

25 626.752 Exchange of business.--

26 (5) Within 15 days after the last day of each month,
27 any insurer accepting business under this section shall report
28 to the department the name, address, telephone number, and
29 social security number of each agent from which the insurer
30 received more than 24 personal lines risks during the calendar
31 year, except for risks being removed from the Citizens

1 Property Insurance Corporation Residential Property and
2 ~~Casualty Joint Underwriting Association~~ and placed with that
3 insurer by a brokering agent. Once the insurer has reported
4 pursuant to this subsection an agent's name to the department,
5 additional reports on the same agent shall not be required.
6 However, the fee set forth in s. 624.501 shall be paid for the
7 agent by the insurer for each year until the insurer notifies
8 the department that the insurer is no longer accepting
9 business from the agent pursuant to this section. The insurer
10 may require that the agent reimburse the insurer for the fee.

11 Section 963. Subsection (2) of section 626.7845,
12 Florida Statutes, is amended to read:

13 626.7845 Prohibition against unlicensed transaction of
14 life insurance.--

15 (2) Except as provided in s. 626.112(6), with respect
16 to any line of authority specified in s. 626.015(11) ~~s.~~
17 ~~626.015(12)~~, no individual shall, unless licensed as a life
18 agent:

19 (a) Solicit insurance or annuities or procure
20 applications; or

21 (b) In this state, engage or hold himself or herself
22 out as engaging in the business of analyzing or abstracting
23 insurance policies or of counseling or advising or giving
24 opinions to persons relative to insurance or insurance
25 contracts other than:

26 1. As a consulting actuary advising an insurer; or

27 2. As to the counseling and advising of labor unions,
28 associations, trustees, employers, or other business entities,
29 the subsidiaries and affiliates of each, relative to their
30 interests and those of their members or employees under
31 insurance benefit plans.

1 Section 964. Section 626.7851, Florida Statutes, is
2 amended to read:

3 626.7851 Requirement as to knowledge, experience, or
4 instruction.--No applicant for a license as a life agent,
5 except for a chartered life underwriter (CLU), shall be
6 qualified or licensed unless within the 4 years immediately
7 preceding the date the application for a license is filed with
8 the department he or she has:

9 (1) Successfully completed 40 hours of classroom
10 courses in insurance satisfactory to the department at a
11 school or college, or extension division thereof, or other
12 authorized course of study, approved by the department.
13 Courses must include instruction on the subject matter of
14 unauthorized entities engaging in the business of insurance,
15 to include the Florida Nonprofit Multiple-Employer Welfare
16 Arrangement Act and the Employee Retirement Income Security
17 Act, 29 U.S.C. ss. 1001 et seq., as it relates to the
18 provision of life insurance by employers to their employees
19 and the regulation thereof;

20 (2) Successfully completed a correspondence course in
21 insurance satisfactory to the department and regularly offered
22 by accredited institutions of higher learning in this state,
23 approved by the department. Courses must include instruction
24 on the subject matter of unauthorized entities engaging in the
25 business of insurance, to include the Florida Nonprofit
26 Multiple-Employer Welfare Arrangement Act and the Employee
27 Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as
28 it relates to the provision of life insurance by employers to
29 their employees and the regulation thereof;

30 (3) Held an active license in life, or life and
31 health, insurance in another state. This provision may not be

1 utilized unless the other state grants reciprocal treatment to
2 licensees formerly licensed in Florida; or

3 (4) Been employed by the department or office for at
4 least 1 year, full time in life or life and health insurance
5 regulatory matters and who was not terminated for cause, and
6 application for examination is made within 90 days after the
7 date of termination of his or her employment with the
8 department or office.

9 Section 965. Section 626.8305, Florida Statutes, is
10 amended to read:

11 626.8305 Prohibition against the unlicensed
12 transaction of health insurance.--Except as provided in s.
13 626.112(6), with respect to any line of authority specified in
14 s. 626.015(7)~~s. 626.015(8)~~, no individual shall, unless
15 licensed as a health agent:

16 (1) Solicit insurance or procure applications; or

17 (2) In this state, engage or hold himself or herself
18 out as engaging in the business of analyzing or abstracting
19 insurance policies or of counseling or advising or giving
20 opinions to persons relative to insurance contracts other
21 than:

22 (a) As a consulting actuary advising insurers; or

23 (b) As to the counseling and advising of labor unions,
24 associations, trustees, employers, or other business entities,
25 the subsidiaries and affiliates of each, relative to their
26 interests and those of their members or employees under
27 insurance benefit plans.

28 Section 966. Section 626.8311, Florida Statutes, is
29 amended to read:

30 626.8311 Requirement as to knowledge, experience, or
31 instruction.--No applicant for a license as a health agent,

1 except for a chartered life underwriter (CLU), shall be
2 qualified or licensed unless within the 4 years immediately
3 preceding the date the application for license is filed with
4 the department he or she has:

5 (1) Successfully completed 40 hours of classroom
6 courses in insurance satisfactory to the department at a
7 school or college, or extension division thereof, or other
8 authorized course of study, approved by the department.
9 Courses must include instruction on the subject matter of
10 unauthorized entities engaging in the business of insurance,
11 to include the Florida Nonprofit Multiple-Employer Welfare
12 Arrangement Act and the Employee Retirement Income Security
13 Act, 29 U.S.C. ss. 1001 et seq., as it relates to the
14 provision of health insurance by employers to their employees
15 and the regulation thereof;

16 (2) Successfully completed a correspondence course in
17 insurance satisfactory to the department and regularly offered
18 by accredited institutions of higher learning in this state,
19 approved by the department. Courses must include instruction
20 on the subject matter of unauthorized entities engaging in the
21 business of insurance, to include the Florida Nonprofit
22 Multiple-Employer Welfare Arrangement Act and the Employee
23 Retirement Income Security Act, 29 U.S.C. ss. 1001 et seq., as
24 it relates to the provision of health insurance by employers
25 to their employees and the regulation thereof;

26 (3) Held an active license in health, or life and
27 health, insurance in another state. This provision may not be
28 utilized unless the other state grants reciprocal treatment to
29 licensees formerly licensed in Florida; or

30 (4) Been employed by the department or office for at
31 least 1 year, full time in health insurance regulatory matters

1 and who was not terminated for cause, and application for
2 examination is made within 90 days after the date of
3 termination of his or her employment with the department or
4 office.

5 Section 967. Subsection (1) of section 626.8427,
6 Florida Statutes, is amended to read:

7 626.8427 Number of applications for licensure
8 required; exemption; effect of expiration of license.--

9 (1) After a license as a title insurance agent has
10 been issued to a title insurance agent, the agent is not
11 required to file another license application for a similar
12 license, irrespective of the number of insurers to be
13 represented by the agent, unless:

14 (a) The agent is specifically ordered by the
15 department to complete a new application; or

16 (b) During any period of 48 months since the filing of
17 the original license application, the agent was not appointed,
18 unless in the case of individuals the failure to be so
19 appointed was due to military service, in which event the
20 period within which a new application is not required may, in
21 the discretion of the department ~~of Insurance~~, be extended for
22 12 months following the date of discharge from military
23 service if the military service does not exceed 3 years, but
24 in no event shall the period be extended under this clause for
25 a period of more than 6 years from the date of filing the
26 original application.

27 Section 968. Subsections (1) and (3) of section
28 626.8463, Florida Statutes, are amended to read:

29 626.8463 Witnesses and evidence.--

30 (1) As to the subject of any examination,
31 investigation, or hearing being conducted by him or her under

1 s. 624.5015, ss. 626.8417-626.847, or s. 627.791, an examiner
2 appointed by the department or office ~~of Insurance~~ may
3 administer oaths, examine and cross-examine witnesses, and
4 receive oral and documentary evidence and shall have the power
5 to subpoena witnesses, compel their attendance and testimony,
6 and require by subpoena the production of books, papers,
7 records, files, correspondence, documents, or other evidence
8 which the examiner deems relevant to the inquiry.

9 (3) If a person refuses to comply with any such
10 subpoena or to testify as to any matter concerning which the
11 person may be lawfully interrogated, the circuit court in and
12 for Leon County, or the county in which such examination,
13 investigation, or hearing is being conducted, or the county in
14 which such person resides, upon application by the department
15 or office, may issue an order requiring such person to comply
16 with the subpoena and to testify. A person who fails to obey
17 such an order of the court may be punished by the court for
18 contempt.

19 Section 969. Section 626.8467, Florida Statutes, is
20 amended to read:

21 626.8467 Testimony compelled; immunity from
22 prosecution.--

23 (1) If a person asks to be excused from attending or
24 testifying or from producing any books, papers, records,
25 contracts, documents, or other evidence in connection with any
26 examination, hearing, or investigation being conducted under
27 s. 624.5015, ss. 626.8417-626.847, or s. 627.791 by the
28 department or office or its examiner on the ground that the
29 testimony or evidence required of the person may tend to
30 incriminate him or her or subject him or her to a penalty or
31 forfeiture and notwithstanding is directed to give such

1 testimony or produce such evidence, the person must, if so
2 directed by the Department of Financial Services ~~Insurance~~ and
3 the Department of Legal Affairs or by the office and the
4 Department of Legal Affairs, nonetheless comply with such
5 direction, but he or she shall not thereafter be prosecuted or
6 subjected to any penalty or forfeiture for or on account of
7 any transaction, matter, or thing concerning which he or she
8 may have so testified or produced evidence, and no testimony
9 so given or evidence produced shall be received against the
10 person upon any criminal action, investigation, or proceeding.
11 However, a person so testifying shall not be exempt from
12 prosecution or punishment for any perjury committed by him or
13 her in such testimony, and the testimony or evidence so given
14 or produced shall be admissible against him or her upon any
15 criminal action, investigation, or proceeding concerning such
16 perjury; and such person shall not be exempt from the refusal,
17 suspension, or revocation of any license or appointment,
18 permission, or authority conferred or to be conferred pursuant
19 to s. 624.5015, ss. 626.8417-626.847, or s. 627.791.

20 (2) Any such person may execute, acknowledge, and file
21 with ~~in the office of~~ the Department of Financial Services ~~or~~
22 the office, as appropriate, ~~Insurance~~ a statement expressly
23 waiving such immunity or privilege with respect to any
24 transaction, matter, or thing specified in the statement, and
25 thereupon the testimony of such person or such evidence in
26 relation to such transaction, matter, or thing may be received
27 or produced before any judge or justice, court, tribunal, or
28 grand jury or otherwise and, if so received or produced, such
29 person shall not be entitled to any immunity or privilege on
30 account of any testimony he or she may so give or evidence so
31 produced.

1 Section 970. Section 626.847, Florida Statutes, is
2 amended to read:

3 626.847 Penalty for refusal to testify.--A person who
4 refuses or fails, without lawful cause, to testify relative to
5 the affairs of any title insurer or other person when
6 subpoenaed under s. 626.8463 and requested by the department
7 or office of Insurance to so testify is guilty of a
8 misdemeanor of the second degree and, upon conviction, is
9 punishable as provided in s. 775.082 or s. 775.083.

10 Section 971. Subsection (3) of section 626.8473,
11 Florida Statutes, is amended to read:

12 626.8473 Escrow; trust fund.--

13 (3) All funds received by a title insurance agent to
14 be held in trust shall be immediately placed in a financial
15 institution that is located within this state and is a member
16 of the Federal Deposit Insurance Corporation or the National
17 Credit Union Share Insurance Fund. These funds shall be
18 invested in an escrow account in accordance with the
19 investment requirements and standards established for deposits
20 and investments of state funds in s. 17.57 ~~s. 18.10~~, where the
21 funds shall be kept until disbursement thereof is properly
22 authorized.

23 Section 972. Section 626.8582, Florida Statutes, is
24 amended to read:

25 626.8582 "Nonresident public adjuster" defined.--A
26 "nonresident public adjuster" is a person who:

27 (1) Is not a resident of this state;

28 (2) Is a currently licensed public adjuster in his or
29 her state of residence for the type or kinds of insurance for
30 which the licensee intends to adjust claims in this state or,
31 if a resident of a state that does not license public

1 adjusters, has passed the office's ~~department's~~ adjuster
2 examination as prescribed in s. 626.8732(1)(b); and

3 (3) Is a self-employed public adjuster or associated
4 with or employed by a public adjusting firm or other public
5 adjuster.

6 Section 973. Section 626.8584, Florida Statutes, is
7 amended to read:

8 626.8584 "Nonresident independent adjuster"
9 defined.--A "nonresident independent adjuster" is a person
10 who:

11 (1) Is not a resident of this state;

12 (2) Is a currently licensed independent adjuster in
13 his or her state of residence for the type or kinds of
14 insurance for which the licensee intends to adjust claims in
15 this state or, if a resident of a state that does not license
16 independent adjusters, has passed the office's ~~department's~~
17 adjuster examination as prescribed in s. 626.8734(1)(b); and

18 (3) Is a self-employed independent adjuster or
19 associated with or employed by an independent adjusting firm
20 or other independent adjuster.

21 Section 974. Section 626.859, Florida Statutes, is
22 amended to read:

23 626.859 "Catastrophe" or "emergency" adjuster
24 defined.--A "catastrophe" or "emergency" adjuster is a person
25 who is not a licensed adjuster under this part, but who has
26 been designated and certified to the office ~~department~~ by
27 insurers as qualified to adjust claims, losses, or damages
28 under policies or contracts of insurance issued by such
29 insurer, and whom the office ~~department~~ may license, in the
30 event of a catastrophe or emergency, for the purposes and
31 under the conditions which the office ~~department~~ shall fix and

1 for the period of the emergency as the office ~~department~~ shall
2 determine, to adjust claims, losses, or damages under the
3 policies of insurance issued by the insurers.

4 Section 975. Subsection (2) of section 626.861,
5 Florida Statutes, is amended to read:

6 626.861 Insurer's officers, insurer's employees,
7 reciprocal insurer's representatives; adjustments by.--

8 (2) If any such officer, employee, attorney, or agent
9 in connection with the adjustment of any such claim, loss, or
10 damage engages in any of the misconduct described in or
11 contemplated by s. 626.611(6), the office ~~department~~ may
12 suspend or revoke the insurer's certificate of authority.

13 Section 976. Subsection (2) of section 626.863,
14 Florida Statutes, is amended to read:

15 626.863 Licensed independent adjusters required;
16 insurers' responsibility.--

17 (2) Before referring any claim or loss, the insurer
18 shall ascertain from the office ~~department~~ whether the
19 proposed independent adjuster is currently licensed and
20 appointed as such. Having once ascertained that a particular
21 person is so licensed and appointed, the insurer may assume
22 that he or she will continue to be so licensed and appointed
23 until the insurer has knowledge, or receives information from
24 the office ~~department~~, to the contrary.

25 Section 977. Section 626.865, Florida Statutes, is
26 amended to read:

27 626.865 Public adjuster's qualifications, bond.--

28 (1) The office ~~department~~ shall issue a license to an
29 applicant for a public adjuster's license upon determining
30 that the applicant has paid the applicable fees specified in
31 s. 624.501 and possesses the following qualifications:

- 1 (a) Is a natural person at least 18 years of age.
- 2 (b) Is a bona fide resident of this state.
- 3 (c) Is trustworthy and has such business reputation as
4 would reasonably assure that the applicant will conduct his or
5 her business as insurance adjuster fairly and in good faith
6 and without detriment to the public.
- 7 (d) Has had sufficient experience, training, or
8 instruction concerning the adjusting of damages or losses
9 under insurance contracts, other than life and annuity
10 contracts, is sufficiently informed as to the terms and
11 effects of the provisions of those types of insurance
12 contracts, and possesses adequate knowledge of the laws of
13 this state relating to such contracts as to enable and qualify
14 him or her to engage in the business of insurance adjuster
15 fairly and without injury to the public or any member thereof
16 with whom the applicant may have business as a public
17 adjuster.
- 18 (e) Has passed any required written examination.
- 19 (2) At the time of application for license as a public
20 adjuster, the applicant shall file with the office ~~department~~
21 a bond executed and issued by a surety insurer authorized to
22 transact such business in this state, in the amount of
23 \$50,000, conditioned for the faithful performance of his or
24 her duties as a public adjuster under the license applied for.
25 The bond shall be in favor of the office ~~department~~ and shall
26 specifically authorize recovery by the office ~~department~~ of
27 the damages sustained in case the licensee is guilty of fraud
28 or unfair practices in connection with his or her business as
29 public adjuster. The aggregate liability of the surety for all
30 such damages shall in no event exceed the amount of the bond.
31 Such bond shall not be terminated unless at least 30 days'

1 written notice is given to the licensee and filed with the
2 office ~~department~~.

3 Section 978. Section 626.866, Florida Statutes, is
4 amended to read:

5 626.866 Independent adjuster's qualifications.--The
6 office ~~department~~ shall issue a license to an applicant for an
7 independent adjuster's license upon determining that the
8 applicable license fee specified in s. 624.501 has been paid
9 and that the applicant possesses the following qualifications:

10 (1) Is a natural person at least 18 years of age.
11 (2) Is a bona fide resident of this state.
12 (3) Is trustworthy and has such business reputation as
13 would reasonably assure that the applicant will conduct his or
14 her business as insurance adjuster fairly and in good faith
15 and without detriment to the public.

16 (4) Has had sufficient experience, training, or
17 instruction concerning the adjusting of damage or loss under
18 insurance contracts, other than life and annuity contracts, is
19 sufficiently informed as to the terms and the effects of the
20 provisions of such types of contracts, and possesses adequate
21 knowledge of the insurance laws of this state relating to such
22 contracts as to enable and qualify him or her to engage in the
23 business of insurance adjuster fairly and without injury to
24 the public or any member thereof with whom he or she may have
25 relations as an insurance adjuster and to adjust all claims in
26 accordance with the policy or contract and the insurance laws
27 of this state.

28 (5) Has passed any required written examination.

29 Section 979. Section 626.867, Florida Statutes, is
30 amended to read:

31

1 626.867 Company employee adjuster's
2 qualifications.--The office ~~department~~ shall issue a license
3 to an applicant for a company employee adjuster's license upon
4 determining that the applicable license fee specified in s.
5 624.501 has been paid and that the applicant possesses the
6 following qualifications:

7 (1) Is a natural person at least 18 years of age.
8 (2) Is a bona fide resident of this state.
9 (3) Is trustworthy and has such business reputation as
10 would reasonably assure that the applicant will conduct his or
11 her business as insurance adjuster fairly and in good faith
12 and without detriment to the public.

13 (4) Has had sufficient experience, training, or
14 instruction concerning the adjusting of damage or loss of
15 risks described in his or her application, is sufficiently
16 informed as to the terms and the effects of the provisions of
17 insurance contracts covering such risks, and possesses
18 adequate knowledge of the insurance laws of this state
19 relating to such insurance contracts as to enable and qualify
20 him or her to engage in such business as insurance adjuster
21 fairly and without injury to the public or any member thereof
22 with whom he or she may have relations as an insurance
23 adjuster and to adjust all claims in accordance with the
24 policy or contract and the insurance laws of this state.

25 (5) Has passed any required written examination.

26 Section 980. Subsection (5) of section 626.869,
27 Florida Statutes, is amended to read:

28 626.869 License, adjusters.--

29 (5) Any person holding a license for 24 consecutive
30 months or longer and who engages in adjusting workers'
31 compensation insurance must, beginning in their birth month

1 and every 2 years thereafter, have completed 24 hours of
2 courses, 2 hours of which relate to ethics, in subjects
3 designed to inform the licensee regarding the current workers'
4 compensation laws of this state, so as to enable him or her to
5 engage in business as a workers' compensation insurance
6 adjuster fairly and without injury to the public and to adjust
7 all claims in accordance with the policy or contract and the
8 workers' compensation laws of this state. In order to qualify
9 as an eligible course under this subsection, the course must:

10 (a) Have a course outline approved by the office
11 ~~department~~.

12 (b) Be taught at a school training facility or other
13 location approved by the office ~~department~~.

14 (c) Be taught by instructors with at least 5 years of
15 experience in the area of workers' compensation, general lines
16 of insurance, or other persons approved by the office
17 ~~department~~. However, a member of The Florida Bar is exempt
18 from the 5 years' experience requirement.

19 (d) Furnish the attendee a certificate of completion.
20 The course provider shall send a roster to the office
21 ~~department~~ in a format prescribed by the commission
22 ~~department~~.

23 Section 981. Section 626.8695, Florida Statutes, is
24 amended to read:

25 626.8695 Primary adjuster.--

26 (1) Each person operating an adjusting firm and each
27 location of a multiple location adjusting firm must designate
28 a primary adjuster for each such firm or location and must
29 file with the office ~~department~~ the name of such primary
30 adjuster and the address of the firm or location where he or
31 she is the primary adjuster, on a form approved by the

1 commission ~~department~~. The designation of the primary adjuster
2 may be changed at the option of the adjusting firm. Any such
3 change is effective upon notification to the office
4 ~~department~~. Notice of change must be sent to the office
5 ~~department~~ within 30 days after such change.

6 (2)(a) For purposes of this section, a "primary
7 adjuster" is the licensed adjuster who is responsible for the
8 hiring and supervision of all individuals within an adjusting
9 firm location who deal with the public and who acts in the
10 capacity of a public adjuster as defined in s. 626.854, or an
11 independent adjuster as defined in s. 626.855. An adjuster
12 may be designated as a primary adjuster for only one adjusting
13 firm location.

14 (b) For purposes of this section, an "adjusting firm"
15 is a location where an independent or public adjuster is
16 engaged in the business of insurance.

17 (3) The office ~~department~~ may suspend or revoke the
18 license of the primary adjuster if the adjusting firm employs
19 any person who has had a license denied or any person whose
20 license is currently suspended or revoked. However, if a
21 person has been denied a license for failure to pass a
22 required examination, he or she may be employed to perform
23 clerical or administrative functions for which licensure is
24 not required.

25 (4) The primary adjuster in an unincorporated
26 adjusting firm, or the primary adjuster in an incorporated
27 adjusting firm in which no officer, director, or stockholder
28 is an adjuster, is responsible and accountable for the acts of
29 salaried employees under his or her direct supervision and
30 control while acting on behalf of the adjusting firm. Nothing
31 in this section renders any person criminally liable or

1 subject to any disciplinary proceedings for any act unless the
2 person personally committed or knew or should have known of
3 the act and of the facts constituting a violation of this
4 code.

5 (5) The office ~~department~~ may suspend or revoke the
6 license of any adjuster who is employed by a person whose
7 license is currently suspended or revoked.

8 (6) An adjusting firm location may not conduct the
9 business of insurance unless a primary adjuster is designated.
10 Failure of the person operating the adjusting firm to
11 designate a primary adjuster for the firm, or for each
12 location, as applicable, on a form prescribed by the
13 commission ~~department~~ within 30 days after inception of the
14 firm or change of primary adjuster designation, constitutes
15 grounds for requiring the adjusting firm to obtain an
16 adjusting firm license pursuant to s. 626.8696.

17 (7) Any adjusting firm may request, on a form
18 prescribed by the commission ~~department~~, verification from the
19 office ~~department~~ of any person's current licensure status. If
20 a request is mailed to the office ~~department~~ within 5 working
21 days after the date an adjuster is hired, and the office
22 ~~department~~ subsequently notifies the adjusting firm that an
23 employee's license is currently suspended, revoked, or has
24 been denied, the license of the primary adjuster shall not be
25 revoked or suspended if the unlicensed person is immediately
26 dismissed from employment as an adjuster with the firm.

27 Section 982. Subsections (1) and (5) of section
28 626.8696, Florida Statutes, are amended to read:

29 626.8696 Application for adjusting firm license.--

30 (1) The application for an adjusting firm license must
31 include:

1 (a) The name of each majority owner, partner, officer,
2 and director of the adjusting firm.

3 (b) The resident address of each person required to be
4 listed in the application under paragraph (a).

5 (c) The name of the adjusting firm and its principal
6 business address.

7 (d) The location of each adjusting firm office and the
8 name under which each office conducts or will conduct
9 business.

10 (e) Any additional information which the commission
11 ~~department~~ may require.

12 (5) An adjusting firm required to be licensed pursuant
13 to s. 626.8695 must remain so licensed for a period of 3 years
14 from the date of licensure, unless the license is suspended or
15 revoked. The office ~~department~~ may suspend or revoke the
16 adjusting firm's authority to do business for activities
17 occurring during the time the firm is licensed, regardless of
18 whether the licensing period has terminated.

19 Section 983. Section 626.8697, Florida Statutes, is
20 amended to read:

21 626.8697 Grounds for refusal, suspension, or
22 revocation of adjusting firm license.--

23 (1) The office ~~department~~ shall deny, suspend, revoke,
24 or refuse to continue the license of any adjusting firm if it
25 finds, as to any adjusting firm or as to any majority owner,
26 partner, manager, director, officer, or other person who
27 manages or controls the firm, that any of the following
28 grounds exist:

29 (a) Lack by the firm of one or more of the
30 qualifications for the license as specified in this code.

31

1 (b) Material misstatement, misrepresentation, or fraud
2 in obtaining the license or in attempting to obtain the
3 license.

4 (2) The office ~~department~~ may, in its discretion,
5 deny, suspend, revoke, or refuse to continue the license of
6 any adjusting firm if it finds that any of the following
7 applicable grounds exist with respect to the firm or any
8 owner, partner, manager, director, officer, or other person
9 who is otherwise involved in the operation of the firm:

10 (a) Any cause for which issuance of the license could
11 have been refused had it then existed and been known to the
12 office ~~department~~.

13 (b) Violation of any provision of this code or of any
14 other law applicable to the business of insurance.

15 (c) Violation of any order or rule of the office or
16 commission ~~department~~.

17 (d) An owner, partner, manager, director, officer, or
18 other person who manages or controls the firm having been
19 found guilty of or having pleaded guilty or nolo contendere to
20 a felony or a crime punishable by imprisonment of 1 year or
21 more under the laws of the United States or of any state or
22 under the laws of any other country, without regard to whether
23 adjudication was made or withheld by the court.

24 (e) Failure to inform the office ~~department~~ in writing
25 within 30 days after a pleading by an owner, partner, manager,
26 director, officer, or other person managing or controlling the
27 firm of guilty or nolo contendere to, or being convicted or
28 found guilty of, any felony or a crime punishable by
29 imprisonment of 1 year or more under the laws of the United
30 States or of any state, or under the laws of any other

31

1 country, without regard to whether adjudication was made or
2 withheld by the court.

3 (f) Knowingly aiding, assisting, procuring, advising,
4 or abetting any person in the violation of or to violate a
5 provision of the insurance code or any order or rule of the
6 office or commission ~~department~~.

7 (g) Knowingly employing any individual in a managerial
8 capacity or in a capacity dealing with the public who is under
9 an order of revocation or suspension issued by the office
10 ~~department~~.

11 (h) Committing any of the following acts with such a
12 frequency as to have made the operation of the adjusting firm
13 hazardous to the insurance-buying public or other persons:

14 1. Misappropriation, conversion, or unlawful or
15 unreasonable withholding of moneys belonging to insurers or
16 insureds or beneficiaries or claimants or to others and
17 received in the conduct of business under the license.

18 2. Misrepresentation or deception with regard to the
19 business of insurance, dissemination of information, or
20 advertising.

21 3. Demonstrated lack of fitness or trustworthiness to
22 engage in the business of insurance adjusting arising out of
23 activities related to insurance adjusting or the adjusting
24 firm.

25 (i) Failure to appoint a primary adjuster.

26 (3) In lieu of discretionary refusal, suspension, or
27 revocation of an adjusting firm's license, the office
28 ~~department~~ may impose an administrative penalty of up to
29 \$1,000 for each violation or ground provided under this
30 section, not to exceed an aggregate amount of \$10,000 for all
31 violations or grounds.

1 (4) If any adjusting firm, having been licensed,
2 thereafter has such license revoked or suspended, the firm
3 shall terminate all adjusting activities while the license is
4 revoked or suspended.

5 Section 984. Section 626.8698, Florida Statutes, is
6 amended to read:

7 626.8698 Disciplinary guidelines for public
8 adjusters.--The office ~~department~~ may deny, suspend, or revoke
9 the license of a public adjuster, and administer a fine not to
10 exceed \$5,000 per act, for any of the following:

11 (1) Violating any provision of this chapter or a rule
12 or order of the office or commission ~~department~~;

13 (2) Receiving payment or anything of value as a result
14 of an unfair or deceptive practice;

15 (3) Receiving or accepting any fee, kickback, or other
16 thing of value pursuant to any agreement or understanding,
17 oral or otherwise; entering into a split-fee arrangement with
18 another person who is not a public adjuster; or being
19 otherwise paid or accepting payment for services that have not
20 been performed;

21 (4) Violating s. 316.066 or s. 817.234;

22 (5) Soliciting or otherwise taking advantage of a
23 person who is vulnerable, emotional, or otherwise upset as the
24 result of a trauma, accident, or other similar occurrence; or

25 (6) Violating any ethical rule of the commission
26 ~~department~~.

27 Section 985. Section 626.870, Florida Statutes, is
28 amended to read:

29 626.870 Application for license.--
30
31

1 (1) Application for a license under this part shall be
2 made as provided in s. 626.171 and related sections of this
3 code.

4 (2) The commission ~~department~~ shall so prepare the
5 form of the application as to elicit and require from the
6 applicant the information necessary to enable the office
7 ~~department~~ to determine whether the applicant possesses the
8 qualifications prerequisite to issuance of the license to the
9 applicant.

10 (3) The commission ~~department~~ may, in its discretion,
11 require that the application be supplemented by the
12 certificate or affidavit of such person or persons as it deems
13 necessary for its determination of the applicant's residence,
14 business reputation, and reputation for trustworthiness. The
15 commission ~~department~~ shall prescribe and the office may
16 furnish the forms for such certificates and affidavits.

17 Section 986. Section 626.871, Florida Statutes, is
18 amended to read:

19 626.871 Reappointment after military service.--The
20 office ~~department~~ may, without requiring a further written
21 examination, issue an appointment as an adjuster to a formerly
22 licensed and appointed adjuster of this state who held a
23 current adjuster's appointment at the time of entering service
24 in the Armed Forces of the United States, subject to the
25 following conditions:

26 (1) The period of military service must not have been
27 in excess of 3 years;

28 (2) The application for the appointment must be filed
29 with the office ~~department~~ and the applicable fee paid, within
30 12 months following the date of honorable discharge of the
31 applicant from the military service; and

1 (3) The new appointment will be of the same type and
2 class as that currently effective at the time the applicant
3 entered military service; but, if such type and class of
4 appointment is not being currently issued under this code, the
5 new appointment shall be of that type and class or classes
6 most closely resembling those of the former appointment.

7 Section 987. Subsections (1) and (5) of section
8 626.872, Florida Statutes, are amended to read:

9 626.872 Temporary license.--

10 (1) The office ~~department~~ may, in its discretion,
11 issue a temporary license as an independent adjuster or as a
12 company employee adjuster, subject to the following
13 conditions:

14 (a) The applicant must be an employee of an adjuster
15 currently licensed by the office ~~department~~, an employee of an
16 authorized insurer, or an employee of an established adjusting
17 firm or corporation which is supervised by a currently
18 licensed independent adjuster.

19 (b) The application must be accompanied by a
20 certificate of employment and a report as to the applicant's
21 integrity and moral character on a form prescribed by the
22 commission ~~department~~ and executed by the employer.

23 (c) The applicant must be a natural person of at least
24 18 years of age, must be a bona fide resident of this state,
25 must be trustworthy, and must have such business reputation as
26 would reasonably assure that the applicant will conduct his or
27 her business as an adjuster fairly and in good faith and
28 without detriment to the public.

29 (d) The applicant's employer is responsible for the
30 adjustment acts of any licensee under this section.

31

1 (e) The applicable license fee specified must be paid
2 before issuance of the temporary license.

3 (f) The temporary license shall be effective for a
4 period of 1 year, but subject to earlier termination at the
5 request of the employer, or if the licensee fails to take an
6 examination as an independent adjuster or company employee
7 adjuster within 6 months after issuance of the temporary
8 license, or if suspended or revoked by the office ~~department~~.

9 (5) The office ~~department~~ shall not issue a temporary
10 license as an independent adjuster or as a company employee
11 adjuster to any individual who has ever held such a license in
12 this state.

13 Section 988. Subsection (1) of section 626.873,
14 Florida Statutes, is amended to read:

15 626.873 Nonresident company employee adjusters.--

16 (1) The office ~~department~~ shall, upon application
17 therefor, issue a license to an applicant for a nonresident
18 adjuster's license upon determining that the applicant has
19 paid the applicable license fees required under s. 624.501
20 and:

21 (a) Is a currently licensed insurance adjuster in his
22 or her home state, if such state requires a license.

23 (b) Is an employee of an insurer, or a wholly owned
24 subsidiary of an insurer, admitted to do business in this
25 state.

26 (c) Has filed a certificate or letter of authorization
27 from the insurance department of his or her home state, if
28 such state requires an adjuster to be licensed, stating that
29 he or she holds a current license or authorization to adjust
30 insurance losses. Such certificate or authorization must be
31 signed by the insurance commissioner, or his or her deputy, of

1 the adjuster's home state and must reflect whether or not the
2 adjuster has ever had his or her license or authorization in
3 the adjuster's home state suspended or revoked and, if such is
4 the case, the reason for such action.

5 Section 989. Section 626.8732, Florida Statutes, is
6 amended to read:

7 626.8732 Nonresident public adjuster's qualifications,
8 bond.--

9 (1) The office ~~department~~ shall, upon application
10 therefor, issue a license to an applicant for a nonresident
11 public adjuster's license upon determining that the applicant
12 has paid the applicable license fees required under s. 624.501
13 and:

14 (a) Is a natural person at least 18 years of age.

15 (b) Has passed to the satisfaction of the office
16 ~~department~~ a written Florida public adjuster's examination of
17 the scope prescribed in s. 626.241(6); however, the
18 requirement for such an examination does not apply to any of
19 the following:

20 1. An applicant who is licensed as a resident public
21 adjuster in his or her state of residence, when that state
22 requires the passing of a written examination in order to
23 obtain the license and a reciprocal agreement with the
24 appropriate official of that state has been entered into by
25 the office ~~department~~; or

26 2. An applicant who is licensed as a nonresident
27 public adjuster in a state other than his or her state of
28 residence when the state of licensure requires the passing of
29 a written examination in order to obtain the license and a
30 reciprocal agreement with the appropriate official of the
31

1 state of licensure has been entered into by the office
2 ~~department~~.

3 (c) Is self-employed as a public adjuster or
4 associated with or employed by a public adjusting firm or
5 other public adjuster. Applicants licensed as nonresident
6 public adjusters under this section must be appointed as such
7 in accordance with the provisions of ss. 626.112 and 626.451.
8 Appointment fees in the amount specified in s. 624.501 must be
9 paid to the office ~~department~~ in advance. The appointment of a
10 nonresident public adjuster shall continue in force until
11 suspended, revoked, or otherwise terminated, but subject to
12 biennial renewal or continuation by the licensee in accordance
13 with procedures prescribed in s. 626.381 for licensees in
14 general.

15 (d) Is trustworthy and has such business reputation as
16 would reasonably assure that he or she will conduct his or her
17 business as a nonresident public adjuster fairly and in good
18 faith and without detriment to the public.

19 (e) Has had sufficient experience, training, or
20 instruction concerning the adjusting of damages or losses
21 under insurance contracts, other than life and annuity
22 contracts; is sufficiently informed as to the terms and
23 effects of the provisions of those types of insurance
24 contracts; and possesses adequate knowledge of the laws of
25 this state relating to such contracts as to enable and qualify
26 him or her to engage in the business of insurance adjuster
27 fairly and without injury to the public or any member thereof
28 with whom he or she may have business as a public adjuster.

29 (2) The applicant shall furnish the following with his
30 or her application:

31

1 (a) A complete set of his or her fingerprints. The
2 applicant's fingerprints must be certified by an authorized
3 law enforcement officer. The office ~~department~~ may not
4 authorize an applicant to take the required examination or
5 issue a nonresident public adjuster's license to the applicant
6 until the office ~~department~~ has received a report from the
7 Florida Department of Law Enforcement and the Federal Bureau
8 of Investigation relative to the existence or nonexistence of
9 a criminal history report based on the applicant's
10 fingerprints.

11 (b) If currently licensed as a resident public
12 adjuster in the applicant's state of residence, a certificate
13 or letter of authorization from the licensing authority of the
14 applicant's state of residence, stating that the applicant
15 holds a current or comparable license to act as a public
16 adjuster. The certificate or letter of authorization must be
17 signed by the insurance commissioner or his or her deputy or
18 the appropriate licensing official and must disclose whether
19 the adjuster has ever had any license or eligibility to hold
20 any license declined, denied, suspended, revoked, or placed on
21 probation or whether an administrative fine or penalty has
22 been levied against the adjuster and, if so, the reason for
23 the action.

24 (c) If the applicant's state of residence does not
25 require licensure as a public adjuster and the applicant has
26 been licensed as a resident insurance adjuster, agent, broker,
27 or other insurance representative in his or her state of
28 residence or any other state within the past 3 years, a
29 certificate or letter of authorization from the licensing
30 authority stating that the applicant holds or has held a
31 license to act as such an insurance adjuster, agent, or other

1 insurance representative. The certificate or letter of
2 authorization must be signed by the insurance commissioner or
3 his or her deputy or the appropriate licensing official and
4 must disclose whether or not the adjuster, agent, or other
5 insurance representative has ever had any license or
6 eligibility to hold any license declined, denied, suspended,
7 revoked, or placed on probation or whether an administrative
8 fine or penalty has been levied against the adjuster and, if
9 so, the reason for the action.

10 (3) At the time of application for license as a
11 nonresident public adjuster, the applicant shall file with the
12 office ~~department~~ a bond executed and issued by a surety
13 insurer authorized to transact surety business in this state,
14 in the amount of \$50,000, conditioned for the faithful
15 performance of his or her duties as a nonresident public
16 adjuster under the license applied for. The bond must be in
17 favor of the office ~~department~~ and must specifically authorize
18 recovery by the office ~~department~~ of the damages sustained if
19 the licensee commits fraud or unfair practices in connection
20 with his or her business as nonresident public adjuster. The
21 aggregate liability of the surety for all the damages may not
22 exceed the amount of the bond. The bond may not be terminated
23 unless at least 30 days' written notice is given to the
24 licensee and filed with the office ~~department~~.

25 (4) The usual and customary records pertaining to
26 transactions under the license of a nonresident public
27 adjuster must be retained for at least 3 years after
28 completion of the adjustment and must be made available in
29 this state to the office ~~department~~ upon request. The failure
30 of a nonresident public adjuster to properly maintain records
31 and make them available to the office ~~department~~ upon request

1 constitutes grounds for the immediate suspension of the
2 license issued under this section.

3 (5) After licensure as a nonresident public adjuster,
4 as a condition of doing business in this state, the licensee
5 must annually on or before January 1, on a form prescribed by
6 the commission ~~department~~, submit an affidavit certifying that
7 the licensee is familiar with and understands the insurance
8 code and rules adopted thereunder and the provisions of the
9 contracts negotiated or to be negotiated. Compliance with this
10 filing requirement is a condition precedent to the issuance,
11 continuation, reinstatement, or renewal of a nonresident
12 public adjuster's appointment.

13 Section 990. Subsections (1), (3), and (4) of section
14 626.8734, Florida Statutes, are amended to read:

15 626.8734 Nonresident independent adjuster's
16 qualifications.--

17 (1) The office ~~department~~ shall, upon application
18 therefor, issue a license to an applicant for a nonresident
19 independent adjuster's license upon determining that the
20 applicant has paid the applicable license fees required under
21 s. 624.501 and:

22 (a) Is a natural person at least 18 years of age.

23 (b) Has passed to the satisfaction of the office
24 ~~department~~ a written Florida independent adjuster's
25 examination of the scope prescribed in s. 626.241(6); however,
26 the requirement for the examination does not apply to any of
27 the following:

28 1. An applicant who is licensed as a resident
29 independent adjuster in his or her state of residence when
30 that state requires the passing of a written examination in
31 order to obtain the license and a reciprocal agreement with

1 the appropriate official of that state has been entered into
2 by the office ~~department~~; or

3 2. An applicant who is licensed as a nonresident
4 independent adjuster in a state other than his or her state of
5 residence when the state of licensure requires the passing of
6 a written examination in order to obtain the license and a
7 reciprocal agreement with the appropriate official of the
8 state of licensure has been entered into by the office
9 ~~department~~.

10 (c) Is self-employed or associated with or employed by
11 an independent adjusting firm or other independent adjuster.
12 Applicants licensed as nonresident independent adjusters under
13 this section must be appointed as such in accordance with the
14 provisions of ss. 626.112 and 626.451. Appointment fees in the
15 amount specified in s. 624.501 must be paid to the office
16 ~~department~~ in advance. The appointment of a nonresident
17 independent adjuster shall continue in force until suspended,
18 revoked, or otherwise terminated, but subject to biennial
19 renewal or continuation by the licensee in accordance with
20 procedures prescribed in s. 626.381 for licensees in general.

21 (d) Is trustworthy and has such business reputation as
22 would reasonably assure that he or she will conduct his or her
23 business as a nonresident independent adjuster fairly and in
24 good faith and without detriment to the public.

25 (e) Has had sufficient experience, training, or
26 instruction concerning the adjusting of damages or losses
27 under insurance contracts, other than life and annuity
28 contracts; is sufficiently informed as to the terms and
29 effects of the provisions of those types of insurance
30 contracts; and possesses adequate knowledge of the laws of
31 this state relating to such contracts as to enable and qualify

1 him or her to engage in the business of insurance adjuster
2 fairly and without injury to the public or any member thereof
3 with whom he or she may have business as an independent
4 adjuster.

5 (3) The usual and customary records pertaining to
6 transactions under the license of a nonresident independent
7 adjuster must be retained for at least 3 years after
8 completion of the adjustment and must be made available in
9 this state to the office ~~department~~ upon request. The failure
10 of a nonresident independent adjuster to properly maintain
11 records and make them available to the office ~~department~~ upon
12 request constitutes grounds for the immediate suspension of
13 the license issued under this section.

14 (4) After licensure as a nonresident independent
15 adjuster, as a condition of doing business in this state, the
16 licensee must annually on or before January 1, on a form
17 prescribed by the commission ~~department~~, submit an affidavit
18 certifying that the licensee is familiar with and understands
19 the insurance laws and administrative rules of this state and
20 the provisions of the contracts negotiated or to be
21 negotiated. Compliance with this filing requirement is a
22 condition precedent to the issuance, continuation,
23 reinstatement, or renewal of a nonresident independent
24 adjuster's appointment.

25 Section 991. Section 626.8736, Florida Statutes, is
26 amended to read:

27 626.8736 Nonresident independent or public adjusters;
28 service of process.--

29 (1) Each licensed nonresident independent or public
30 adjuster shall appoint the Chief Financial Officer ~~Insurance~~
31 ~~Commissioner and Treasurer~~ and his or her successors in office

1 as his or her attorney to receive service of legal process
2 issued against the nonresident independent or public adjuster
3 in this state, upon causes of action arising within this state
4 out of transactions under his license and appointment. Service
5 upon the Chief Financial Officer ~~Insurance Commissioner and~~
6 ~~Treasurer~~ as attorney shall constitute effective legal service
7 upon the nonresident independent or public adjuster.

8 (2) The appointment of the Chief Financial Officer
9 ~~Insurance Commissioner and Treasurer~~ for service of process
10 shall be irrevocable for as long as there could be any cause
11 of action against the nonresident independent or public
12 adjuster arising out of his or her insurance transactions in
13 this state.

14 (3) Duplicate copies of legal process against the
15 nonresident independent or public adjuster shall be served
16 upon the Chief Financial Officer ~~Insurance Commissioner and~~
17 ~~Treasurer~~ by a person competent to serve a summons.

18 (4) Upon receiving the service, the Chief Financial
19 ~~Officer Insurance Commissioner and Treasurer~~ shall forthwith
20 send one of the copies of the process, by registered mail with
21 return receipt requested, to the defendant nonresident
22 independent or public adjuster at his or her last address of
23 record with the office ~~department~~.

24 (5) The Chief Financial Officer ~~Insurance Commissioner~~
25 ~~and Treasurer~~ shall keep a record of the day and hour of
26 service upon him or her of all legal process received under
27 this section.

28 Section 992. Section 626.8738, Florida Statutes, is
29 amended to read:

30 626.8738 Penalty for violation.--In addition to any
31 other remedy imposed pursuant to this code, any person who

1 acts as a resident or nonresident public adjuster or holds
2 himself or herself out to be a public adjuster to adjust
3 claims in this state, without being licensed by the office
4 ~~department~~ as a public adjuster and appointed as a public
5 adjuster, commits a felony of the third degree, punishable as
6 provided in s. 775.082, s. 775.083, or s. 775.084. Each act in
7 violation of this section constitutes a separate offense.

8 Section 993. Section 626.874, Florida Statutes, is
9 amended to read:

10 626.874 Catastrophe or emergency adjusters.--

11 (1) In the event of a catastrophe or emergency, the
12 office ~~department~~ may issue a license, for the purposes and
13 under the conditions which it shall fix and for the period of
14 emergency as it shall determine, to persons who are residents
15 or nonresidents of this state and who are not licensed
16 adjusters under this part but who have been designated and
17 certified to it as qualified to act as adjusters by
18 independent resident adjusters or by an authorized insurer or
19 by a licensed general lines agent to adjust claims, losses, or
20 damages under policies or contracts of insurance issued by
21 such insurers. The fee for the license shall be as provided
22 in s. 624.501(12)(c).

23 (2) If any person not a licensed adjuster who has been
24 permitted to adjust such losses, claims, or damages under the
25 conditions and circumstances set forth in subsection (1),
26 engages in any of the misconduct described in or contemplated
27 by ss. 626.611 and 626.621, the office ~~department~~, without
28 notice and hearing, shall be authorized to issue its order
29 denying such person the privileges granted under this section;
30 and thereafter it shall be unlawful for any such person to
31 adjust any such losses, claims, or damages in this state.

1 Section 994. Section 626.878, Florida Statutes, is
2 amended to read:

3 626.878 Rules; code of ethics.--An adjuster shall
4 subscribe to the code of ethics specified in the rules of the
5 commission ~~department~~.

6 Section 995. Paragraphs (d) and (m) of subsection (1)
7 of section 626.88, Florida Statutes, are amended to read:

8 626.88 Definitions of "administrator" and "insurer".--

9 (1) For the purposes of this part, an "administrator"
10 is any person who directly or indirectly solicits or effects
11 coverage of, collects charges or premiums from, or adjusts or
12 settles claims on residents of this state in connection with
13 authorized commercial self-insurance funds or with insured or
14 self-insured programs which provide life or health insurance
15 coverage or coverage of any other expenses described in s.
16 624.33(1) or any person who, through a health care risk
17 contract as defined in s. 641.234 with an insurer or health
18 maintenance organization, provides billing and collection
19 services to health insurers and health maintenance
20 organizations on behalf of health care providers, other than
21 any of the following persons:

22 (d) A health care services plan, health maintenance
23 organization, professional service plan corporation, or person
24 in the business of providing continuing care, possessing a
25 valid certificate of authority issued by the office
26 ~~department~~, and the sales representatives thereof, if the
27 activities of such entity are limited to the activities
28 permitted under the certificate of authority.

29 (m) A person approved by the department ~~of Insurance~~
30 who administers only self-insured workers' compensation plans.

31

1 A person who provides billing and collection services to
2 health insurers and health maintenance organizations on behalf
3 of health care providers shall comply with the provisions of
4 ss. 627.6131, 641.3155, and 641.51(4).

5 Section 996. Section 626.8805, Florida Statutes, is
6 amended to read:

7 626.8805 Certificate of authority to act as
8 administrator.--

9 (1) It is unlawful for any person to act as or hold
10 himself or herself out to be an administrator in this state
11 without a valid certificate of authority issued by the office
12 ~~department~~ pursuant to ss. 626.88-626.894. To qualify for and
13 hold authority to act as an administrator in this state, an
14 administrator must otherwise be in compliance with this code
15 and with its organizational agreement. The failure of any
16 person to hold such a certificate while acting as an
17 administrator shall subject such person to a fine of not less
18 than \$5,000 or more than \$10,000 for each violation.

19 (2) The administrator shall file with the office
20 ~~department~~ an application for a certificate of authority upon
21 a form to be adopted by the commission and furnished by the
22 office ~~department~~, which application shall include or have
23 attached the following information and documents:

24 (a) All basic organizational documents of the
25 administrator, such as the articles of incorporation, articles
26 of association, partnership agreement, trade name certificate,
27 trust agreement, shareholder agreement, and other applicable
28 documents, and all amendments to those documents.

29 (b) The bylaws, rules, and regulations or similar
30 documents regulating the conduct or the internal affairs of
31 the administrator.

1 (c) The names, addresses, official positions, and
2 professional qualifications of the individuals who are
3 responsible for the conduct of the affairs of the
4 administrator, including all members of the board of
5 directors, board of trustees, executive committee, or other
6 governing board or committee, the principal officers in the
7 case of a corporation, the partners or members in the case of
8 a partnership or association, and any other person who
9 exercises control or influence over the affairs of the
10 administrator.

11 (d) Annual statements or reports for the 3 most recent
12 years, or such other information as the office ~~department~~ may
13 require in order to review the current financial condition of
14 the applicant.

15 (e) If the applicant is not currently acting as an
16 administrator, a statement of the amounts and sources of the
17 funds available for organization expenses and the proposed
18 arrangements for reimbursement and compensation of
19 incorporators or other principals.

20 (3) The applicant shall make available for inspection
21 by the office ~~department~~ copies of all contracts with insurers
22 or other persons utilizing the services of the administrator.

23 (4) The office ~~department~~ shall not issue a
24 certificate of authority if it determines that the
25 administrator or any principal thereof is not competent,
26 trustworthy, financially responsible, or of good personal and
27 business reputation or has had an insurance license denied for
28 cause by any state.

29 (5) A certificate of authority issued under this
30 section shall remain valid, unless suspended or revoked by the
31

1 office department, so long as the certificateholder continues
2 in business in this state.

3 (6) A certificate of authority issued under this
4 section shall indicate that the administrator is authorized to
5 administer commercial self-insurance funds or life and health
6 programs or both, except that a certificate of authority
7 issued prior to October 1, 1988, does not authorize the
8 administration of commercial self-insurance funds.

9 Section 997. Section 626.8809, Florida Statutes, is
10 amended to read:

11 626.8809 Fidelity bond.--An administrator shall have
12 and keep in full force and effect a fidelity bond equal to at
13 least 10 percent of the amount of the funds handled or managed
14 annually by the administrator. However, the office department
15 may not require a bond greater than \$500,000 unless the office
16 ~~department~~, after due notice to all interested parties and
17 opportunity for hearing and after consideration of the record,
18 requires an amount in excess of \$500,000 but not more than 10
19 percent of the amount of the funds handled or managed annually
20 by the administrator.

21 Section 998. Section 626.8814, Florida Statutes, is
22 amended to read:

23 626.8814 Disclosure of ownership or affiliation.--Each
24 administrator shall identify to the office department any
25 ownership interest or affiliation of any kind with any
26 insurance company responsible for providing benefits directly
27 or through reinsurance to any plan for which the administrator
28 provides administrative services.

29 Section 999. Subsection (2) of section 626.884,
30 Florida Statutes, is amended to read:

31

1 626.884 Maintenance of records by administrator;
2 access; confidentiality.--

3 (2) The office ~~department~~ shall have access to books
4 and records maintained by the administrator for the purpose of
5 examination, audit, and inspection. Information contained in
6 such books and records is confidential and exempt from the
7 provisions of s. 119.07(1) if the disclosure of such
8 information would reveal a trade secret as defined in s.
9 688.002. However, the office ~~department~~ may use such
10 information in any proceeding instituted against the
11 administrator.

12 Section 1000. Subsections (1) and (3) of section
13 626.89, Florida Statutes, are amended to read:

14 626.89 Annual financial statement and filing fee;
15 notice of change of ownership.--

16 (1) Each authorized administrator shall file with the
17 office ~~department~~ a full and true statement of its financial
18 condition, transactions, and affairs. The statement shall be
19 filed annually on or before March 1 or within such extension
20 of time therefor as the office ~~department~~ for good cause may
21 have granted and shall be for the preceding calendar year. The
22 statement shall be in such form and contain such matters as
23 the commission ~~department~~ prescribes and shall be verified by
24 at least two officers of such administrator.

25 (3) In addition, the administrator shall immediately
26 notify the office ~~department~~ of any material change in its
27 ownership.

28 Section 1001. Section 626.891, Florida Statutes, is
29 amended to read:

30 626.891 Grounds for suspension or revocation of
31 certificate of authority.--

1 (1) The certificate of authority of an administrator
2 shall be suspended or revoked if the office ~~department~~
3 determines that the administrator:

4 (a) Is in an unsound financial condition;

5 (b) Has used or is using such methods or practices in
6 the conduct of its business so as to render its further
7 transaction of business in this state hazardous or injurious
8 to insured persons or the public; or

9 (c) Has failed to pay any judgment rendered against it
10 in this state within 60 days after the judgment has become
11 final.

12 (2) The office ~~department~~ may, in its discretion,
13 suspend or revoke the certificate of authority of an
14 administrator if it finds that the administrator:

15 (a) Has violated any lawful rule or order of the
16 commission or office ~~department~~ or any provision of this
17 chapter;

18 (b) Has refused to be examined or to produce its
19 accounts, records, and files for examination, or if any of its
20 officers has refused to give information with respect to its
21 affairs or has refused to perform any other legal obligation
22 as to such examination, when required by the office
23 ~~department~~;

24 (c) Has, without just cause, refused to pay proper
25 claims or perform services arising under its contracts or has,
26 without just cause, compelled insured persons to accept less
27 than the amount due them or to employ attorneys or bring suit
28 against the administrator to secure full payment or settlement
29 of such claims;

30 (d) Is or was affiliated with and under the same
31 general management or interlocking directorate or ownership as

1 another administrator which transacts business in this state
2 without having a certificate of authority;

3 (e) At any time fails to meet any qualification for
4 which issuance of the certificate could have been refused had
5 such failure then existed and been known to the office
6 ~~department~~;

7 (f) Has been convicted of, or has entered a plea of
8 guilty or nolo contendere to, a felony relating to the
9 business of insurance or insurance administration in this
10 state or in any other state without regard to whether
11 adjudication was withheld; or

12 (g) Is under suspension or revocation in another
13 state.

14 (3) The office ~~department~~ may, pursuant to s. 120.60,
15 in its discretion and without advance notice or hearing
16 thereon, immediately suspend the certificate of any
17 administrator if it finds that one or more of the following
18 circumstances exist:

19 (a) The administrator is insolvent or impaired.

20 (b) The fidelity bond required by s. 626.8809 is not
21 maintained.

22 (c) A proceeding for receivership, conservatorship,
23 rehabilitation, or other delinquency proceeding regarding the
24 administrator has been commenced in any state.

25 (d) The financial condition or business practices of
26 the administrator otherwise pose an imminent threat to the
27 public health, safety, or welfare of the residents of this
28 state.

29 (4) The violation of this part by any insurer shall be
30 a ground for suspension or revocation of the certificate of
31 authority of that insurer in this state.

1 Section 1002. Section 626.892, Florida Statutes, is
2 amended to read:

3 626.892 Order of suspension or revocation of
4 certificate of authority; notice.--

5 (1) The suspension or revocation of a certificate of
6 authority of an administrator shall be effected by order of
7 the office ~~department~~ mailed to the administrator by
8 registered or certified mail.

9 (2) In its discretion, the office ~~department~~ may cause
10 notice of any such revocation or suspension to be published in
11 one or more newspapers of general circulation published in
12 this state.

13 Section 1003. Subsections (1), (3), and (4) of section
14 626.894, Florida Statutes, are amended to read:

15 626.894 Administrative fine in lieu of suspension or
16 revocation.--

17 (1) If the office ~~department~~ finds that one or more
18 grounds exist for the suspension or revocation of a
19 certificate of authority issued under this part, the office
20 ~~department~~ may, in lieu of such suspension or revocation,
21 impose a fine upon the administrator.

22 (3) With respect to any knowing and willful violation
23 of a lawful order or rule of the office or commission
24 ~~department~~ or a provision of this part, the office ~~department~~
25 may impose a fine upon the administrator in an amount not to
26 exceed \$5,000 for each such violation. In no event may such
27 fine exceed an aggregate amount of \$25,000 for all knowing and
28 willful violations arising out of the same action. In addition
29 to such fine, the administrator shall make restitution when
30 due in accordance with the provisions of subsection (2).

31

1 (4) The failure of an administrator to make
2 restitution when due as required under this section
3 constitutes a willful violation of this part. However, if an
4 administrator in good faith is uncertain as to whether any
5 restitution is due or as to the amount of restitution due, it
6 shall promptly notify the office ~~department~~ of the
7 circumstances; and the failure to make restitution pending a
8 determination of whether restitution is due or the amount of
9 restitution due will not constitute a violation of this part.

10 Section 1004. Section 626.895, Florida Statutes, is
11 amended to read:

12 626.895 Definition of "service company" or "service
13 agent".--For the purpose of this part, a "service company" is
14 any business entity which has met all the requirements of ss.
15 626.895-626.899, which does not control funds, and which has
16 obtained office ~~department~~ approval to contract with
17 self-insurers or multiple-employer welfare arrangements for
18 the purpose of providing all or any part of the services
19 necessary to establish and maintain a multiple-employer
20 welfare arrangement as defined in s. 624.437(1). The term
21 "service agent" is synonymous with the term "service company"
22 as used in this part.

23 Section 1005. Subsection (3) of section 626.896,
24 Florida Statutes, is amended to read:

25 626.896 Servicing requirements for self-insurers and
26 multiple-employer welfare arrangements.--

27 (3) It is the responsibility of the self-insurer or
28 multiple-employer welfare arrangement to notify the office
29 ~~department~~ within 90 days of changing its method of fulfilling
30 its servicing requirements from those which were previously
31 filed with the office ~~department~~.

1 Section 1006. Subsection (2) of section 626.897,
2 Florida Statutes, is amended to read:

3 626.897 Application for authorization to act as
4 service company; bond.--

5 (2) Any business desiring to act as a service company
6 for individual self-insurers or multiple-employer welfare
7 arrangements shall be approved by the office ~~department~~. Any
8 business acting as a service company prior to October 1, 1983,
9 will be approved as a service company upon complying with the
10 filing requirements of this section and s. 626.898. The
11 failure of any person to obtain such approval while acting as
12 a service company shall subject such person to a fine of not
13 less than \$5,000 or more than \$10,000 for each violation.

14 Section 1007. Subsections (3) and (10) of section
15 626.898, Florida Statutes, are amended to read:

16 626.898 Requirements for retaining authorization as
17 service company; recertification.--

18 (3)(a) Each service company shall maintain at one or
19 more locations within this state copies of all contracts with
20 each self-insurer or multiple-employer welfare arrangement
21 that it services and records relating thereto which are
22 sufficient in type and quantity to verify the accuracy and
23 completeness of all reports and documents submitted to the
24 office ~~department~~ pursuant to this part. In the event that the
25 service company has its records distributed in multiple
26 locations, it shall inform the office ~~department~~ as to the
27 location of each type of record, as well as the location of
28 specific records for the self-insurers or multiple-employer
29 welfare arrangements it services.

30 (b) These records shall be open to inspection by
31 representatives of the office ~~department~~ during regular

1 business hours. All records shall be retained according to the
2 schedule adopted by the commission ~~department~~ for similar
3 documents. The location of these records shall be made known
4 to the office ~~department~~ as necessary.

5 (10) Each service company shall identify to the office
6 ~~department~~ any ownership interest or affiliation of any kind
7 with any insurance company responsible directly or through
8 reinsurance for providing benefits to any plan for which it
9 provides services.

10 Section 1008. Section 626.899, Florida Statutes, is
11 amended to read:

12 626.899 Withdrawal of authorization as service
13 company.--The failure to comply with any provision of ss.
14 626.895-626.899 or with any rule or any order of the
15 commission or office ~~department~~ within the time prescribed
16 shall be considered good cause for withdrawal of the
17 certificate of approval. The office ~~department~~ shall by
18 registered or certified mail give to the service company prior
19 written notice of such withdrawal. The service company shall
20 have 30 days from the date of mailing to request a hearing.
21 The failure to request a hearing within the time prescribed
22 shall result in the withdrawal becoming effective 45 days from
23 the date of mailing of the original notice. In no event shall
24 the withdrawal of the certificate of approval be effective
25 prior to the date upon which a hearing, if requested, is
26 scheduled. Copies of such notice of withdrawal of a
27 certificate of approval shall be furnished by the office
28 ~~department~~ to each self-funded program serviced.

29 Section 1009. Subsection (4) of section 626.901,
30 Florida Statutes, is amended to read:

31

1 626.901 Representing or aiding unauthorized insurer
2 prohibited.--

3 (4) This section does not apply to:

4 (a) Matters authorized to be done by the office
5 ~~department~~ under the Unauthorized Insurers Process Law, ss.
6 626.904-626.912.

7 (b) Surplus lines insurance when written pursuant to
8 the Surplus Lines Law, ss. 626.913-626.937.

9 (c) Transactions as to which a certificate of
10 authority is not required of an insurer, as stated in s.
11 624.402.

12 (d) Independently procured coverage written pursuant
13 to s. 626.938.

14 Section 1010. Section 626.906, Florida Statutes, is
15 amended to read:

16 626.906 Acts constituting Chief Financial Officer
17 ~~Insurance Commissioner and Treasurer~~ as process agent.--Any of
18 the following acts in this state, effected by mail or
19 otherwise, by an unauthorized foreign insurer, alien insurer,
20 or person representing or aiding such an insurer is equivalent
21 to and shall constitute an appointment by such insurer or
22 person representing or aiding such insurer of the Chief
23 Financial Officer ~~Insurance Commissioner and Treasurer~~, and
24 ~~his or her successor or successors in office~~, to be its true
25 and lawful attorney, upon whom may be served all lawful
26 process in any action, suit, or proceeding instituted by or on
27 behalf of an insured or beneficiary, arising out of any such
28 contract of insurance; and any such act shall be signification
29 of the insurer's or person's agreement that such service of
30 process is of the same legal force and validity as personal
31

1 service of process in this state upon such insurer or person
2 representing or aiding such insurer:

3 (1) The issuance or delivery of contracts of insurance
4 to residents of this state or to corporations authorized to do
5 business therein;

6 (2) The solicitation of applications for such
7 contracts;

8 (3) The collection of premiums, membership fees,
9 assessments, or other considerations for such contracts; or

10 (4) Any other transaction of insurance.

11 Section 1011. Subsection (1) of section 626.907,
12 Florida Statutes, is amended to read:

13 626.907 Service of process; judgment by default.--

14 (1) Service of process upon an insurer or person
15 representing or aiding such insurer pursuant to s. 626.906
16 shall be made by delivering to and leaving with the Chief
17 Financial Officer ~~Insurance Commissioner and Treasurer~~ or some
18 person in apparent charge of his or her office two copies
19 thereof. The Chief Financial Officer ~~Insurance Commissioner~~
20 ~~and Treasurer~~ shall forthwith mail by registered mail one of
21 the copies of such process to the defendant at the defendant's
22 last known principal place of business and shall keep a record
23 of all process so served upon him or her. The service of
24 process is sufficient, provided notice of such service and a
25 copy of the process are sent within 10 days thereafter by
26 registered mail by plaintiff or plaintiff's attorney to the
27 defendant at the defendant's last known principal place of
28 business, and the defendant's receipt, or receipt issued by
29 the post office with which the letter is registered, showing
30 the name of the sender of the letter and the name and address
31 of the person to whom the letter is addressed, and the

1 affidavit of the plaintiff or plaintiff's attorney showing a
2 compliance herewith are filed with the clerk of the court in
3 which the action is pending on or before the date the
4 defendant is required to appear, or within such further time
5 as the court may allow.

6 Section 1012. Section 626.909, Florida Statutes, is
7 amended to read:

8 626.909 Jurisdiction of office and department; service
9 of process on Secretary of State.--

10 (1) The Legislature hereby declares that it is a
11 subject of concern that the purpose of the Unauthorized
12 Insurers Process Law as expressed in s. 626.905 may be denied
13 by the possibility that the right of service of process
14 provided for in that law may be restricted only to those
15 actions, suits, or proceedings brought by insureds or
16 beneficiaries. It therefore declares that it is the intent of
17 s. 626.905 that it is the obligation and duty of the state to
18 protect its residents and also proceed under this law through
19 the office or department in the courts of this state. It
20 further declares that it is also the intent of the Legislature
21 to subject unauthorized insurers and persons representing or
22 aiding such insurers to the jurisdiction of the office or
23 department in proceedings, examinations, or hearings before it
24 as provided for in this code.

25 (2) In addition to the procedure for service of
26 process on unauthorized insurers or persons representing or
27 aiding such insurers contained in ss. 626.906 and 626.907, the
28 office or department shall have the right to bring any action,
29 suit, or proceeding in the name of the state or conduct any
30 proceeding, examination, or hearing provided for in this code
31 against any unauthorized insurer or person representing or

1 aiding such insurer for violation of any lawful order of the
2 office or department or any provision of this code,
3 specifically including but not limited to the regulation of
4 trade practices provided for in part IX of this chapter, if
5 the insurer or person representing or aiding such insurer
6 transacts insurance in this state as defined in ss. 624.10 and
7 626.906 and the insurer does not transact such business under
8 a subsisting certificate of authority as required by s.
9 624.401. In the event the transaction of business is done by
10 mail, the venue of the act is at the point where the matter
11 transmitted by mail is delivered and takes effect.

12 (3) In addition to the right of action, suit, or
13 proceeding authorized by subsection (2), the office or
14 department shall have the right to bring a civil action in the
15 name of the state, as parens patriae on behalf of any insured,
16 beneficiary of any insured, claimant or dependent, or any
17 other person or class of persons injured as a result of the
18 transaction of any insurance business as defined in s. 626.906
19 by any unauthorized insurer, as defined in s. 624.09 who is
20 also an ineligible insurer as set forth in ss. 626.917 and
21 626.918, or any person who represents or aids any unauthorized
22 insurer, in violation of s. 626.901, to recover actual damages
23 on behalf of individuals who were residents at the time the
24 transaction occurred and the cost of such suit, including a
25 reasonable attorney's fee. The court shall exclude from the
26 amount of monetary relief awarded in such action any amount of
27 monetary relief which duplicates amounts which have been
28 awarded for the same injury.

29 (4) Transaction of business in this state, as so
30 defined, by any unauthorized insurer or person representing or
31 aiding such insurer shall be deemed consent by the insurer or

1 person representing or aiding such insurer to the jurisdiction
2 of the office or department in proceedings, examinations, and
3 hearings before it as provided for in this code and shall
4 constitute an irrevocable appointment by the insurer or person
5 representing or aiding such insurer of the Secretary of State
6 and his or her successor or successors in office as its true
7 and lawful attorney upon whom may be served all lawful process
8 in any action, suit, or proceeding in any court by the office
9 or department or by the state and upon whom may be served all
10 notices and orders of the office or department arising out of
11 any such transaction of business; and such transaction of
12 business shall constitute the agreement of the insurer or
13 person representing or aiding such insurer that any such
14 process against it or any such notice or order which is so
15 served shall be of the same legal force and validity as if
16 served personally within this state on the insurer or person
17 representing or aiding such insurer. Service of process shall
18 be in accordance with and in the same manner as now provided
19 for service of process upon nonresidents under the provision
20 of s. 48.161, and service of process shall also be valid if
21 made as provided in s. 626.907(2).

22 (5) No plaintiff shall be entitled to a judgment by
23 default or a decree pro confesso under this section until the
24 expiration of 30 days after date of the filing of the
25 affidavit of compliance.

26 (6) Nothing in this section shall limit or abridge the
27 right to serve any process, notice, orders, or demand upon the
28 insurer or person representing or aiding such insurer in any
29 other manner now or hereafter permitted by law.

30 (7) Nothing in this section shall apply as to surplus
31 lines insurance when written pursuant to the Surplus Lines

1 Law, ss. 626.913-626.937, or as to transactions as to which a
2 certificate of authority is not required of the insurer, as
3 stated in s. 624.402.

4 Section 1013. Section 626.910, Florida Statutes, is
5 amended to read:

6 626.910 Penalty for violation by unauthorized insurers
7 and persons representing or aiding such insurers.--Any
8 unauthorized insurer or person representing or aiding such
9 insurer transacting insurance in this state and subject to
10 service of process as referred to in s. 626.909 shall forfeit
11 and pay to the state a civil penalty of not more than \$1,000
12 for each nonwillful violation, or not more than \$10,000 for
13 each willful violation, of any lawful order of the office or
14 department or any provision of this code.

15 Section 1014. Section 626.912, Florida Statutes, is
16 amended to read:

17 626.912 Exemptions from ss. 626.904-626.911.--The
18 provisions of ss. 626.904-626.911 do not apply to any action,
19 suit, or proceeding against any unauthorized foreign insurer,
20 alien insurer, or person representing or aiding such an
21 insurer arising out of any contract of insurance:

22 (1) Covering reinsurance, wet marine and
23 transportation, commercial aircraft, or railway insurance
24 risks;

25 (2) Against legal liability arising out of the
26 ownership, operation, or maintenance of any property having a
27 permanent situs outside this state;

28 (3) Against loss of or damage to any property having a
29 permanent situs outside this state; or

30 (4) Issued under and in accordance with the Surplus
31 Lines Law, when such insurer or person representing or aiding

1 such insurer enters a general appearance or when such contract
2 of insurance contains a provision designating the Chief
3 Financial Officer ~~Insurance Commissioner and Treasurer and his~~
4 ~~or her successor or successors in office~~ or designating a
5 Florida resident agent to be the true and lawful attorney of
6 such unauthorized insurer or person representing or aiding
7 such insurer upon whom may be served all lawful process in any
8 action, suit, or proceeding instituted by or on behalf of an
9 insured or person representing or aiding such insurer or
10 beneficiary arising out of any such contract of insurance; and
11 service of process effected on such Chief Financial Officer
12 ~~Insurance Commissioner and Treasurer, his or her successor or~~
13 ~~successors in office,~~ or such resident agent shall be deemed
14 to confer complete jurisdiction over such unauthorized insurer
15 or person representing or aiding such insurer in such action.

16 Section 1015. Subsection (2) of section 626.914,
17 Florida Statutes, is amended to read:

18 626.914 Definitions.--As used in this Surplus Lines
19 Law, the term:

20 (2) "Eligible surplus lines insurer" means an
21 unauthorized insurer which has been made eligible by the
22 office ~~department~~ to issue insurance coverage under this
23 Surplus Lines Law.

24 Section 1016. Subsections (1) and (2) of section
25 626.916, Florida Statutes, are amended to read:

26 626.916 Eligibility for export.--

27 (1) No insurance coverage shall be eligible for export
28 unless it meets all of the following conditions:

29 (a) The full amount of insurance required must not be
30 procurable, after a diligent effort has been made by the
31 producing agent to do so, from among the insurers authorized

1 to transact and actually writing that kind and class of
2 insurance in this state, and the amount of insurance exported
3 shall be only the excess over the amount so procurable from
4 authorized insurers. Surplus lines agents must verify that a
5 diligent effort has been made by requiring a properly
6 documented statement of diligent effort from the retail or
7 producing agent. However, to be in compliance with the
8 diligent effort requirement, the surplus lines agent's
9 reliance must be reasonable under the particular circumstances
10 surrounding the export of that particular risk. Reasonableness
11 shall be assessed by taking into account factors which
12 include, but are not limited to, a regularly conducted program
13 of verification of the information provided by the retail or
14 producing agent. Declinations must be documented on a
15 risk-by-risk basis. If it is not possible to obtain the full
16 amount of insurance required by layering the risk, it is
17 permissible to export the full amount.

18 (b) The premium rate at which the coverage is exported
19 shall not be lower than that rate applicable, if any, in
20 actual and current use by a majority of the authorized
21 insurers for the same coverage on a similar risk.

22 (c) The policy or contract form under which the
23 insurance is exported shall not be more favorable to the
24 insured as to the coverage or rate than under similar
25 contracts on file and in actual current use in this state by
26 the majority of authorized insurers actually writing similar
27 coverages on similar risks; except that a coverage may be
28 exported under a unique form of policy designed for use with
29 respect to a particular subject of insurance if a copy of such
30 form is filed with the office ~~department~~ by the surplus lines
31 agent desiring to use the same and is subject to the

1 disapproval of the office ~~department~~ within 10 days of filing
2 such form exclusive of Saturdays, Sundays, and legal holidays
3 if it finds that the use of such special form is not
4 reasonably necessary for the principal purposes of the
5 coverage or that its use would be contrary to the purposes of
6 this Surplus Lines Law with respect to the reasonable
7 protection of authorized insurers from unwarranted competition
8 by unauthorized insurers.

9 (d) Except as to extended coverage in connection with
10 fire insurance policies and except as to windstorm insurance,
11 the policy or contract under which the insurance is exported
12 shall not provide for deductible amounts, in determining the
13 existence or extent of the insurer's liability, other than
14 those available under similar policies or contracts in actual
15 and current use by one or more authorized insurers.

16 (2) The commission ~~department~~ may by rule ~~rules and~~
17 ~~regulations~~ declare eligible for export generally, and
18 notwithstanding the provisions of paragraphs (a), (b), (c),
19 and (d) of subsection (1), any class or classes of insurance
20 coverage or risk for which it finds, after a hearing, that
21 there is no reasonable or adequate market among authorized
22 insurers. Any such rules ~~and regulations~~ shall continue in
23 effect during the existence of the conditions upon which
24 predicated, but subject to termination by the commission
25 ~~department~~.

26 Section 1017. Subsection (1) of section 626.917,
27 Florida Statutes, is amended to read:

28 626.917 Eligibility for export; wet marine and
29 transportation, aviation risks.--

30 (1) Insurance coverage of wet marine and
31 transportation risks, as defined in this code in s.

1 624.607(2), or aviation risks, including airport and products
2 liability incidental thereto and hangarkeeper's liability, may
3 be exported under the following conditions:

4 (a) The insurance must be placed only by or through a
5 licensed Florida surplus lines agent; and

6 (b) The insurer must be one made eligible by the
7 office ~~department~~ specifically for such coverages, based upon
8 information furnished by the insurer and indicating that the
9 insurer is well able to meet its financial obligations.

10 Section 1018. Section 626.918, Florida Statutes, is
11 amended to read:

12 626.918 Eligible surplus lines insurers.--

13 (1) No surplus lines agent shall place any coverage
14 with any unauthorized insurer which is not then an eligible
15 surplus lines insurer, except as permitted under subsections
16 (5) and (6).

17 (2) No unauthorized insurer shall be or become an
18 eligible surplus lines insurer unless made eligible by the
19 office ~~department~~ in accordance with the following conditions:

20 (a) Eligibility of the insurer must be requested in
21 writing by the Florida Surplus Lines Service Office;

22 (b) The insurer must be currently an authorized
23 insurer in the state or country of its domicile as to the kind
24 or kinds of insurance proposed to be so placed and must have
25 been such an insurer for not less than the 3 years next
26 preceding or must be the wholly owned subsidiary of such
27 authorized insurer or must be the wholly owned subsidiary of
28 an already eligible surplus lines insurer as to the kind or
29 kinds of insurance proposed for a period of not less than the
30 3 years next preceding. However, the office ~~department~~ may
31 waive the 3-year requirement if the insurer provides a product

1 or service not readily available to the consumers of this
2 state or has operated successfully for a period of at least 1
3 year next preceding and has capital and surplus of not less
4 than \$25 million;

5 (c) Before granting eligibility, the requesting
6 surplus lines agent or the insurer shall furnish the office
7 ~~department~~ with a duly authenticated copy of its current
8 annual financial statement in the English language and with
9 all monetary values therein expressed in United States
10 dollars, at an exchange rate (in the case of statements
11 originally made in the currencies of other countries)
12 then-current and shown in the statement, and with such
13 additional information relative to the insurer as the office
14 ~~department~~ may request;

15 (d)1. The insurer must have and maintain surplus as to
16 policyholders of not less than \$15 million; in addition, an
17 alien insurer must also have and maintain in the United States
18 a trust fund for the protection of all its policyholders in
19 the United States under terms deemed by the office ~~department~~
20 to be reasonably adequate, in an amount not less than \$5.4
21 million. Any such surplus as to policyholders or trust fund
22 shall be represented by investments consisting of eligible
23 investments for like funds of like domestic insurers under
24 part II of chapter 625 provided, however, that in the case of
25 an alien insurance company, any such surplus as to
26 policyholders may be represented by investments permitted by
27 the domestic regulator of such alien insurance company if such
28 investments are substantially similar in terms of quality,
29 liquidity, and security to eligible investments for like funds
30 of like domestic insurers under part II of chapter 625;

31

1 2. For those surplus lines insurers that were eligible
2 on January 1, 1994, and that maintained their eligibility
3 thereafter, the required surplus as to policyholders shall be:
4 a. On December 31, 1994, and until December 30, 1995,
5 \$2.5 million.
6 b. On December 31, 1995, and until December 30, 1996,
7 \$3.5 million.
8 c. On December 31, 1996, and until December 30, 1997,
9 \$4.5 million.
10 d. On December 31, 1997, and until December 30, 1998,
11 \$5.5 million.
12 e. On December 31, 1998, and until December 30, 1999,
13 \$6.5 million.
14 f. On December 31, 1999, and until December 30, 2000,
15 \$8 million.
16 g. On December 31, 2000, and until December 30, 2001,
17 \$9.5 million.
18 h. On December 31, 2001, and until December 30, 2002,
19 \$11 million.
20 i. On December 31, 2002, and until December 30, 2003,
21 \$13 million.
22 j. On December 31, 2003, and thereafter, \$15 million.
23 3. The capital and surplus requirements as set forth
24 in subparagraph 2. do not apply in the case of an insurance
25 exchange created by the laws of individual states, where the
26 exchange maintains capital and surplus pursuant to the
27 requirements of that state, or maintains capital and surplus
28 in an amount not less than \$50 million in the aggregate. For
29 an insurance exchange which maintains funds in the amount of
30 at least \$12 million for the protection of all insurance
31 exchange policyholders, each individual syndicate shall

1 maintain minimum capital and surplus in an amount not less
2 than \$3 million. If the insurance exchange does not maintain
3 funds in the amount of at least \$12 million for the protection
4 of all insurance exchange policyholders, each individual
5 syndicate shall meet the minimum capital and surplus
6 requirements set forth in subparagraph 2.;

7 4. A surplus lines insurer which is a member of an
8 insurance holding company that includes a member which is a
9 Florida domestic insurer as set forth in its holding company
10 registration statement, as set forth in s. 628.801 and rules
11 adopted thereunder, may elect to maintain surplus as to
12 policyholders in an amount equal to the requirements of s.
13 624.408, subject to the requirement that the surplus lines
14 insurer shall at all times be in compliance with the
15 requirements of chapter 625.

16
17 The election shall be submitted to the office ~~department~~ and
18 shall be effective upon the office's ~~department's~~ being
19 satisfied that the requirements of subparagraph 4. have been
20 met. The initial date of election shall be the date of office
21 ~~department~~ approval. The election approval application shall
22 be on a form adopted by commission ~~department~~ rule. The office
23 ~~department~~ may approve an election form submitted pursuant to
24 subparagraph 4. only if it was on file with the former
25 Department of Insurance before February 28, 1998;

26 (e) The insurer must be of good reputation as to the
27 providing of service to its policyholders and the payment of
28 losses and claims;

29 (f) The insurer must be eligible, as for authority to
30 transact insurance in this state, under s. 624.404(3); and

31

1 (g) This subsection does not apply as to unauthorized
2 insurers made eligible under s. 626.917 as to wet marine and
3 aviation risks.

4 (3) The office ~~department~~ shall from time to time
5 publish a list of all currently eligible surplus lines
6 insurers and shall mail a copy thereof to each licensed
7 surplus lines agent at his or her office of record with the
8 office ~~department~~.

9 (4) This section shall not be deemed to cast upon the
10 office ~~department~~ any duty or responsibility to determine the
11 actual financial condition or claims practices of any
12 unauthorized insurer; and the status of eligibility, if
13 granted by the office ~~department~~, shall indicate only that the
14 insurer appears to be sound financially and to have
15 satisfactory claims practices and that the office ~~department~~
16 has no credible evidence to the contrary.

17 (5) When it appears that any particular insurance risk
18 which is eligible for export, but on which insurance coverage,
19 in whole or in part, is not procurable from the eligible
20 surplus lines insurers, after a search of eligible surplus
21 lines insurers, then the surplus lines agent may file a
22 supplemental signed statement setting forth such facts and
23 advising the office ~~department~~ that such part of the risk as
24 shall be unprocurable, as aforesaid, is being placed with
25 named unauthorized insurers, in the amounts and percentages
26 set forth in the statement. Such named unauthorized insurer
27 shall, however, before accepting any risk in this state,
28 deposit with the department cash or securities acceptable to
29 the office and ~~department~~ of the market value of \$50,000 for
30 each individual risk, contract, or certificate, which deposit
31 shall be held by the department for the benefit of Florida

1 policyholders only; and the surplus lines agent shall procure
2 from such unauthorized insurer and file with the office
3 ~~department~~ a certified copy of its statement of condition as
4 of the close of the last calendar year. If such statement
5 reveals, including both capital and surplus, net assets of at
6 least that amount required for licensure of a domestic
7 insurer, then the surplus lines agent may proceed to
8 consummate such contract of insurance. Whenever any insurance
9 risk, or any part thereof, is placed with an unauthorized
10 insurer, as provided herein, the policy, binder, or cover note
11 shall contain a statement signed by the insured and the agent
12 with the following notation: "The insured is aware that
13 certain insurers participating in this risk have not been
14 approved to transact business in Florida nor have they been
15 declared eligible as surplus lines insurers by the Office of
16 Insurance Regulation ~~Department of Insurance~~ of Florida. The
17 placing of such insurance by a duly licensed surplus lines
18 agent in Florida shall not be construed as approval of such
19 insurer by the Office of Insurance Regulation ~~Department of~~
20 ~~insurance~~ of Florida. Consequently, the insured is aware that
21 the insured has severely limited the assistance available
22 under the insurance laws of Florida. The insured is further
23 aware that he or she may be charged a reasonable per policy
24 fee, as provided in s. 626.916(4), Florida Statutes, for each
25 policy certified for export." All other provisions of this
26 code shall apply to such placement the same as if such risks
27 were placed with an eligible surplus lines insurer.

28 (6) When any particular insurance risk subject to
29 subsection (5) is eligible for placement with an unauthorized
30 insurer and not more than 12.5 percent of the risk is so
31 subject, the office ~~Department of Insurance~~ may, at its

1 discretion, permit the agent to obtain from the insured a
2 signed statement as indicated in subsection (5). All other
3 provisions of this code apply to such placement the same as if
4 such risks were placed with an eligible surplus lines insurer.

5 Section 1019. Section 626.919, Florida Statutes, is
6 amended to read:

7 626.919 Withdrawal of eligibility; surplus lines
8 insurer.--

9 (1) If at any time the office ~~department~~ has reason to
10 believe that any unauthorized insurer then on the list of
11 eligible surplus lines insurers is insolvent or in unsound
12 financial condition, or does not make reasonable prompt
13 payment of just losses and claims in this state, or that it is
14 no longer eligible under the conditions therefor provided in
15 s. 626.918, it shall withdraw the eligibility of the insurer
16 to insure surplus lines risks in this state.

17 (2) If the office ~~department~~ finds that an insurer
18 currently eligible as a surplus lines insurer has willfully
19 violated the laws of this state or a rule of the commission
20 ~~department~~, it may, in its discretion, withdraw the
21 eligibility of the insurer to insure surplus lines risks in
22 this state.

23 (3) The office ~~department~~ shall promptly mail notice
24 of all such withdrawals of eligibility to each surplus lines
25 agent at his or her address of record with the department.

26 Section 1020. Subsections (3), (5), (6), (7), and (8)
27 of section 626.921, Florida Statutes, is amended to read:

28 626.921 Florida Surplus Lines Service Office.--

29 (3) The association shall perform its functions under
30 a plan of operation adopted under subsection (5). It shall
31 exercise its powers through a board of governors established

1 under subsection (4). The association shall be regulated by
2 the office ~~department~~ and is subject to the applicable
3 provisions of this code and the rules of the commission and,
4 with respect to surplus lines agents, rules of the department.

5 The service office shall conduct the following activities
6 provided in the plan of operation adopted under subsection
7 (5):

8 (a) Receive, record, and review all surplus lines
9 insurance policies or documents.

10 (b) Maintain records of the surplus lines policies
11 reported to the service office and prepare monthly reports for
12 the office ~~department~~ in such form as the commission
13 ~~department~~ may prescribe.

14 (c) Prepare and deliver to each surplus lines agent
15 quarterly reports of each surplus lines agent's business in
16 such form as the commission ~~department~~ may prescribe, and
17 collect and remit to the department the surplus lines tax as
18 provided for in s. 626.932.

19 (d) Perform a reconciliation of the policies written
20 in the nonadmitted market, as provided by nonadmitted
21 insurers, with the policies reported to the service office by
22 the surplus lines agents, and prepare and deliver to the
23 office ~~department~~ a report on the results of the
24 reconciliation in such form as the commission ~~department~~ may
25 prescribe.

26 (e) Submit to the office ~~department~~ for review and
27 approval an annual budget for the operation of the service
28 office.

29 (f) Collect from each surplus lines agent a service
30 fee of up to 0.3 percent, as determined by the office
31 ~~department~~, of the total gross premium of each surplus lines

1 policy or document reported under this section, for the cost
2 of operation of the service office. The service fee shall be
3 paid by the insured.

4 (g) Employ and retain such personnel as are necessary
5 to carry out the duties of the service office.

6 (h) Borrow money, as necessary, to effect the purposes
7 of the service office.

8 (i) Enter into contracts, as necessary, to effect the
9 purposes of the service office.

10 (j) Perform such other acts as will facilitate and
11 encourage compliance with the surplus lines law of this state
12 and rules adopted thereunder.

13 (k) Provide such other services as are incidental or
14 related to the purposes of the service office.

15 (5)(a) The association shall submit to the office
16 ~~department~~ a plan of operation, and any amendments thereto, to
17 provide operating procedures for the administration of the
18 service office. The plan of operation and any amendments
19 thereto shall become effective upon approval by order of the
20 office ~~department~~.

21 (b) If the association fails to submit a suitable plan
22 of operation within 180 days following the effective date of
23 this act, or if at any time thereafter the association fails
24 to submit suitable amendments to the plan of operation, the
25 office ~~department~~ shall, after notice and hearing, adopt by
26 order a plan of operation, or amendments to a plan of
27 operation, and the commission shall adopt such rules as are
28 necessary or advisable to effectuate the provisions of this
29 section. Such rules shall continue in force until modified by
30 the commission ~~department~~ or superseded by a plan of operation
31

1 submitted by the association and approved by order of the
2 office ~~department~~.

3 (c) All surplus lines agents licensed in this state
4 must comply with the plan of operation.

5 (6) The office ~~department~~ shall, at such times deemed
6 necessary, make or cause to be made an examination of the
7 association. The costs of any such examination shall be paid
8 by the association. During the course of such examination,
9 the governors, officers, agents, employees, and members of the
10 association may be examined under oath regarding the operation
11 of the service office and shall make available all books,
12 records, accounts, documents, and agreements pertaining
13 thereto.

14 (7) There shall be no liability on the part of, and no
15 cause of action of any nature shall arise against, any member
16 or its agents or employees, agents or employees of the
17 association, the commission, the office,members of the board
18 of governors of the association, or the department or its
19 representatives, for any action taken by them in the
20 performance of their duties or responsibilities under this
21 subsection. Such immunity does not apply to actions for breach
22 of any contract or agreement pertaining to insurance, or any
23 willful tort.

24 (8)(a) Information furnished to the department under
25 s. 626.923 or contained in the records subject to examination
26 by the department under s. 626.930 is confidential and exempt
27 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
28 the State Constitution if the disclosure of the information
29 would reveal information specific to a particular policy or
30 policyholder. The exemption does not apply to any proceeding
31

1 instituted by the department or office against an agent or
2 insurer.

3 (b) Information furnished to the Florida Surplus Lines
4 Service Office under the Surplus Lines Law is confidential and
5 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
6 I of the State Constitution if the disclosure of the
7 information would reveal information specific to a particular
8 policy or policyholder. This exemption does not prevent the
9 disclosure of any information by the Florida Surplus Lines
10 Service Office to the department, but the exemption applies to
11 records obtained by the department from the Florida Surplus
12 Lines Service Office. The exemption does not apply to any
13 proceeding instituted by the department or office against an
14 agent or insurer. This paragraph is subject to the Open
15 Government Sunset Review Act of 1995 in accordance with s.
16 119.15, and shall stand repealed on October 2, 2006, unless
17 reviewed and saved from repeal through reenactment by the
18 Legislature.

19 Section 1021. Subsection (5) of section 626.931,
20 Florida Statutes, is amended to read:

21 626.931 Agent affidavit and insurer reporting
22 requirements.--

23 (5) ~~The department may Insurance Commissioner shall~~
24 ~~have the authority to~~ waive the filing requirements described
25 in subsections (3) and (4).

26 Section 1022. Subsections (2) and (5) of section
27 626.932, Florida Statutes, are amended to read:

28 626.932 Surplus lines tax.--

29 (2)(a) The surplus lines agent shall make payable to
30 the department ~~of Insurance~~ the tax related to each calendar
31 quarter's business as reported to the Florida Surplus Lines

1 Service Office, and remit the tax to the Florida Surplus Lines
2 Service Office at the same time as provided for the filing of
3 the quarterly affidavit, under s. 626.931. The Florida Surplus
4 Lines Service Office shall forward to the department the taxes
5 and any interest collected pursuant to paragraph (b), within
6 10 days of receipt.

7 (b) The agent shall pay interest on the amount of any
8 delinquent tax due, at the rate of 9 percent per year,
9 compounded annually, beginning the day the amount becomes
10 delinquent.

11 (5) The department shall deposit 55 percent of all
12 taxes collected under this section to the credit of the
13 Insurance ~~Commissioner's~~ Regulatory Trust Fund. Forty-five
14 percent of all taxes collected under this section shall be
15 deposited into the General Revenue Fund.

16 Section 1023. Section 626.936, Florida Statutes, is
17 amended to read:

18 626.936 Failure to file reports or pay tax or service
19 fee; administrative penalty.--

20 (1) Any licensed surplus lines agent who neglects to
21 file a report or an affidavit in the form and within the time
22 required or provided for in the Surplus Lines Law may be fined
23 up to \$50 per day for each day the neglect continues,
24 beginning the day after the report or affidavit was due until
25 the date the report or affidavit is received. All sums
26 collected under this section shall be deposited into the
27 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

28 (2) Any licensed surplus lines agent who neglects to
29 pay the taxes or service fees as required under the Surplus
30 Lines Law and within the time required may be fined up to \$500
31 per day for each day the failure to pay continues, beginning

1 the day after the tax or service fees were due. The agent
2 shall pay interest on the amount of any delinquent tax due, at
3 the rate of 9 percent per year, compounded annually, beginning
4 the day the amount becomes delinquent. The department shall
5 deposit all sums collected under this section into the
6 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

7 Section 1024. Section 626.9361, Florida Statutes, is
8 amended to read:

9 626.9361 Failure to file report; administrative
10 penalty.--Any eligible surplus lines insurer who fails to file
11 a report in the form and within the time required or provided
12 for in the Surplus Lines Law may be fined up to \$500 per day
13 for each day such failure continues, beginning the day after
14 the report was due, until the date the report is received.
15 Failure to file a report may also result in withdrawal of
16 eligibility as a surplus lines insurer in this state. All sums
17 collected by the department under this section shall be
18 deposited into the Insurance ~~Commissioner's~~ Regulatory Trust
19 Fund.

20 Section 1025. Subsections (2), (3), and (4) of section
21 626.937, Florida Statutes, are amended to read:

22 626.937 Actions against insurer; service of process.--

23 (2) The unauthorized insurer accepting the risk or
24 issuing the policy shall be deemed thereby to have authorized
25 service of process against it in the manner and to the effect
26 as provided in this section, and to have appointed the Chief
27 Financial Officer ~~Insurance Commissioner and Treasurer~~ as its
28 agent for service of process issuing upon any cause of action
29 arising in this state under any such policy, contract, or
30 insurance.

31

1 (3) Each unauthorized insurer requesting eligibility
2 pursuant to s. 626.918 shall file with the department its
3 appointment of the Chief Financial Officer Insurance
4 ~~Commissioner and Treasurer and his or her successors in~~
5 ~~office~~, on a form as furnished by the department, as its
6 attorney to receive service of all legal process issued
7 against it in any civil action or proceeding in this state,
8 and agreeing that process so served shall be valid and binding
9 upon the insurer. The appointment shall be irrevocable, shall
10 bind the insurer and any successor in interest as to the
11 assets or liabilities of the insurer, and shall remain in
12 effect as long as there is outstanding in this state any
13 obligation or liability of the insurer resulting from its
14 insurance transactions therein.

15 (4) At the time of such appointment of the Chief
16 Financial Officer Insurance ~~Commissioner and Treasurer~~ as its
17 process agent, the insurer shall file with the department
18 designation of the name and address of the person to whom
19 process against it served upon the Chief Financial Officer
20 ~~Insurance Commissioner and Treasurer~~ is to be forwarded. The
21 insurer may change the designation at any time by a new
22 filing.

23 Section 1026. Subsections (3) and (7) of section
24 626.938, Florida Statutes, are amended to read:

25 626.938 Report and tax of independently procured
26 coverages.--

27 (3) For the general support of the government of this
28 state, there is levied upon the obligation, chose in action,
29 or right represented by the premium charged for such insurance
30 a tax at the rate of 5 percent of the gross amount of such
31 premium and a 0.3 percent service fee pursuant to s. 626.9325.

1 The insured shall withhold the amount of the tax and service
2 fee from the amount of premium charged by and otherwise
3 payable to the insurer for such insurance. Within 30 days
4 after the insurance is procured, continued, or renewed, and
5 simultaneously with the filing of the report provided for in
6 subsection (1) with the Florida Surplus Lines Service Office,
7 the insured shall make payable to the department ~~of Insurance~~
8 the amount of the tax and make payable to the Florida Surplus
9 Lines Service Office the amount of the service fee. The
10 insured shall remit the tax and the service fee to the Florida
11 Surplus Lines Service Office. The Florida Surplus Lines
12 Service Office shall forward to the department the taxes, and
13 any interest collected pursuant to subsection (5), within 10
14 days after receipt.

15 (7) The department shall deposit 55 percent of all
16 taxes and interest collected under this section to the credit
17 of the Insurance ~~Commissioner's~~ Regulatory Trust Fund.
18 Forty-five percent of all taxes and interest collected under
19 this section shall be deposited into the General Revenue Fund.

20 Section 1027. Section 626.9511, Florida Statutes, is
21 amended to read:

22 626.9511 Definitions.--When used in this part:

23 (1) "Person" means any individual, corporation,
24 association, partnership, reciprocal exchange, interinsurer,
25 Lloyds insurer, fraternal benefit society, or business trust
26 or any entity involved in the business of insurance.

27 ~~(2) "Department" means the Department of Insurance of~~
28 ~~this state.~~

29 (2)(3) "Insurance policy" or "insurance contract"
30 means a written contract of, or a written agreement for or
31 effecting, insurance, or the certificate thereof, by whatever

1 name called, and includes all clauses, riders, endorsements,
2 and papers which are a part thereof.

3 Section 1028. Paragraphs (h), (o), (w), and (aa) of
4 subsection (1) of section 626.9541, Florida Statutes, are
5 amended to read:

6 626.9541 Unfair methods of competition and unfair or
7 deceptive acts or practices defined.--

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

11 (h) Unlawful rebates.--

12 1. Except as otherwise expressly provided by law, or
13 in an applicable filing with the office ~~department~~, knowingly:

14 a. Permitting, or offering to make, or making, any
15 contract or agreement as to such contract other than as
16 plainly expressed in the insurance contract issued thereon;

17 b. Paying, allowing, or giving, or offering to pay,
18 allow, or give, directly or indirectly, as inducement to such
19 insurance contract, any unlawful rebate of premiums payable on
20 the contract, any special favor or advantage in the dividends
21 or other benefits thereon, or any valuable consideration or
22 inducement whatever not specified in the contract;

23 c. Giving, selling, or purchasing, or offering to
24 give, sell, or purchase, as inducement to such insurance
25 contract or in connection therewith, any stocks, bonds, or
26 other securities of any insurance company or other
27 corporation, association, or partnership, or any dividends or
28 profits accrued thereon, or anything of value whatsoever not
29 specified in the insurance contract.

30

31

1 2. Nothing in paragraph (g) or subparagraph 1. of this
2 paragraph shall be construed as including within the
3 definition of discrimination or unlawful rebates:

4 a. In the case of any contract of life insurance or
5 life annuity, paying bonuses to all policyholders or otherwise
6 abating their premiums in whole or in part out of surplus
7 accumulated from nonparticipating insurance; provided that any
8 such bonuses or abatement of premiums is fair and equitable to
9 all policyholders and for the best interests of the company
10 and its policyholders.

11 b. In the case of life insurance policies issued on
12 the industrial debit plan, making allowance to policyholders
13 who have continuously for a specified period made premium
14 payments directly to an office of the insurer in an amount
15 which fairly represents the saving in collection expenses.

16 c. Readjustment of the rate of premium for a group
17 insurance policy based on the loss or expense thereunder, at
18 the end of the first or any subsequent policy year of
19 insurance thereunder, which may be made retroactive only for
20 such policy year.

21 d. Issuance of life insurance policies or annuity
22 contracts at rates less than the usual rates of premiums for
23 such policies or contracts, as group insurance or employee
24 insurance as defined in this code.

25 e. Issuing life or disability insurance policies on a
26 salary savings, bank draft, preauthorized check, payroll
27 deduction, or other similar plan at a reduced rate reasonably
28 related to the savings made by the use of such plan.

29 3.a. No title insurer, or any member, employee,
30 attorney, agent, agency, or solicitor thereof, shall pay,
31 allow, or give, or offer to pay, allow, or give, directly or

1 indirectly, as inducement to title insurance, or after such
2 insurance has been effected, any rebate or abatement of the
3 agent's, agency's, or title insurer's share of the premium or
4 any charge for related title services below the cost for
5 providing such services, or provide any special favor or
6 advantage, or any monetary consideration or inducement
7 whatever. Nothing herein contained shall preclude an
8 abatement in an attorney's fee charged for legal services.

9 b. Nothing in this subparagraph shall be construed as
10 prohibiting the payment of fees to attorneys at law duly
11 licensed to practice law in the courts of this state, for
12 professional services, or as prohibiting the payment of earned
13 portions of the premium to duly appointed agents or agencies
14 who actually perform services for the title insurer.

15 c. No insured named in a policy, or any other person
16 directly or indirectly connected with the transaction
17 involving the issuance of such policy, including, but not
18 limited to, any mortgage broker, real estate broker, builder,
19 or attorney, any employee, agent, agency, or representative
20 thereof, or any other person whatsoever, shall knowingly
21 receive or accept, directly or indirectly, any rebate or
22 abatement of said charge, or any monetary consideration or
23 inducement, other than as set forth in sub-subparagraph b.

24 (o) Illegal dealings in premiums; excess or reduced
25 charges for insurance.--

26 1. Knowingly collecting any sum as a premium or charge
27 for insurance, which is not then provided, or is not in due
28 course to be provided, subject to acceptance of the risk by
29 the insurer, by an insurance policy issued by an insurer as
30 permitted by this code.

31

1 2. Knowingly collecting as a premium or charge for
2 insurance any sum in excess of or less than the premium or
3 charge applicable to such insurance, in accordance with the
4 applicable classifications and rates as filed with and
5 approved by the office ~~department~~, and as specified in the
6 policy; or, in cases when classifications, premiums, or rates
7 are not required by this code to be so filed and approved,
8 premiums and charges in excess of or less than those specified
9 in the policy and as fixed by the insurer. This provision
10 shall not be deemed to prohibit the charging and collection,
11 by surplus lines agents licensed under part VIII of this
12 chapter, of the amount of applicable state and federal taxes,
13 or fees as authorized by s. 626.916(4), in addition to the
14 premium required by the insurer or the charging and
15 collection, by licensed agents, of the exact amount of any
16 discount or other such fee charged by a credit card facility
17 in connection with the use of a credit card, as authorized by
18 subparagraph (q)3., in addition to the premium required by the
19 insurer. This subparagraph shall not be construed to prohibit
20 collection of a premium for a universal life or a variable or
21 indeterminate value insurance policy made in accordance with
22 the terms of the contract.

23 3.a. Imposing or requesting an additional premium for
24 a policy of motor vehicle liability, personal injury
25 protection, medical payment, or collision insurance or any
26 combination thereof or refusing to renew the policy solely
27 because the insured was involved in a motor vehicle accident
28 unless the insurer's file contains information from which the
29 insurer in good faith determines that the insured was
30 substantially at fault in the accident.

31

1 b. An insurer which imposes and collects such a
2 surcharge or which refuses to renew such policy shall, in
3 conjunction with the notice of premium due or notice of
4 nonrenewal, notify the named insured that he or she is
5 entitled to reimbursement of such amount or renewal of the
6 policy under the conditions listed below and will subsequently
7 reimburse him or her or renew the policy, if the named insured
8 demonstrates that the operator involved in the accident was:

9 (I) Lawfully parked;

10 (II) Reimbursed by, or on behalf of, a person
11 responsible for the accident or has a judgment against such
12 person;

13 (III) Struck in the rear by another vehicle headed in
14 the same direction and was not convicted of a moving traffic
15 violation in connection with the accident;

16 (IV) Hit by a "hit-and-run" driver, if the accident
17 was reported to the proper authorities within 24 hours after
18 discovering the accident;

19 (V) Not convicted of a moving traffic violation in
20 connection with the accident, but the operator of the other
21 automobile involved in such accident was convicted of a moving
22 traffic violation;

23 (VI) Finally adjudicated not to be liable by a court
24 of competent jurisdiction;

25 (VII) In receipt of a traffic citation which was
26 dismissed or nolle prossed; or

27 (VIII) Not at fault as evidenced by a written
28 statement from the insured establishing facts demonstrating
29 lack of fault which are not rebutted by information in the
30 insurer's file from which the insurer in good faith determines
31 that the insured was substantially at fault.

1 c. In addition to the other provisions of this
2 subparagraph, an insurer may not fail to renew a policy if the
3 insured has had only one accident in which he or she was at
4 fault within the current 3-year period. However, an insurer
5 may nonrenew a policy for reasons other than accidents in
6 accordance with s. 627.728. This subparagraph does not
7 prohibit nonrenewal of a policy under which the insured has
8 had three or more accidents, regardless of fault, during the
9 most recent 3-year period.

10 4. Imposing or requesting an additional premium for,
11 or refusing to renew, a policy for motor vehicle insurance
12 solely because the insured committed a noncriminal traffic
13 infraction as described in s. 318.14 unless the infraction is:

14 a. A second infraction committed within an 18-month
15 period, or a third or subsequent infraction committed within a
16 36-month period.

17 b. A violation of s. 316.183, when such violation is a
18 result of exceeding the lawful speed limit by more than 15
19 miles per hour.

20 5. Upon the request of the insured, the insurer and
21 licensed agent shall supply to the insured the complete proof
22 of fault or other criteria which justifies the additional
23 charge or cancellation.

24 6. No insurer shall impose or request an additional
25 premium for motor vehicle insurance, cancel or refuse to issue
26 a policy, or refuse to renew a policy because the insured or
27 the applicant is a handicapped or physically disabled person,
28 so long as such handicap or physical disability does not
29 substantially impair such person's mechanically assisted
30 driving ability.

31

1 7. No insurer may cancel or otherwise terminate any
2 insurance contract or coverage, or require execution of a
3 consent to rate endorsement, during the stated policy term for
4 the purpose of offering to issue, or issuing, a similar or
5 identical contract or coverage to the same insured with the
6 same exposure at a higher premium rate or continuing an
7 existing contract or coverage with the same exposure at an
8 increased premium.

9 8. No insurer may issue a nonrenewal notice on any
10 insurance contract or coverage, or require execution of a
11 consent to rate endorsement, for the purpose of offering to
12 issue, or issuing, a similar or identical contract or coverage
13 to the same insured at a higher premium rate or continuing an
14 existing contract or coverage at an increased premium without
15 meeting any applicable notice requirements.

16 9. No insurer shall, with respect to premiums charged
17 for motor vehicle insurance, unfairly discriminate solely on
18 the basis of age, sex, marital status, or scholastic
19 achievement.

20 10. Imposing or requesting an additional premium for
21 motor vehicle comprehensive or uninsured motorist coverage
22 solely because the insured was involved in a motor vehicle
23 accident or was convicted of a moving traffic violation.

24 11. No insurer shall cancel or issue a nonrenewal
25 notice on any insurance policy or contract without complying
26 with any applicable cancellation or nonrenewal provision
27 required under the Florida Insurance Code.

28 12. No insurer shall impose or request an additional
29 premium, cancel a policy, or issue a nonrenewal notice on any
30 insurance policy or contract because of any traffic infraction
31 when adjudication has been withheld and no points have been

1 assessed pursuant to s. 318.14(9) and (10). However, this
2 subparagraph does not apply to traffic infractions involving
3 accidents in which the insurer has incurred a loss due to the
4 fault of the insured.

5 (w) Soliciting or accepting new or renewal insurance
6 risks by insolvent or impaired insurer prohibited; penalty.--

7 1. Whether or not delinquency proceedings as to the
8 insurer have been or are to be initiated, but while such
9 insolvency or impairment exists, no director or officer of an
10 insurer, except with the written permission of the office
11 ~~Department of Insurance~~, shall authorize or permit the insurer
12 to solicit or accept new or renewal insurance risks in this
13 state after such director or officer knew, or reasonably
14 should have known, that the insurer was insolvent or impaired.
15 "Impaired" includes impairment of capital or surplus, as
16 defined in s. 631.011(12) and (13).

17 2. Any such director or officer, upon conviction of a
18 violation of this paragraph, is guilty of a felony of the
19 third degree, punishable as provided in s. 775.082, s.
20 775.083, or s. 775.084.

21 (aa) Churning.--

22 1. Churning is the practice whereby policy values in
23 an existing life insurance policy or annuity contract,
24 including, but not limited to, cash, loan values, or dividend
25 values, and in any riders to that policy or contract, are
26 utilized to purchase another insurance policy or annuity
27 contract with that same insurer for the purpose of earning
28 additional premiums, fees, commissions, or other compensation:

29 a. Without an objectively reasonable basis for
30 believing that the replacement or extraction will result in an
31 actual and demonstrable benefit to the policyholder;

1 b. In a fashion that is fraudulent, deceptive, or
2 otherwise misleading or that involves a deceptive omission;

3 c. ~~Effective October 1, 1995,~~When the applicant is
4 not informed that the policy values including cash values,
5 dividends, and other assets of the existing policy or contract
6 will be reduced, forfeited, or utilized in the purchase of the
7 replacing or additional policy or contract, if this is the
8 case; or

9 d. ~~Effective October 1, 1995,~~Without informing the
10 applicant that the replacing or additional policy or contract
11 will not be a paid-up policy or that additional premiums will
12 be due, if this is the case.

13
14 Churning by an insurer or an agent is an unfair method of
15 competition and an unfair or deceptive act or practice.

16 2. ~~Effective October 1, 1995,~~Each insurer shall
17 comply with sub-subparagraphs 1.c. and 1.d. by disclosing to
18 the applicant at the time of the offer on a form designed and
19 adopted by rule by the commission ~~department~~ if, how, and the
20 extent to which the policy or contract values (including cash
21 value, dividends, and other assets) of a previously issued
22 policy or contract will be used to purchase a replacing or
23 additional policy or contract with the same insurer. The form
24 shall include disclosure of the premium, the death benefit of
25 the proposed replacing or additional policy, and the date when
26 the policy values of the existing policy or contract will be
27 insufficient to pay the premiums of the replacing or
28 additional policy or contract.

29 3. ~~Effective October 1, 1995,~~Each insurer shall adopt
30 written procedures to reasonably avoid churning of policies or
31 contracts that it has issued, and failure to adopt written

1 procedures sufficient to reasonably avoid churning shall be an
2 unfair method of competition and an unfair or deceptive act or
3 practice.

4 Section 1029. Section 626.9545, Florida Statutes, is
5 amended to read:

6 626.9545 Improper charge identification incentive
7 program.--No section or provision of the Florida Insurance
8 Code shall be construed as prohibiting an insurer from
9 establishing a financial incentive program for remunerating a
10 policyholder or an insured person with a selected percentage
11 or stated portion of any health care charge identified by the
12 policyholder or the insured person as an error or overcharge
13 if the health care charge is recovered by the insurer. The
14 financial incentive program shall be written and shall be
15 available for inspection by the office ~~department~~.

16 Section 1030. Subsection (5) of section 626.9551,
17 Florida Statutes, is amended to read:

18 626.9551 Favored agent or insurer; coercion of
19 debtors.--

20 (5) The department or office may investigate the
21 affairs of any person to whom this section applies to
22 determine whether such person has violated this section. If a
23 violation of this section is found to have been committed
24 knowingly, the person in violation shall be subject to the
25 same procedures and penalties as provided in ss. 626.9571,
26 626.9581, 626.9591, and 626.9601.

27 Section 1031. Section 626.9561, Florida Statutes, is
28 amended to read:

29 626.9561 Power of department and office.--The
30 department and office shall each have power within its
31 respective regulatory jurisdiction to examine and investigate

1 the affairs of every person involved in the business of
2 insurance in this state in order to determine whether such
3 person has been or is engaged in any unfair method of
4 competition or in any unfair or deceptive act or practice
5 prohibited by s. 626.9521, and shall each have the powers and
6 duties specified in ss. 626.9571-626.9601 in connection
7 therewith.

8 Section 1032. Section 626.9571, Florida Statutes, is
9 amended to read:

10 626.9571 Defined practices; hearings, witnesses,
11 appearances, production of books and service of process.--

12 (1) Whenever the department or office has reason to
13 believe that any person has engaged, or is engaging, in this
14 state in any unfair method of competition or any unfair or
15 deceptive act or practice as defined in s. 626.9541 or s.
16 626.9551 or is engaging in the business of insurance without
17 being properly licensed as required by this code and that a
18 proceeding by it in respect thereto would be to the interest
19 of the public, it shall conduct or cause to have conducted a
20 hearing in accordance with chapter 120.

21 (2) The department or office, a duly empowered hearing
22 officer, or an administrative law judge shall, during the
23 conduct of such hearing, have those powers enumerated in s.
24 120.569; however, the penalties for failure to comply with a
25 subpoena or with an order directing discovery shall be limited
26 to a fine not to exceed \$1,000 per violation.

27 (3) Statements of charges, notices, and orders under
28 this act may be served by anyone duly authorized by the
29 department or office, either in the manner provided by law for
30 service of process in civil actions or by certifying and
31 mailing a copy thereof to the person affected by such

1 statement, notice, order, or other process at his or her or
2 its residence or principal office or place of business. The
3 verified return by the person so serving such statement,
4 notice, order, or other process, setting forth the manner of
5 the service, shall be proof of the same, and the return
6 postcard receipt for such statement, notice, order, or other
7 process, certified and mailed as aforesaid, shall be proof of
8 service of the same.

9 Section 1033. Section 626.9581, Florida Statutes, is
10 amended to read:

11 626.9581 Cease and desist and penalty orders.--After
12 the hearing provided in s. 626.9571, the department or office
13 shall enter a final order in accordance with s. 120.569. If it
14 is determined that the person charged has engaged in an unfair
15 or deceptive act or practice or the unlawful transaction of
16 insurance, the department or office shall also issue an order
17 requiring the violator to cease and desist from engaging in
18 such method of competition, act, or practice or the unlawful
19 transaction of insurance. Further, if the act or practice is a
20 violation of s. 626.9541 or s. 626.9551, the department or
21 office may, at its discretion, order any one or more of the
22 following:

23 (1) Suspension or revocation of the person's
24 certificate of authority, license, or eligibility for any
25 certificate of authority or license, if he or she knew, or
26 reasonably should have known, he or she was in violation of
27 this act.

28 (2) Such other relief as may be provided in the
29 insurance code.

30 Section 1034. Section 626.9591, Florida Statutes, is
31 amended to read:

1 626.9591 Appeals from the department or office.--Any
2 person subject to an order of the department or office under
3 s. 626.9581 or s. 626.9601 may obtain a review of such order
4 by filing an appeal therefrom in accordance with the
5 provisions and procedures for appeal from the orders of the
6 department or office in general under s. 120.68.

7 Section 1035. Section 626.9601, Florida Statutes, is
8 amended to read:

9 626.9601 Penalty for violation of cease and desist
10 orders.--Any person who violates a cease and desist order of
11 the department or office under s. 626.9581 while such order is
12 in effect, after notice and hearing as provided in s.
13 626.9571, shall be subject, at the discretion of the
14 department or office, to any one or more of the following:

15 (1) A monetary penalty of not more than \$50,000 as to
16 all matters determined in such hearing.

17 (2) Suspension or revocation of such person's
18 certificate of authority, license, or eligibility to hold such
19 certificate of authority or license.

20 (3) Such other relief as may be provided in the
21 insurance code.

22 Section 1036. Section 626.9611, Florida Statutes, is
23 amended to read:

24 626.9611 Rules.--The department or commission may, in
25 accordance with chapter 120, adopt ~~promulgate~~ reasonable rules
26 as are necessary or proper to identify specific methods of
27 competition or acts or practices which are prohibited by s.
28 626.9541 or s. 626.9551, but the rules shall not enlarge upon
29 or extend the provisions of ss. 626.9541 and 626.9551.

30 Section 1037. Section 626.9621, Florida Statutes, is
31 amended to read:

1 626.9621 Provisions of part additional to existing
2 law.--The powers vested in the department, commission, and
3 office by this part shall be additional to any other powers to
4 enforce any penalties, fines, or forfeitures authorized by
5 law.

6 Section 1038. Section 626.9631, Florida Statutes, is
7 amended to read:

8 626.9631 Civil liability.--The provisions of this part
9 are cumulative to rights under the general civil and common
10 law, and no action of the department, commission, or office
11 shall abrogate such rights to damages or other relief in any
12 court.

13 Section 1039. Subsection (1) of section 626.9641,
14 Florida Statutes, is amended to read:

15 626.9641 Policyholders, bill of rights.--

16 (1) The principles expressed in the following
17 statements shall serve as standards to be followed by the
18 department, commission, and office in exercising their ~~its~~
19 powers and duties, in exercising administrative discretion, in
20 dispensing administrative interpretations of the law, and in
21 adopting ~~promulgating~~ rules:

22 (a) Policyholders shall have the right to competitive
23 pricing practices and marketing methods that enable them to
24 determine the best value among comparable policies.

25 (b) Policyholders shall have the right to obtain
26 comprehensive coverage.

27 (c) Policyholders shall have the right to insurance
28 advertising and other selling approaches that provide accurate
29 and balanced information on the benefits and limitations of a
30 policy.

31

1 (d) Policyholders shall have a right to an insurance
2 company that is financially stable.

3 (e) Policyholders shall have the right to be serviced
4 by a competent, honest insurance agent or broker.

5 (f) Policyholders shall have the right to a readable
6 policy.

7 (g) Policyholders shall have the right to an insurance
8 company that provides an economic delivery of coverage and
9 that tries to prevent losses.

10 (h) Policyholders shall have the right to a balanced
11 and positive regulation by the department, commission, and
12 office.

13 Section 1040. Section 626.9651, Florida Statutes, is
14 amended to read:

15 626.9651 Privacy.--The department and commission shall
16 each adopt rules consistent with other provisions of the
17 Florida Insurance Code to govern the use of a consumer's
18 nonpublic personal financial and health information. These
19 rules must be based on, consistent with, and not more
20 restrictive than the Privacy of Consumer Financial and Health
21 Information Regulation, adopted September 26, 2000, by the
22 National Association of Insurance Commissioners; however, the
23 rules must permit the use and disclosure of nonpublic personal
24 health information for scientific, medical, or public policy
25 research, in accordance with federal law. In addition, these
26 rules must be consistent with, and not more restrictive than,
27 the standards contained in Title V of the Gramm-Leach-Bliley
28 Act of 1999, Pub. L. No. 106-102. If the office ~~department~~
29 determines that a health insurer or health maintenance
30 organization is in compliance with, or is actively undertaking
31 compliance with, the consumer privacy protection rules adopted

1 by the United States Department of Health and Human Services,
2 in conformance with the Health Insurance Portability and
3 Affordability Act, that health insurer or health maintenance
4 organization is in compliance with this section.

5 Section 1041. Paragraph (e) of subsection (4) and
6 subsections (5) and (9) of section 626.989, Florida Statutes,
7 are amended to read:

8 626.989 Investigation by department or Division of
9 Insurance Fraud; compliance; immunity; confidential
10 information; reports to division; division investigator's
11 power of arrest.--

12 (4)

13 (e) The Chief Financial Officer ~~Insurance Commissioner~~
14 and any employee or agent of the department, commission,
15 office, or division, when acting without malice and in the
16 absence of fraud or bad faith, is not subject to civil
17 liability for libel, slander, or any other relevant tort, and
18 no civil cause of action of any nature exists against such
19 person by virtue of the execution of official activities or
20 duties of the department, commission, or office under this
21 section or by virtue of the publication of any report or
22 bulletin related to the official activities or duties of the
23 department, or division, commission, or office under this
24 section.

25 (5) The office's and the department's papers,
26 documents, reports, or evidence relative to the subject of an
27 investigation under this section are confidential and exempt
28 from the provisions of s. 119.07(1) until such investigation
29 is completed or ceases to be active. For purposes of this
30 subsection, an investigation is considered "active" while the
31 investigation is being conducted by the office or department

1 with a reasonable, good faith belief that it could lead to the
2 filing of administrative, civil, or criminal proceedings. An
3 investigation does not cease to be active if the office or
4 department is proceeding with reasonable dispatch and has a
5 good faith belief that action could be initiated by the office
6 or department or other administrative or law enforcement
7 agency. After an investigation is completed or ceases to be
8 active, portions of records relating to the investigation
9 shall remain exempt from the provisions of s. 119.07(1) if
10 disclosure would:

11 (a) Jeopardize the integrity of another active
12 investigation;

13 (b) Impair the safety and soundness of an insurer;

14 (c) Reveal personal financial information;

15 (d) Reveal the identity of a confidential source;

16 (e) Defame or cause unwarranted damage to the good
17 name or reputation of an individual or jeopardize the safety
18 of an individual; or

19 (f) Reveal investigative techniques or procedures.

20 Further, such papers, documents, reports, or evidence relative
21 to the subject of an investigation under this section shall
22 not be subject to discovery until the investigation is
23 completed or ceases to be active. Office, department, or
24 division investigators shall not be subject to subpoena in
25 civil actions by any court of this state to testify concerning
26 any matter of which they have knowledge pursuant to a pending
27 insurance fraud investigation by the division.

28 (9) In recognition of the complementary roles of
29 investigating instances of workers' compensation fraud and
30 enforcing compliance with the workers' compensation coverage
31 requirements under chapter 440, the department ~~of Insurance~~ is

1 directed to prepare and submit a joint performance report to
2 the President of the Senate and the Speaker of the House of
3 Representatives by November 1, 2003, and then by November 1
4 every 3 years thereafter, describing the results obtained in
5 achieving compliance with the workers' compensation coverage
6 requirements and reducing the incidence of workers'
7 compensation fraud.

8 Section 1042. Subsection (1) of section 626.9892,
9 Florida Statutes, is amended to read:

10 626.9892 Anti-Fraud Reward Program; reporting of
11 insurance fraud.--

12 (1) The Anti-Fraud Reward Program is hereby
13 established within the department, to be funded from the
14 Insurance ~~Commissioner's~~ Regulatory Trust Fund.

15 Section 1043. Paragraph (k) of subsection (5) of
16 section 626.99, Florida Statutes, is amended to read:

17 626.99 Life insurance solicitation.--

18 (5) GENERAL RULES RELATING TO SOLICITATION.--

19 (k) If an appropriately licensed agent proposes to
20 replace a life insurance policy or an in-force annuity with a
21 registered securities product, preapplication notice
22 requirements ~~to the department~~ shall not apply.

23 Section 1044. Section 626.9911, Florida Statutes, is
24 amended to read:

25 626.9911 Definitions.--As used in this act, the term:

26 ~~(1) "Department" means the Department of Insurance.~~

27 (1)(2) "Independent third-party trustee or escrow
28 agent" means an attorney, certified public accountant,
29 financial institution, or other person providing escrow
30 services under the authority of a regulatory body. The term
31 does not include any person associated, affiliated, or under

1 common control with a viatical settlement provider or viatical
2 settlement broker.

3 (2)~~(3)~~ "Person" has the meaning specified in s. 1.01.

4 (3)~~(4)~~ "Viatical settlement broker" means a person
5 who, on behalf of a viator and for a fee, commission, or other
6 valuable consideration, offers or attempts to negotiate
7 viatical settlement contracts between a viator resident in
8 this state and one or more viatical settlement providers.
9 Notwithstanding the manner in which the viatical settlement
10 broker is compensated, a viatical settlement broker is deemed
11 to represent only the viator and owes a fiduciary duty to the
12 viator to act according to the viator's instructions and in
13 the best interest of the viator. The term does not include an
14 attorney, licensed Certified Public Accountant, or investment
15 adviser lawfully registered with the department of Banking and
16 Finance under chapter 517, who is retained to represent the
17 viator and whose compensation is paid directly by or at the
18 direction and on behalf of the viator.

19 (4)~~(5)~~ "Viatical settlement contract" means a written
20 agreement entered into between a viatical settlement provider,
21 or its related provider trust, and a viator. The viatical
22 settlement contract includes an agreement to transfer
23 ownership or change the beneficiary designation of a life
24 insurance policy at a later date, regardless of the date that
25 compensation is paid to the viator. The agreement must
26 establish the terms under which the viatical settlement
27 provider will pay compensation or anything of value, which
28 compensation or value is less than the expected death benefit
29 of the insurance policy or certificate, in return for the
30 viator's assignment, transfer, sale, devise, or bequest of the
31 death benefit or ownership of all or a portion of the

1 insurance policy or certificate of insurance to the viatical
2 settlement provider. A viatical settlement contract also
3 includes a contract for a loan or other financial transaction
4 secured primarily by an individual or group life insurance
5 policy, other than a loan by a life insurance company pursuant
6 to the terms of the life insurance contract, or a loan secured
7 by the cash value of a policy.

8 (5)~~(6)~~ "Viatical settlement provider" means a person
9 who, in this state, from this state, or with a resident of
10 this state, effectuates a viatical settlement contract. The
11 term does not include:

12 (a) Any bank, savings bank, savings and loan
13 association, credit union, or other licensed lending
14 institution that takes an assignment of a life insurance
15 policy as collateral for a loan.~~†~~

16 (b) A life and health insurer that has lawfully issued
17 a life insurance policy that provides accelerated benefits to
18 terminally ill policyholders or certificateholders.~~†~~~~or~~

19 (c) Any natural person who enters into no more than
20 one viatical settlement contract with a viator in 1 calendar
21 year, unless such natural person has previously been licensed
22 under this act or is currently licensed under this act.

23 (d) A trust that meets the definition of a "related
24 provider trust."

25 (e) A viator in this state.

26 (f) A viatical settlement purchaser.

27 (g) A financing entity.

28 (6)~~(7)~~ "Viator" means the owner of a life insurance
29 policy or a certificateholder under a group policy who enters
30 or seeks to enter into a viatical settlement contract. This
31 term does not include a viatical settlement purchaser or a

1 viatical settlement provider or any person acquiring a policy
2 or interest in a policy from a viatical settlement provider,
3 nor does it include an independent third-party trustee or
4 escrow agent.

5 (7)~~(8)~~ "Related provider trust" means a titling trust
6 or other trust established by a licensed viatical settlement
7 provider or financing entity for the sole purpose of holding
8 the ownership or beneficial interest in purchased policies in
9 connection with a financing transaction. The trust must have a
10 written agreement with a licensed viatical settlement provider
11 or financing entity under which the licensed viatical
12 settlement provider or financing entity is responsible for
13 insuring compliance with all statutory and regulatory
14 requirements and under which the trust agrees to make all
15 records and files relating to viatical settlement transactions
16 available to the office ~~department~~ as if those records and
17 files were maintained directly by the licensed viatical
18 settlement provider. This term does not include an independent
19 third-party trustee or escrow agent or a trust that does not
20 enter into agreements with a viator. A related provider trust
21 shall be subject to all provisions of this act that apply to
22 the viatical settlement provider who established the related
23 provider trust, except s. 626.9912, which shall not be
24 applicable. A viatical settlement provider may establish no
25 more than one related provider trust, and the sole trustee of
26 such related provider trust shall be the viatical settlement
27 provider licensed under s. 626.9912. The name of the licensed
28 viatical settlement provider shall be included within the name
29 of the related provider trust.

30 (8)~~(9)~~ "Viatical settlement purchase agreement" means
31 a contract or agreement, entered into by a viatical settlement

1 purchaser, to which the viator is not a party, to purchase a
2 life insurance policy or an interest in a life insurance
3 policy, which is entered into for the purpose of deriving an
4 economic benefit. The term also includes purchases made by
5 viatical settlement purchasers from any person other than the
6 provider who effectuated the viatical settlement contract.

7 (9)~~(10)~~ "Viatical settlement purchaser" means a person
8 who gives a sum of money as consideration for a life insurance
9 policy or an equitable or legal interest in the death benefits
10 of a life insurance policy that has been or will be the
11 subject of a viatical settlement contract, for the purpose of
12 deriving an economic benefit, including purchases made from
13 any person other than the provider who effectuated the
14 viatical settlement contract or an entity affiliated with the
15 provider. The term does not include a licensee under this
16 part, an accredited investor as defined in Rule 501,
17 Regulation D of the Securities Act Rules, or a qualified
18 institutional buyer as defined by Rule 144(a) of the Federal
19 Securities Act, a special purpose entity, a financing entity,
20 or a contingency insurer. The above references to Rule 501,
21 Regulation D and Rule 144(a) of the Federal Securities Act are
22 used strictly for defining purposes and shall not be
23 interpreted in any other manner. Any person who claims to be
24 an accredited investor shall sign an affidavit stating that he
25 or she is an accredited investor, the basis of that claim, and
26 that he or she understands that as an accredited investor he
27 or she will not be entitled to certain protections of the
28 Viatical Settlement Act. This affidavit must be kept with
29 other documents required to be maintained by this act.

30 (10)~~(11)~~ "Viatical settlement sales agent" means a
31 person other than a licensed viatical settlement provider who

1 arranges the purchase through a viatical settlement purchase
2 agreement of a life insurance policy or an interest in a life
3 insurance policy.

4 (11)~~(12)~~ "Viaticated policy" means a life insurance
5 policy, or a certificate under a group policy, which is the
6 subject of a viatical settlement contract.

7 (12)~~(13)~~ "Related form" means any form, created by or
8 on behalf of a licensee, which a viator or viatical settlement
9 purchaser is required to sign or initial. The forms include,
10 but are not limited to, a power of attorney, a release of
11 medical information form, a suitability questionnaire, a
12 disclosure document, or any addendum, schedule, or amendment
13 to a viatical settlement contract or viatical settlement
14 purchase agreement considered necessary by a provider to
15 effectuate a viatical settlement transaction.

16 (13)~~(14)~~ "Special purpose entity" means an entity
17 established by a licensed viatical settlement provider or by a
18 financing entity, which may be a corporation, partnership,
19 trust, limited liability company, or other similar entity
20 formed solely to provide, either directly or indirectly,
21 access to institutional capital markets to a viatical
22 settlement provider or financing entity. A special purpose
23 entity shall not enter into a viatical settlement contract or
24 a viatical settlement purchase agreement.

25 (14)~~(15)~~ "Financing entity" means an underwriter,
26 placement agent, lender, purchaser of securities, or purchaser
27 of a policy or certificate from a viatical settlement
28 provider, credit enhancer, or any entity that has direct
29 ownership in a policy or certificate that is the subject of a
30 viatical settlement contract, but whose principal activity
31 related to the transaction is providing funds or credit

1 enhancement to effect the viatical settlement or the purchase
2 of one or more viatical policies and who has an agreement in
3 writing with one or more licensed viatical settlement
4 providers to finance the acquisition of viatical settlement
5 contracts. The term does not include a nonaccredited investor,
6 a viatical settlement purchaser, or other natural person. A
7 financing entity may not enter into a viatical settlement
8 contract.

9 Section 1045. Section 626.9912, Florida Statutes, is
10 amended to read:

11 626.9912 Viatical settlement provider license
12 required; application for license.--

13 (1) A person may not perform the functions of a
14 viatical settlement provider as defined in this act or enter
15 into or solicit a viatical settlement contract without first
16 having obtained a license from the office ~~department~~.

17 (2) Application for a viatical settlement provider
18 license must be made to the office ~~department~~ by the applicant
19 on a form prescribed by the commission ~~department~~, under oath
20 and signed by the applicant. The application must be
21 accompanied by a fee of \$500. If the applicant is a
22 corporation, the application must be under oath and signed by
23 the president and the secretary of the corporation.

24 (3) In the application, the applicant must provide all
25 of the following:

26 (a) The applicant's full name, age, residence address,
27 and business address, and all occupations engaged in by the
28 applicant during the 5 years preceding the date of the
29 application.

30 (b) A copy of the applicant's basic organizational
31 documents, if any, including the articles of incorporation,

1 articles of association, partnership agreement, trust
2 agreement, or other similar documents, together with all
3 amendments to such documents.

4 (c) Copies of all bylaws, rules, regulations, or
5 similar documents regulating the conduct of the applicant's
6 internal affairs.

7 (d) A list showing the name, business and residence
8 addresses, and official position of each individual who is
9 responsible for conduct of the applicant's affairs, including,
10 but not limited to, any member of the applicant's board of
11 directors, board of trustees, executive committee, or other
12 governing board or committee and any other person or entity
13 owning or having the right to acquire 10 percent or more of
14 the voting securities of the applicant.

15 (e) With respect to each individual identified under
16 paragraph (d):

17 1. A sworn biographical statement on forms adopted by
18 the commission and supplied by the office ~~department~~.

19 2. A set of fingerprints on forms prescribed by the
20 commission ~~department~~, certified by a law enforcement officer,
21 and accompanied by the fingerprinting fee specified in s.
22 624.501.

23 3. Authority for release of information relating to
24 the investigation of the individual's background.

25 (f) All applications, viatical settlement contract
26 forms, viatical settlement purchase agreement forms, escrow
27 forms, and other related forms proposed to be used by the
28 applicant.

29 (g) Such other information as the commission or office
30 ~~department~~ deems necessary to determine that the applicant and
31 the individuals identified under paragraph (d) are competent

1 and trustworthy and can lawfully and successfully act as a
2 viatical settlement provider.

3 (4) The office ~~department~~ may not issue a license to
4 an entity other than a natural person if it is not satisfied
5 that all officers, directors, employees, stockholders,
6 partners, and any other persons who exercise or have the
7 ability to exercise effective control of the entity or who
8 have the ability to influence the transaction of business by
9 the entity meet the standards of this act and have not
10 violated any provision of this act or rules of the commission
11 ~~department~~ related to the business of viatical settlement
12 contracts or viatical settlement purchase agreements.

13 (5) Upon the filing of a sworn application and the
14 payment of the license fee, the office ~~department~~ shall
15 investigate each applicant and may issue the applicant a
16 license if the office ~~department~~ finds that the applicant:

17 (a) Has provided a detailed plan of operation.

18 (b) Is competent and trustworthy and intends to act in
19 good faith in the business authorized by the license applied
20 for.

21 (c) Has a good business reputation and has had
22 experience, training, or education that qualifies the
23 applicant to conduct the business authorized by the license
24 applied for.

25 (d) If the applicant is a corporation, is a
26 corporation incorporated under the laws of this state, or is a
27 foreign corporation authorized to transact business in this
28 state.

29 (e) Has designated the Chief Financial Officer
30 ~~Insurance Commissioner and Treasurer~~ as its agent for service
31 of process.

1 (f) Has made the deposit required by s. 626.9913(3).
2 Section 1046. Subsections (2) and (3) of section
3 626.9913, Florida Statutes, are amended to read:

4 626.9913 Viatical settlement provider license
5 continuance; annual report; fees; deposit.--

6 (2) Annually, on or before March 1, the viatical
7 settlement provider licensee shall file a statement containing
8 information the commission ~~department~~ requires and shall pay
9 to the office ~~department~~ a license fee in the amount of \$500.
10 A viatical settlement provider shall include in all statements
11 filed with the office ~~department~~ all information requested by
12 the office ~~department~~ regarding a related provider trust
13 established by the viatical settlement provider. The office
14 ~~department~~ may require more frequent reporting. Failure to
15 timely file the annual statement or to timely pay the license
16 fee is grounds for immediate suspension of the license.

17 (3) A viatical settlement provider licensee must
18 deposit and maintain deposited in trust with the department
19 securities eligible for deposit under s. 625.52, having at all
20 times a value of not less than \$100,000. As an alternative to
21 meeting the \$100,000 deposit requirement, the provider may
22 deposit and maintain deposited in trust with the department
23 such securities in the amount of \$25,000 and post with the
24 office ~~department~~ a surety bond acceptable to the office
25 ~~department~~ in the amount of \$75,000.

26 Section 1047. Section 626.9914, Florida Statutes, is
27 amended to read:

28 626.9914 Suspension, revocation, or nonrenewal of
29 viatical settlement provider license; grounds; administrative
30 fine.--

31

1 (1) The office ~~department~~ shall suspend, revoke, or
2 refuse to renew the license of any viatical settlement
3 provider if the office ~~department~~ finds that the licensee:

4 (a) Has made a misrepresentation in the application
5 for the license;

6 (b) Has engaged in fraudulent or dishonest practices,
7 or otherwise has been shown to be untrustworthy or incompetent
8 to act as a viatical settlement provider;

9 (c) Demonstrates a pattern of unreasonable payments to
10 viators;

11 (d) Has been found guilty of, or has pleaded guilty or
12 nolo contendere to, any felony, or a misdemeanor involving
13 fraud or moral turpitude, regardless of whether a judgment of
14 conviction has been entered by the court;

15 (e) Has issued viatical settlement contracts that have
16 not been approved pursuant to this act;

17 (f) Has failed to honor contractual obligations
18 related to the business of viatical settlement contracts;

19 (g) Deals in bad faith with viators;

20 (h) Has violated any provision of the insurance code
21 or of this act;

22 (i) Employs any person who materially influences the
23 licensee's conduct and who fails to meet the requirements of
24 this act; or

25 (j) No longer meets the requirements for initial
26 licensure.

27 (2) The office ~~department~~ may, in lieu of or in
28 addition to any suspension or revocation, assess an
29 administrative fine not to exceed \$2,500 for each nonwillful
30 violation or \$10,000 for each willful violation by a viatical
31 settlement provider licensee. The office ~~department~~ may also

1 place a viatical settlement provider licensee on probation for
2 a period not to exceed 2 years.

3 (3) If an employee of a viatical settlement provider
4 violates any provision of this act, the office ~~department~~ may
5 take disciplinary action against such employee as if the
6 employee were licensed under this act, including suspending or
7 otherwise prohibiting the employee from performing the
8 functions of a viatical settlement provider or viatical
9 settlement broker as defined in this act.

10 (4) If a viatical settlement provider establishes a
11 related provider trust as permitted by this act, the viatical
12 settlement provider shall be liable and responsible for the
13 performance of all obligations of the related provider trust
14 under all viatical settlement contracts entered into by the
15 related provider trust, and for the compliance of the related
16 provider trust with all provisions of this act. Any violation
17 of this act by the related provider trust shall be deemed a
18 violation of this act by the viatical settlement provider as
19 well as the related provider trust. If the related provider
20 trust violates any provisions of this act, the office
21 ~~department~~ may exercise all remedies set forth in this act for
22 such violations against the viatical settlement provider, as
23 well as the related provider trust.

24 Section 1048. Subsections (1), (2), and (4) of section
25 626.9915, Florida Statutes, are amended to read:

26 626.9915 Effect of suspension or revocation of
27 viatical settlement provider license; duration of suspension;
28 reinstatement.--

29 (1) When its license is suspended or revoked, the
30 provider must proceed, immediately following the effective
31 date of the suspension or revocation, to conclude the affairs

1 it is transacting under its license. The provider may not
2 solicit, negotiate, advertise, or effectuate new contracts.
3 The office ~~department~~ retains jurisdiction over the provider
4 until all contracts have been fulfilled or canceled or have
5 expired. A provider whose license is suspended or revoked may
6 continue to maintain and service viaticated policies subject
7 to the approval of the office ~~department~~.

8 (2) The suspension of the license of a viatical
9 settlement provider licensee may be for such period, not to
10 exceed 2 years, as determined by the office ~~department~~. The
11 office ~~department~~ may shorten, rescind, or modify the
12 suspension.

13 (4) If, upon expiration of the suspension order, the
14 license has not otherwise been terminated, the office
15 ~~department~~ must reinstate the license only upon written
16 request by the suspended licensee unless the office ~~department~~
17 finds that the grounds giving rise to the suspension have not
18 been removed or that the licensee is otherwise not in
19 compliance with the requirements of this act. The office
20 ~~department~~ shall give the licensee notice of its findings no
21 later than 90 days after receipt of the request or upon
22 expiration of the suspension order, whichever occurs later.
23 If a license is not reinstated pursuant to the procedures set
24 forth in this subsection, it expires at the end of the
25 suspension or on the date it otherwise would have expired,
26 whichever is sooner.

27 Section 1049. Subsections (7), (8), and (9) of section
28 626.9916, Florida Statutes, are amended to read:

29 626.9916 Viatical settlement broker license required;
30 application for license.--

31

1 (7) Upon the filing of a sworn application and the
2 payment of the license fee and all other applicable fees under
3 this act, the department shall investigate each applicant and
4 may issue the applicant a license if the department finds that
5 the applicant:

6 (a) Is competent and trustworthy and intends to act in
7 good faith in the business authorized by the license applied
8 for.

9 (b) Has a good business reputation and has had
10 experience, training, or education that qualifies the
11 applicant to conduct the business authorized by the license
12 applied for.

13 (c) Except with respect to applicants for nonresident
14 licenses, is a bona fide resident of this state and actually
15 resides in this state at least 180 days a year. If an
16 applicant holds a similar license or an insurance agent's or
17 broker's license in another state at the time of applying for
18 a license under this section, the applicant may be found to
19 meet the residency requirement of this paragraph only after he
20 or she furnishes a letter of clearance satisfactory to the
21 department or other proof that the applicant's resident
22 licenses have been canceled or changed to nonresident status
23 and that the applicant is in good standing with the licensing
24 authority.

25 (d) Is a corporation, a corporation incorporated under
26 the laws of this state, or a foreign corporation authorized to
27 transact business in this state.

28 (e) Has designated the Chief Financial Officer
29 ~~Insurance Commissioner and Treasurer~~ as its agent for service
30 of process.

31

1 (8) An applicant for a nonresident viatical settlement
2 broker license must, in addition to designating the Chief
3 Financial Officer ~~Insurance Commissioner and Treasurer~~ as
4 agent for service of process as required by this section, also
5 furnish the department with the name and address of a resident
6 of this state upon whom notices or orders of the department or
7 process affecting the applicant or licensee may be served.
8 After issuance of the license, the licensee must also notify
9 the department of change of the person to receive such
10 notices, orders, or process; such change is not effective
11 until acknowledged by the department.

12 (9) ~~Beginning July 1, 1997,~~The department may, by
13 rule, specify experience, educational, or other training
14 standards required for licensure under this section.

15 Section 1050. Section 626.9919, Florida Statutes, is
16 amended to read:

17 626.9919 Notice of change of licensee address or
18 name.--Each viatical settlement provider licensee, viatical
19 settlement broker licensee, and viatical settlement sales
20 agent licensee must provide the office or department, as
21 applicable,at least 30 days' advance notice of any change in
22 the licensee's name, residence address, principal business
23 address, or mailing address.

24 Section 1051. Section 626.9921, Florida Statutes, is
25 amended to read:

26 626.9921 Filing of forms; required procedures;
27 approval.--

28 (1) A viatical settlement contract form, viatical
29 settlement purchase agreement form, escrow form, or related
30 form may be used in this state only after the form has been
31

1 filed with the office ~~department~~ and only after the form has
2 been approved by the office ~~department~~.

3 (2) The viatical settlement contract form, viatical
4 settlement purchase agreement form, escrow form, or related
5 form must be filed with the office ~~department~~ at least 60 days
6 before its use. The form is considered approved on the 60th
7 day after its date of filing unless it has been previously
8 disapproved by the office ~~department~~. The office ~~department~~
9 must disapprove a viatical settlement contract form, viatical
10 settlement purchase agreement form, escrow form, or related
11 form that is unreasonable, contrary to the public interest,
12 discriminatory, or misleading or unfair to the viator or the
13 purchaser.

14 (3) If a viatical settlement provider elects to use a
15 related provider trust in accordance with this act, the
16 viatical settlement provider shall file notice of its
17 intention to use a related provider trust with the office
18 ~~department~~, including a copy of the trust agreement of the
19 related provider trust. The organizational documents of the
20 trust must be submitted to and approved by the office
21 ~~department~~ before the transacting of business by the trust.

22 (4) The commission ~~department~~ may adopt, by rule,
23 standardized forms to be used by licensees, at the licensee's
24 option in place of separately approved forms.

25 Section 1052. Section 626.9922, Florida Statutes, is
26 amended to read:

27 626.9922 Examination.--

28 (1) The office or ~~department~~ may examine the business
29 and affairs of any of its respective licensees or applicants
30 ~~licensee or applicant~~ for a license. The office or ~~department~~
31 may order any such licensee or applicant to produce any

1 records, books, files, advertising and solicitation materials,
2 or other information and may take statements under oath to
3 determine whether the licensee or applicant is in violation of
4 the law or is acting contrary to the public interest. The
5 expenses incurred in conducting any examination or
6 investigation must be paid by the licensee or applicant.
7 Examinations and investigations must be conducted as provided
8 in chapter 624, and licensees are subject to all applicable
9 provisions of the insurance code.

10 (2) All accounts, books and records, documents, files,
11 contracts, and other information relating to all transactions
12 of viatical settlement contracts or viatical settlement
13 purchase agreements must be maintained by the licensee for a
14 period of at least 3 years after the death of the insured and
15 must be available to the office or department for inspection
16 during reasonable business hours.

17 (3) All such records or accurate copies of such
18 records must be maintained at the licensee's home office. As
19 used in this section, the term "home office" means the
20 principal place of business and any other single storage
21 facility, the street address of which shall be disclosed to
22 the office or department within 20 days after its initial use,
23 or within 20 days of the effective date of this subsection.

24 (4) The originals of records required to be maintained
25 under this section must be made available to the office or
26 department for examination at the office's or department's
27 request.

28 Section 1053. Subsection (2) of section 626.99235,
29 Florida Statutes, is amended to read:

30 626.99235 Disclosures to viatical settlement
31 purchasers; misrepresentations.--

1 (2) The viatical settlement provider and the viatical
2 settlement sales agent, themselves or through another person,
3 shall provide in writing the following disclosures to any
4 viatical settlement purchaser or purchaser prospect:

5 (a) That the return represented as being available
6 under the viatical settlement purchase agreement is directly
7 tied to the projected life span of one or more insureds.

8 (b) If a return is represented, the disclosure shall
9 indicate the projected life span of the insured or insureds
10 whose life or lives are tied to the return.

11 (c) If required by the terms of the viatical
12 settlement purchase agreement, that the viatical settlement
13 purchaser shall be responsible for the payment of insurance
14 premiums on the life of the insured, late or surrender fees,
15 or other costs related to the life insurance policy on the
16 life of the insured or insureds which may reduce the return.

17 (d) The amount of any trust fees, commissions,
18 deductions, or other expenses, if any, to be charged to the
19 viatical settlement purchaser.

20 (e) The name and address of the person responsible for
21 tracking the insured.

22 (f) That group policies may contain limitations or
23 caps in the conversion rights, that additional premiums may
24 have to be paid if the policy is converted, and that the party
25 responsible for the payment of such additional premiums shall
26 be identified.

27 (g) That the life expectancy and rate of return are
28 only estimates and cannot be guaranteed.

29 (h) That the purchase of a viatical settlement
30 contract should not be considered a liquid purchase, since it
31

1 is impossible to predict the exact timing of its maturity and
2 the funds may not be available until the death of the insured.

3 (i) The name and address of the person with the
4 responsibility for paying the premium until the death of the
5 insured.

6
7 The written disclosure required under this subsection shall be
8 conspicuously displayed in any viatical settlement purchase
9 agreement, and in any solicitation material furnished to the
10 viatical settlement purchaser by such viatical settlement
11 provider, related provider trust, or person, and shall be in
12 contrasting color and in not less than 10-point type or no
13 smaller than the largest type on the page if larger than
14 10-point type. The commission may ~~department is authorized to~~
15 adopt by rule the disclosure form to be used. The disclosures
16 need not be furnished in an invitation to inquire, the
17 objective of which is to create a desire to inquire further
18 about entering into a viatical settlement purchase agreement.
19 The invitation to inquire may not quote rates of return, may
20 not include material attendant to the execution of any
21 specific viatical settlement purchase agreement, and may not
22 relate to any specific viator.

23 Section 1054. Section 626.99245, Florida Statutes, is
24 amended to read:

25 626.99245 Conflict of regulation of viaticals.--

26 (1) A viatical settlement provider who from this state
27 enters into a viatical settlement purchase agreement with a
28 purchaser who is a resident of another state that has enacted
29 statutes or adopted regulations governing viatical settlement
30 purchase agreements, shall be governed in the effectuation of
31 that viatical settlement purchase agreement by the statutes

1 and regulations of the purchaser's state of residence. If the
2 state in which the purchaser is a resident has not enacted
3 statutes or regulations governing viatical settlement purchase
4 agreements, the provider shall give the purchaser notice that
5 neither Florida nor his or her state regulates the transaction
6 upon which he or she is entering. For transactions in these
7 states, however, the viatical settlement provider is to
8 maintain all records required as if the transactions were
9 executed in Florida. However, the forms used in those states
10 need not be approved by the office ~~department~~.

11 (2) A viatical settlement provider who from this state
12 enters into a viatical settlement contract with a viator who
13 is a resident of another state that has enacted statutes or
14 adopted regulations governing viatical settlement contracts
15 shall be governed in the effectuation of that viatical
16 settlement contract by the statutes and regulations of the
17 viator's state of residence. If the state in which the viator
18 is a resident has not enacted statutes or regulations
19 governing viatical settlement agreements, the provider shall
20 give the viator notice that neither Florida nor his or her
21 state regulates the transaction upon which he or she is
22 entering. For transactions in those states, however, the
23 viatical settlement provider is to maintain all records
24 required as if the transactions were executed in Florida. The
25 forms used in those states need not be approved by the office
26 ~~department~~.

27 (3) This section does not affect the requirement of
28 ss. 626.9911(5)~~626.9911(6)~~ and 626.9912(1) that a viatical
29 settlement provider doing business from this state must obtain
30 a viatical settlement license from the office ~~department~~. As
31 used in this subsection, the term "doing business from this

1 state" includes effectuating viatical settlement contracts and
2 effectuating viatical settlement purchase agreements from
3 offices in this state, regardless of the state of residence of
4 the viator or the viatical settlement purchaser.

5 Section 1055. Section 626.9925, Florida Statutes, is
6 amended to read:

7 626.9925 Rules.--The commission ~~department~~ may adopt
8 rules to administer this act, including rules establishing
9 standards for evaluating advertising by licensees; rules
10 providing for the collection of data, for disclosures to
11 viators or purchasers, and for the reporting of life
12 expectancies; and rules defining terms used in this act and
13 prescribing recordkeeping requirements relating to executed
14 viatical settlement contracts and viatical settlement purchase
15 agreements.

16 Section 1056. Section 626.9926, Florida Statutes, is
17 amended to read:

18 626.9926 Rate regulation not authorized.--Nothing in
19 this act shall be construed to authorize the office or
20 department to directly or indirectly regulate the amount paid
21 as consideration for entry into a viatical settlement contract
22 or viatical settlement purchase agreement.

23 Section 1057. Subsection (2) of section 626.9927,
24 Florida Statutes, is amended to read:

25 626.9927 Unfair trade practices; cease and desist;
26 injunctions; civil remedy.--

27 (2) In addition to the penalties and other enforcement
28 provisions of this act, if any person violates this act or any
29 rule implementing this act, the office or department, as
30 appropriate, may seek an injunction in the circuit court of
31 the county where the person resides or has a principal place

1 of business and may apply for temporary and permanent orders
2 that the office or department determines necessary to restrain
3 the person from committing the violation.

4 Section 1058. Section 626.99272, Florida Statutes, is
5 amended to read:

6 626.99272 Cease and desist orders and fines.--

7 (1) The office or department as appropriate may issue
8 a cease and desist order upon a person that violates any
9 provision of this part, any rule or order adopted by the
10 commission, office, or department, or any written agreement
11 entered into with the office or department.

12 (2) When the office or department finds that such an
13 action presents an immediate danger to the public which
14 requires an immediate final order, it may issue an emergency
15 cease and desist order reciting with particularity the facts
16 underlying such findings. The emergency cease and desist order
17 is effective immediately upon service of a copy of the order
18 on the respondent and remains effective for 90 days. If the
19 office or department begins nonemergency cease and desist
20 proceedings under subsection (1), the emergency cease and
21 desist order remains effective, absent an order by an
22 appellate court of competent jurisdiction pursuant to s.
23 120.68, until the conclusion of proceedings under ss. 120.569
24 and 120.57.

25 (3) The office or department may impose and collect an
26 administrative fine not to exceed \$10,000 for each nonwillful
27 violation and \$25,000 for each willful violation of any
28 provision of this part.

29 Section 1059. Section 626.99285, Florida Statutes, is
30 amended to read:

31

1 626.99285 Applicability of insurance code.--In
2 addition to other applicable provisions cited in the insurance
3 code, the office or department, as appropriate, has the
4 authority granted under ss. 624.310, 626.901, and 626.989 to
5 regulate viatical settlement providers, viatical settlement
6 brokers, viatical settlement sales agents, viatical settlement
7 contracts, viatical settlement purchase agreements, and
8 viatical settlement transactions.

9 Section 1060. Section 626.99295, Florida Statutes, is
10 amended to read:

11 626.99295 Grace period.--An unlicensed viatical
12 settlement provider or viatical settlement broker that was
13 legally transacting business in this state on June 30, 2000,
14 may continue to transact such business, in the absence of any
15 orders by the office, department, or the former Department of
16 Insurance to the contrary, until the office or department, as
17 applicable, approves or disapproves the viatical settlement
18 provider's application for licensure if the viatical
19 settlement provider or viatical settlement broker filed files
20 with the former department an application for licensure no
21 later than August 1, 2000, and if the viatical settlement
22 provider or viatical settlement broker complies with all other
23 provisions of this act. Any form for which former department
24 approval was is required under this part must have been be
25 filed by August 1, 2000, and may continue to be used until
26 disapproved by the office or department.

27 Section 1061. Subsection (2) of section 627.031,
28 Florida Statutes, is amended to read:

29 627.031 Purposes of this part; interpretation.--

30 (2) It is the purpose of this part to protect
31 policyholders and the public against the adverse effects of

1 excessive, inadequate, or unfairly discriminatory insurance
2 rates, and to authorize the office ~~department~~ to regulate such
3 rates. If at any time the office ~~department~~ has reason to
4 believe any such rate is excessive, inadequate, or unfairly
5 discriminatory under the law, it is directed to take the
6 necessary action to cause such rate to comply with the laws of
7 this state.

8 Section 1062. Section 627.0612, Florida Statutes, is
9 amended to read:

10 627.0612 Administrative proceedings in rating
11 determinations.--In any proceeding to determine whether rates,
12 rating plans, or other matters governed by this part comply
13 with the law, the appellate court shall set aside a final
14 order of the office ~~department~~ if the office ~~department~~ has
15 violated s. 120.57(1)(k) by substituting its findings of fact
16 for findings of an administrative law judge which were
17 supported by competent substantial evidence.

18 Section 1063. Section 627.0613, Florida Statutes, is
19 amended to read:

20 627.0613 Consumer advocate.--The Chief Financial
21 Officer ~~Insurance Commissioner~~ must appoint a consumer
22 advocate who must represent the general public of the state
23 before the department and the office. The consumer advocate
24 must report directly to the Chief Financial Officer ~~Insurance~~
25 ~~Commissioner~~, but is not otherwise under the authority of the
26 department or of any employee of the department. The consumer
27 advocate has such powers as are necessary to carry out the
28 duties of the office of consumer advocate, including, but not
29 limited to, the powers to:

30 (1) Recommend to the department or office, by
31 petition, the commencement of any proceeding or action; appear

1 in any proceeding or action before the department or office;
2 or appear in any proceeding before the Division of
3 Administrative Hearings relating to subject matter under the
4 jurisdiction of the department or office.

5 (2) Have access to and use of all files, records, and
6 data of the department or office.

7 (3) Examine rate and form filings submitted to the
8 office ~~department~~, hire consultants as necessary to aid in the
9 review process, and recommend to the department or office any
10 position deemed by the consumer advocate to be in the public
11 interest.

12 (4) Prepare an annual budget for presentation to the
13 Legislature by the department, which budget must be adequate
14 to carry out the duties of the office of consumer advocate.

15 Section 1064. Subsections (2), (3), and (6) of section
16 627.062, Florida Statutes, are amended to read:

17 627.062 Rate standards.--

18 (2) As to all such classes of insurance:

19 (a) Insurers or rating organizations shall establish
20 and use rates, rating schedules, or rating manuals to allow
21 the insurer a reasonable rate of return on such classes of
22 insurance written in this state. A copy of rates, rating
23 schedules, rating manuals, premium credits or discount
24 schedules, and surcharge schedules, and changes thereto, shall
25 be filed with the office ~~department~~ under one of the following
26 procedures:

27 1. If the filing is made at least 90 days before the
28 proposed effective date and the filing is not implemented
29 during the office's ~~department's~~ review of the filing and any
30 proceeding and judicial review, then such filing shall be
31 considered a "file and use" filing. In such case, the office

1 ~~department~~ shall finalize its review by issuance of a notice
2 of intent to approve or a notice of intent to disapprove
3 within 90 days after receipt of the filing. The notice of
4 intent to approve and the notice of intent to disapprove
5 constitute agency action for purposes of the Administrative
6 Procedure Act. Requests for supporting information, requests
7 for mathematical or mechanical corrections, or notification to
8 the insurer by the office ~~department~~ of its preliminary
9 findings shall not toll the 90-day period during any such
10 proceedings and subsequent judicial review. The rate shall be
11 deemed approved if the office ~~department~~ does not issue a
12 notice of intent to approve or a notice of intent to
13 disapprove within 90 days after receipt of the filing.

14 2. If the filing is not made in accordance with the
15 provisions of subparagraph 1., such filing shall be made as
16 soon as practicable, but no later than 30 days after the
17 effective date, and shall be considered a "use and file"
18 filing. An insurer making a "use and file" filing is
19 potentially subject to an order by the office ~~department~~ to
20 return to policyholders portions of rates found to be
21 excessive, as provided in paragraph (h).

22 (b) Upon receiving a rate filing, the office
23 ~~department~~ shall review the rate filing to determine if a rate
24 is excessive, inadequate, or unfairly discriminatory. In
25 making that determination, the office ~~department~~ shall, in
26 accordance with generally accepted and reasonable actuarial
27 techniques, consider the following factors:

28 1. Past and prospective loss experience within and
29 without this state.

30 2. Past and prospective expenses.

31

1 3. The degree of competition among insurers for the
2 risk insured.

3 4. Investment income reasonably expected by the
4 insurer, consistent with the insurer's investment practices,
5 from investable premiums anticipated in the filing, plus any
6 other expected income from currently invested assets
7 representing the amount expected on unearned premium reserves
8 and loss reserves. The commission ~~department~~ may adopt
9 ~~promulgate~~ rules utilizing reasonable techniques of actuarial
10 science and economics to specify the manner in which insurers
11 shall calculate investment income attributable to such classes
12 of insurance written in this state and the manner in which
13 such investment income shall be used in the calculation of
14 insurance rates. Such manner shall contemplate allowances for
15 an underwriting profit factor and full consideration of
16 investment income which produce a reasonable rate of return;
17 however, investment income from invested surplus shall not be
18 considered. ~~The profit and contingency factor as specified in~~
19 ~~the filing shall be utilized in computing excess profits in~~
20 ~~conjunction with s. 627.0625.~~

21 5. The reasonableness of the judgment reflected in the
22 filing.

23 6. Dividends, savings, or unabsorbed premium deposits
24 allowed or returned to Florida policyholders, members, or
25 subscribers.

26 7. The adequacy of loss reserves.

27 8. The cost of reinsurance.

28 9. Trend factors, including trends in actual losses
29 per insured unit for the insurer making the filing.

30 10. Conflagration and catastrophe hazards, if
31 applicable.

1 11. A reasonable margin for underwriting profit and
2 contingencies.

3 12. The cost of medical services, if applicable.

4 13. Other relevant factors which impact upon the
5 frequency or severity of claims or upon expenses.

6 (c) In the case of fire insurance rates, consideration
7 shall be given to the availability of water supplies and the
8 experience of the fire insurance business during a period of
9 not less than the most recent 5-year period for which such
10 experience is available.

11 (d) If conflagration or catastrophe hazards are given
12 consideration by an insurer in its rates or rating plan,
13 including surcharges and discounts, the insurer shall
14 establish a reserve for that portion of the premium allocated
15 to such hazard and shall maintain the premium in a catastrophe
16 reserve. Any removal of such premiums from the reserve for
17 purposes other than paying claims associated with a
18 catastrophe or purchasing reinsurance for catastrophes shall
19 be subject to approval of the office ~~department~~. Any ceding
20 commission received by an insurer purchasing reinsurance for
21 catastrophes shall be placed in the catastrophe reserve.

22 (e) After consideration of the rate factors provided
23 in paragraphs (b), (c), and (d), a rate may be found by the
24 office ~~department~~ to be excessive, inadequate, or unfairly
25 discriminatory based upon the following standards:

26 1. Rates shall be deemed excessive if they are likely
27 to produce a profit from Florida business that is unreasonably
28 high in relation to the risk involved in the class of business
29 or if expenses are unreasonably high in relation to services
30 rendered.

31

1 2. Rates shall be deemed excessive if, among other
2 things, the rate structure established by a stock insurance
3 company provides for replenishment of surpluses from premiums,
4 when the replenishment is attributable to investment losses.

5 3. Rates shall be deemed inadequate if they are
6 clearly insufficient, together with the investment income
7 attributable to them, to sustain projected losses and expenses
8 in the class of business to which they apply.

9 4. A rating plan, including discounts, credits, or
10 surcharges, shall be deemed unfairly discriminatory if it
11 fails to clearly and equitably reflect consideration of the
12 policyholder's participation in a risk management program
13 adopted pursuant to s. 627.0625.

14 5. A rate shall be deemed inadequate as to the premium
15 charged to a risk or group of risks if discounts or credits
16 are allowed which exceed a reasonable reflection of expense
17 savings and reasonably expected loss experience from the risk
18 or group of risks.

19 6. A rate shall be deemed unfairly discriminatory as
20 to a risk or group of risks if the application of premium
21 discounts, credits, or surcharges among such risks does not
22 bear a reasonable relationship to the expected loss and
23 expense experience among the various risks.

24 (f) In reviewing a rate filing, the office ~~department~~
25 may require the insurer to provide at the insurer's expense
26 all information necessary to evaluate the condition of the
27 company and the reasonableness of the filing according to the
28 criteria enumerated in this section.

29 (g) The office ~~department~~ may at any time review a
30 rate, rating schedule, rating manual, or rate change; the
31 pertinent records of the insurer; and market conditions. If

1 the office ~~department~~ finds on a preliminary basis that a rate
2 may be excessive, inadequate, or unfairly discriminatory, the
3 office ~~department~~ shall initiate proceedings to disapprove the
4 rate and shall so notify the insurer. However, the office
5 ~~department~~ may not disapprove as excessive any rate for which
6 it has given final approval or which has been deemed approved
7 for a period of 1 year after the effective date of the filing
8 unless the office ~~department~~ finds that a material
9 misrepresentation or material error was made by the insurer or
10 was contained in the filing. Upon being so notified, the
11 insurer or rating organization shall, within 60 days, file
12 with the office ~~department~~ all information which, in the
13 belief of the insurer or organization, proves the
14 reasonableness, adequacy, and fairness of the rate or rate
15 change. The office ~~department~~ shall issue a notice of intent
16 to approve or a notice of intent to disapprove pursuant to the
17 procedures of paragraph (a) within 90 days after receipt of
18 the insurer's initial response. In such instances and in any
19 administrative proceeding relating to the legality of the
20 rate, the insurer or rating organization shall carry the
21 burden of proof by a preponderance of the evidence to show
22 that the rate is not excessive, inadequate, or unfairly
23 discriminatory. After the office ~~department~~ notifies an
24 insurer that a rate may be excessive, inadequate, or unfairly
25 discriminatory, unless the office ~~department~~ withdraws the
26 notification, the insurer shall not alter the rate except to
27 conform with the office's ~~department's~~ notice until the
28 earlier of 120 days after the date the notification was
29 provided or 180 days after the date of the implementation of
30 the rate. The office ~~department~~ may, subject to chapter 120,
31 disapprove without the 60-day notification any rate increase

1 filed by an insurer within the prohibited time period or
2 during the time that the legality of the increased rate is
3 being contested.

4 (h) In the event the office ~~department~~ finds that a
5 rate or rate change is excessive, inadequate, or unfairly
6 discriminatory, the office ~~department~~ shall issue an order of
7 disapproval specifying that a new rate or rate schedule which
8 responds to the findings of the office ~~department~~ be filed by
9 the insurer. The office ~~department~~ shall further order, for
10 any "use and file" filing made in accordance with subparagraph
11 (a)2., that premiums charged each policyholder constituting
12 the portion of the rate above that which was actuarially
13 justified be returned to such policyholder in the form of a
14 credit or refund. If the office ~~department~~ finds that an
15 insurer's rate or rate change is inadequate, the new rate or
16 rate schedule filed with the office ~~department~~ in response to
17 such a finding shall be applicable only to new or renewal
18 business of the insurer written on or after the effective date
19 of the responsive filing.

20 (i) Except as otherwise specifically provided in this
21 chapter, the office ~~department~~ shall not prohibit any insurer,
22 including any residual market plan or joint underwriting
23 association, from paying acquisition costs based on the full
24 amount of premium, as defined in s. 627.403, applicable to any
25 policy, or prohibit any such insurer from including the full
26 amount of acquisition costs in a rate filing.

27
28 The provisions of this subsection shall not apply to workers'
29 compensation and employer's liability insurance and to motor
30 vehicle insurance.

31

1 (3)(a) For individual risks that are not rated in
2 accordance with the insurer's rates, rating schedules, rating
3 manuals, and underwriting rules filed with the office
4 ~~department~~ and which have been submitted to the insurer for
5 individual rating, the insurer must maintain documentation on
6 each risk subject to individual risk rating. The
7 documentation must identify the named insured and specify the
8 characteristics and classification of the risk supporting the
9 reason for the risk being individually risk rated, including
10 any modifications to existing approved forms to be used on the
11 risk. The insurer must maintain these records for a period of
12 at least 5 years after the effective date of the policy.

13 (b) Individual risk rates and modifications to
14 existing approved forms are not subject to this part or part
15 II, except for paragraph (a) and ss. 627.402, 627.403,
16 627.4035, 627.404, 627.405, 627.406, 627.407, 627.4085,
17 627.409, 627.4132, 627.4133, 627.415, 627.416, 627.417,
18 627.419, 627.425, 627.426, 627.4265, 627.427, and 627.428, but
19 are subject to all other applicable provisions of this code
20 and rules adopted thereunder.

21 (c) This subsection does not apply to private
22 passenger motor vehicle insurance.

23 (6)(a) After any action with respect to a rate filing
24 that constitutes agency action for purposes of the
25 Administrative Procedure Act, an insurer may, in lieu of
26 demanding a hearing under s. 120.57, require arbitration of
27 the rate filing. Arbitration shall be conducted by a board of
28 arbitrators consisting of an arbitrator selected by the office
29 ~~department~~, an arbitrator selected by the insurer, and an
30 arbitrator selected jointly by the other two arbitrators. Each
31 arbitrator must be certified by the American Arbitration

1 Association. A decision is valid only upon the affirmative
2 vote of at least two of the arbitrators. No arbitrator may be
3 an employee of any insurance regulator or regulatory body or
4 of any insurer, regardless of whether or not the employing
5 insurer does business in this state. The office ~~department~~ and
6 the insurer must treat the decision of the arbitrators as the
7 final approval of a rate filing. Costs of arbitration shall be
8 paid by the insurer.

9 (b) Arbitration under this subsection shall be
10 conducted pursuant to the procedures specified in ss.
11 682.06-682.10. Either party may apply to the circuit court to
12 vacate or modify the decision pursuant to s. 682.13 or s.
13 682.14. The commission ~~department~~ shall adopt rules for
14 arbitration under this subsection, which rules may not be
15 inconsistent with the arbitration rules of the American
16 Arbitration Association as of January 1, 1996.

17 (c) Upon initiation of the arbitration process, the
18 insurer waives all rights to challenge the action of the
19 office ~~department~~ under the Administrative Procedure Act or
20 any other provision of law; however, such rights are restored
21 to the insurer if the arbitrators fail to render a decision
22 within 90 days after initiation of the arbitration process.

23 Section 1065. Subsection (3) of section 627.0625,
24 Florida Statutes, is amended to read:

25 627.0625 Commercial property and casualty risk
26 management plans.--

27 (3) Each insurer or insurer group offering commercial
28 casualty insurance or commercial property insurance covering
29 risks located in this state shall develop and make available
30 to insureds guidelines for risk management plans. The risk
31 management program shall include the following:

1 (a) Safety measures, including, as applicable, the
2 following areas:

- 3 1. Pollution and environmental hazards;
- 4 2. Disease hazards;
- 5 3. Accidental occurrences;
- 6 4. Fire hazards and fire prevention and detection;
- 7 5. Liability for acts from the course of business;
- 8 6. Slip and fall hazards;
- 9 7. Product injury; and
- 10 8. Hazards unique to a particular class or category of
11 insureds.

12 (b) Training to insureds in safety management
13 techniques.

14 (c) Safety management counseling services.
15

16 There shall be no civil cause of action against any insurer or
17 its agents or employees for acts or omissions in any way
18 connected with the requirements of this subsection. This
19 shall not limit the authority for the office ~~department~~ to
20 enforce the provisions of this subsection.

21 Section 1066. Paragraphs (a), (b), and (c) of
22 subsection (2) and paragraph (c) of subsection (3) of section
23 627.0628, Florida Statutes, are amended to read:

24 627.0628 Florida Commission on Hurricane Loss
25 Projection Methodology.--

26 (2) COMMISSION CREATED.--

27 (a) There is created the Florida Commission on
28 Hurricane Loss Projection Methodology, which is assigned to
29 the State Board of Administration. For the purposes of this
30 section, the term "commission" means the Florida Commission on
31 Hurricane Loss Projection Methodology.The commission shall be

1 administratively housed within the State Board of
2 Administration, but it shall independently exercise the powers
3 and duties specified in this section.

4 (b) The commission shall consist of the following 11
5 members:

6 1. The insurance consumer advocate.

7 2. The senior employee of the State Board of
8 Administration responsible for operations ~~Chief Operating~~
9 ~~Officer~~ of the Florida Hurricane Catastrophe Fund.

10 3. The Executive Director of the Citizens Property
11 Insurance Corporation ~~Residential Property and Casualty Joint~~
12 ~~Underwriting Association~~.

13 4. The Director of the Division of Emergency
14 Management of the Department of Community Affairs.

15 5. The actuary member of the Florida Hurricane
16 Catastrophe Fund Advisory Council.

17 6. Six members appointed by the Chief Financial
18 Officer ~~Insurance Commissioner~~, as follows:

19 a. An employee of the office ~~Department of Insurance~~
20 who is an actuary responsible for property insurance rate
21 filings.

22 b. An actuary who is employed full time by a property
23 and casualty insurer which was responsible for at least 1
24 percent of the aggregate statewide direct written premium for
25 homeowner's insurance in the calendar year preceding the
26 member's appointment to the commission.

27 c. An expert in insurance finance who is a full time
28 member of the faculty of the State University System and who
29 has a background in actuarial science.

30
31

1 d. An expert in statistics who is a full time member
2 of the faculty of the State University System and who has a
3 background in insurance.

4 e. An expert in computer system design who is a full
5 time member of the faculty of the State University System.

6 f. An expert in meteorology who is a full time member
7 of the faculty of the State University System and who
8 specializes in hurricanes.

9 (c) Members designated under subparagraphs (b)1.-5.
10 shall serve on the commission as long as they maintain the
11 respective offices designated in subparagraphs (b)1.-5.
12 Members appointed by the Chief Financial Officer ~~Insurance~~
13 ~~Commissioner~~ under subparagraph (b)6. shall serve on the
14 commission until the end of the term of office of the Chief
15 Financial Officer ~~Insurance Commissioner~~ who appointed them,
16 unless earlier removed by the Chief Financial Officer
17 ~~Insurance Commissioner~~ for cause. Vacancies on the commission
18 shall be filled in the same manner as the original
19 appointment.

20 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.--

21 (c) With respect to a rate filing under s. 627.062, an
22 insurer may employ actuarial methods, principles, standards,
23 models, or output ranges found by the commission to be
24 accurate or reliable to determine hurricane loss factors for
25 use in a rate filing under s. 627.062, which findings and
26 factors are admissible and relevant in consideration of a rate
27 filing by the office ~~department~~ or in any arbitration or
28 administrative or judicial review.

29 Section 1067. Paragraph (b) of subsection (2) and
30 subsections (5), (6), and (9) of section 627.0629, Florida
31 Statutes, are amended to read:

1 627.0629 Residential property insurance; rate
2 filings.--
3 (2)
4 (b) A rate filing for residential property insurance
5 made more than 150 days after approval by the office
6 ~~department~~ of a building code rating factor plan submitted by
7 a statewide rating organization shall include positive and
8 negative rate factors that reflect the manner in which
9 building code enforcement in a particular jurisdiction
10 addresses risk of wind damage. The rate filing shall include
11 variations from standard rate factors on an individual basis
12 based on inspection of a particular structure by a licensed
13 home inspector. If an inspection is requested by the insured,
14 the insurer may require the insured to pay the reasonable cost
15 of the inspection. This paragraph applies to structures
16 constructed or renovated after the implementation of this
17 paragraph.
18 (5) In order to provide an appropriate transition
19 period, an insurer may, in its sole discretion, implement an
20 approved rate filing for residential property insurance over a
21 period of years. An insurer electing to phase in its rate
22 filing must provide an informational notice to the office
23 ~~department~~ setting out its schedule for implementation of the
24 phased-in rate filing.
25 (6) An insurer may not write a residential property
26 insurance policy without providing windstorm coverage or
27 hurricane coverage as defined in s. 627.4025. This subsection
28 does not apply with respect to risks located in an area
29 eligible for coverage under the high-risk account of the
30 Citizens Property Insurance Corporation pursuant to s.
31

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 ~~627.351(6) Florida Windstorm Underwriting Association under s.~~
2 ~~627.351(2).~~

3 (9) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL
4 SOUNDNESS.--

5 (a) It is the intent of the Legislature to provide a
6 program whereby homeowners may obtain an evaluation of the
7 wind resistance of their homes with respect to preventing
8 damage from hurricanes, together with a recommendation of
9 reasonable steps that may be taken to upgrade their homes to
10 better withstand hurricane force winds.

11 (b) To the extent that funds are provided for this
12 purpose in the General Appropriations Act, the Legislature
13 hereby authorizes the establishment of a program to be
14 administered by the Citizens Property Insurance Corporation
15 for homeowners insured in the high-risk account Florida
16 ~~Windstorm Underwriting Association.~~

17 (c) The program shall provide grants to homeowners,
18 for the purpose of providing homeowner applicants with funds
19 to conduct an evaluation of the integrity of their homes with
20 respect to withstanding hurricane force winds, recommendations
21 to retrofit the homes to better withstand damage from such
22 winds, and the estimated cost to make the recommended
23 retrofits.

24 (d) The Department of Community Affairs shall
25 establish by rule standards to govern the quality of the
26 evaluation, the quality of the recommendations for
27 retrofitting, the eligibility of the persons conducting the
28 evaluation, and the selection of applicants under the program.
29 In establishing the rule, the Department of Community Affairs
30 shall consult with the advisory committee to minimize the
31 possibility of fraud or abuse in the evaluation and

1 retrofitting process, and to ensure that funds spent by
2 homeowners acting on the recommendations achieve positive
3 results.

4 (e) The Citizens Property Insurance Corporation
5 ~~Florida Windstorm Underwriting Association~~ shall identify
6 areas of this state with the greatest wind risk to residential
7 properties and recommend annually to the Department of
8 Community Affairs priority target areas for such evaluations
9 and inclusion with the associated residential construction
10 mitigation program.

11 Section 1068. Subsection (1), paragraph (b) of
12 subsection (2), paragraph (a) of subsection (3), and
13 subsections (6), (7), and (9) of section 627.0645, Florida
14 Statutes, are amended to read:

15 627.0645 Annual filings.--

16 (1) Each rating organization filing rates for, and
17 each insurer writing, any line of property or casualty
18 insurance to which this part applies, except:

19 (a) Workers' compensation and employer's liability
20 insurance; or

21 (b) Commercial property and casualty insurance as
22 defined in s. 627.0625(1) other than commercial multiple line
23 and commercial motor vehicle,

24
25 shall make an annual base rate filing for each such line with
26 the office ~~department~~ no later than 12 months after its
27 previous base rate filing, demonstrating that its rates are
28 not inadequate.

29 (2)

30 (b) The office ~~department~~, after receiving a request
31 to be exempted from the provisions of this section, may, for

1 good cause due to insignificant numbers of policies in force
2 or insignificant premium volume, exempt a company, by line of
3 coverage, from filing rates or rate certification as required
4 by this section.

5 (3) The filing requirements of this section shall be
6 satisfied by one of the following methods:

7 (a) A rate filing prepared by an actuary which
8 contains documentation demonstrating that the proposed rates
9 are not excessive, inadequate, or unfairly discriminatory
10 pursuant to the applicable rating laws and pursuant to rules
11 of the commission ~~department~~.

12 (6) If at the time a filing is required under this
13 section an insurer is in the process of completing a rate
14 review, the insurer may apply to the office ~~department~~ for an
15 extension of up to an additional 30 days in which to make the
16 filing. The request for extension must be received by the
17 office ~~department~~ no later than the date the filing is due.

18 (7) Nothing in this section limits the office's
19 ~~department's~~ authority to review rates at any time or to find
20 that a rate or rate change is excessive, inadequate, or
21 unfairly discriminatory pursuant to s. 627.062.

22 (9) If an insurer fails to meet the filing
23 requirements of this section and does not submit the filing
24 within 60 days after the date the filing is due, the office
25 ~~department~~ may, in addition to any other penalty authorized by
26 law, order the insurer to discontinue the issuance of policies
27 for the line of insurance for which the required filing was
28 not made until such time as the office ~~department~~ determines
29 that the required filing is properly submitted.

30 Section 1069. Subsection (1) of section 627.06501,
31 Florida Statutes, is amended to read:

1 627.06501 Insurance discounts for certain persons
2 completing driver improvement course.--

3 (1) Any rate, rating schedule, or rating manual for
4 the liability, personal injury protection, and collision
5 coverages of a motor vehicle insurance policy filed with the
6 office ~~department~~ may provide for an appropriate reduction in
7 premium charges as to such coverages when the principal
8 operator on the covered vehicle has successfully completed a
9 driver improvement course approved and certified by the
10 Department of Highway Safety and Motor Vehicles which is
11 effective in reducing crash or violation rates, or both, as
12 determined pursuant to s. 318.1451(5). Any discount, not to
13 exceed 10 percent, used by an insurer is presumed to be
14 appropriate unless credible data demonstrates otherwise.

15 Section 1070. Subsections (1) and (2), paragraph (b)
16 of subsection (5), subsections (9), (10), and (11), and
17 paragraph (b) of subsection (13) of section 627.0651, Florida
18 Statutes, are amended to read:

19 627.0651 Making and use of rates for motor vehicle
20 insurance.--

21 (1) Insurers shall establish and use rates, rating
22 schedules, or rating manuals to allow the insurer a reasonable
23 rate of return on motor vehicle insurance written in this
24 state. A copy of rates, rating schedules, and rating manuals,
25 and changes therein, shall be filed with the office ~~department~~
26 under one of the following procedures:

27 (a) If the filing is made at least 60 days before the
28 proposed effective date and the filing is not implemented
29 during the office's ~~department's~~ review of the filing and any
30 proceeding and judicial review, such filing shall be
31 considered a "file and use" filing. In such case, the office

1 ~~department~~ shall initiate proceedings to disapprove the rate
2 and so notify the insurer or shall finalize its review within
3 60 days after receipt of the filing. Notification to the
4 insurer by the office ~~department~~ of its preliminary findings
5 shall toll the 60-day period during any such proceedings and
6 subsequent judicial review. The rate shall be deemed approved
7 if the office ~~department~~ does not issue notice to the insurer
8 of its preliminary findings within 60 days after the filing.

9 (b) If the filing is not made in accordance with the
10 provisions of paragraph (a), such filing shall be made as soon
11 as practicable, but no later than 30 days after the effective
12 date, and shall be considered a "use and file" filing. An
13 insurer making a "use and file" filing is potentially subject
14 to an order by the office ~~department~~ to return to
15 policyholders portions of rates found to be excessive, as
16 provided in subsection (11).

17 (2) Upon receiving notice of a rate filing or rate
18 change, the office ~~department~~ shall review the rate or rate
19 change to determine if the rate is excessive, inadequate, or
20 unfairly discriminatory. In making that determination, the
21 office ~~department~~ shall in accordance with generally accepted
22 and reasonable actuarial techniques consider the following
23 factors:

24 (a) Past and prospective loss experience within and
25 outside this state.

26 (b) The past and prospective expenses.

27 (c) The degree of competition among insurers for the
28 risk insured.

29 (d) Investment income reasonably expected by the
30 insurer, consistent with the insurer's investment practices,
31 from investable premiums anticipated in the filing, plus any

1 other expected income from currently invested assets
2 representing the amount expected on unearned premium reserves
3 and loss reserves. Such investment income shall not include
4 income from invested surplus. The commission ~~department~~ may
5 adopt ~~promulgate~~ rules utilizing reasonable techniques of
6 actuarial science and economics to specify the manner in which
7 insurers shall calculate investment income attributable to
8 motor vehicle insurance policies written in this state and the
9 manner in which such investment income is used in the
10 calculation of insurance rates. Such manner shall contemplate
11 the use of a positive underwriting profit allowance in the
12 rates that will be compatible with a reasonable rate of return
13 plus provisions for contingencies. The total of the profit and
14 contingency factor as specified in the filing shall be
15 utilized in computing excess profits in conjunction with s.
16 627.066. In adopting ~~promulgating~~ such rules, the commission
17 ~~department~~ shall in all instances adhere to and implement the
18 provisions of this paragraph.

19 (e) The reasonableness of the judgment reflected in
20 the filing.

21 (f) Dividends, savings, or unabsorbed premium deposits
22 allowed or returned to Florida policyholders, members, or
23 subscribers.

24 (g) The cost of repairs to motor vehicles.

25 (h) The cost of medical services, if applicable.

26 (i) The adequacy of loss reserves.

27 (j) The cost of reinsurance.

28 (k) Trend factors, including trends in actual losses
29 per insured unit for the insurer making the filing.

30 (l) Other relevant factors which impact upon the
31 frequency or severity of claims or upon expenses.

1 (5)

2 (b) The office has ~~Insurance Commissioner shall have~~
3 the responsibility to ensure that rates for private passenger
4 vehicle insurance are adequate. To that end, the commission
5 ~~department~~ shall adopt ~~promulgate~~ rules and regulations
6 establishing standards defining inadequate rates on private
7 passenger vehicle insurance as defined in s. 627.041(8). In
8 the event that the office ~~department~~ finds that a rate or rate
9 change is inadequate, the office ~~department~~ shall order that a
10 new rate or rate schedule be thereafter filed by the insurer
11 and shall further provide information as to the manner in
12 which noncompliance of the standards may be corrected. When a
13 violation of this provision occurs, the office ~~department~~
14 shall impose an administrative fine pursuant to s. 624.4211.

15 (9) In reviewing the rate or rate change filed, the
16 office ~~department~~ may require the insurer to provide at the
17 insurer's expense all information necessary to evaluate the
18 condition of the company and the reasonableness of the filing
19 according to the criteria enumerated herein.

20 (10) The office ~~department~~ may, at any time, review a
21 rate or rate change, the pertinent records of the insurer, and
22 market conditions; and, if the office ~~department~~ finds on a
23 preliminary basis that the rate or rate change may be
24 excessive, inadequate, or unfairly discriminatory, the office
25 ~~department~~ shall so notify the insurer. However, the office
26 ~~department~~ may not disapprove as excessive any rate for which
27 it has given final approval or which has been deemed approved
28 for a period of 1 year after the effective date of the filing
29 unless the office ~~department~~ finds that a material
30 misrepresentation or material error was made by the insurer or
31 was contained in the filing. Upon being so notified, the

1 insurer or rating organization shall, within 60 days, file
2 with the office ~~department~~ all information which, in the
3 belief of the insurer or organization, proves the
4 reasonableness, adequacy, and fairness of the rate or rate
5 change. In such instances and in any administrative
6 proceeding relating to the legality of the rate, the insurer
7 or rating organization shall carry the burden of proof by a
8 preponderance of the evidence to show that the rate is not
9 excessive, inadequate, or unfairly discriminatory. After the
10 office ~~department~~ notifies an insurer that a rate may be
11 excessive, inadequate, or unfairly discriminatory, unless the
12 office ~~department~~ withdraws the notification, the insurer
13 shall not increase the rate until the earlier of 120 days
14 after the date the notification was provided or 180 days after
15 the date of the implementation of the rate. The office
16 ~~department~~ may, subject to chapter 120, disapprove without the
17 60-day notification any rate increase filed by an insurer
18 within the prohibited time period or during the time that the
19 legality of the increased rate is being contested.

20 (11) In the event the office ~~department~~ finds that a
21 rate or rate change is excessive, inadequate, or unfairly
22 discriminatory, the office ~~department~~ shall issue an order of
23 disapproval specifying that a new rate or rate schedule which
24 responds to the findings of the office ~~department~~ be filed by
25 the insurer. The office ~~department~~ shall further order for
26 any "use and file" filing made in accordance with paragraph
27 (1)(b), that premiums charged each policyholder constituting
28 the portion of the rate above that which was actuarially
29 justified be returned to such policyholder in the form of a
30 credit or refund. If the office ~~department~~ finds that an
31 insurer's rate or rate change is inadequate, the new rate or

1 rate schedule filed with the office ~~department~~ in response to
2 such a finding shall be applicable only to new or renewal
3 business of the insurer written on or after the effective date
4 of the responsive filing.

5 (13)

6 (b) The submission of rates, rating schedules, and
7 rating manuals to the office ~~department~~ by a licensed rating
8 organization of which an insurer is a member or subscriber
9 will be sufficient compliance with this subsection for any
10 insurer maintaining membership or subscribership in such
11 organization, to the extent that the insurer uses the rates,
12 rating schedules, and rating manuals of such organization.
13 All such information shall be available for public inspection,
14 upon receipt by the office ~~department~~, during usual business
15 hours.

16 Section 1071. Subsection (1) of section 627.0652,
17 Florida Statutes, is amended to read:

18 627.0652 Insurance discounts for certain persons
19 completing safety course.--

20 (1) Any rates, rating schedules, or rating manuals for
21 the liability, personal injury protection, and collision
22 coverages of a motor vehicle insurance policy filed with the
23 office ~~department~~ shall provide for an appropriate reduction
24 in premium charges as to such coverages when the principal
25 operator on the covered vehicle is an insured 55 years of age
26 or older who has successfully completed a motor vehicle
27 accident prevention course approved by the Department of
28 Highway Safety and Motor Vehicles. Any discount used by an
29 insurer is presumed to be appropriate unless credible data
30 demonstrates otherwise.

31

1 Section 1072. Section 627.0653, Florida Statutes, is
2 amended to read:

3 627.0653 Insurance discounts for specified motor
4 vehicle equipment.--

5 (1) Any rates, rating schedules, or rating manuals for
6 the liability, personal injury protection, and collision
7 coverages of a motor vehicle insurance policy filed with the
8 office ~~department~~ shall provide a premium discount if the
9 insured vehicle is equipped with factory-installed, four-wheel
10 antilock brakes.

11 (2) Each insurer writing motor vehicle comprehensive
12 coverage in this state shall include in its rating manual
13 discount provisions for comprehensive coverage which
14 specifically relate to an antitheft device or vehicle recovery
15 system utilized in the insured vehicle which are factory
16 installed or approved by the office ~~department~~. The
17 commission ~~department~~ shall adopt, by rule, procedures under
18 which manufacturers, distributors, or sellers may apply to the
19 office ~~department~~ for approval of non-factory-installed
20 devices under this subsection. The rules must include, at a
21 minimum, the test results that must accompany the application
22 and the standards for approval.

23 (3) Any rates, rating schedules, or rating manuals for
24 personal injury protection coverage and medical payments
25 coverage, if offered, of a motor vehicle insurance policy
26 filed with the office ~~department~~ shall provide a premium
27 discount if the insured vehicle is equipped with one or more
28 air bags which are factory installed.

29 (4) The removal of a discount or credit does not
30 constitute the imposition of, or request for, additional
31

1 premium or a surcharge if the basis for the discount or credit
2 no longer exists or is substantially eliminated.

3 (5) Each insurer writing motor vehicle comprehensive
4 coverage in this state may provide a premium discount for this
5 coverage if the insured vehicle has the complete
6 manufacturer's vehicle identification number permanently
7 etched on the windshield and all windows of the vehicle. The
8 etching must be by a tool or process that does not destroy the
9 integrity of the glass or visibility for the operator of the
10 motor vehicle. The identification numbers and letters must be
11 at least 1/4 inch in height. A sticker may identify the
12 presence of this identification system. The commission
13 ~~department~~ may, by rule, set forth appropriate guidelines to
14 implement this subsection.

15 Section 1073. Section 627.06535, Florida Statutes, is
16 amended to read:

17 627.06535 Electric vehicles; restrictions on imposing
18 surcharges.--An insurer may not impose a surcharge on the
19 premium for motor vehicle insurance written on an electric
20 vehicle, as defined in s. 320.01, if the surcharge is based on
21 a factor such as new technology, passenger payload,
22 weight-to-horsepower ratio, or types of materials, including
23 composite materials or aluminum, used to manufacture the
24 vehicle, unless the office ~~Department of Insurance~~ determines
25 from actuarial data submitted to it that the surcharge is
26 justified.

27 Section 1074. Subsections (2), (7), (10), (11), and
28 (13) of section 627.066, Florida Statutes, are amended to
29 read:

30 627.066 Excessive profits for motor vehicle insurance
31 prohibited.--

1 (2) Each Florida private passenger automobile insurer
2 group shall file with the office ~~department~~, prior to July 1
3 of each year on forms prescribed by the commission ~~department~~,
4 the following data for Florida private passenger automobile
5 business. The data filed for the group shall be a
6 consolidation of the data of the individual insurers of the
7 group. The data shall include both voluntary and joint
8 underwriting association business, as follows:

9 (a) Calendar-year total limits earned premium.

10 (b) Accident-year incurred losses and loss adjustment
11 expenses.

12 (c) The administrative and selling expenses incurred
13 in this state or allocated to this state for the calendar
14 year.

15 (d) Policyholder dividends incurred during the
16 applicable calendar year.

17 (7) If the insurer group has realized an excessive
18 profit, the office ~~department~~ shall order a return of the
19 excessive amounts after affording the insurer group an
20 opportunity for hearing and otherwise complying with the
21 requirements of chapter 120. Such excessive amounts shall be
22 refunded in all instances unless the insurer group
23 affirmatively demonstrates to the office ~~department~~ that the
24 refund of the excessive amounts will render a member of the
25 insurer group financially impaired or will render it insolvent
26 under the provisions of the Florida Insurance Code.

27 (10)(a) Cash refunds to policyholders may be rounded
28 to the nearest dollar.

29 (b) Data in required reports to the office ~~department~~
30 may be rounded to the nearest dollar.

31

1 (c) Rounding, if elected by the insurer group, shall
2 be applied consistently.

3 (11)(a) Refunds shall be completed in one of the
4 following ways:

5 1. If the insurer group elects to make a cash refund,
6 the refund shall be completed within 60 days of entry of a
7 final order indicating that excessive profits have been
8 realized.

9 2. If the insurer group elects to make refunds in the
10 form of a credit to renewal policies, such credits shall be
11 applied to policy renewal premium notices which are forwarded
12 to insureds more than 60 calendar days after entry of a final
13 order indicating that excessive profits have been realized.
14 If an insurer group has made this election but an insured
15 thereafter cancels his or her policy or otherwise allows the
16 policy to terminate, the insurer group shall make a cash
17 refund not later than 60 days after termination of such
18 coverage.

19 (b) Upon completion of the renewal credits or refund
20 payments, the insurer group shall immediately certify to the
21 office department that the refunds have been made.

22 ~~(13) Since it appears to the Legislature that private~~
23 ~~passenger automobile insurer groups have realized excessive~~
24 ~~profits during all or part of the years 1977, 1978, and 1979~~
25 ~~and that such profits were realized in part due to statutory~~
26 ~~changes for which rates were not adequately adjusted, it is~~
27 ~~the desire and intent of the Legislature that the provisions~~
28 ~~of this section, as amended by chapter 80-236, Laws of~~
29 ~~Florida, shall apply retroactively to excessive profits~~
30 ~~realized during the years 1977, 1978, and 1979. In the event~~
31 ~~that such retroactive application is judicially determined to~~

1 ~~be unconstitutional, it is the intent of the Legislature that~~
2 ~~the act be given prospective application as stated~~
3 ~~hereinafter. Prior to July 1, 1982, the data required by this~~
4 ~~section shall be submitted to the department for the years~~
5 ~~1979, 1980, and 1981. Excessive profits shall be calculated~~
6 ~~in accordance with the provisions of this section. However,~~
7 ~~only the excessive profits realized by the insurer group in~~
8 ~~1981 shall be refunded to policyholders, and such refunds~~
9 ~~shall be made in accordance with this section. Prior to July~~
10 ~~1, 1983, the data required by this section shall be submitted~~
11 ~~to the department for the years 1980, 1981, and 1982.~~
12 ~~Excessive profits shall be calculated in accordance with this~~
13 ~~section; however, refunds shall only be made for excessive~~
14 ~~profits realized in the years 1981 and 1982. Thereafter,~~
15 ~~excessive profits shall be calculated and refunded on the~~
16 ~~basis of 3 years as set forth in this section.~~

17 Section 1075. Subsection (4) of section 627.072,
18 Florida Statutes, is amended to read:

19 627.072 Making and use of rates.--

20 (4)(a) In the case of workers' compensation and
21 employer's liability insurance, the office department shall
22 consider utilizing the following methodology in rate
23 determinations: Premiums, expenses, and expected claim costs
24 would be discounted to a common point of time, such as the
25 initial point of a policy year, in the determination of rates;
26 the cash-flow pattern of premiums, expenses, and claim costs
27 would be determined initially by using data from 8 to 10 of
28 the largest insurers writing workers' compensation insurance
29 in the state; such insurers may be selected for their
30 statistical ability to report the data on an accident-year
31 basis and in accordance with subparagraphs (b)1., 2., and 3.,

1 for at least 2 1/2 years; such a cash-flow pattern would be
 2 modified when necessary in accordance with the data and
 3 whenever a radical change in the payout pattern is expected in
 4 the policy year under consideration.

5 (b) If the methodology set forth in paragraph (a) is
 6 utilized, to facilitate the determination of such a cash-flow
 7 pattern methodology:

8 1. Each insurer shall include in its statistical
 9 reporting to the rating bureau and the office ~~department~~ the
 10 accident year by calendar quarter data for paid-claim costs;

11 2. Each insurer shall submit financial reports to the
 12 rating bureau and the office ~~department~~ which shall include
 13 total incurred claim amounts and paid-claim amounts by policy
 14 year and by injury types as of December 31 of each calendar
 15 year; and

16 3. Each insurer shall submit to the rating bureau and
 17 the office ~~department~~ paid-premium data on an individual risk
 18 basis in which risks are to be subdivided by premium size as
 19 follows:

21	Number of Risks in	
22	Premium Range	Standard Premium Size
23		
24	...(to be filled in by carrier)...	\$300--999
25	...(to be filled in by carrier)...	1,000--4,999
26	...(to be filled in by carrier)...	5,000--49,999
27	...(to be filled in by carrier)...	50,000--99,999
28	...(to be filled in by carrier)...	100,000 or more
29	Total:	

30 Section 1076. Section 627.091, Florida Statutes, is
 31 amended to read:

1 627.091 Rate filings; workers' compensation and
2 employer's liability insurances.--

3 (1) As to workers' compensation and employer's
4 liability insurances, every insurer shall file with the office
5 ~~department~~ every manual of classifications, rules, and rates,
6 every rating plan, and every modification of any of the
7 foregoing which it proposes to use. Every insurer is
8 authorized to include deductible provisions in its manual of
9 classifications, rules, and rates. Such deductibles shall in
10 all cases be in a form and manner which is consistent with the
11 underlying purpose of chapter 440.

12 (2) Every such filing shall state the proposed
13 effective date thereof, and shall indicate the character and
14 extent of the coverage contemplated. When a filing is not
15 accompanied by the information upon which the insurer supports
16 the filing and the office ~~department~~ does not have sufficient
17 information to determine whether the filing meets the
18 applicable requirements of this part, it shall within 15 days
19 after the date of filing require the insurer to furnish the
20 information upon which it supports the filing. The
21 information furnished in support of a filing may include:

22 (a) The experience or judgment of the insurer or
23 rating organization making the filing;

24 (b) Its interpretation of any statistical data it
25 relies upon;

26 (c) The experience of other insurers or rating
27 organizations; or

28 (d) Any other factors which the insurer or rating
29 organization deems relevant.

30 (3) A filing and any supporting information shall be
31 open to public inspection as provided in s. 119.07(1).

1 (4) An insurer may satisfy its obligation to make such
2 filings by becoming a member of, or a subscriber to, a
3 licensed rating organization which makes such filings and by
4 authorizing the office ~~department~~ to accept such filings in
5 its behalf; but nothing contained in this chapter shall be
6 construed as requiring any insurer to become a member or a
7 subscriber to any rating organization.

8 (5) Pursuant to the provisions of s. 624.3161, the
9 office ~~department~~ may examine the underlying statistical data
10 used in such filings.

11 (6) Whenever the committee of a recognized rating
12 organization with responsibility for workers' compensation and
13 employer's liability insurance rates in this state meets to
14 discuss the necessity for, or a request for, Florida rate
15 increases or decreases, the determination of Florida rates,
16 the rates to be requested, and any other matters pertaining
17 specifically and directly to such Florida rates, such meetings
18 shall be held in this state and shall be subject to s.
19 286.011. The committee of such a rating organization shall
20 provide at least 3 weeks' prior notice of such meetings to the
21 office ~~department~~ and shall provide at least 14 days' prior
22 notice of such meetings to the public by publication in the
23 Florida Administrative Weekly.

24 Section 1077. Section 627.0915, Florida Statutes, is
25 amended to read:

26 627.0915 Rate filings; workers' compensation,
27 drug-free workplace, and safe employers.--The office
28 ~~Department of Insurance~~ shall approve rating plans for
29 workers' compensation insurance that give specific
30 identifiable consideration in the setting of rates to
31 employers that either implement a drug-free workplace program

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 pursuant to rules adopted by the commission ~~Department of~~
2 ~~Insurance~~ or implement a safety program pursuant to provisions
3 of the rating plan or implement both a drug-free workplace
4 program and a safety program. The plans must be actuarially
5 sound and must state the savings anticipated to result from
6 such drug-testing and safety programs.

7 Section 1078. Section 627.0916, Florida Statutes, is
8 amended to read:

9 627.0916 Agricultural horse farms.--Notwithstanding
10 any other provision of this chapter to the contrary, any
11 rates, rating schedules, or rating manuals for workers'
12 compensation and employer's liability insurance filed with the
13 office ~~Department of Insurance~~ shall provide for the rates of
14 an agricultural horse farm engaged in breeding or training to
15 be separated into the following three rate classifications and
16 the premium paid shall be applied proportionately according to
17 payroll: breeding activity involving stallions; breeding
18 activity not involving stallions, including but not limited to
19 boarding and foaling; and training.

20 Section 1079. Section 627.092, Florida Statutes, is
21 amended to read:

22 627.092 Workers' Compensation Administrator.--There is
23 created within the office ~~Division of Insurer Services of the~~
24 ~~Department of Insurance~~ the position of Workers' Compensation
25 Administrator to monitor carrier practices in the field of
26 workers' compensation.

27 Section 1080. Section 627.096, Florida Statutes, is
28 amended to read:

29 627.096 Workers' Compensation Rating Bureau.--

30 (1) There is created within the office ~~department~~ a
31 Workers' Compensation Rating Bureau, which shall make an

1 investigation and study of all insurers authorized to issue
2 workers' compensation and employer's liability coverage in
3 this state. Such bureau shall study the data, statistics,
4 schedules, or other information as it may deem necessary to
5 assist and advise the office ~~department~~ in its review of
6 filings made by or on behalf of workers' compensation and
7 employer's liability insurers. The commission may adopt
8 ~~department shall have the authority to promulgate~~ rules
9 requiring all workers' compensation and employer's liability
10 insurers to submit to the rating bureau any data, statistics,
11 schedules, and other information deemed necessary to the
12 rating bureau's study and advisement.

13 (2) The acquisition by the Department of Management
14 Services of data processing software, hardware, and services
15 necessary to carry out the provisions of this act for the
16 department or office ~~Treasurer's Management Information Center~~
17 ~~of the Department of Insurance~~ shall be exempt from the
18 provisions of part I of chapter 287.

19 Section 1081. Section 627.101, Florida Statutes, is
20 amended to read:

21 627.101 When filing becomes effective; workers'
22 compensation and employer's liability insurances.--

23 (1) The office ~~department~~ shall review filings as to
24 workers' compensation and employer's liability insurances as
25 soon as reasonably possible after they have been made in order
26 to determine whether they meet the applicable requirements of
27 this part. If the office ~~department~~ determines that part of a
28 rate filing does not meet the applicable requirements of this
29 part, it may reject so much of the filing as does not meet
30 these requirements, and approve the remainder of the filing.

31

1 (2) The office ~~department~~ shall specifically approve
2 the filing before it becomes effective, unless the office
3 ~~department~~ has concluded it to be in the public interest to
4 hold a public hearing to determine whether the filing meets
5 the requirements of this chapter and has given notice of such
6 hearing to the insurer or rating organization that made the
7 filing, and in which case the effectiveness of the filing
8 shall be subject to the further order of the office ~~department~~
9 made as provided in s. 627.111. If the office ~~department~~
10 specifically disapproves the filing, the provisions of
11 subsection (4) shall apply.

12 (3) An insurer or rating organization may, at the time
13 it makes a filing with the office ~~department~~, request a public
14 hearing thereon. In such event, the office ~~department~~ shall
15 give notice of the hearing.

16 (4) If the office ~~department~~ disapproves a filing, it
17 shall promptly give notice of such disapproval to the insurer
18 or rating organization that made the filing, stating the
19 respects in which it finds that the filing does not meet the
20 requirements of this chapter. If the office ~~department~~
21 approves a filing, it shall give prompt notice thereof to the
22 insurer or rating organization that made the filing, and in
23 which case the filing shall become effective upon such
24 approval or upon such subsequent date as may be satisfactory
25 to the office ~~department~~ and the insurer or rating
26 organization that made the filing.

27 Section 1082. Section 627.111, Florida Statutes, is
28 amended to read:

29 627.111 Effective date of filing.--

30 (1) If, pursuant to s. 627.101(2), the office
31 ~~department~~ determines to hold a public hearing as to a filing,

1 or it holds such a public hearing pursuant to request therefor
2 under s. 627.101(3), it shall give written notice thereof to
3 the rating organization or insurer that made the filing and
4 shall hold such hearing within 30 days, and not less than 10
5 days prior to the date of the hearing, it shall give written
6 notice of the hearing to the insurer or rating organization
7 that made the filing. The office ~~department~~ may also, in its
8 discretion, give advance public notice of such hearing by
9 publication of notice in one or more daily newspapers of
10 general circulation in this state.

11 (2) If the order of the office ~~department~~ disapproves
12 the filing, the filing shall not become effective during the
13 effectiveness of such order. If the order of the office
14 ~~department~~ approves the filing, the filing shall become
15 effective upon the date of the order or upon such subsequent
16 date as may be satisfactory to the insurer or rating
17 organization that made the filing.

18 Section 1083. Section 627.141, Florida Statutes, is
19 amended to read:

20 627.141 Subsequent disapproval of filing; workers'
21 compensation and employer's liability insurances.--If at any
22 time after a filing has been approved by it or has otherwise
23 become effective the office ~~department~~ finds that the filing
24 no longer meets the requirements of this chapter, it shall
25 issue an order specifying in what respects it finds that such
26 filing fails to meet such requirements and stating when,
27 within a reasonable period thereafter, such filing shall be
28 deemed no longer effective. The order shall not affect any
29 insurance contract or policy made or issued prior to the
30 expiration of the period set forth in the order.

31

1 Section 1084. Subsection (1) of section 627.151,
2 Florida Statutes, is amended to read:

3 627.151 Basis of approval or disapproval of workers'
4 compensation or employer's liability insurance filing; scope
5 of disapproval power.--

6 (1) In determining at any time whether to approve or
7 disapprove a filing as to workers' compensation or employer's
8 liability insurance, or to permit the filing otherwise to
9 become effective, the office ~~department~~ shall give
10 consideration only to the applicable standards and factors
11 referred to in ss. 627.062 and 627.072.

12 Section 1085. Subsection (1) of section 627.171,
13 Florida Statutes, is amended to read:

14 627.171 Excess rates.--

15 (1) With written consent of the insured signed prior
16 to the policy inception date and filed with the insurer, the
17 insurer may use a rate in excess of the otherwise applicable
18 filed rate on any specific risk. The signed consent form must
19 include the filed rate as well as the excess rate for the risk
20 insured and a copy of the form must be maintained by the
21 insurer for 3 years and be available for review by the office
22 ~~department~~.

23 Section 1086. Paragraph (f) of subsection (2) of
24 section 627.192, Florida Statutes, is amended to read:

25 627.192 Workers' compensation insurance; employee
26 leasing arrangements.--

27 (2) For purposes of the Florida Insurance Code:

28 (f) "Premium subject to dispute" means that the
29 insured has provided a written notice of dispute to the
30 insurer or service carrier, has initiated any applicable
31 proceeding for resolving such disputes as prescribed by law or

1 rating organization procedures approved by the office
2 ~~department~~, or has initiated litigation regarding the premium
3 dispute. The insured must have detailed the specific areas of
4 dispute and provided an estimate of the premium the insured
5 believes to be correct. The insured must have paid any
6 undisputed portion of the bill.

7 Section 1087. Section 627.211, Florida Statutes, is
8 amended to read:

9 627.211 Deviations; workers' compensation and
10 employer's liability insurances.--

11 (1) Every member or subscriber to a rating
12 organization shall, as to workers' compensation or employer's
13 liability insurance, adhere to the filings made on its behalf
14 by such organization; except that any such insurer may make
15 written application to the office ~~department~~ for permission to
16 file a uniform percentage decrease or increase to be applied
17 to the premiums produced by the rating system so filed for a
18 kind of insurance, for a class of insurance which is found by
19 the office ~~department~~ to be a proper rating unit for the
20 application of such uniform percentage decrease or increase,
21 or for a subdivision of workers' compensation or employer's
22 liability insurance:

23 (a) Comprised of a group of manual classifications
24 which is treated as a separate unit for ratemaking purposes;
25 or

26 (b) For which separate expense provisions are included
27 in the filings of the rating organization.

28
29 Such application shall specify the basis for the modification
30 and shall be accompanied by the data upon which the applicant
31

1 relies. A copy of the application and data shall be sent
2 simultaneously to the rating organization.

3 (2) Every member or subscriber to a rating
4 organization may, as to workers' compensation and employer's
5 liability insurance, file a plan or plans to use deviations
6 that vary according to factors present in each insured's
7 individual risk. The insurer that files for the deviations
8 provided in this subsection shall file the qualifications for
9 the plans, schedules of rating factors, and the maximum
10 deviation factors which shall be subject to the approval of
11 the office ~~department~~ pursuant to s. 627.091. The actual
12 deviation which shall be used for each insured that qualifies
13 under this subsection may not exceed the maximum filed
14 deviation under that plan and shall be based on the merits of
15 each insured's individual risk as determined by using
16 schedules of rating factors which shall be applied uniformly.
17 Insurers shall maintain statistical data in accordance with
18 the schedule of rating factors. Such data shall be available
19 to support the continued use of such varying deviations.

20 (3) In considering an application for the deviation,
21 the office ~~department~~ shall give consideration to the
22 applicable principles for ratemaking as set forth in ss.
23 627.062 and 627.072, the financial condition of the insurer,
24 and the impact of the deviation on the current market
25 conditions including the composition of the market, the
26 stability of rates, and the level of competition in the
27 market. In evaluating the financial condition of the insurer,
28 the office ~~department~~ may consider: (1) the insurer's audited
29 financial statements and whether the statements provide
30 unqualified opinions or contain significant qualifications or
31 "subject to" provisions; (2) any independent or other

1 actuarial certification of loss reserves; (3) whether workers'
2 compensation and employer's liability reserves are above the
3 midpoint or best estimate of the actuary's reserve range
4 estimate; (4) the adequacy of the proposed rate; (5)
5 historical experience demonstrating the profitability of the
6 insurer; (6) the existence of excess or other reinsurance
7 that contains a sufficiently low attachment point and maximums
8 that provide adequate protection to the insurer; and (7) other
9 factors considered relevant to the financial condition of the
10 insurer by the office ~~department~~. The office ~~department~~ shall
11 approve the deviation if it finds it to be justified, it would
12 not endanger the financial condition of the insurer, it would
13 not adversely affect the current market conditions including
14 the composition of the market, the stability of rates, and the
15 level of competition in the market, and that the deviation
16 would not constitute predatory pricing. It shall disapprove
17 the deviation if it finds that the resulting premiums would be
18 excessive, inadequate, or unfairly discriminatory, would
19 endanger the financial condition of the insurer, or would
20 adversely affect current market conditions including the
21 composition of the marketplace, the stability of rates, and
22 the level of competition in the market, or would result in
23 predatory pricing. The insurer may not use a deviation unless
24 the deviation is specifically approved by the office
25 ~~department~~.

26 (4) Each deviation permitted to be filed shall be
27 effective for a period of 1 year unless terminated, extended,
28 or modified with the approval of the office ~~department~~. If at
29 any time after a deviation has been approved the office
30 ~~department~~ finds that the deviation no longer meets the
31 requirements of this code, it shall notify the insurer in what

1 respects it finds that the deviation fails to meet such
2 requirements and specify when, within a reasonable period
3 thereafter, the deviation shall be deemed no longer effective.
4 The notice shall not affect any insurance contract or policy
5 made or issued prior to the expiration of the period set forth
6 in the notice.

7 (5) For purposes of this section, the office
8 ~~department~~, when considering the experience of any insurer,
9 shall consider the experience of any predecessor insurer when
10 the business and the liabilities of the predecessor insurer
11 were assumed by the insurer pursuant to an order of the office
12 ~~department~~ which approves the assumption of the business and
13 the liabilities.

14 Section 1088. Section 627.212, Florida Statutes, is
15 amended to read:

16 627.212 Workplace safety program surcharge.--The
17 office ~~department~~ shall approve a rating plan for workers'
18 compensation coverage insurance that provides for carriers
19 voluntarily to impose a surcharge of no more than 10 percent
20 on the premium of a policyholder or fund member if that
21 policyholder or fund member has been identified by the
22 department ~~of Labor and Employment Security~~ as having been
23 required to implement a safety program and having failed to
24 establish or maintain, either in whole or in part, a safety
25 program. The department ~~division~~ shall adopt rules prescribing
26 the criteria for the employee safety programs.

27 Section 1089. Paragraph (a) of subsection (1),
28 subsection (9), paragraph (b) of subsection (11), and
29 paragraph (b) of subsection (12) of section 627.215, Florida
30 Statutes, are amended to read:

31

1 627.215 Excessive profits for workers' compensation,
2 employer's liability, commercial property, and commercial
3 casualty insurance prohibited.--

4 (1)(a) Each insurer group writing workers'
5 compensation and employer's liability insurance as defined in
6 s. 624.605(1)(c), commercial property insurance as defined in
7 s. 627.0625, commercial umbrella liability insurance as
8 defined in s. 627.0625, or commercial casualty insurance as
9 defined in s. 627.0625 shall file with the office ~~department~~
10 prior to July 1 of each year, on a form prescribed by the
11 commission ~~department~~, the following data for the component
12 types of such insurance as provided in the form:

- 13 1. Calendar-year earned premium.
- 14 2. Accident-year incurred losses and loss adjustment
15 expenses.
- 16 3. The administrative and selling expenses incurred in
17 this state or allocated to this state for the calendar year.
- 18 4. Policyholder dividends applicable to the calendar
19 year.

20
21 Nothing herein is intended to prohibit an insurer from filing
22 on a calendar-year basis.

23 (9) If the insurer group has realized an excessive
24 profit, the office ~~department~~ shall order a return of the
25 excessive amounts after affording the insurer group an
26 opportunity for hearing and otherwise complying with the
27 requirements of chapter 120. Such excessive amounts shall be
28 refunded in all instances unless the insurer group
29 affirmatively demonstrates to the office ~~department~~ that the
30 refund of the excessive amounts will render a member of the
31

1 insurer group financially impaired or will render it insolvent
2 under the provisions of the Florida Insurance Code.

3 (11)

4 (b) Data in required reports to the office ~~department~~
5 may be rounded to the nearest dollar.

6 (12)

7 (b) Upon completion of the renewal credits or refund
8 payments, the insurer group shall immediately certify to the
9 office ~~department~~ that the refunds have been made.

10 Section 1090. Section 627.221, Florida Statutes, is
11 amended to read:

12 627.221 Rating organizations; licensing; fee.--

13 (1) A person, whether located within or outside this
14 state, may make application to the office ~~department~~ for a
15 license as a rating organization. As to property or inland
16 marine insurance, the application shall be for such kinds of
17 insurance or subdivisions thereof or classes of risk or a part
18 or combination thereof as are specified in the application. As
19 to casualty and surety insurances, the application shall be
20 for such kinds of insurance or subdivisions thereof as are
21 specified in the application. The applicant shall file with
22 its application:

23 (a) A copy of its constitution, its articles of
24 agreement or association or its certificate of incorporation,
25 and of its bylaws, rules, and regulations governing the
26 conduct of its business;

27 (b) A list of its members and subscribers;

28 (c) The name and address of a resident of this state
29 upon whom notices or orders of the office ~~department~~ or
30 process affecting such rating organization may be served; and

31

1 (d) A statement of its qualifications as a rating
2 organization.

3
4 If the office ~~department~~ finds that the applicant is
5 competent, trustworthy, and otherwise qualified to act as a
6 rating organization and that its constitution, articles of
7 agreement or association or certificate of incorporation, and
8 its bylaws, rules, and regulations governing the conduct of
9 its business conform to the requirements of law, it shall
10 issue a license specifying (in the case of a casualty or
11 surety rating organization) the kinds of insurance or
12 subdivisions thereof, or (in the case of a property insurance
13 rating organization) the kinds of insurance or subdivisions
14 thereof or classes of risk or a part or combination thereof,
15 for which the applicant is authorized to act as a rating
16 organization.

17 (2) Licenses issued pursuant to this section shall
18 expire on the September 30 next following date of issuance and
19 shall be subject to annual renewal.

20 (3) The fee for the license shall be in the amount
21 specified therefor in s. 624.501. This fee, when collected,
22 shall be deposited to the credit of the Insurance
23 ~~Commissioner's~~ Regulatory Trust Fund.

24 Section 1091. Section 627.231, Florida Statutes, is
25 amended to read:

26 627.231 Subscribers to rating organizations.--

27 (1) Subject to rules and regulations which have been
28 approved by the office ~~department~~ as reasonable, each rating
29 organization shall permit any insurer, not a member, to
30 subscribe to its rating services. As to property and marine
31 rating organizations, an insurer shall be so permitted to

1 subscribe to rating services for any kind of insurance,
2 subdivision thereof, or class of risk or a part or combination
3 thereof for which the rating organization is authorized so to
4 act. As to casualty and surety rating organizations, an
5 insurer shall be so permitted to subscribe to rating services
6 for any kind of insurance or subdivision thereof for which the
7 rating organization is authorized so to act. The rating
8 organization shall give notice to subscribers of proposed
9 changes in such rules and regulations.

10 (2) The reasonableness of any rule or regulation in
11 its application to subscribers, or the refusal of any rating
12 organization to admit an insurer as a subscriber, shall, at
13 the request of any subscriber or any such insurer, be reviewed
14 by the office ~~department~~. If the office ~~department~~ finds that
15 such rule or regulation is unreasonable in its application to
16 subscribers, it shall order that such rule or regulation shall
17 not be applicable to subscribers. If the rating organization
18 fails to grant or reject an insurer's application for
19 subscribership within 30 days after it was made, the insurer
20 may request a review by the office ~~department~~ as if the
21 application had been rejected. If the office ~~department~~ finds
22 that the insurer has been refused admittance to the rating
23 organization as a subscriber without justification, it shall
24 order the rating organization to admit the insurer as a
25 subscriber. If it finds that the action of the rating
26 organization was justified, it shall make an order affirming
27 its action.

28 (3) Each rating organization shall furnish its rating
29 services without discrimination to its members and
30 subscribers.

31

1 Section 1092. Section 627.241, Florida Statutes, is
2 amended to read:

3 627.241 Notice of changes.--Every rating organization
4 shall notify the office ~~department~~ promptly of every change
5 in:

6 (1) Its constitution, its articles of agreement or
7 association, or its certificate of incorporation, and its
8 bylaws, rules and regulations governing the conduct of its
9 business;

10 (2) Its list of members and subscribers; and

11 (3) The name and address of the resident of this state
12 designated by it upon whom notices or orders of the office
13 ~~department~~ or process affecting such rating organization may
14 be served.

15 Section 1093. Section 627.281, Florida Statutes, is
16 amended to read:

17 627.281 Appeal from rating organization; workers'
18 compensation and employer's liability insurance filings.--

19 (1) Any member or subscriber to a rating organization
20 may appeal to the office ~~department~~ from the action or
21 decision of such rating organization in approving or rejecting
22 any proposed change in or addition to the workers'
23 compensation or employer's liability insurance filings of such
24 rating organization, and the office ~~department~~ shall issue an
25 order approving the decision of such rating organization or
26 directing it to give further consideration to such proposal.
27 If such appeal is from the action or decision of the rating
28 organization in rejecting a proposed addition to its filings,
29 the office ~~department~~ may, in the event it finds that such
30 action or decision was unreasonable, issue an order directing
31 the rating organization to make an addition to its filings, on

1 behalf of its members and subscribers, in a manner consistent
2 with its findings, within a reasonable time after the issuance
3 of such order.

4 (2) If such appeal is based upon the failure of the
5 rating organization to make a filing on behalf of such member
6 or subscriber which is based on a system of expense provisions
7 which differs, in accordance with the right granted in s.
8 627.072(2), from the system of expense provisions included in
9 a filing made by the rating organization, the office
10 ~~department~~ shall, if it grants the appeal, order the rating
11 organization to make the requested filing for use by the
12 appellant. In deciding such appeal, the office ~~department~~
13 shall apply the applicable standards set forth in ss. 627.062
14 and 627.072.

15 Section 1094. Subsection (2) of section 627.291,
16 Florida Statutes, is amended to read:

17 627.291 Information to be furnished insureds; appeal
18 by insureds; workers' compensation and employer's liability
19 insurances.--

20 (2) As to workers' compensation and employer's
21 liability insurances, every rating organization and every
22 insurer which makes its own rates shall provide within this
23 state reasonable means whereby any person aggrieved by the
24 application of its rating system may be heard, in person or by
25 his or her authorized representative, on his or her written
26 request to review the manner in which such rating system has
27 been applied in connection with the insurance afforded him or
28 her. If the rating organization or insurer fails to grant or
29 rejects such request within 30 days after it is made, the
30 applicant may proceed in the same manner as if his or her
31 application had been rejected. Any party affected by the

1 action of such rating organization or insurer on such request
2 may, within 30 days after written notice of such action,
3 appeal to the office ~~department~~, which may affirm or reverse
4 such action.

5 Section 1095. Section 627.301, Florida Statutes, is
6 amended to read:

7 627.301 Advisory organizations.--

8 (1) No advisory organization shall conduct its
9 operations in this state unless and until it has filed with
10 the office ~~department~~:

11 (a) A copy of its constitution, articles of
12 incorporation, articles of agreement or of association, and
13 bylaws or rules and regulations governing its activities, all
14 duly certified by the custodian of the originals thereof;

15 (b) A list of its members and subscribers; and

16 (c) The name and address of a resident of this state
17 upon whom notices or orders of the office ~~department~~ or
18 process may be served.

19 (2) Every such advisory organization shall notify the
20 office ~~department~~ promptly of every change in:

21 (a) Its constitution;

22 (b) Its articles of incorporation, agreement, or
23 association;

24 (c) Its bylaws, rules and regulations governing the
25 conduct of its business;

26 (d) The list of members and subscribers; and

27 (e) The name and address of the resident of this state
28 designated by it upon whom notices or orders of the office
29 ~~department~~ or process affecting such organization may be
30 served.

31

1 (3) No such advisory organization shall engage in any
2 unfair or unreasonable practice with respect to such
3 activities.

4 Section 1096. Subsections (2) and (3) and paragraphs
5 (a), (b), (c), (e), (f), and (g) of subsection (4) of section
6 627.311, Florida Statutes, are amended to read:

7 627.311 Joint underwriters and joint reinsurers.--

8 (2) If the office ~~department~~ finds that any activity
9 or practice of any such group, association, or other
10 organization is unfair or unreasonable or otherwise
11 inconsistent with the provisions of this chapter, it may issue
12 a written order specifying in what respects such activity or
13 practice is unfair or unreasonable or otherwise inconsistent
14 with the provisions of this chapter, and requiring the
15 discontinuance of such activity or practice.

16 (3) The office ~~department~~ may, after consultation with
17 insurers licensed to write automobile insurance in this state,
18 approve a joint underwriting plan for purposes of equitable
19 apportionment or sharing among insurers of automobile
20 liability insurance and other motor vehicle insurance, as an
21 alternate to the plan required in s. 627.351(1). All insurers
22 authorized to write automobile insurance in this state shall
23 subscribe to the plan and participate therein. The plan shall
24 be subject to continuous review by the office ~~department~~ which
25 may at any time disapprove the entire plan or any part thereof
26 if it determines that conditions have changed since prior
27 approval and that in view of the purposes of the plan changes
28 are warranted. Any disapproval by the office ~~department~~ shall
29 be subject to the provisions of chapter 120. If adopted, the
30 plan and the association created under the plan:

31

1 (a) Must be subject to all provisions of s.
2 627.351(1), except apportionment of applicants.

3 (b) May provide for one or more designated insurers,
4 able and willing to provide policy and claims service, to act
5 on behalf of all other insurers to provide insurance for
6 applicants who are in good faith entitled to, but unable to,
7 procure insurance through the voluntary insurance market at
8 standard rates.

9 (c) Must provide that designated insurers will issue
10 policies of insurance and provide policyholder and claims
11 service on behalf of all insurers for the joint underwriting
12 association.

13 (d) Must provide for the equitable apportionment among
14 insurers of losses and expenses incurred.

15 (e) Must provide that the joint underwriting
16 association will operate subject to the supervision and
17 approval of a board of governors consisting of 11 individuals,
18 including 1 who will be elected as chair. Five members of the
19 board must be appointed by the Chief Financial Officer
20 ~~Insurance Commissioner~~. Two of the Chief Financial Officer's
21 ~~commissioner's~~ appointees must be chosen from the insurance
22 industry. Any board member appointed by the Chief Financial
23 Officer ~~Insurance Commissioner~~ may be removed and replaced by
24 her or him at any time without cause. Six members of the board
25 must be appointed by the participating insurers, two of whom
26 must be from the insurance agents' associations. All board
27 members, including the chair, must be appointed to serve for
28 2-year terms beginning annually on a date designated by the
29 plan.

30 (f) Must provide that an agent appointed to a
31 servicing carrier must be a licensed general lines agent of an

1 insurer which is authorized to write automobile liability and
2 physical damage insurance in the state and which is actively
3 writing such coverage in the county in which the agent is
4 located, or the immediately adjoining counties, or an agent
5 who places a volume of other property and casualty insurance
6 in an amount equal to the premium volume placed with the
7 Florida Joint Underwriting Association. The office ~~department~~
8 may, however, determine that an agent may be appointed to a
9 servicing carrier if, after public hearing, the office
10 ~~department~~ finds that consumers in the agent's operating area
11 would not have adequate and reasonable access to the purchase
12 of automobile insurance if the agent were not appointed to a
13 servicing carrier.

14 (g) Must make available noncancelable coverage as
15 provided in s. 627.7275(2).

16 (h) Must provide for the furnishing of a list of
17 insureds and their mailing addresses upon the request of a
18 member of the association or an insurance agent licensed to
19 place business with an association member. The list must
20 indicate whether the insured is currently receiving a good
21 driver discount from the association. The plan may charge a
22 reasonable fee to cover the cost incurred in providing the
23 list.

24 (i) Must not provide a renewal credit or discount or
25 any other inducement designed to retain a risk.

26 (j) Must not provide any other good driver credit or
27 discount that is not actuarially sound. In addition to other
28 criteria that the plan may specify, to be eligible for a good
29 driver credit, an insured must not have any criminal traffic
30 violations within the most recent 36-month period preceding
31 the date the discount is received.

1 (k) Shall have no liability, and no cause of action of
2 any nature shall arise against, any member insurer or its
3 agents or employees, agents or employees of the association,
4 members of the board of governors of the association, the
5 Chief Financial Officer, or the office ~~department~~ or its
6 representatives, for any action taken by them in the
7 performance of their duties or responsibilities under this
8 subsection. Such immunity does not apply to actions for or
9 arising out of breach of any contract or agreement pertaining
10 to insurance, or any willful tort.

11 (1)1. Shall be subject to the public records
12 requirements of chapter 119 and the public meeting
13 requirements of s. 286.011. However, the following records of
14 the Florida Automobile Joint Underwriting Association are
15 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
16 of the State Constitution:

17 a. Underwriting files, except that a policyholder or
18 an applicant shall have access to his or her own underwriting
19 files.

20 b. Claims files, until termination of all litigation
21 and settlement of all claims arising out of the same incident,
22 although portions of the claims files may remain exempt, as
23 otherwise provided by law. Confidential and exempt claims file
24 records may be released to other governmental agencies upon
25 written request and demonstration of need; such records held
26 by the receiving agency remain confidential and exempt as
27 provided by this paragraph.

28 c. Records obtained or generated by an internal
29 auditor pursuant to a routine audit, until the audit is
30 completed or, if the audit is conducted as part of an
31 investigation, until the investigation is closed or ceases to

1 be active. An investigation is considered "active" while the
2 investigation is being conducted with a reasonable, good faith
3 belief that it could lead to the filing of administrative,
4 civil, or criminal proceedings.

5 d. Matters reasonably encompassed in privileged
6 attorney-client communications.

7 e. Proprietary information licensed to the association
8 under contract when the contract provides for the
9 confidentiality of such proprietary information.

10 f. All information relating to the medical condition
11 or medical status of an association employee which is not
12 relevant to the employee's capacity to perform his or her
13 duties, except as otherwise provided in this paragraph.

14 Information which is exempt shall include, but is not limited
15 to, information relating to workers' compensation, insurance
16 benefits, and retirement or disability benefits.

17 g. All records relative to an employee's participation
18 in an employee assistance program designed to assist any
19 employee who has a behavioral or medical disorder, substance
20 abuse problem, or emotional difficulty which affects the
21 employee's job performance, except as otherwise provided in s.
22 112.0455(11).

23 h. Information relating to negotiations for financing,
24 reinsurance, depopulation, or contractual services, until the
25 conclusion of the negotiations.

26 i. Minutes of closed meetings regarding underwriting
27 files, and minutes of closed meetings regarding an open claims
28 file until termination of all litigation and settlement of all
29 claims with regard to that claim, except that information
30 otherwise confidential or exempt by law must be redacted.

31

1 When an authorized insurer is considering underwriting a risk
2 insured by the association, relevant underwriting files and
3 confidential claims files may be released to the insurer
4 provided the insurer agrees in writing, notarized and under
5 oath, to maintain the confidentiality of such files. When a
6 file is transferred to an insurer, that file is no longer a
7 public record because it is not held by an agency subject to
8 the provisions of the public records law. The association may
9 make the following information obtained from underwriting
10 files and confidential claims files available to licensed
11 general lines insurance agents: name, address, and telephone
12 number of the automobile owner or insured; location of the
13 risk; rating information; loss history; and policy type. The
14 receiving licensed general lines insurance agent must retain
15 the confidentiality of the information received.

16 2. Portions of meetings of the Florida Automobile
17 Joint Underwriting Association during which confidential
18 underwriting files or confidential open claims files are
19 discussed are exempt from the provisions of s. 286.011 and s.
20 24(b), Art. I of the State Constitution. All portions of
21 association meetings which are closed to the public shall be
22 recorded by a court reporter. The court reporter shall record
23 the times of commencement and termination of the meeting, all
24 discussion and proceedings, the names of all persons present
25 at any time, and the names of all persons speaking. No
26 portion of any closed meeting shall be off the record.
27 Subject to the provisions of this paragraph and s.
28 119.07(2)(a), the court reporter's notes of any closed meeting
29 shall be retained by the association for a minimum of 5 years.
30 A copy of the transcript, less any exempt matters, of any
31

1 closed meeting during which claims are discussed shall become
2 public as to individual claims after settlement of the claim.

3
4 This paragraph is subject to the Open Government Sunset Review
5 Act of 1995 in accordance with s. 119.15, and shall stand
6 repealed on October 2, 2003, unless reviewed and saved from
7 repeal through reenactment by the Legislature.

8 (4)(a) ~~Effective upon this act becoming a law,~~The
9 office department shall, after consultation with insurers,
10 approve a joint underwriting plan of insurers which shall
11 operate as a nonprofit entity. For the purposes of this
12 subsection, the term "insurer" includes group self-insurance
13 funds authorized by s. 624.4621, commercial self-insurance
14 funds authorized by s. 624.462, assessable mutual insurers
15 authorized under s. 628.6011, and insurers licensed to write
16 workers' compensation and employer's liability insurance in
17 this state. The purpose of the plan is to provide workers'
18 compensation and employer's liability insurance to applicants
19 who are required by law to maintain workers' compensation and
20 employer's liability insurance and who are in good faith
21 entitled to but who are unable to purchase such insurance
22 through the voluntary market. ~~The joint underwriting plan~~
23 ~~shall issue policies beginning January 1, 1994.~~The plan must
24 have actuarially sound rates that assure that the plan is
25 self-supporting.

26 (b) The operation of the plan is subject to the
27 supervision of a 13-member board of governors. The board of
28 governors shall be comprised of:

29 1. Five of the 20 domestic insurers, as defined in s.
30 624.06(1), having the largest voluntary direct premiums
31 written in this state for workers' compensation and employer's

1 liability insurance, which shall be elected by those 20
2 domestic insurers;

3 2. Five of the 20 foreign insurers as defined in s.
4 624.06(2) having the largest voluntary direct premiums written
5 in this state for workers' compensation and employer's
6 liability insurance, which shall be elected by those 20
7 foreign insurers;

8 3. One person, who shall serve as the chair, appointed
9 by the Chief Financial Officer ~~Insurance Commissioner~~;

10 4. One person appointed by the largest property and
11 casualty insurance agents' association in this state; and

12 5. The consumer advocate appointed under s. 627.0613
13 or the consumer advocate's designee.

14

15 Each board member shall serve a 4-year term and may serve
16 consecutive terms. No board member shall be an insurer which
17 provides service to the plan or which has an affiliate which
18 provides services to the plan or which is serviced by a
19 service company or third-party administrator which provides
20 services to the plan or which has an affiliate which provides
21 services to the plan. The minutes, audits, and procedures of
22 the board of governors are subject to chapter 119.

23 (c) The operation of the plan shall be governed by a
24 plan of operation that is prepared at the direction of the
25 board of governors. The plan of operation may be changed at
26 any time by the board of governors or upon request of the
27 office department. The plan of operation and all changes
28 thereto are subject to the approval of the office department.
29 The plan of operation shall:

30

31

1 1. Authorize the board to engage in the activities
2 necessary to implement this subsection, including, but not
3 limited to, borrowing money.

4 2. Develop criteria for eligibility for coverage by
5 the plan, including, but not limited to, documented rejection
6 by at least two insurers which reasonably assures that
7 insureds covered under the plan are unable to acquire coverage
8 in the voluntary market. Any insured may voluntarily elect to
9 accept coverage from an insurer for a premium equal to or
10 greater than the plan premium if the insurer writing the
11 coverage adheres to the provisions of s. 627.171.

12 3. Require notice from the agent to the insured at the
13 time of the application for coverage that the application is
14 for coverage with the plan and that coverage may be available
15 through an insurer, group self-insurers' fund, commercial
16 self-insurance fund, or assessable mutual insurer through
17 another agent at a lower cost.

18 4. Establish programs to encourage insurers to provide
19 coverage to applicants of the plan in the voluntary market and
20 to insureds of the plan, including, but not limited to:

21 a. Establishing procedures for an insurer to use in
22 notifying the plan of the insurer's desire to provide coverage
23 to applicants to the plan or existing insureds of the plan and
24 in describing the types of risks in which the insurer is
25 interested. The description of the desired risks must be on a
26 form developed by the plan.

27 b. Developing forms and procedures that provide an
28 insurer with the information necessary to determine whether
29 the insurer wants to write particular applicants to the plan
30 or insureds of the plan.

31

1 c. Developing procedures for notice to the plan and
2 the applicant to the plan or insured of the plan that an
3 insurer will insure the applicant or the insured of the plan,
4 and notice of the cost of the coverage offered; and developing
5 procedures for the selection of an insuring entity by the
6 applicant or insured of the plan.

7 d. Provide for a market-assistance plan to assist in
8 the placement of employers. All applications for coverage in
9 the plan received 45 days before the effective date for
10 coverage shall be processed through the market-assistance
11 plan. A market-assistance plan specifically designed to serve
12 the needs of small good policyholders as defined by the board
13 must be finalized by January 1, 1994.

14 5. Provide for policy and claims services to the
15 insureds of the plan of the nature and quality provided for
16 insureds in the voluntary market.

17 6. Provide for the review of applications for coverage
18 with the plan for reasonableness and accuracy, using any
19 available historic information regarding the insured.

20 7. Provide for procedures for auditing insureds of the
21 plan which are based on reasonable business judgment and are
22 designed to maximize the likelihood that the plan will collect
23 the appropriate premiums.

24 8. Authorize the plan to terminate the coverage of and
25 refuse future coverage for any insured that submits a
26 fraudulent application to the plan or provides fraudulent or
27 grossly erroneous records to the plan or to any service
28 provider of the plan in conjunction with the activities of the
29 plan.

30 9. Establish service standards for agents who submit
31 business to the plan.

1 10. Establish criteria and procedures to prohibit any
2 agent who does not adhere to the established service standards
3 from placing business with the plan or receiving, directly or
4 indirectly, any commissions for business placed with the plan.

5 11. Provide for the establishment of reasonable safety
6 programs for all insureds in the plan.

7 12. Authorize the plan to terminate the coverage of
8 and refuse future coverage to any insured who fails to pay
9 premiums or surcharges when due; who, at the time of
10 application, is delinquent in payments of workers'
11 compensation or employer's liability insurance premiums or
12 surcharges owed to an insurer, group self-insurers' fund,
13 commercial self-insurance fund, or assessable mutual insurer
14 licensed to write such coverage in this state; or who refuses
15 to substantially comply with any safety programs recommended
16 by the plan.

17 13. Authorize the board of governors to provide the
18 services required by the plan through staff employed by the
19 plan, through reasonably compensated service providers who
20 contract with the plan to provide services as specified by the
21 board of governors, or through a combination of employees and
22 service providers.

23 14. Provide for service standards for service
24 providers, methods of determining adherence to those service
25 standards, incentives and disincentives for service, and
26 procedures for terminating contracts for service providers
27 that fail to adhere to service standards.

28 15. Provide procedures for selecting service providers
29 and standards for qualification as a service provider that
30 reasonably assure that any service provider selected will
31

1 continue to operate as an ongoing concern and is capable of
2 providing the specified services in the manner required.

3 16. Provide for reasonable accounting and
4 data-reporting practices.

5 17. Provide for annual review of costs associated with
6 the administration and servicing of the policies issued by the
7 plan to determine alternatives by which costs can be reduced.

8 18. Authorize the acquisition of such excess insurance
9 or reinsurance as is consistent with the purposes of the plan.

10 19. Provide for an annual report to the office
11 ~~department~~ on a date specified by the office ~~department~~ and
12 containing such information as the office ~~department~~
13 reasonably requires.

14 20. Establish multiple rating plans for various
15 classifications of risk which reflect risk of loss, hazard
16 grade, actual losses, size of premium, and compliance with
17 loss control. At least one of such plans must be a
18 preferred-rating plan to accommodate small-premium
19 policyholders with good experience as defined in
20 sub-subparagraph 22.a.

21 21. Establish agent commission schedules.

22 22. Establish three subplans as follows:

23 a. Subplan "A" must include those insureds whose
24 annual premium does not exceed \$2,500 and who have neither
25 incurred any lost-time claims nor incurred medical-only claims
26 exceeding 50 percent of their premium for the immediate 2
27 years.

28 b. Subplan "B" must include insureds that are
29 employers identified by the board of governors as high-risk
30 employers due solely to the nature of the operations being
31 performed by those insureds and for whom no market exists in

1 the voluntary market, and whose experience modifications are
2 less than 1.00.

3 c. Subplan "C" must include all other insureds within
4 the plan.

5 (e) The plan shall establish and use its rates and
6 rating plans, and the plan may establish and use changes in
7 rating plans at any time, but no more frequently than two
8 times per any rating class for any calendar year. By December
9 1, 1993, and December 1 of each year thereafter, the board
10 shall establish and use actuarially sound rates for use by the
11 plan to assure that the plan is self-funding while those rates
12 are in effect. Such rates and rating plans must be filed with
13 the office ~~department~~ within 30 calendar days after their
14 effective dates, and shall be considered a "use and file"
15 filing. Any disapproval by the office ~~department~~ must have an
16 effective date that is at least 60 days from the date of
17 disapproval of the rates and rating plan and must have
18 prospective effect only. The plan may not be subject to any
19 order by the office ~~department~~ to return to policyholders any
20 portion of the rates disapproved by the office ~~department~~. The
21 office ~~department~~ may not disapprove any rates or rating plans
22 unless it demonstrates that such rates and rating plans are
23 excessive, inadequate, or unfairly discriminatory.

24 (f) No later than June 1 of each year, the plan shall
25 obtain an independent actuarial certification of the results
26 of the operations of the plan for prior years, and shall
27 furnish a copy of the certification to the office ~~department~~.
28 If, after the effective date of the plan, the projected
29 ultimate incurred losses and expenses and dividends for prior
30 years exceed collected premiums, accrued net investment
31 income, and prior assessments for prior years, the

1 certification is subject to review and approval by the office
2 ~~department~~ before it becomes final.

3 (g) Whenever a deficit exists, the plan shall, within
4 90 days, provide the office ~~department~~ with a program to
5 eliminate the deficit within a reasonable time. The deficit
6 may be funded through increased premiums charged to insureds
7 of the plan for subsequent years, through the use of
8 policyholder surplus attributable to any year, and through
9 assessments on insureds in the plan if the plan uses
10 assessable policies.

11 Section 1097. Section 627.3111, Florida Statutes, is
12 transferred, renumbered as section 624.23, Florida Statutes,
13 and amended to read:

14 624.23 ~~627.3111~~ Public records exemption.--All bank
15 account numbers and debit, charge, and credit card numbers,
16 and all other personal financial and health information of a
17 consumer held by the department or office ~~of insurance~~ or
18 their ~~its~~ service providers or agents, relating to a
19 consumer's complaint or inquiry regarding a matter or activity
20 regulated under the Florida Insurance Code, are confidential
21 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
22 Constitution. For the purpose of this section, the term
23 "consumer" includes but is not limited to a prospective
24 purchaser, purchaser, or beneficiary of, or applicant for, any
25 product or service regulated under the Florida Insurance Code,
26 and a family member or dependent of a consumer, a subscriber
27 under a group policy, or a policyholder. This information
28 shall be redacted from records that contain nonexempt
29 information prior to disclosure. This exemption applies to
30 information made confidential and exempt by this section held
31 by the department or office ~~of insurance~~ or their ~~its~~ service

1 providers or agents before, on, or after the effective date of
2 this exemption. Such confidential and exempt information may
3 be disclosed to another governmental entity, if disclosure is
4 necessary for the receiving entity to perform its duties and
5 responsibilities, and may be disclosed to the National
6 Association of Insurance Commissioners. The receiving
7 governmental entity and the association must maintain the
8 confidential and exempt status of such information. The
9 information made confidential and exempt by this section may
10 be used in a criminal, civil, or administrative proceeding so
11 long as the confidential and exempt status of such information
12 is maintained. This exemption does not include the name and
13 address of an inquirer or complainant to the department or
14 office or the name of an insurer or other regulated entity
15 which is the subject of the inquiry or complaint. This section
16 is subject to the Open Government Sunset Review Act of 1995 in
17 accordance with s. 119.15 and shall stand repealed on October
18 2, 2007, unless reviewed and saved from repeal through
19 reenactment by the Legislature.

20 Section 1098. Subsection (6) of section 627.314,
21 Florida Statutes, is amended to read:

22 627.314 Concerted action by two or more insurers.--
23 (6) Notwithstanding any other provisions of this part,
24 insurers shall not participate directly or indirectly in the
25 deliberations or decisions of rating organizations on private
26 passenger automobile insurance. However, such rating
27 organizations shall, upon request of individual insurers, be
28 required to furnish at reasonable cost the rate indications
29 resulting from the loss and expense statistics gathered by
30 them. Individual insurers may modify the indications to
31 reflect their individual experience in determining their own

1 rates. Such rates shall be filed with the office ~~department~~
2 for public inspection whenever requested and shall be
3 available for public announcement only by the press, office
4 ~~department~~, or insurer.

5 Section 1099. Section 627.318, Florida Statutes, is
6 amended to read:

7 627.318 Records.--Every insurer, rating organization,
8 and advisory organization and every group, association, or
9 other organization of insurers which engages in joint
10 underwriting or joint reinsurance shall maintain reasonable
11 records, of the type and kind reasonably adapted to its method
12 of operation, of its experience or the experience of its
13 members and of the data, statistics, or information collected
14 or used by it in connection with the rates, rating plans,
15 rating systems, underwriting rules, policy or bond forms,
16 surveys, or inspections made or used by it, so that such
17 records will be available at all reasonable times to enable
18 the office ~~department~~ to determine whether such organization,
19 insurer, group, or association, and, in the case of an insurer
20 or rating organization, every rate, rating plan, and rating
21 system made or used by it, complies with the provisions of
22 this part applicable to it. The maintenance of such records
23 in the office of a licensed rating organization of which an
24 insurer is a member or subscriber will be sufficient
25 compliance with this section for any such insurer maintaining
26 membership or subscribership in such organization, to the
27 extent that the insurer uses the rates, rating plans, rating
28 systems, or underwriting rules of such organization. Such
29 records shall be maintained in an office within this state or
30 shall be made available for examination or inspection within
31

1 this state by the department at any time upon reasonable
2 notice.

3 Section 1100. Section 627.331, Florida Statutes, is
4 amended to read:

5 627.331 Recording and reporting of loss, expense, and
6 claims experience; rating information.--

7 (1) The commission ~~department~~ may promulgate rules and
8 statistical plans which shall thereafter be used by each
9 insurer in the recording and reporting of its loss, expense,
10 and claims experience, in order that the experience of all
11 insurers may be made available at least annually in such form
12 and detail as may be necessary to aid the office ~~department~~ in
13 determining whether the insurer's activities comply with the
14 applicable standards of this code.

15 (2) In promulgating such rules and plans, the
16 commission ~~department~~ shall give due consideration to the
17 rating systems in use in this state and, in order that such
18 rules and plans may be as uniform as is practicable among the
19 several states, to the rules and to the form of the plans used
20 for such rating systems in other states. No insurer shall be
21 required to record or report its loss experience on a
22 classification basis that is inconsistent with the rating
23 system used by it, except for motor vehicle insurance as
24 otherwise provided by law.

25 (3) The office ~~department~~ may designate one or more
26 rating organizations or other agencies to assist it in
27 gathering such experience and making compilations thereof; and
28 such compilations shall be made available, subject to
29 reasonable rules adopted ~~promulgated~~ by the commission
30 ~~department~~, to insurers and rating organizations.

31

1 Section 1101. Subsection (1), paragraphs (a) and (c)
2 of subsection (3), paragraphs (a), (c), and (d) of subsection
3 (4), and subsections (5) and (6) of section 627.351, Florida
4 Statutes, are amended, and paragraph (f) is added to
5 subsection (2) of that section to read:

6 627.351 Insurance risk apportionment plans.--

7 (1) MOTOR VEHICLE INSURANCE RISK

8 APPORTIONMENT.--Agreements may be made among casualty and
9 surety insurers with respect to the equitable apportionment
10 among them of insurance which may be afforded applicants who
11 are in good faith entitled to, but are unable to, procure such
12 insurance through ordinary methods, and such insurers may
13 agree among themselves on the use of reasonable rate
14 modifications for such insurance. Such agreements and rate
15 modifications shall be subject to the approval of the office
16 ~~department~~. The office department shall, after consultation
17 with the insurers licensed to write automobile liability
18 insurance in this state, adopt a reasonable plan or plans for
19 the equitable apportionment among such insurers of applicants
20 for such insurance who are in good faith entitled to, but are
21 unable to, procure such insurance through ordinary methods,
22 and, when such plan has been adopted, all such insurers shall
23 subscribe thereto and shall participate therein. Such plan or
24 plans shall include rules for classification of risks and
25 rates therefor. The plan or plans shall make available
26 noncancelable coverage as provided in s. 627.7275(2). Any
27 insured placed with the plan shall be notified of the fact
28 that insurance coverage is being afforded through the plan and
29 not through the private market, and such notification shall be
30 given in writing within 10 days of such placement. To assure
31 that plan rates are made adequate to pay claims and expenses,

1 insurers shall develop a means of obtaining loss and expense
2 experience at least annually, and the plan shall file such
3 experience, when available, with the office ~~department~~ in
4 sufficient detail to make a determination of rate adequacy.
5 Prior to the filing of such experience with the office
6 ~~department~~, the plan shall poll each member insurer as to the
7 need for an actuary who is a member of the Casualty Actuarial
8 Society and who is not affiliated with the plan's statistical
9 agent to certify the plan's rate adequacy. If a majority of
10 those insurers responding indicate a need for such
11 certification, the plan shall include the certification as
12 part of its experience filing. Such experience shall be filed
13 with the office ~~department~~ not more than 9 months following
14 the end of the annual statistical period under review,
15 together with a rate filing based on said experience. The
16 office ~~department~~ shall initiate proceedings to disapprove the
17 rate and so notify the plan or shall finalize its review
18 within 60 days of receipt of the filing. Notification to the
19 plan by the office ~~department~~ of its preliminary findings,
20 which include a point of entry to the plan pursuant to chapter
21 120, shall toll the 60-day period during any such proceedings
22 and subsequent judicial review. The rate shall be deemed
23 approved if the office ~~department~~ does not issue notice to the
24 plan of its preliminary findings within 60 days of the filing.
25 In addition to provisions for claims and expenses, the
26 ratemaking formula shall include a factor for projected claims
27 trending and 5 percent for contingencies. In no instance shall
28 the formula include a renewal discount for plan insureds.
29 However, the plan shall reunderwrite each insured on an annual
30 basis, based upon all applicable rating factors approved by
31 the office ~~department~~. Trend factors shall not be found to be

1 inappropriate if not in excess of trend factors normally used
2 in the development of residual market rates by the appropriate
3 licensed rating organization. Each application for coverage
4 in the plan shall include, in boldfaced 12-point type
5 immediately preceding the applicant's signature, the following
6 statement:

7

8 "THIS INSURANCE IS BEING AFFORDED THROUGH THE
9 FLORIDA JOINT UNDERWRITING ASSOCIATION AND NOT
10 THROUGH THE PRIVATE MARKET. PLEASE BE ADVISED
11 THAT COVERAGE WITH A PRIVATE INSURER MAY BE
12 AVAILABLE FROM ANOTHER AGENT AT A LOWER COST.
13 AGENT AND COMPANY LISTINGS ARE AVAILABLE IN THE
14 LOCAL YELLOW PAGES."

15

16 The plan shall annually report to the office
17 ~~department~~ the number and percentage of plan insureds
18 who are not surcharged due to their driving record.

19 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

20 (f) As used in this subsection, the term "department"
21 means the former Department of Insurance.

22 (3) POLITICAL SUBDIVISION; CASUALTY INSURANCE RISK
23 APPORTIONMENT.--

24 (a) The office ~~department~~ shall, after consultation
25 with the casualty insurers licensed in this state, adopt a
26 plan or plans for the equitable apportionment among them of
27 casualty insurance coverage which may be afforded political
28 subdivisions which are in good faith entitled to, but are
29 unable to, procure such coverage through the voluntary market
30 at standard rates or through a statutorily approved plan
31 authorized by the office ~~department~~. The office ~~department~~ may

1 adopt a joint underwriting plan which shall provide for one or
2 more designated insurers able and willing to provide
3 policyholder and claims service, including the issuance of
4 insurance policies, to act on behalf of all other insurers
5 required to participate in the joint underwriting plan. Any
6 joint underwriting plan adopted shall provide for the
7 equitable apportionment of any profits realized, or of losses
8 and expenses incurred, among participating insurers. The plan
9 shall include, but shall not be limited to:

10 1. Rules for the classification of risks and rates
11 which reflect the past loss experience and prospective loss
12 experience in different geographic areas.

13 2. A rating plan which reasonably reflects the prior
14 claims experience of the insureds.

15 3. Excess coverage by insurers if the office ~~insurance~~
16 ~~Commissioner~~, in its ~~his or her~~ discretion, requires such
17 coverage by insurers participating in the joint underwriting
18 plan.

19 (c) Any deficit sustained under the plan shall first
20 be recovered through a premium contingency assessment.
21 Concurrently, the rates for insureds shall be adjusted for the
22 next year so as to be actuarially sound in conformance with
23 rules adopted by ~~of the~~ commission ~~department~~.

24 (4) MEDICAL MALPRACTICE RISK APPORTIONMENT.--

25 (a) The office ~~department~~ shall, after consultation
26 with insurers as set forth in paragraph (b), adopt a joint
27 underwriting plan as set forth in paragraph (d).

28 (c) The Joint Underwriting Association shall operate
29 subject to the supervision and approval of a board of
30 governors consisting of representatives of five of the
31 insurers participating in the Joint Underwriting Association,

1 an attorney to be named by The Florida Bar, a physician to be
2 named by the Florida Medical Association, a dentist to be
3 named by the Florida Dental Association, and a hospital
4 representative to be named by the Florida Hospital
5 Association. The Chief Financial Officer shall select the
6 representatives of the five insurers. One insurer
7 representative shall be selected from recommendations of the
8 American Insurance Association. One insurer representative
9 shall be selected from recommendations of the Alliance of
10 American Insurers. One insurer representative shall be
11 selected from recommendations of the National Association of
12 Independent Insurers. Two insurer representatives shall be
13 selected to represent insurers that are not affiliated with
14 these associations.The board of governors shall choose,
15 during the first meeting of the board after June 30 of each
16 year, one of its members to serve as chair of the board and
17 another member to serve as vice chair of the board. There
18 shall be no liability on the part of, and no cause of action
19 of any nature shall arise against, any member insurer,
20 self-insurer, or its agents or employees, the Joint
21 Underwriting Association or its agents or employees, members
22 of the board of governors, or the office ~~department~~ or its
23 representatives for any action taken by them in the
24 performance of their powers and duties under this subsection.

25 (d) The plan shall provide coverage for claims arising
26 out of the rendering of, or failure to render, medical care or
27 services and, in the case of health care facilities, coverage
28 for bodily injury or property damage to the person or property
29 of any patient arising out of the insured's activities, in
30 appropriate policy forms for all health care providers as
31

1 defined in paragraph (h). The plan shall include, but shall
2 not be limited to:

3 1. Classifications of risks and rates which reflect
4 past and prospective loss and expense experience in different
5 areas of practice and in different geographical areas. To
6 assure that plan rates are adequate to pay claims and
7 expenses, the Joint Underwriting Association shall develop a
8 means of obtaining loss and expense experience; and the plan
9 shall file such experience, when available, with the office
10 ~~department~~ in sufficient detail to make a determination of
11 rate adequacy. Within 60 days after a rate filing, the office
12 ~~department~~ shall approve such rates or rate revisions as are
13 fully supported by the filing. In addition to provisions for
14 claims and expenses, the ratemaking formula may include a
15 factor for projected claims trending and a margin for
16 contingencies. The use of trend factors shall not be found to
17 be inappropriate.

18 2. A rating plan which reasonably recognizes the prior
19 claims experience of insureds.

20 3. Provisions as to rates for:

21 a. Insureds who are retired or semiretired.

22 b. The estates of deceased insureds.

23 c. Part-time professionals.

24 4. Protection in an amount not to exceed \$250,000 per
25 claim, \$750,000 annual aggregate for health care providers
26 other than hospitals and in an amount not to exceed \$1.5
27 million per claim, \$5 million annual aggregate for hospitals.
28 Such coverage for health care providers other than hospitals
29 shall be available as primary coverage and as excess coverage
30 for the layer of coverage between the primary coverage and the
31 total limits of \$250,000 per claim, \$750,000 annual aggregate.

1 The plan shall also provide tail coverage in these amounts to
2 insureds whose claims-made coverage with another insurer or
3 trust has or will be terminated. Such tail coverage shall
4 provide coverage for incidents that occurred during the
5 claims-made policy period for which a claim is made after the
6 policy period.

7 5. A risk management program for insureds of the
8 association. This program shall include, but not be limited
9 to: investigation and analysis of frequency, severity, and
10 causes of adverse or untoward medical injuries; development of
11 measures to control these injuries; systematic reporting of
12 medical incidents; investigation and analysis of patient
13 complaints; and auditing of association members to assure
14 implementation of this program. The plan may refuse to insure
15 any insured who refuses or fails to comply with the risk
16 management program implemented by the association. Prior to
17 cancellation or refusal to renew an insured, the association
18 shall provide the insured 60 days' notice of intent to cancel
19 or nonrenew and shall further notify the insured of any action
20 which must be taken to be in compliance with the risk
21 management program.

22 (5) PROPERTY AND CASUALTY INSURANCE RISK
23 APPORTIONMENT.--The commission ~~department~~ shall adopt by rule
24 a joint underwriting plan to equitably apportion among
25 insurers authorized in this state to write property insurance
26 as defined in s. 624.604 or casualty insurance as defined in
27 s. 624.605, the underwriting of one or more classes of
28 property insurance or casualty insurance, except for the types
29 of insurance that are included within property insurance or
30 casualty insurance for which an equitable apportionment plan,
31 assigned risk plan, or joint underwriting plan is authorized

1 under s. 627.311 or subsection (1), subsection (2), subsection
2 (3), subsection (4), or subsection (5) and except for risks
3 eligible for flood insurance written through the federal flood
4 insurance program to persons with risks eligible under
5 subparagraph (a)1. and who are in good faith entitled to, but
6 are unable to, obtain such property or casualty insurance
7 coverage, including excess coverage, through the voluntary
8 market. For purposes of this subsection, an adequate level of
9 coverage means that coverage which is required by state law or
10 by responsible or prudent business practices. The Joint
11 Underwriting Association shall not be required to provide
12 coverage for any type of risk for which there are no insurers
13 providing similar coverage in this state. The office
14 ~~department~~ may designate one or more participating insurers
15 who agree to provide policyholder and claims service,
16 including the issuance of policies, on behalf of the
17 participating insurers.

18 (a) The plan shall provide:

19 1. A means of establishing eligibility of a risk for
20 obtaining insurance through the plan, which provides that:

21 a. A risk shall be eligible for such property
22 insurance or casualty insurance as is required by Florida law
23 if the insurance is unavailable in the voluntary market,
24 including the market assistance program and the surplus lines
25 market.

26 b. A commercial risk not eligible under
27 sub-subparagraph a. shall be eligible for property or casualty
28 insurance if:

29 (I) The insurance is unavailable in the voluntary
30 market, including the market assistance plan and the surplus
31 lines market;

1 (II) Failure to secure the insurance would
2 substantially impair the ability of the entity to conduct its
3 affairs; and

4 (III) The risk is not determined by the Risk
5 Underwriting Committee to be uninsurable.

6 c. In the event the Federal Government terminates the
7 Federal Crime Insurance Program established under 44 C.F.R.
8 ss. 80-83, Florida commercial and residential risks previously
9 insured under the federal program shall be eligible under the
10 plan.

11 d.(I) In the event a risk is eligible under this
12 paragraph and in the event the market assistance plan receives
13 a minimum of 100 applications for coverage within a 3-month
14 period, or 200 applications for coverage within a 1-year
15 period or less, for a given class of risk contained in the
16 classification system defined in the plan of operation of the
17 Joint Underwriting Association, and unless the market
18 assistance plan provides a quotation for at least 80 percent
19 of such applicants, such classification shall immediately be
20 eligible for coverage in the Joint Underwriting Association.

21 (II) Any market assistance plan application which is
22 rejected because an individual risk is so hazardous as to be
23 practically uninsurable, considering whether the likelihood of
24 a loss for such a risk is substantially higher than for other
25 risks of the same class due to individual risk
26 characteristics, prior loss experience, unwillingness to
27 cooperate with a prior insurer, physical characteristics and
28 physical location shall not be included in the minimum
29 percentage calculation provided above. In the event that there
30 is any legal or administrative challenge to a determination by
31 the office ~~department~~ that the conditions of this subparagraph

1 have been met for eligibility for coverage in the Joint
2 Underwriting Association for a given classification, any
3 eligible risk may obtain coverage during the pendency of any
4 such challenge.

5 e. In order to qualify as a quotation for the purpose
6 of meeting the minimum percentage calculation in this
7 subparagraph, the quoted premium must meet the following
8 criteria:

9 (I) In the case of an admitted carrier, the quoted
10 premium must not exceed the premium available for a given
11 classification currently in use by the Joint Underwriting
12 Association or the premium developed by using the rates and
13 rating plans on file with the office ~~department~~ by the quoting
14 insurer, whichever is greater.

15 (II) In the case of an authorized surplus lines
16 insurer, the quoted premium must not exceed the premium
17 available for a given classification currently in use by the
18 Joint Underwriting Association by more than 25 percent, after
19 consideration of any individual risk surcharge or credit.

20 f. Any agent who falsely certifies the unavailability
21 of coverage as provided by sub-subparagraphs a. and b., is
22 subject to the penalties provided in s. 626.611.

23 2. A means for the equitable apportionment of profits
24 or losses and expenses among participating insurers.

25 3. Rules for the classification of risks and rates
26 which reflect the past and prospective loss experience.

27 4. A rating plan which reasonably reflects the prior
28 claims experience of the insureds. Such rating plan shall
29 include at least two levels of rates for risks that have
30 favorable loss experience and risks that have unfavorable loss
31 experience, as established by the plan.

1 5. Reasonable limits to available amounts of
2 insurance. Such limits may not be less than the amounts of
3 insurance required of eligible risks by Florida law.

4 6. Risk management requirements for insurance where
5 such requirements are reasonable and are expected to reduce
6 losses.

7 7. Deductibles as may be necessary to meet the needs
8 of insureds.

9 8. Policy forms which are consistent with the forms in
10 use by the majority of the insurers providing coverage in the
11 voluntary market for the coverage requested by the applicant.

12 9. A means to remove risks from the plan once such
13 risks no longer meet the eligibility requirements of this
14 paragraph. For this purpose, the plan shall include the
15 following requirements: At each 6-month interval after the
16 activation of any class of insureds, the board of governors or
17 its designated committee shall review the number of
18 applications to the market assistance plan for that class. If,
19 based on these latest numbers, at least 90 percent of such
20 applications have been provided a quotation, the Joint
21 Underwriting Association shall cease underwriting new
22 applications for such class within 30 days, and notification
23 of this decision shall be sent to the office Insurance
24 ~~Commissioner~~, the major agents' associations, and the board of
25 directors of the market assistance plan. A quotation for the
26 purpose of this subparagraph shall meet the same criteria for
27 a quotation as provided in sub-subparagraph 1.e
28 ~~sub-subparagraph d~~. All policies which were previously written
29 for that class shall continue in force until their normal
30 expiration date, at which time, subject to the required timely
31 notification of nonrenewal by the Joint Underwriting

1 Association, the insured may then elect to reapply to the
2 Joint Underwriting Association according to the requirements
3 of eligibility. If, upon reapplication, those previously
4 insured Joint Underwriting Association risks meet the
5 eligibility requirements, the Joint Underwriting Association
6 shall provide the coverage requested.

7 10. A means for providing credits to insurers against
8 any deficit assessment levied pursuant to paragraph (c), for
9 risks voluntarily written through the market assistance plan
10 by such insurers.

11 11. That the Joint Underwriting Association shall
12 operate subject to the supervision and approval of a board of
13 governors consisting of 13 individuals appointed by the Chief
14 Financial Officer ~~Insurance Commissioner~~, and shall have an
15 executive or underwriting committee. At least four of the
16 members shall be representatives of insurance trade
17 associations as follows: one member from the American
18 Insurance Association, one member from the Alliance of
19 American Insurers, one member from the National Association of
20 Independent Insurers, and one member from an unaffiliated
21 insurer writing coverage on a national basis. Two
22 representatives shall be from two of the statewide agents'
23 associations. Each board member shall be appointed to serve
24 for 2-year terms beginning on a date designated by the plan
25 and shall serve at the pleasure of the Chief Financial Officer
26 ~~commissioner~~. Members may be reappointed for subsequent terms.

27 (b) Rates used by the Joint Underwriting Association
28 shall be actuarially sound. To the extent applicable, the rate
29 standards set forth in s. 627.062 shall be considered by the
30 office ~~department~~ in establishing rates to be used by the
31 joint underwriting plan. The initial rate level shall be

1 determined using the rates, rules, rating plans, and
2 classifications contained in the most current Insurance
3 Services Office (ISO) filing with the office ~~department~~ or the
4 filing of other licensed rating organizations with an
5 additional increment of 25 percent of premium. For any type of
6 coverage or classification which lends itself to manual rating
7 for which the Insurance Services Office or another licensed
8 rating organization does not file or publish a rate, the Joint
9 Underwriting Association shall file and use an initial rate
10 based on the average current market rate. The initial rate
11 level for the rate plan shall also be subject to an experience
12 and schedule rating plan which may produce a maximum of 25
13 percent debits or credits. For any risk which does not lend
14 itself to manual rating and for which no rate has been
15 promulgated under the rate plan, the board shall develop and
16 file with the office ~~commissioner~~, subject to its ~~his or her~~
17 approval, appropriate criteria and factors for rating the
18 individual risk. Such criteria and factors shall include, but
19 not be limited to, loss rating plans, composite rating plans,
20 and unique and unusual risk rating plans. The initial rates
21 required under this paragraph shall be adjusted in conformity
22 with future filings by the Insurance Services Office with the
23 office ~~department~~ and shall remain in effect until such time
24 as the Joint Underwriting Association has sufficient data as
25 to independently justify an actuarially sound change in such
26 rates.

27 (c)1. In the event an underwriting deficit exists for
28 any policy year the plan is in effect, any surplus which has
29 accrued from previous years and is not projected within
30 reasonable actuarial certainty to be needed for payment for
31

1 claims in the year the surplus arose shall be used to offset
2 the deficit to the extent available.

3 2. As to any remaining deficit, the board of governors
4 of the Joint Underwriting Association shall levy and collect
5 an assessment in an amount sufficient to offset such deficit.
6 Such assessment shall be levied against the insurers
7 participating in the plan during the year giving rise to the
8 assessment. Any assessments against insurers for the lines of
9 property and casualty insurance issued to commercial risks
10 shall be recovered from the participating insurers in the
11 proportion that the net direct premium of each insurer for
12 commercial risks written during the preceding calendar year
13 bears to the aggregate net direct premium written for
14 commercial risks by all members of the plan for the lines of
15 insurance included in the plan. Any assessments against
16 insurers for the lines of property and casualty insurance
17 issued to personal risks eligible under sub-subparagraph
18 (a)1.a. or sub-subparagraph (a)1.c. shall be recovered from
19 the participating insurers in the proportion that the net
20 direct premium of each insurer for personal risks written
21 during the preceding calendar year bears to the aggregate net
22 direct premium written for personal risks by all members of
23 the plan for the lines of insurance included in the plan.

24 3. The board shall take all reasonable and prudent
25 steps necessary to collect the amount of assessment due from
26 each participating insurer and policyholder, including, if
27 prudent, filing suit to collect such assessment. If the board
28 is unable to collect an assessment from any insurer, the
29 uncollected assessments shall be levied as an additional
30 assessment against the participating insurers and any
31 participating insurer required to pay an additional assessment

1 as a result of such failure to pay shall have a cause of
2 action against such nonpaying insurer.

3 4. Any funds or entitlements that the state may be
4 eligible to receive by virtue of the Federal Government's
5 termination of the Federal Crime Insurance Program referenced
6 in sub-subparagraph (a)1.c. may be used under the plan to
7 offset any subsequent underwriting deficits that may occur
8 from risks previously insured with the Federal Crime Insurance
9 Program.

10 5. Assessments shall be included as an appropriate
11 factor in the making of rates as provided in s. 627.3512.

12 6.a. The Legislature finds that the potential for
13 unlimited assessments under this paragraph may induce insurers
14 to attempt to reduce their writings in the voluntary market,
15 and that such actions would worsen the availability problems
16 that the association was created to remedy. It is the intent
17 of the Legislature that insurers remain fully responsible for
18 covering any deficits of the association; however, it is also
19 the intent of the Legislature to provide a means by which
20 assessment liabilities may be amortized over a period of
21 years.

22 b. The total amount of deficit assessments under this
23 paragraph with respect to any year may not exceed 10 percent
24 of the statewide total gross written premium for all insurers
25 for the coverages referred to in the introductory language of
26 this subsection for the prior year, except that if the deficit
27 with respect to any plan year exceeds such amount and bonds
28 are issued under sub-subparagraph c. to defray the deficit,
29 the total amount of assessments with respect to such deficit
30 may not in any year exceed 10 percent of the deficit, or such
31 lesser percentage as is sufficient to retire the bonds as

1 determined by the board, and shall continue annually until the
2 bonds are retired.

3 c. The governing body of any unit of local government,
4 any residents or businesses of which are insured by the
5 association, may issue bonds as defined in s. 125.013 or s.
6 166.101 from time to time to fund an assistance program, in
7 conjunction with the association, for the purpose of defraying
8 deficits of the association. Revenue bonds may not be issued
9 until validated pursuant to chapter 75, unless a state of
10 emergency is declared by executive order or proclamation of
11 the Governor pursuant to s. 252.36 making such findings as are
12 necessary to determine that it is in the best interests of,
13 and necessary for, the protection of the public health,
14 safety, and general welfare of residents of this state and the
15 protection and preservation of the economic stability of
16 insurers operating in this state, and declaring it an
17 essential public purpose to permit certain municipalities or
18 counties to issue such bonds as will provide relief to
19 claimants and policyholders of the joint underwriting
20 association and insurers responsible for apportionment of
21 association losses. The unit of local government shall enter
22 into such contracts with the association as are necessary to
23 carry out this paragraph. Any bonds issued under this
24 sub-subparagraph shall be payable from and secured by moneys
25 received by the association from assessments under this
26 paragraph, and assigned and pledged to or on behalf of the
27 unit of local government for the benefit of the holders of
28 such bonds. The funds, credit, property, and taxing power of
29 the state or of the unit of local government shall not be
30 pledged for the payment of such bonds. If any of the bonds
31 remain unsold 60 days after issuance, the office ~~department~~

1 shall require all insurers subject to assessment to purchase
2 the bonds, which shall be treated as admitted assets; each
3 insurer shall be required to purchase that percentage of the
4 unsold portion of the bond issue that equals the insurer's
5 relative share of assessment liability under this subsection.
6 An insurer shall not be required to purchase the bonds to the
7 extent that the office ~~department~~ determines that the purchase
8 would endanger or impair the solvency of the insurer.

9 7. The plan shall provide for the deferment, in whole
10 or in part, of the assessment of an insurer if the office
11 ~~department~~ finds that payment of the assessment would endanger
12 or impair the solvency of the insurer. In the event an
13 assessment against an insurer is deferred in whole or in part,
14 the amount by which such assessment is deferred may be
15 assessed against the other member insurers in a manner
16 consistent with the basis for assessments set forth in
17 subparagraph 2.

18 (d) Upon adoption of the plan, all insurers authorized
19 in this state to underwrite property or casualty insurance
20 shall participate in the plan.

21 (e) A Risk Underwriting Committee of the Joint
22 Underwriting Association composed of three members experienced
23 in evaluating insurance risks is created to review risks
24 rejected by the voluntary market for which application is made
25 for insurance through the joint underwriting plan. The
26 committee shall consist of a representative of the market
27 assistance plan created under s. 627.3515, a member selected
28 by the insurers participating in the Joint Underwriting
29 Association, and a member named by the Chief Financial Officer
30 ~~Insurance Commissioner~~. The Risk Underwriting Committee shall
31 appoint such advisory committees as are provided for in the

1 plan and are necessary to conduct its functions. The salaries
2 and expenses of the members of the Risk Underwriting Committee
3 and its advisory committees shall be paid by the joint
4 underwriting plan. The plan approved by the office ~~department~~
5 shall establish criteria and procedures for use by the Risk
6 Underwriting Committee for determining whether an individual
7 risk is so hazardous as to be uninsurable. In making this
8 determination and in establishing the criteria and procedures,
9 the following shall be considered:

10 1. Whether the likelihood of a loss for the individual
11 risk is substantially higher than for other risks of the same
12 class; and

13 2. Whether the uncertainty associated with the
14 individual risk is such that an appropriate premium cannot be
15 determined.

16
17 The acceptance or rejection of a risk by the underwriting
18 committee shall be construed as the private placement of
19 insurance, and the provisions of chapter 120 shall not apply.

20 (f) There shall be no liability on the part of, and no
21 cause of action of any nature shall arise against, any member
22 insurer or its agents or employees, the Florida Property and
23 Casualty Joint Underwriting Association or its agents or
24 employees, members of the board of governors, the Chief
25 Financial Officer, or the office ~~department~~ or its
26 representatives for any action taken by them in the
27 performance of their duties under this subsection. Such
28 immunity does not apply to actions for breach of any contract
29 or agreement pertaining to insurance, or any other willful
30 tort.

31 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

1 (a)1. The Legislature finds that actual and threatened
2 catastrophic losses to property in this state from hurricanes
3 have caused insurers to be unwilling or unable to provide
4 property insurance coverage to the extent sought and needed.
5 It is in the public interest and a public purpose to assist in
6 assuring that property in the state is insured so as to
7 facilitate the remediation, reconstruction, and replacement of
8 damaged or destroyed property in order to reduce or avoid the
9 negative effects otherwise resulting to the public health,
10 safety, and welfare; to the economy of the state; and to the
11 revenues of the state and local governments needed to provide
12 for the public welfare. It is necessary, therefore, to provide
13 property insurance to applicants who are in good faith
14 entitled to procure insurance through the voluntary market but
15 are unable to do so. The Legislature intends by this
16 subsection that property insurance be provided and that it
17 continues, as long as necessary, through an entity organized
18 to achieve efficiencies and economies, all toward the
19 achievement of the foregoing public purposes. Because it is
20 essential for the corporation to have the maximum financial
21 resources to pay claims following a catastrophic hurricane, it
22 is the intent of the Legislature that the income of the
23 corporation be exempt from federal income taxation and that
24 interest on the debt obligations issued by the corporation be
25 exempt from federal income taxation.

26 2. The Residential Property and Casualty Joint
27 Underwriting Association originally created by this statute
28 shall be known, as of July 1, 2002, as the Citizens Property
29 Insurance Corporation. The corporation shall provide insurance
30 for residential and commercial property, for applicants who
31 are in good faith entitled, but are unable, to procure

1 insurance through the voluntary market. The corporation shall
2 operate pursuant to a plan of operation approved by order of
3 the office department. The plan is subject to continuous
4 review by the office department. The office department may, by
5 order, withdraw approval of all or part of a plan if the
6 office department determines that conditions have changed
7 since approval was granted and that the purposes of the plan
8 require changes in the plan. For the purposes of this
9 subsection, residential coverage includes both personal lines
10 residential coverage, which consists of the type of coverage
11 provided by homeowner's, mobile home owner's, dwelling,
12 tenant's, condominium unit owner's, and similar policies, and
13 commercial lines residential coverage, which consists of the
14 type of coverage provided by condominium association,
15 apartment building, and similar policies.

16 (b)1. All insurers authorized to write one or more
17 subject lines of business in this state are subject to
18 assessment by the corporation and, for the purposes of this
19 subsection, are referred to collectively as "assessable
20 insurers." Insurers writing one or more subject lines of
21 business in this state pursuant to part VIII of chapter 626
22 are not assessable insurers, but insureds who procure one or
23 more subject lines of business in this state pursuant to part
24 VIII of chapter 626 are subject to assessment by the
25 corporation and are referred to collectively as "assessable
26 insureds." An authorized insurer's assessment liability shall
27 begin on the first day of the calendar year following the year
28 in which the insurer was issued a certificate of authority to
29 transact insurance for subject lines of business in this state
30 and shall terminate 1 year after the end of the first calendar
31 year during which the insurer no longer holds a certificate of

1 authority to transact insurance for subject lines of business
2 in this state.

3 2.a. All revenues, assets, liabilities, losses, and
4 expenses of the corporation shall be divided into three
5 separate accounts as follows:

6 (I) A personal lines account for personal residential
7 policies issued by the corporation or issued by the
8 Residential Property and Casualty Joint Underwriting
9 Association and renewed by the corporation that provide
10 comprehensive, multiperil coverage on risks that are not
11 located in areas eligible for coverage in the Florida
12 Windstorm Underwriting Association as those areas were defined
13 on January 1, 2002 and for such policies that do not provide
14 coverage for the peril of wind on risks that are located in
15 such areas;

16 (II) A commercial lines account for commercial
17 residential policies issued by the corporation or issued by
18 the Residential Property and Casualty Joint Underwriting
19 Association and renewed by the corporation that provide
20 coverage for basic property perils on risks that are not
21 located in areas eligible for coverage in the Florida
22 Windstorm Underwriting Association as those areas were defined
23 on January 1, 2002, and for such policies that do not provide
24 coverage for the peril of wind on risks that are located in
25 such areas; and

26 (III) A high-risk account for personal residential
27 policies and commercial residential and commercial
28 nonresidential property policies issued by the corporation or
29 transferred to the corporation that provide coverage for the
30 peril of wind on risks that are located in areas eligible for
31 coverage in the Florida Windstorm Underwriting Association as

1 those areas were defined on January 1, 2002. The high-risk
2 account must also include quota share primary insurance under
3 subparagraph (c)2. The area eligible for coverage under the
4 high-risk account also includes the area within Port
5 Canaveral, which is bordered on the south by the City of Cape
6 Canaveral, bordered on the west by the Banana River, and
7 bordered on the north by Federal Government property. The
8 office ~~department~~ may remove territory from the area eligible
9 for wind-only and quota share coverage if, after a public
10 hearing, the office ~~department~~ finds that authorized insurers
11 in the voluntary market are willing and able to write
12 sufficient amounts of personal and commercial residential
13 coverage for all perils in the territory, including coverage
14 for the peril of wind, such that risks covered by wind-only
15 policies in the removed territory could be issued a policy by
16 the corporation in either the personal lines or commercial
17 lines account without a significant increase in the
18 corporation's probable maximum loss in such account. Removal
19 of territory from the area eligible for wind-only or quota
20 share coverage does not alter the assignment of wind coverage
21 written in such areas to the high-risk account.

22 b. The three separate accounts must be maintained as
23 long as financing obligations entered into by the Florida
24 Windstorm Underwriting Association or Residential Property and
25 Casualty Joint Underwriting Association are outstanding, in
26 accordance with the terms of the corresponding financing
27 documents. When the financing obligations are no longer
28 outstanding, in accordance with the terms of the corresponding
29 financing documents, the corporation may use a single account
30 for all revenues, assets, liabilities, losses, and expenses of
31 the corporation.

1 c. Creditors of the Residential Property and Casualty
2 Joint Underwriting Association shall have a claim against, and
3 recourse to, the accounts referred to in sub-sub-subparagraphs
4 a.(I) and (II) and shall have no claim against, or recourse
5 to, the account referred to in sub-sub-subparagraph a.(III).
6 Creditors of the Florida Windstorm Underwriting Association
7 shall have a claim against, and recourse to, the account
8 referred to in sub-sub-subparagraph a.(III) and shall have no
9 claim against, or recourse to, the accounts referred to in
10 sub-sub-subparagraphs a.(I) and (II).

11 d. Revenues, assets, liabilities, losses, and expenses
12 not attributable to particular accounts shall be prorated
13 among the accounts.

14 e. The Legislature finds that the revenues of the
15 corporation are revenues that are necessary to meet the
16 requirements set forth in documents authorizing the issuance
17 of bonds under this subsection.

18 f. No part of the income of the corporation may inure
19 to the benefit of any private person.

20 3. With respect to a deficit in an account:

21 a. When the deficit incurred in a particular calendar
22 year is not greater than 10 percent of the aggregate statewide
23 direct written premium for the subject lines of business for
24 the prior calendar year, the entire deficit shall be recovered
25 through regular assessments of assessable insurers under
26 paragraph (g) and assessable insureds.

27 b. When the deficit incurred in a particular calendar
28 year exceeds 10 percent of the aggregate statewide direct
29 written premium for the subject lines of business for the
30 prior calendar year, the corporation shall levy regular
31 assessments on assessable insurers under paragraph (g) and on

1 assessable insureds in an amount equal to the greater of 10
2 percent of the deficit or 10 percent of the aggregate
3 statewide direct written premium for the subject lines of
4 business for the prior calendar year. Any remaining deficit
5 shall be recovered through emergency assessments under
6 sub-subparagraph d.

7 c. Each assessable insurer's share of the amount being
8 assessed under sub-subparagraph a. or sub-subparagraph b.
9 shall be in the proportion that the assessable insurer's
10 direct written premium for the subject lines of business for
11 the year preceding the assessment bears to the aggregate
12 statewide direct written premium for the subject lines of
13 business for that year. The assessment percentage applicable
14 to each assessable insured is the ratio of the amount being
15 assessed under sub-subparagraph a. or sub-subparagraph b. to
16 the aggregate statewide direct written premium for the subject
17 lines of business for the prior year. Assessments levied by
18 the corporation on assessable insurers under sub-subparagraphs
19 a. and b. shall be paid as required by the corporation's plan
20 of operation and paragraph (g). Assessments levied by the
21 corporation on assessable insureds under sub-subparagraphs a.
22 and b. shall be collected by the surplus lines agent at the
23 time the surplus lines agent collects the surplus lines tax
24 required by s. 626.932 and shall be paid to the Florida
25 Surplus Lines Service Office at the time the surplus lines
26 agent pays the surplus lines tax to the Florida Surplus Lines
27 Service Office. Upon receipt of regular assessments from
28 surplus lines agents, the Florida Surplus Lines Service Office
29 shall transfer the assessments directly to the corporation as
30 determined by the corporation.
31

1 d. Upon a determination by the board of governors that
2 a deficit in an account exceeds the amount that will be
3 recovered through regular assessments under sub-subparagraph
4 a. or sub-subparagraph b., the board shall levy, after
5 verification by the office ~~department~~, emergency assessments,
6 for as many years as necessary to cover the deficits, to be
7 collected by assessable insurers and the corporation and
8 collected from assessable insureds upon issuance or renewal of
9 policies for subject lines of business, excluding National
10 Flood Insurance policies. The amount of the emergency
11 assessment collected in a particular year shall be a uniform
12 percentage of that year's direct written premium for subject
13 lines of business and all accounts of the corporation,
14 excluding National Flood Insurance Program policy premiums, as
15 annually determined by the board and verified by the office
16 ~~department~~. The office ~~department~~ shall verify the arithmetic
17 calculations involved in the board's determination within 30
18 days after receipt of the information on which the
19 determination was based. Notwithstanding any other provision
20 of law, the corporation and each assessable insurer that
21 writes subject lines of business shall collect emergency
22 assessments from its policyholders without such obligation
23 being affected by any credit, limitation, exemption, or
24 deferment. Emergency assessments levied by the corporation on
25 assessable insureds shall be collected by the surplus lines
26 agent at the time the surplus lines agent collects the surplus
27 lines tax required by s. 626.932 and shall be paid to the
28 Florida Surplus Lines Service Office at the time the surplus
29 lines agent pays the surplus lines tax to the Florida Surplus
30 Lines Service Office. The emergency assessments so collected
31 shall be transferred directly to the corporation on a periodic

1 basis as determined by the corporation and shall be held by
2 the corporation solely in the applicable account. The
3 aggregate amount of emergency assessments levied for an
4 account under this sub-subparagraph in any calendar year may
5 not exceed the greater of 10 percent of the amount needed to
6 cover the original deficit, plus interest, fees, commissions,
7 required reserves, and other costs associated with financing
8 of the original deficit, or 10 percent of the aggregate
9 statewide direct written premium for subject lines of business
10 and for all accounts of the corporation for the prior year,
11 plus interest, fees, commissions, required reserves, and other
12 costs associated with financing the original deficit.

13 e. The corporation may pledge the proceeds of
14 assessments, projected recoveries from the Florida Hurricane
15 Catastrophe Fund, other insurance and reinsurance
16 recoverables, market equalization surcharges and other
17 surcharges, and other funds available to the corporation as
18 the source of revenue for and to secure bonds issued under
19 paragraph (g), bonds or other indebtedness issued under
20 subparagraph (c)3., or lines of credit or other financing
21 mechanisms issued or created under this subsection, or to
22 retire any other debt incurred as a result of deficits or
23 events giving rise to deficits, or in any other way that the
24 board determines will efficiently recover such deficits. The
25 purpose of the lines of credit or other financing mechanisms
26 is to provide additional resources to assist the corporation
27 in covering claims and expenses attributable to a catastrophe.
28 As used in this subsection, the term "assessments" includes
29 regular assessments under sub-subparagraph a.,
30 sub-subparagraph b., or subparagraph (g)1. and emergency
31 assessments under sub-subparagraph d. Emergency assessments

1 collected under sub-subparagraph d. are not part of an
2 insurer's rates, are not premium, and are not subject to
3 premium tax, fees, or commissions; however, failure to pay the
4 emergency assessment shall be treated as failure to pay
5 premium. The emergency assessments under sub-subparagraph d.
6 shall continue as long as any bonds issued or other
7 indebtedness incurred with respect to a deficit for which the
8 assessment was imposed remain outstanding, unless adequate
9 provision has been made for the payment of such bonds or other
10 indebtedness pursuant to the documents governing such bonds or
11 other indebtedness.

12 f. As used in this subsection, the term "subject lines
13 of business" means insurance written by assessable insurers or
14 procured by assessable insureds on real or personal property,
15 as defined in s. 624.604, including insurance for fire,
16 industrial fire, allied lines, farmowners multiperil,
17 homeowners multiperil, commercial multiperil, and mobile
18 homes, and including liability coverage on all such insurance,
19 but excluding inland marine as defined in s. 624.607(3) and
20 excluding vehicle insurance as defined in s. 624.605(1) other
21 than insurance on mobile homes used as permanent dwellings.

22 g. The Florida Surplus Lines Service Office shall
23 determine annually the aggregate statewide written premium in
24 subject lines of business procured by assessable insureds and
25 shall report that information to the corporation in a form and
26 at a time the corporation specifies to ensure that the
27 corporation can meet the requirements of this subsection and
28 the corporation's financing obligations.

29 h. The Florida Surplus Lines Service Office shall
30 verify the proper application by surplus lines agents of
31 assessment percentages for regular assessments and emergency

1 assessments levied under this subparagraph on assessable
2 insureds and shall assist the corporation in ensuring the
3 accurate, timely collection and payment of assessments by
4 surplus lines agents as required by the corporation.

5 (c) The plan of operation of the corporation:

6 1. Must provide for adoption of residential property
7 and casualty insurance policy forms and commercial residential
8 and nonresidential property insurance forms, which forms must
9 be approved by the office ~~department~~ prior to use. The
10 corporation shall adopt the following policy forms:

11 a. Standard personal lines policy forms that are
12 comprehensive multiperil policies providing full coverage of a
13 residential property equivalent to the coverage provided in
14 the private insurance market under an HO-3, HO-4, or HO-6
15 policy.

16 b. Basic personal lines policy forms that are policies
17 similar to an HO-8 policy or a dwelling fire policy that
18 provide coverage meeting the requirements of the secondary
19 mortgage market, but which coverage is more limited than the
20 coverage under a standard policy.

21 c. Commercial lines residential policy forms that are
22 generally similar to the basic perils of full coverage
23 obtainable for commercial residential structures in the
24 admitted voluntary market.

25 d. Personal lines and commercial lines residential
26 property insurance forms that cover the peril of wind only.
27 The forms are applicable only to residential properties
28 located in areas eligible for coverage under the high-risk
29 account referred to in sub-subparagraph (b)2.a.

30 e. Commercial lines nonresidential property insurance
31 forms that cover the peril of wind only. The forms are

1 applicable only to nonresidential properties located in areas
2 eligible for coverage under the high-risk account referred to
3 in sub-subparagraph (b)2.a.

4 2.a. Must provide that the corporation adopt a program
5 in which the corporation and authorized insurers enter into
6 quota share primary insurance agreements for hurricane
7 coverage, as defined in s. 627.4025(2)(a), for eligible risks,
8 and adopt property insurance forms for eligible risks which
9 cover the peril of wind only. As used in this subsection, the
10 term:

11 (I) "Quota share primary insurance" means an
12 arrangement in which the primary hurricane coverage of an
13 eligible risk is provided in specified percentages by the
14 corporation and an authorized insurer. The corporation and
15 authorized insurer are each solely responsible for a specified
16 percentage of hurricane coverage of an eligible risk as set
17 forth in a quota share primary insurance agreement between the
18 corporation and an authorized insurer and the insurance
19 contract. The responsibility of the corporation or authorized
20 insurer to pay its specified percentage of hurricane losses of
21 an eligible risk, as set forth in the quota share primary
22 insurance agreement, may not be altered by the inability of
23 the other party to the agreement to pay its specified
24 percentage of hurricane losses. Eligible risks that are
25 provided hurricane coverage through a quota share primary
26 insurance arrangement must be provided policy forms that set
27 forth the obligations of the corporation and authorized
28 insurer under the arrangement, clearly specify the percentages
29 of quota share primary insurance provided by the corporation
30 and authorized insurer, and conspicuously and clearly state
31 that neither the authorized insurer nor the corporation may be

1 held responsible beyond its specified percentage of coverage
2 of hurricane losses.

3 (II) "Eligible risks" means personal lines residential
4 and commercial lines residential risks that meet the
5 underwriting criteria of the corporation and are located in
6 areas that were eligible for coverage by the Florida Windstorm
7 Underwriting Association on January 1, 2002.

8 b. The corporation may enter into quota share primary
9 insurance agreements with authorized insurers at corporation
10 coverage levels of 90 percent and 50 percent.

11 c. If the corporation determines that additional
12 coverage levels are necessary to maximize participation in
13 quota share primary insurance agreements by authorized
14 insurers, the corporation may establish additional coverage
15 levels. However, the corporation's quota share primary
16 insurance coverage level may not exceed 90 percent.

17 d. Any quota share primary insurance agreement entered
18 into between an authorized insurer and the corporation must
19 provide for a uniform specified percentage of coverage of
20 hurricane losses, by county or territory as set forth by the
21 corporation board, for all eligible risks of the authorized
22 insurer covered under the quota share primary insurance
23 agreement.

24 e. Any quota share primary insurance agreement entered
25 into between an authorized insurer and the corporation is
26 subject to review and approval by the office ~~department~~.
27 However, such agreement shall be authorized only as to
28 insurance contracts entered into between an authorized insurer
29 and an insured who is already insured by the corporation for
30 wind coverage.

31

1 f. For all eligible risks covered under quota share
2 primary insurance agreements, the exposure and coverage levels
3 for both the corporation and authorized insurers shall be
4 reported by the corporation to the Florida Hurricane
5 Catastrophe Fund. For all policies of eligible risks covered
6 under quota share primary insurance agreements, the
7 corporation and the authorized insurer shall maintain complete
8 and accurate records for the purpose of exposure and loss
9 reimbursement audits as required by Florida Hurricane
10 Catastrophe Fund rules. The corporation and the authorized
11 insurer shall each maintain duplicate copies of policy
12 declaration pages and supporting claims documents.

13 g. The corporation board shall establish in its plan
14 of operation standards for quota share agreements which ensure
15 that there is no discriminatory application among insurers as
16 to the terms of quota share agreements, pricing of quota share
17 agreements, incentive provisions if any, and consideration
18 paid for servicing policies or adjusting claims.

19 h. The quota share primary insurance agreement between
20 the corporation and an authorized insurer must set forth the
21 specific terms under which coverage is provided, including,
22 but not limited to, the sale and servicing of policies issued
23 under the agreement by the insurance agent of the authorized
24 insurer producing the business, the reporting of information
25 concerning eligible risks, the payment of premium to the
26 corporation, and arrangements for the adjustment and payment
27 of hurricane claims incurred on eligible risks by the claims
28 adjuster and personnel of the authorized insurer. Entering
29 into a quota sharing insurance agreement between the
30 corporation and an authorized insurer shall be voluntary and
31 at the discretion of the authorized insurer.

1 3. May provide that the corporation may employ or
2 otherwise contract with individuals or other entities to
3 provide administrative or professional services that may be
4 appropriate to effectuate the plan. The corporation shall have
5 the power to borrow funds, by issuing bonds or by incurring
6 other indebtedness, and shall have other powers reasonably
7 necessary to effectuate the requirements of this subsection.
8 The corporation may, but is not required to, seek judicial
9 validation of its bonds or other indebtedness under chapter
10 75. The corporation may issue bonds or incur other
11 indebtedness, or have bonds issued on its behalf by a unit of
12 local government pursuant to subparagraph (g)2., in the
13 absence of a hurricane or other weather-related event, upon a
14 determination by the corporation, subject to approval by the
15 office ~~department~~, that such action would enable it to
16 efficiently meet the financial obligations of the corporation
17 and that such financings are reasonably necessary to
18 effectuate the requirements of this subsection. The
19 corporation is authorized to take all actions needed to
20 facilitate tax-free status for any such bonds or indebtedness,
21 including formation of trusts or other affiliated entities.
22 The corporation shall have the authority to pledge
23 assessments, projected recoveries from the Florida Hurricane
24 Catastrophe Fund, other reinsurance recoverables, market
25 equalization and other surcharges, and other funds available
26 to the corporation as security for bonds or other
27 indebtedness. In recognition of s. 10, Art. I of the State
28 Constitution, prohibiting the impairment of obligations of
29 contracts, it is the intent of the Legislature that no action
30 be taken whose purpose is to impair any bond indenture or
31

1 financing agreement or any revenue source committed by
2 contract to such bond or other indebtedness.

3 4.a. Must require that the corporation operate subject
4 to the supervision and approval of a board of governors
5 consisting of 7 individuals who are residents of this state,
6 from different geographical areas of this state, appointed by
7 the Chief Financial Officer ~~Treasurer~~. The Chief Financial
8 Officer ~~Treasurer~~ shall designate one of the appointees as
9 chair. All board members serve at the pleasure of the Chief
10 Financial Officer ~~Treasurer~~. All board members, including the
11 chair, must be appointed to serve for 3-year terms beginning
12 annually on a date designated by the plan. Any board vacancy
13 shall be filled for the unexpired term by the Chief Financial
14 Officer ~~Treasurer~~. The Chief Financial Officer ~~Treasurer~~ shall
15 appoint a technical advisory group to provide information and
16 advice to the board of governors in connection with the
17 board's duties under this subsection. The executive director
18 and senior managers of the corporation shall be engaged by the
19 Chief Financial Officer ~~Treasurer~~ and serve at the pleasure of
20 the Chief Financial Officer ~~Treasurer~~. The executive director
21 is responsible for employing other staff as the corporation
22 may require, subject to review and concurrence by the Office
23 of the Chief Financial Officer ~~Treasurer~~.

24 b. ~~To ensure the effective and efficient~~
25 ~~implementation of this subsection, the Treasurer shall appoint~~
26 ~~the board of governors by July 1, 2002. The board of governors~~
27 ~~shall work in conjunction with the Residential Property~~
28 ~~Insurance Market Coordinating Council to address appropriate~~
29 ~~organizational, operational, and financial matters relating to~~
30 ~~the corporation. In addition, after consultation with the~~
31 ~~Residential Property Insurance Market Coordinating Council,~~

1 ~~the bond trustees and rating agencies, the Treasurer may~~
2 ~~postpone for a period not to exceed 180 days after the~~
3 ~~effective date, the implementation of the corporation or the~~
4 ~~implementation of one or more of the provisions relating to~~
5 ~~transfer of Florida Windstorm Underwriting Association~~
6 ~~policies, obligations, rights, assets, and liabilities into~~
7 ~~the high-risk accounts and such other provisions that may be~~
8 ~~affected thereby if the Treasurer determines that postponement~~
9 ~~is necessary;~~

10 ~~(I) Due to emergency conditions;~~

11 ~~(II) To ensure the effective and efficient~~
12 ~~implementation of the corporation's operations; or~~

13 ~~(III) To maintain existing financing arrangements~~

14 ~~without a material adverse effect on the creditors of the~~
15 ~~Residential Property and Casualty Joint Underwriting~~
16 ~~Association or the Florida Windstorm Underwriting Association.~~

17 5. Must provide a procedure for determining the
18 eligibility of a risk for coverage, as follows:

19 a. Subject to the provisions of s. 627.3517, with
20 respect to personal lines residential risks, if the risk is
21 offered coverage from an authorized insurer at the insurer's
22 approved rate under either a standard policy including wind
23 coverage or, if consistent with the insurer's underwriting
24 rules as filed with the office department, a basic policy
25 including wind coverage, the risk is not eligible for any
26 policy issued by the corporation association. If the risk is
27 not able to obtain any such offer, the risk is eligible for
28 either a standard policy including wind coverage or a basic
29 policy including wind coverage issued by the corporation
30 association; however, if the risk could not be insured under a
31 standard policy including wind coverage regardless of market

1 conditions, the risk shall be eligible for a basic policy
2 including wind coverage unless rejected under subparagraph 8.
3 The corporation ~~association~~ shall determine the type of policy
4 to be provided on the basis of objective standards specified
5 in the underwriting manual and based on generally accepted
6 underwriting practices.

7 (I) If the risk accepts an offer of coverage through
8 the market assistance plan or an offer of coverage through a
9 mechanism established by the corporation ~~association~~ before a
10 policy is issued to the risk by the corporation ~~association~~ or
11 during the first 30 days of coverage by the corporation
12 ~~association~~, and the producing agent who submitted the
13 application to the plan or to the corporation ~~association~~ is
14 not currently appointed by the insurer, the insurer shall:

15 (A) Pay to the producing agent of record of the
16 policy, for the first year, an amount that is the greater of
17 the insurer's usual and customary commission for the type of
18 policy written or a fee equal to the usual and customary
19 commission of the corporation ~~association~~; or

20 (B) Offer to allow the producing agent of record of
21 the policy to continue servicing the policy for a period of
22 not less than 1 year and offer to pay the agent the greater of
23 the insurer's or the corporation's ~~association's~~ usual and
24 customary commission for the type of policy written.

25
26 If the producing agent is unwilling or unable to accept
27 appointment, the new insurer shall pay the agent in accordance
28 with sub-sub-sub-subparagraph (A).

29 (II) When the corporation ~~association~~ enters into a
30 contractual agreement for a take-out plan, the producing agent
31 of record of the corporation ~~association~~ policy is entitled to

1 retain any unearned commission on the policy, and the insurer
2 shall:

3 (A) Pay to the producing agent of record of the
4 corporation ~~association~~ policy, for the first year, an amount
5 that is the greater of the insurer's usual and customary
6 commission for the type of policy written or a fee equal to
7 the usual and customary commission of the corporation
8 ~~association~~; or

9 (B) Offer to allow the producing agent of record of
10 the corporation ~~association~~ policy to continue servicing the
11 policy for a period of not less than 1 year and offer to pay
12 the agent the greater of the insurer's or the corporation's
13 ~~association's~~ usual and customary commission for the type of
14 policy written.

15
16 If the producing agent is unwilling or unable to accept
17 appointment, the new insurer shall pay the agent in accordance
18 with sub-sub-sub-subparagraph (A).

19 b. With respect to commercial lines residential risks,
20 if the risk is offered coverage under a policy including wind
21 coverage from an authorized insurer at its approved rate, the
22 risk is not eligible for any policy issued by the corporation
23 ~~association~~. If the risk is not able to obtain any such offer,
24 the risk is eligible for a policy including wind coverage
25 issued by the corporation ~~association~~.

26 (I) If the risk accepts an offer of coverage through
27 the market assistance plan or an offer of coverage through a
28 mechanism established by the corporation ~~association~~ before a
29 policy is issued to the risk by the corporation ~~association~~ or
30 during the first 30 days of coverage by the corporation
31 ~~association~~, and the producing agent who submitted the

1 application to the plan or the corporation ~~association~~ is not
2 currently appointed by the insurer, the insurer shall:

3 (A) Pay to the producing agent of record of the
4 policy, for the first year, an amount that is the greater of
5 the insurer's usual and customary commission for the type of
6 policy written or a fee equal to the usual and customary
7 commission of the corporation ~~association~~; or

8 (B) Offer to allow the producing agent of record of
9 the policy to continue servicing the policy for a period of
10 not less than 1 year and offer to pay the agent the greater of
11 the insurer's or the corporation's ~~association's~~ usual and
12 customary commission for the type of policy written.

13

14 If the producing agent is unwilling or unable to accept
15 appointment, the new insurer shall pay the agent in accordance
16 with sub-sub-sub-subparagraph (A).

17 (II) When the corporation ~~association~~ enters into a
18 contractual agreement for a take-out plan, the producing agent
19 of record of the corporation ~~association~~ policy is entitled to
20 retain any unearned commission on the policy, and the insurer
21 shall:

22 (A) Pay to the producing agent of record of the
23 corporation ~~association~~ policy, for the first year, an amount
24 that is the greater of the insurer's usual and customary
25 commission for the type of policy written or a fee equal to
26 the usual and customary commission of the corporation
27 ~~association~~; or

28 (B) Offer to allow the producing agent of record of
29 the corporation ~~association~~ policy to continue servicing the
30 policy for a period of not less than 1 year and offer to pay
31 the agent the greater of the insurer's or the corporation's

1 ~~association's~~ usual and customary commission for the type of
2 policy written.

3
4 If the producing agent is unwilling or unable to accept
5 appointment, the new insurer shall pay the agent in accordance
6 with sub-sub-sub-subparagraph (A).

7 ~~c. This subparagraph does not require the association~~
8 ~~to provide wind coverage or hurricane coverage in any area in~~
9 ~~which such coverage is available through the Florida Windstorm~~
10 ~~Underwriting Association.~~

11 6. Must include rules for classifications of risks and
12 rates therefor.

13 7. Must provide that if premium and investment income
14 for an account attributable to a particular calendar year are
15 in excess of projected losses and expenses for the account
16 attributable to that year, such excess shall be held in
17 surplus in the account. Such surplus shall be available to
18 defray deficits in that account as to future years and shall
19 be used for that purpose prior to assessing assessable
20 insurers and assessable insureds as to any calendar year.

21 8. Must provide objective criteria and procedures to
22 be uniformly applied for all applicants in determining whether
23 an individual risk is so hazardous as to be uninsurable. In
24 making this determination and in establishing the criteria and
25 procedures, the following shall be considered:

26 a. Whether the likelihood of a loss for the individual
27 risk is substantially higher than for other risks of the same
28 class; and

29 b. Whether the uncertainty associated with the
30 individual risk is such that an appropriate premium cannot be
31 determined.

1
2 The acceptance or rejection of a risk by the corporation shall
3 be construed as the private placement of insurance, and the
4 provisions of chapter 120 shall not apply.

5 9. Must provide that the corporation shall make its
6 best efforts to procure catastrophe reinsurance at reasonable
7 rates, as determined by the board of governors.

8 10. Must provide that in the event of regular deficit
9 assessments under sub-subparagraph (b)3.a. or sub-subparagraph
10 (b)3.b., in the personal lines account, the commercial lines
11 residential account, or the high-risk account, the corporation
12 shall levy upon corporation policyholders in its next rate
13 filing, or by a separate rate filing solely for this purpose,
14 a market equalization surcharge arising from a regular
15 assessment in such account in a percentage equal to the total
16 amount of such regular assessments divided by the aggregate
17 statewide direct written premium for subject lines of business
18 for the prior calendar year. Market equalization surcharges
19 under this subparagraph are not considered premium and are not
20 subject to commissions, fees, or premium taxes; however,
21 failure to pay a market equalization surcharge shall be
22 treated as failure to pay premium.

23 11. The policies issued by the corporation must
24 provide that, if the corporation or the market assistance plan
25 obtains an offer from an authorized insurer to cover the risk
26 at its approved rates, the risk is no longer eligible for
27 renewal through the corporation.

28 12. Corporation policies and applications must include
29 a notice that the corporation policy could, under this
30 section, be replaced with a policy issued by an authorized
31 insurer that does not provide coverage identical to the

1 coverage provided by the corporation. The notice shall also
2 specify that acceptance of corporation coverage creates a
3 conclusive presumption that the applicant or policyholder is
4 aware of this potential.

5 13. May establish, subject to approval by the office
6 ~~department~~, different eligibility requirements and operational
7 procedures for any line or type of coverage for any specified
8 county or area if the board determines that such changes to
9 the eligibility requirements and operational procedures are
10 justified due to the voluntary market being sufficiently
11 stable and competitive in such area or for such line or type
12 of coverage and that consumers who, in good faith, are unable
13 to obtain insurance through the voluntary market through
14 ordinary methods would continue to have access to coverage
15 from the corporation. When coverage is sought in connection
16 with a real property transfer, such requirements and
17 procedures shall not provide for an effective date of coverage
18 later than the date of the closing of the transfer as
19 established by the transferor, the transferee, and, if
20 applicable, the lender.

21 14. Must provide that, with respect to the high-risk
22 account, any assessable insurer with a surplus as to
23 policyholders of \$25 million or less writing 25 percent or
24 more of its total countrywide property insurance premiums in
25 this state may petition the office ~~department~~, within the
26 first 90 days of each calendar year, to qualify as a limited
27 apportionment company. In no event shall a limited
28 apportionment company be required to participate in the
29 portion of any assessment, within the high-risk account,
30 pursuant to sub-subparagraph (b)3.a. or sub-subparagraph
31 (b)3.b. in the aggregate which exceeds \$50 million after

1 payment of available high-risk account funds in any calendar
2 year. However, a limited apportionment company shall collect
3 from its policyholders any emergency assessment imposed under
4 sub-subparagraph (b)3.d. The plan shall provide that, if the
5 office ~~department~~ determines that any regular assessment will
6 result in an impairment of the surplus of a limited
7 apportionment company, the office ~~department~~ may direct that
8 all or part of such assessment be deferred as provided in
9 subparagraph (g)4. However, there shall be no limitation or
10 deferment of an emergency assessment to be collected from
11 policyholders under sub-subparagraph (b)3.d.

12 15. Must provide that the corporation appoint as its
13 licensed agents only those agents who also hold an appointment
14 as defined in s. 626.104 with an insurer who at the time of
15 the agent's initial appointment by the corporation is
16 authorized to write and is actually writing personal lines
17 residential property coverage, commercial residential property
18 coverage, or commercial nonresidential property coverage
19 within the state.

20 (d)1. It is the intent of the Legislature that the
21 rates for coverage provided by the corporation be actuarially
22 sound and not competitive with approved rates charged in the
23 admitted voluntary market, so that the corporation functions
24 as a residual market mechanism to provide insurance only when
25 the insurance cannot be procured in the voluntary market.
26 Rates shall include an appropriate catastrophe loading factor
27 that reflects the actual catastrophic exposure of the
28 corporation.

29 2. For each county, the average rates of the
30 corporation for each line of business for personal lines
31 residential policies excluding rates for wind-only policies

1 shall be no lower than the average rates charged by the
2 insurer that had the highest average rate in that county among
3 the 20 insurers with the greatest total direct written premium
4 in the state for that line of business in the preceding year,
5 except that with respect to mobile home coverages, the average
6 rates of the corporation shall be no lower than the average
7 rates charged by the insurer that had the highest average rate
8 in that county among the 5 insurers with the greatest total
9 written premium for mobile home owner's policies in the state
10 in the preceding year.

11 3. Rates for personal lines residential wind-only
12 policies must be actuarially sound and not competitive with
13 approved rates charged by authorized insurers. However, for
14 personal lines residential wind-only policies issued or
15 renewed between July 1, 2002, and June 30, 2003, the maximum
16 premium increase must be no greater than 10 percent of the
17 Florida Windstorm Underwriting Association premium for that
18 policy in effect on June 30, 2002, as adjusted for coverage
19 changes and seasonal occupancy surcharges. The personal lines
20 residential wind-only rates for the corporation effective July
21 1, 2003, must be based on a rate filing by the corporation
22 which establishes rates which are actuarially sound and not
23 competitive with approved rates charged by authorized
24 insurers. Corporation rate manuals shall include a rate
25 surcharge for seasonal occupancy. To ensure that personal
26 lines residential wind-only rates effective on or after July
27 1, 2003, are not competitive with approved rates charged by
28 authorized insurers, the office department, by March 1 of each
29 year, shall provide the corporation, for each county in which
30 there are geographical areas in which personal lines
31 residential wind-only policies may be issued, the average

1 rates charged by the insurer that had the highest average rate
2 in that county for wind coverage in that insurer's rating
3 territories which most closely approximate the geographical
4 area in that county in which personal lines residential
5 wind-only policies may be written by the corporation. The
6 average rates provided must be from an insurer among the 20
7 insurers with the greatest total direct written premium in the
8 state for personal lines residential property insurance for
9 the preceding year. With respect to mobile homes, the five
10 insurers with the greatest total written premium for that line
11 of business in the preceding year shall be used. The
12 corporation shall certify to the office ~~department~~ that its
13 average personal lines residential wind-only rates are no
14 lower in each county than the average rates provided by the
15 office ~~department~~. The commission may ~~department is authorized~~
16 ~~to~~ adopt rules to establish reporting requirements to obtain
17 the necessary wind-only rate information from insurers to
18 implement this provision.

19 4. Rates for commercial lines coverage shall not be
20 subject to the requirements of subparagraph 2., but shall be
21 subject to all other requirements of this paragraph and s.
22 627.062.

23 5. Nothing in this paragraph shall require or allow
24 the corporation to adopt a rate that is inadequate under s.
25 627.062.

26 6. The corporation shall make a rate filing at least
27 once a year, but no more often than quarterly.

28 7. In addition to the rates otherwise determined
29 pursuant to this paragraph, the corporation shall impose and
30 collect an amount equal to the premium tax provided for in s.
31 624.509 to augment the financial resources of the corporation.

1 (e) If coverage in an account is deactivated pursuant
2 to paragraph (f), coverage through the corporation shall be
3 reactivated by order of the office ~~department~~ only under one
4 of the following circumstances:

5 1. If the market assistance plan receives a minimum of
6 100 applications for coverage within a 3-month period, or 200
7 applications for coverage within a 1-year period or less for
8 residential coverage, unless the market assistance plan
9 provides a quotation from admitted carriers at their filed
10 rates for at least 90 percent of such applicants. Any market
11 assistance plan application that is rejected because an
12 individual risk is so hazardous as to be uninsurable using the
13 criteria specified in subparagraph (c)8. shall not be included
14 in the minimum percentage calculation provided herein. In the
15 event that there is a legal or administrative challenge to a
16 determination by the office ~~department~~ that the conditions of
17 this subparagraph have been met for eligibility for coverage
18 in the corporation, any eligible risk may obtain coverage
19 during the pendency of such challenge.

20 2. In response to a state of emergency declared by the
21 Governor under s. 252.36, the office ~~department~~ may activate
22 coverage by order for the period of the emergency upon a
23 finding by the office ~~department~~ that the emergency
24 significantly affects the availability of residential property
25 insurance.

26 (f)1. The corporation shall file with the office
27 ~~department~~ quarterly statements of financial condition, an
28 annual statement of financial condition, and audited financial
29 statements in the manner prescribed by law. In addition, the
30 corporation shall report to the office ~~department~~ monthly on
31 the types, premium, exposure, and distribution by county of

1 its policies in force, and shall submit other reports as the
2 office ~~department~~ requires to carry out its oversight of the
3 corporation.

4 2. The activities of the corporation shall be reviewed
5 at least annually by the office ~~department~~ to determine
6 whether coverage shall be deactivated in an account on the
7 basis that the conditions giving rise to its activation no
8 longer exist.

9 (g)1. The corporation shall certify to the office
10 ~~department~~ its needs for annual assessments as to a particular
11 calendar year, and for any interim assessments that it deems
12 to be necessary to sustain operations as to a particular year
13 pending the receipt of annual assessments. Upon verification,
14 the office ~~department~~ shall approve such certification, and
15 the corporation shall levy such annual or interim assessments.
16 Such assessments shall be prorated as provided in paragraph
17 (b). The corporation shall take all reasonable and prudent
18 steps necessary to collect the amount of assessment due from
19 each assessable insurer, including, if prudent, filing suit to
20 collect such assessment. If the corporation is unable to
21 collect an assessment from any assessable insurer, the
22 uncollected assessments shall be levied as an additional
23 assessment against the assessable insurers and any assessable
24 insurer required to pay an additional assessment as a result
25 of such failure to pay shall have a cause of action against
26 such nonpaying assessable insurer. Assessments shall be
27 included as an appropriate factor in the making of rates. The
28 failure of a surplus lines agent to collect and remit any
29 regular or emergency assessment levied by the corporation is
30 considered to be a violation of s. 626.936 and subjects the
31 surplus lines agent to the penalties provided in that section.

1 2. The governing body of any unit of local government,
2 any residents of which are insured by the corporation, may
3 issue bonds as defined in s. 125.013 or s. 166.101 from time
4 to time to fund an assistance program, in conjunction with the
5 corporation, for the purpose of defraying deficits of the
6 corporation. In order to avoid needless and indiscriminate
7 proliferation, duplication, and fragmentation of such
8 assistance programs, any unit of local government, any
9 residents of which are insured by the corporation, may provide
10 for the payment of losses, regardless of whether or not the
11 losses occurred within or outside of the territorial
12 jurisdiction of the local government. Revenue bonds under this
13 subparagraph may not be issued until validated pursuant to
14 chapter 75, unless a state of emergency is declared by
15 executive order or proclamation of the Governor pursuant to s.
16 252.36 making such findings as are necessary to determine that
17 it is in the best interests of, and necessary for, the
18 protection of the public health, safety, and general welfare
19 of residents of this state and declaring it an essential
20 public purpose to permit certain municipalities or counties to
21 issue such bonds as will permit relief to claimants and
22 policyholders of the corporation. Any such unit of local
23 government may enter into such contracts with the corporation
24 and with any other entity created pursuant to this subsection
25 as are necessary to carry out this paragraph. Any bonds issued
26 under this subparagraph shall be payable from and secured by
27 moneys received by the corporation from emergency assessments
28 under sub-subparagraph (b)3.d., and assigned and pledged to or
29 on behalf of the unit of local government for the benefit of
30 the holders of such bonds. The funds, credit, property, and
31 taxing power of the state or of the unit of local government

1 shall not be pledged for the payment of such bonds. If any of
2 the bonds remain unsold 60 days after issuance, the office
3 ~~department~~ shall require all insurers subject to assessment to
4 purchase the bonds, which shall be treated as admitted assets;
5 each insurer shall be required to purchase that percentage of
6 the unsold portion of the bond issue that equals the insurer's
7 relative share of assessment liability under this subsection.
8 An insurer shall not be required to purchase the bonds to the
9 extent that the office ~~department~~ determines that the purchase
10 would endanger or impair the solvency of the insurer.

11 3.a. The corporation shall adopt one or more programs
12 subject to approval by the office ~~department~~ for the reduction
13 of both new and renewal writings in the corporation. The
14 corporation may consider any prudent and not unfairly
15 discriminatory approach to reducing corporation writings, and
16 may adopt a credit against assessment liability or other
17 liability that provides an incentive for insurers to take
18 risks out of the corporation and to keep risks out of the
19 corporation by maintaining or increasing voluntary writings in
20 counties or areas in which corporation risks are highly
21 concentrated and a program to provide a formula under which an
22 insurer voluntarily taking risks out of the corporation by
23 maintaining or increasing voluntary writings will be relieved
24 wholly or partially from assessments under sub-subparagraphs
25 (b)3.a. and b. When the corporation enters into a contractual
26 agreement for a take-out plan, the producing agent of record
27 of the corporation policy is entitled to retain any unearned
28 commission on such policy, and the insurer shall either:

29 (I) Pay to the producing agent of record of the
30 policy, for the first year, an amount which is the greater of
31 the insurer's usual and customary commission for the type of

1 policy written or a policy fee equal to the usual and
2 customary commission of the corporation; or
3 (II) Offer to allow the producing agent of record of
4 the policy to continue servicing the policy for a period of
5 not less than 1 year and offer to pay the agent the insurer's
6 usual and customary commission for the type of policy written.
7 If the producing agent is unwilling or unable to accept
8 appointment by the new insurer, the new insurer shall pay the
9 agent in accordance with sub-sub-subparagraph (I).
10 b. Any credit or exemption from regular assessments
11 adopted under this subparagraph shall last no longer than the
12 3 years following the cancellation or expiration of the policy
13 by the corporation. With the approval of the office
14 ~~department~~, the board may extend such credits for an
15 additional year if the insurer guarantees an additional year
16 of renewability for all policies removed from the corporation,
17 or for 2 additional years if the insurer guarantees 2
18 additional years of renewability for all policies so removed.
19 c. There shall be no credit, limitation, exemption, or
20 deferment from emergency assessments to be collected from
21 policyholders pursuant to sub-subparagraph (b)3.d.
22 4. The plan shall provide for the deferment, in whole
23 or in part, of the assessment of an assessable insurer, other
24 than an emergency assessment collected from policyholders
25 pursuant to sub-subparagraph (b)3.d., if the office ~~department~~
26 finds that payment of the assessment would endanger or impair
27 the solvency of the insurer. In the event an assessment
28 against an assessable insurer is deferred in whole or in part,
29 the amount by which such assessment is deferred may be
30 assessed against the other assessable insurers in a manner
31

1 consistent with the basis for assessments set forth in
2 paragraph (b).

3 (h) Nothing in this subsection shall be construed to
4 preclude the issuance of residential property insurance
5 coverage pursuant to part VIII of chapter 626.

6 (i) There shall be no liability on the part of, and no
7 cause of action of any nature shall arise against, any
8 assessable insurer or its agents or employees, the corporation
9 or its agents or employees, members of the board of governors
10 or their respective designees at a board meeting, corporation
11 committee members, or the office ~~department~~ or its
12 representatives, for any action taken by them in the
13 performance of their duties or responsibilities under this
14 subsection. Such immunity does not apply to:

15 1. Any of the foregoing persons or entities for any
16 willful tort;

17 2. The corporation or its producing agents for breach
18 of any contract or agreement pertaining to insurance coverage;

19 3. The corporation with respect to issuance or payment
20 of debt; or

21 4. Any assessable insurer with respect to any action
22 to enforce an assessable insurer's obligations to the
23 corporation under this subsection.

24 (j) For the purposes of s. 199.183(1), the corporation
25 shall be considered a political subdivision of the state and
26 shall be exempt from the corporate income tax. The premiums,
27 assessments, investment income, and other revenue of the
28 corporation are funds received for providing property
29 insurance coverage as required by this subsection, paying
30 claims for Florida citizens insured by the corporation,
31 securing and repaying debt obligations issued by the

1 corporation, and conducting all other activities of the
2 corporation, and shall not be considered taxes, fees,
3 licenses, or charges for services imposed by the Legislature
4 on individuals, businesses, or agencies outside state
5 government. Bonds and other debt obligations issued by or on
6 behalf of the corporation are not to be considered "state
7 bonds" within the meaning of s. 215.58(8)~~s. 215.58(10)~~. The
8 corporation is not subject to the procurement provisions of
9 chapter 287, and policies and decisions of the corporation
10 relating to incurring debt, levying of assessments and the
11 sale, issuance, continuation, terms and claims under
12 corporation policies, and all services relating thereto, are
13 not subject to the provisions of chapter 120. The corporation
14 is not required to obtain or to hold a certificate of
15 authority issued by the office ~~department~~, nor is it required
16 to participate as a member insurer of the Florida Insurance
17 Guaranty Association. However, the corporation is required to
18 pay, in the same manner as an authorized insurer, assessments
19 pledged by the Florida Insurance Guaranty Association to
20 secure bonds issued or other indebtedness incurred to pay
21 covered claims arising from insurer insolvencies caused by, or
22 proximately related to, hurricane losses. It is the intent of
23 the Legislature that the tax exemptions provided in this
24 paragraph will augment the financial resources of the
25 corporation to better enable the corporation to fulfill its
26 public purposes. Any bonds issued by the corporation, their
27 transfer, and the income therefrom, including any profit made
28 on the sale thereof, shall at all times be free from taxation
29 of every kind by the state and any political subdivision or
30 local unit or other instrumentality thereof; however, this
31 exemption does not apply to any tax imposed by chapter 220

1 ~~chapter 200~~ on interest, income, or profits on debt
2 obligations owned by corporations other than the corporation.
3 (k) Upon a determination by the office ~~department~~ that
4 the conditions giving rise to the establishment and activation
5 of the corporation no longer exist, the corporation is
6 dissolved. Upon dissolution, the assets of the corporation
7 ~~association~~ shall be applied first to pay all debts,
8 liabilities, and obligations of the corporation, including the
9 establishment of reasonable reserves for any contingent
10 liabilities or obligations, and all remaining assets of the
11 corporation shall become property of the state and be
12 deposited in the Florida Hurricane Catastrophe Fund. However,
13 no dissolution shall take effect as long as the corporation
14 has bonds or other financial obligations outstanding unless
15 adequate provision has been made for the payment of the bonds
16 or other financial obligations pursuant to the documents
17 authorizing the issuance of the bonds or other financial
18 obligations.

19 (l)1. Effective July 1, 2002, policies of the
20 Residential Property and Casualty Joint Underwriting
21 Association shall become policies of the corporation. All
22 obligations, rights, assets and liabilities of the Residential
23 Property and Casualty Joint Underwriting Association,
24 including bonds, note and debt obligations, and the financing
25 documents pertaining to them become those of the corporation
26 as of July 1, 2002. The corporation is not required to issue
27 endorsements or certificates of assumption to insureds during
28 the remaining term of in-force transferred policies.

29 2. Effective July 1, 2002, policies of the Florida
30 Windstorm Underwriting Association are transferred to the
31 corporation and shall become policies of the corporation. All

1 obligations, rights, assets, and liabilities of the Florida
2 Windstorm Underwriting Association, including bonds, note, and
3 debt obligations, and the financing documents pertaining to
4 them are transferred to and assumed by the corporation on July
5 1, 2002. The corporation is not required to issue endorsement
6 or certificates of assumption to insureds during the remaining
7 term of in-force transferred policies.

8 3. The Florida Windstorm Underwriting Association and
9 the Residential Property and Casualty Joint Underwriting
10 Association shall take all actions as may be proper to further
11 evidence the transfers and shall provide the documents and
12 instruments of further assurance as may reasonably be
13 requested by the corporation for that purpose. The corporation
14 shall execute assumptions and instruments as the trustees or
15 other parties to the financing documents of the Florida
16 Windstorm Underwriting Association or the Residential Property
17 and Casualty Joint Underwriting Association may reasonably
18 request to further evidence the transfers and assumptions,
19 which transfers and assumptions, however, are effective on the
20 date provided under this paragraph whether or not, and
21 regardless of the date on which, the assumptions or
22 instruments are executed by the corporation. Subject to the
23 relevant financing documents pertaining to their outstanding
24 bonds, notes, indebtedness, or other financing obligations,
25 the moneys, investments, receivables, choses in action, and
26 other intangibles of the Florida Windstorm Underwriting
27 Association shall be credited to the high-risk account of the
28 corporation, and those of the personal lines residential
29 coverage account and the commercial lines residential coverage
30 account of the Residential Property and Casualty Joint
31 Underwriting Association shall be credited to the personal

1 lines account and the commercial lines account, respectively,
2 of the corporation.

3 4. Effective July 1, 2002, a new applicant for
4 property insurance coverage who would otherwise have been
5 eligible for coverage in the Florida Windstorm Underwriting
6 Association is eligible for coverage from the corporation as
7 provided in this subsection.

8 5. The transfer of all policies, obligations, rights,
9 assets, and liabilities from the Florida Windstorm
10 Underwriting Association to the corporation and the renaming
11 of the Residential Property and Casualty Joint Underwriting
12 Association as the corporation shall in no way affect the
13 coverage with respect to covered policies as defined in s.
14 215.555(2)(c) provided to these entities by the Florida
15 Hurricane Catastrophe Fund. The coverage provided by the
16 Florida Hurricane Catastrophe Fund to the Florida Windstorm
17 Underwriting Association based on its exposures as of June 30,
18 2002, and each June 30 thereafter shall be redesignated as
19 coverage for the high-risk account of the corporation.
20 Notwithstanding any other provision of law, the coverage
21 provided by the Florida Hurricane Catastrophe Fund to the
22 Residential Property and Casualty Joint Underwriting
23 Association based on its exposures as of June 30, 2002, and
24 each June 30 thereafter shall be transferred to the personal
25 lines account and the commercial lines account of the
26 corporation. Notwithstanding any other provision of law, the
27 high-risk account shall be treated, for all Florida Hurricane
28 Catastrophe Fund purposes, as if it were a separate
29 participating insurer with its own exposures, reimbursement
30 premium, and loss reimbursement. Likewise, the personal lines
31 and commercial lines accounts shall be viewed together, for

1 all Florida Hurricane Catastrophe Fund purposes, as if the two
2 accounts were one and represent a single, separate
3 participating insurer with its own exposures, reimbursement
4 premium, and loss reimbursement. The coverage provided by the
5 Florida Hurricane Catastrophe Fund to the corporation shall
6 constitute and operate as a full transfer of coverage from the
7 Florida Windstorm Underwriting Association and Residential
8 Property and Casualty Joint Underwriting to the corporation.

9 (m) Notwithstanding any other provision of law:

10 1. The pledge or sale of, the lien upon, and the
11 security interest in any rights, revenues, or other assets of
12 the corporation created or purported to be created pursuant to
13 any financing documents to secure any bonds or other
14 indebtedness of the corporation shall be and remain valid and
15 enforceable, notwithstanding the commencement of and during
16 the continuation of, and after, any rehabilitation,
17 insolvency, liquidation, bankruptcy, receivership,
18 conservatorship, reorganization, or similar proceeding against
19 the corporation under the laws of this state.

20 2. No such proceeding shall relieve the corporation of
21 its obligation, or otherwise affect its ability to perform its
22 obligation, to continue to collect, or levy and collect,
23 assessments, market equalization or other surcharges under
24 subparagraph (c)10., or any other rights, revenues, or other
25 assets of the corporation pledged pursuant to any financing
26 documents.

27 3. Each such pledge or sale of, lien upon, and
28 security interest in, including the priority of such pledge,
29 lien, or security interest, any such assessments, market
30 equalization or other surcharges, or other rights, revenues,
31 or other assets which are collected, or levied and collected,

1 after the commencement of and during the pendency of, or
2 after, any such proceeding shall continue unaffected by such
3 proceeding. As used in this subsection, the term "financing
4 documents" means any agreement or agreements, instrument or
5 instruments, or other document or documents now existing or
6 hereafter created evidencing any bonds or other indebtedness
7 of the corporation or pursuant to which any such bonds or
8 other indebtedness has been or may be issued and pursuant to
9 which any rights, revenues, or other assets of the corporation
10 are pledged or sold to secure the repayment of such bonds or
11 indebtedness, together with the payment of interest on such
12 bonds or such indebtedness, or the payment of any other
13 obligation or financial product, as defined in the plan of
14 operation of the corporation related to such bonds or
15 indebtedness.

16 4. Any such pledge or sale of assessments, revenues,
17 contract rights, or other rights or assets of the corporation
18 shall constitute a lien and security interest, or sale, as the
19 case may be, that is immediately effective and attaches to
20 such assessments, revenues, or contract rights or other rights
21 or assets, whether or not imposed or collected at the time the
22 pledge or sale is made. Any such pledge or sale is effective,
23 valid, binding, and enforceable against the corporation or
24 other entity making such pledge or sale, and valid and binding
25 against and superior to any competing claims or obligations
26 owed to any other person or entity, including policyholders in
27 this state, asserting rights in any such assessments,
28 revenues, or contract rights or other rights or assets to the
29 extent set forth in and in accordance with the terms of the
30 pledge or sale contained in the applicable financing
31 documents, whether or not any such person or entity has notice

1 of such pledge or sale and without the need for any physical
2 delivery, recordation, filing, or other action.

3 (n)1. The following records of the corporation are
4 confidential and exempt from the provisions of s. 119.07(1)
5 and s. 24(a), Art. I of the State Constitution:

6 a. Underwriting files, except that a policyholder or
7 an applicant shall have access to his or her own underwriting
8 files.

9 b. Claims files, until termination of all litigation
10 and settlement of all claims arising out of the same incident,
11 although portions of the claims files may remain exempt, as
12 otherwise provided by law. Confidential and exempt claims file
13 records may be released to other governmental agencies upon
14 written request and demonstration of need; such records held
15 by the receiving agency remain confidential and exempt as
16 provided for herein.

17 c. Records obtained or generated by an internal
18 auditor pursuant to a routine audit, until the audit is
19 completed, or if the audit is conducted as part of an
20 investigation, until the investigation is closed or ceases to
21 be active. An investigation is considered "active" while the
22 investigation is being conducted with a reasonable, good faith
23 belief that it could lead to the filing of administrative,
24 civil, or criminal proceedings.

25 d. Matters reasonably encompassed in privileged
26 attorney-client communications.

27 e. Proprietary information licensed to the corporation
28 under contract and the contract provides for the
29 confidentiality of such proprietary information.

30 f. All information relating to the medical condition
31 or medical status of a corporation employee which is not

1 relevant to the employee's capacity to perform his or her
2 duties, except as otherwise provided in this paragraph.
3 Information which is exempt shall include, but is not limited
4 to, information relating to workers' compensation, insurance
5 benefits, and retirement or disability benefits.

6 g. Upon an employee's entrance into the employee
7 assistance program, a program to assist any employee who has a
8 behavioral or medical disorder, substance abuse problem, or
9 emotional difficulty which affects the employee's job
10 performance, all records relative to that participation shall
11 be confidential and exempt from the provisions of s. 119.07(1)
12 and s. 24(a), Art. I of the State Constitution, except as
13 otherwise provided in s. 112.0455(11).

14 h. Information relating to negotiations for financing,
15 reinsurance, depopulation, or contractual services, until the
16 conclusion of the negotiations.

17 i. Minutes of closed meetings regarding underwriting
18 files, and minutes of closed meetings regarding an open claims
19 file until termination of all litigation and settlement of all
20 claims with regard to that claim, except that information
21 otherwise confidential or exempt by law will be redacted.

22
23 When an authorized insurer is considering underwriting a risk
24 insured by the corporation, relevant underwriting files and
25 confidential claims files may be released to the insurer
26 provided the insurer agrees in writing, notarized and under
27 oath, to maintain the confidentiality of such files. When a
28 file is transferred to an insurer that file is no longer a
29 public record because it is not held by an agency subject to
30 the provisions of the public records law. Underwriting files
31 and confidential claims files may also be released to staff of

1 and the board of governors of the market assistance plan
2 established pursuant to s. 627.3515, who must retain the
3 confidentiality of such files, except such files may be
4 released to authorized insurers that are considering assuming
5 the risks to which the files apply, provided the insurer
6 agrees in writing, notarized and under oath, to maintain the
7 confidentiality of such files. Finally, the corporation or
8 the board or staff of the market assistance plan may make the
9 following information obtained from underwriting files and
10 confidential claims files available to licensed general lines
11 insurance agents: name, address, and telephone number of the
12 residential property owner or insured; location of the risk;
13 rating information; loss history; and policy type. The
14 receiving licensed general lines insurance agent must retain
15 the confidentiality of the information received.

16 2. Portions of meetings of the corporation are exempt
17 from the provisions of s. 286.011 and s. 24(b), Art. I of the
18 State Constitution wherein confidential underwriting files or
19 confidential open claims files are discussed. All portions of
20 corporation meetings which are closed to the public shall be
21 recorded by a court reporter. The court reporter shall record
22 the times of commencement and termination of the meeting, all
23 discussion and proceedings, the names of all persons present
24 at any time, and the names of all persons speaking. No
25 portion of any closed meeting shall be off the record.
26 Subject to the provisions hereof and s. 119.07(2)(a), the
27 court reporter's notes of any closed meeting shall be retained
28 by the corporation for a minimum of 5 years. A copy of the
29 transcript, less any exempt matters, of any closed meeting
30 wherein claims are discussed shall become public as to
31 individual claims after settlement of the claim.

1 (o) It is the intent of the Legislature that the
2 amendments to this subsection enacted in 2002 should, over
3 time, reduce the probable maximum windstorm losses in the
4 residual markets and should reduce the potential assessments
5 to be levied on property insurers and policyholders statewide.
6 In furtherance of this intent:

7 1. The board shall, on or before February 1 of each
8 year, provide a report to the President of the Senate and the
9 Speaker of the House of Representatives showing the reduction
10 or increase in the 100-year probable maximum loss attributable
11 to wind-only coverages and the quota share program under this
12 subsection combined, as compared to the benchmark 100-year
13 probable maximum loss of the Florida Windstorm Underwriting
14 Association. For purposes of this paragraph, the benchmark
15 100-year probable maximum loss of the Florida Windstorm
16 Underwriting Association shall be the calculation dated
17 February 2001 and based on November 30, 2000, exposures. In
18 order to ensure comparability of data, the board shall use the
19 same methods for calculating its probable maximum loss as were
20 used to calculate the benchmark probable maximum loss.

21 2. Beginning February 1, 2007, if the report under
22 subparagraph 1. for any year indicates that the 100-year
23 probable maximum loss attributable to wind-only coverages and
24 the quota share program combined does not reflect a reduction
25 of at least 25 percent from the benchmark, the board shall
26 reduce the boundaries of the high-risk area eligible for
27 wind-only coverages under this subsection in a manner
28 calculated to reduce such probable maximum loss to an amount
29 at least 25 percent below the benchmark.

30 3. Beginning February 1, 2012, if the report under
31 subparagraph 1. for any year indicates that the 100-year

1 probable maximum loss attributable to wind-only coverages and
2 the quota share program combined does not reflect a reduction
3 of at least 50 percent from the benchmark, the boundaries of
4 the high-risk area eligible for wind-only coverages under this
5 subsection shall be reduced by the elimination of any area
6 that is not seaward of a line 1,000 feet inland from the
7 Intracoastal Waterway.

8 (p) In enacting the provisions of this section, the
9 Legislature recognizes that both the Florida Windstorm
10 Underwriting Association and the Residential Property and
11 Casualty Joint Underwriting Association have entered into
12 financing arrangements that obligate each entity to service
13 its debts and maintain the capacity to repay funds secured
14 under these financing arrangements. It is the intent of the
15 Legislature that nothing in this section be construed to
16 compromise, diminish, or interfere with the rights of
17 creditors under such financing arrangements. It is further the
18 intent of the Legislature to preserve the obligations of the
19 Florida Windstorm Underwriting Association and Residential
20 Property and Casualty Joint Underwriting Association with
21 regard to outstanding financing arrangements, with such
22 obligations passing entirely and unchanged to the corporation
23 and, specifically, to the applicable account of the
24 corporation. So long as any bonds, notes, indebtedness, or
25 other financing obligations of the Florida Windstorm
26 Underwriting Association or the Residential Property and
27 Casualty Joint Underwriting Association are outstanding, under
28 the terms of the financing documents pertaining to them, the
29 governing board of the corporation shall have and shall
30 exercise the authority to levy, charge, collect, and receive
31 all premiums, assessments, surcharges, charges, revenues, and

1 receipts that the associations had authority to levy, charge,
2 collect, or receive under the provisions of subsection (2) and
3 this subsection, respectively, as they existed on January 1,
4 2002, to provide moneys, without exercise of the authority
5 provided by this subsection, in at least the amounts, and by
6 the times, as would be provided under those former provisions
7 of subsection (2) or this subsection, respectively, so that
8 the value, amount, and collectability of any assets, revenues,
9 or revenue source pledged or committed to, or any lien thereon
10 securing such outstanding bonds, notes, indebtedness, or other
11 financing obligations will not be diminished, impaired, or
12 adversely affected by the amendments made by this act and to
13 permit compliance with all provisions of financing documents
14 pertaining to such bonds, notes, indebtedness, or other
15 financing obligations, or the security or credit enhancement
16 for them, and any reference in this subsection to bonds,
17 notes, indebtedness, financing obligations, or similar
18 obligations, of the corporation shall include like instruments
19 or contracts of the Florida Windstorm Underwriting Association
20 and the Residential Property and Casualty Joint Underwriting
21 Association to the extent not inconsistent with the provisions
22 of the financing documents pertaining to them.

23 ~~(q) Effective January 7, 2003, any reference in this~~
24 ~~subsection to the Treasurer shall be deemed to be a reference~~
25 ~~to the Chief Financial Officer and any reference to the~~
26 ~~Department of Insurance shall be deemed to be a reference to~~
27 ~~the Department of Insurance and Financial Services or other~~
28 ~~successor to the Department of Insurance specified by law.~~

29 (q)(r) The corporation shall not require the securing
30 of flood insurance as a condition of coverage if the insured
31 or applicant executes a form approved by the office ~~department~~

1 affirming that flood insurance is not provided by the
2 corporation and that if flood insurance is not secured by the
3 applicant or insured in addition to coverage by the
4 corporation, the risk will not be covered for flood damage. A
5 corporation policyholder electing not to secure flood
6 insurance and executing a form as provided herein making a
7 claim for water damage against the corporation shall have the
8 burden of proving the damage was not caused by flooding.
9 Notwithstanding other provisions of this subsection, the
10 corporation may deny coverage to an applicant or insured who
11 refuses to execute the form described herein.

12 Section 1102. Section 627.3511, Florida Statutes, is
13 amended to read:

14 627.3511 Depopulation of Citizens Property Insurance
15 Corporation Residential Property and Casualty Joint
16 Underwriting Association.--

17 (1) LEGISLATIVE INTENT.--The Legislature finds that
18 the public policy of this state requires the maintenance of a
19 residual market for residential property insurance. It is the
20 intent of the Legislature to provide a variety of financial
21 incentives to encourage the replacement of the highest
22 possible number of Citizens Property Insurance Corporation
23 Residential Property and Casualty Joint Underwriting
24 Association policies with policies written by admitted
25 insurers at approved rates.

26 (2) TAKE-OUT BONUS.--The Citizens Property Insurance
27 Corporation Residential Property and Casualty Joint
28 Underwriting Association shall pay the sum of up to \$100 to an
29 insurer for each risk that the insurer removes from the
30 corporation association, either by issuance of a policy upon
31 expiration or cancellation of the corporation association

1 policy or by assumption of the corporation's ~~association's~~
2 obligations with respect to an in-force policy. Such payment
3 is subject to approval of the corporation ~~association~~ board.
4 In order to qualify for the bonus under this subsection, the
5 take-out plan must include a minimum of 25,000 policies.
6 Within 30 days after approval by the board, the office
7 ~~department~~ may reject the insurer's take-out plan and
8 disqualify the insurer from the bonus, based on the following
9 criteria:

10 (a) The capacity of the insurer to absorb the policies
11 proposed to be taken out of the corporation ~~association~~ and
12 the concentration of risks of those policies.

13 (b) Whether the geographic and risk characteristics of
14 policies in the proposed take-out plan serve to reduce the
15 exposure of the corporation ~~association~~ sufficiently to
16 justify the bonus.

17 (c) Whether coverage for risks to be taken out
18 otherwise exists in the admitted voluntary market.

19 (d) The degree to which the take-out bonus is
20 promoting new capital being allocated by the insurer to
21 Florida residential property coverage.

22 (3) EXEMPTION FROM DEFICIT ASSESSMENTS.--

23 (a) The calculation of an insurer's assessment
24 liability under s. 627.351(6)(b)3.a. or b. shall, for an
25 insurer that in any calendar year removes 50,000 or more risks
26 from the Citizens Property Insurance Corporation ~~Residential~~
27 ~~Property and Casualty Joint Underwriting Association~~, either
28 by issuance of a policy upon expiration or cancellation of the
29 corporation ~~association~~ policy or by assumption of the
30 corporation's ~~association's~~ obligations with respect to
31

1 in-force policies, exclude such removed policies for the
2 succeeding 3 years, as follows:

3 1. In the first year following removal of the risks,
4 the risks are excluded from the calculation to the extent of
5 100 percent.

6 2. In the second year following removal of the risks,
7 the risks are excluded from the calculation to the extent of
8 75 percent.

9 3. In the third year following removal of the risks,
10 the risks are excluded from the calculation to the extent of
11 50 percent.

12

13 If the removal of risks is accomplished through assumption of
14 obligations with respect to in-force policies, the corporation
15 ~~association~~ shall pay to the assuming insurer all unearned
16 premium with respect to such policies less any policy
17 acquisition costs agreed to by the corporation ~~association~~ and
18 assuming insurer. The term "policy acquisition costs" is
19 defined as costs of issuance of the policy by the corporation
20 ~~association~~ which includes agent commissions, servicing
21 company fees, and premium tax. This paragraph does not apply
22 to an insurer that, at any time within 5 years before removing
23 the risks, had a market share in excess of 0.1 percent of the
24 statewide aggregate gross direct written premium for any line
25 of property insurance, or to an affiliate of such an insurer.
26 This paragraph does not apply unless either at least 40
27 percent of the risks removed from the corporation ~~association~~
28 are located in Dade, Broward, and Palm Beach Counties, or at
29 least 30 percent of the risks removed from the corporation
30 ~~association~~ are located in such counties and an additional 50
31

1 percent of the risks removed from the corporation ~~association~~
2 are located in other coastal counties.

3 (b) An insurer that first wrote personal lines
4 residential property coverage in this state on or after July
5 1, 1994, is exempt from regular deficit assessments imposed
6 pursuant to s. 627.351(6)(b)3.a. and b., but not emergency
7 assessments collected from policyholders pursuant to s.
8 627.351(6)(b)3.d., of the Citizens Property Insurance
9 Corporation ~~Residential Property and Casualty Joint~~

10 ~~Underwriting Association~~ until the earlier of the following:

11 1. The end of the calendar year in which it first
12 wrote 0.5 percent or more of the statewide aggregate direct
13 written premium for any line of residential property coverage;
14 or

15 2. December 31, 1997, or December 31 of the third year
16 in which it wrote such coverage in this state, whichever is
17 later.

18 (c) Other than an insurer that is exempt under
19 paragraph (b), an insurer that in any calendar year increases
20 its total structure exposure subject to wind coverage by 25
21 percent or more over its exposure for the preceding calendar
22 year is, with respect to that year, exempt from deficit
23 assessments imposed pursuant to s. 627.351(6)(b)3.a. and b.,
24 but not emergency assessments collected from policyholders
25 pursuant to s. 627.351(6)(b)3.d., of the Citizens Property
26 Insurance Corporation ~~Residential Property and Casualty Joint~~
27 ~~Underwriting Association~~ attributable to such increase in
28 exposure.

29 (d) Any exemption or credit from regular assessments
30 authorized by this section shall last no longer than 3 years
31 following the cancellation or expiration of the policy by the

1 corporation ~~association~~. With the approval of the office
2 ~~department~~, the board may extend such credits for an
3 additional year if the insurer guarantees an additional year
4 of renewability for all policies removed from the corporation
5 ~~association~~, or for 2 additional years if the insurer
6 guarantees 2 additional years of renewability for all policies
7 so removed.

8 (4) AGENT BONUS.--When the corporation ~~Residential~~
9 ~~Property and Casualty Joint Underwriting Association~~ enters
10 into a contractual agreement for a take-out plan that provides
11 a bonus to the insurer, the producing agent of record of the
12 corporation ~~association~~ policy is entitled to retain any
13 unearned commission on such policy, and the insurer shall
14 either:

15 (a) Pay to the producing agent of record of the
16 association policy, for the first year, an amount that is the
17 greater of the insurer's usual and customary commission for
18 the type of policy written or a fee equal to the usual and
19 customary commission of the corporation ~~association~~; or

20 (b) Offer to allow the producing agent of record of
21 the corporation ~~association~~ policy to continue servicing the
22 policy for a period of not less than 1 year and offer to pay
23 the agent the greater of the insurer's or the corporation's
24 ~~association's~~ usual and customary commission for the type of
25 policy written.

26
27 If the producing agent is unwilling or unable to accept
28 appointment, the new insurer shall pay the agent in accordance
29 with paragraph (a). The requirement of this subsection that
30 the producing agent of record is entitled to retain the
31 unearned commission on an association policy does not apply to

1 a policy for which coverage has been provided in the
2 association for 30 days or less or for which a cancellation
3 notice has been issued pursuant to s. 627.351(6)(c)11. during
4 the first 30 days of coverage.

5 (5) APPLICABILITY.--

6 (a) The take-out bonus provided by subsection (2) and
7 the exemption from assessment provided by paragraph (3)(a)
8 apply only if the corporation ~~association~~ policy is replaced
9 by either a standard policy including wind coverage or, if
10 consistent with the insurer's underwriting rules as filed with
11 the office ~~department~~, a basic policy including wind coverage;
12 however, with respect to risks located in areas where coverage
13 through the high-risk account of the corporation ~~Florida~~
14 ~~Windstorm Underwriting Association~~ is available, the
15 replacement policy need not provide wind coverage. The insurer
16 must renew the replacement policy at approved rates on
17 substantially similar terms for two additional 1-year terms,
18 unless canceled by the insurer for a lawful reason other than
19 reduction of hurricane exposure. If an insurer assumes the
20 corporation's ~~association's~~ obligations for a policy, it must
21 issue a replacement policy for a 1-year term upon expiration
22 of the corporation ~~association~~ policy and must renew the
23 replacement policy at approved rates on substantially similar
24 terms for two additional 1-year terms, unless canceled by the
25 insurer for a lawful reason other than reduction of hurricane
26 exposure. For each replacement policy canceled or nonrenewed
27 by the insurer for any reason during the 3-year coverage
28 period required by this paragraph, the insurer must remove
29 from the corporation ~~association~~ one additional policy
30 covering a risk similar to the risk covered by the canceled or
31 nonrenewed policy. In addition to these requirements, the

1 corporation ~~association~~ must place the bonus moneys in escrow
2 for a period of 3 years; such moneys may be released from
3 escrow only to pay claims. A take-out bonus provided by
4 subsection (2) or subsection (6) shall not be considered
5 premium income for purposes of taxes and assessments under the
6 Florida Insurance Code and shall remain the property of the
7 corporation ~~Residential Property and Casualty Joint~~
8 ~~Underwriting Association~~, subject to the prior security
9 interest of the insurer under the escrow agreement until it is
10 released from escrow, and after it is released from escrow it
11 shall be considered an asset of the insurer and credited to
12 the insurer's capital and surplus.

13 (b) It is the intent of the Legislature that an
14 insurer eligible for the exemption under paragraph (3)(a)
15 establish a preference in appointment of agents for those
16 agents who lose a substantial amount of business as a result
17 of risks being removed from the corporation ~~association~~.

18 (6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.--

19 (a) The corporation ~~Residential Property and Casualty~~
20 ~~Joint Underwriting Association~~ shall pay a bonus to an insurer
21 for each commercial residential policy that the insurer
22 removes from the corporation ~~association~~ pursuant to an
23 approved take-out plan, either by issuance of a new policy
24 upon expiration of the corporation ~~association~~ policy or by
25 assumption of the corporation's ~~association's~~ obligations with
26 respect to an in-force policy. The corporation ~~association~~
27 board shall determine the amount of the bonus based on such
28 factors as the coverage provided, relative hurricane risk, the
29 length of time that the property has been covered by the
30 corporation ~~association~~, and the criteria specified in
31 paragraphs (b) and (c). The amount of the bonus with respect

1 to a particular policy may not exceed 25 percent of the
2 corporation's ~~association's~~ 1-year premium for the policy.

3 Such payment is subject to approval of the corporation
4 ~~association~~ board. In order to qualify for the bonus under
5 this subsection, the take-out plan must include policies
6 reflecting at least \$100 million in structure exposure.

7 (b) In order for a plan to qualify for approval:

8 1. At least 40 percent of the policies removed from
9 the corporation ~~association~~ under the plan must be located in
10 Dade, Broward, and Palm Beach Counties, or at least 30 percent
11 of the policies removed from the corporation ~~association~~ under
12 the plan must be located in such counties and an additional 50
13 percent of the policies removed from the corporation
14 ~~association~~ must be located in other coastal counties.

15 2. The insurer must renew the replacement policy at
16 approved rates on substantially similar terms for two
17 additional 1-year terms, unless canceled or nonrenewed by the
18 insurer for a lawful reason other than reduction of hurricane
19 exposure. If an insurer assumes the corporation's
20 ~~association's~~ obligations for a policy, it must issue a
21 replacement policy for a 1-year term upon expiration of the
22 corporation ~~association~~ policy and must renew the replacement
23 policy at approved rates on substantially similar terms for
24 two additional 1-year terms, unless canceled by the insurer
25 for a lawful reason other than reduction of hurricane
26 exposure. For each replacement policy canceled or nonrenewed
27 by the insurer for any reason during the 3-year coverage
28 period required by this subparagraph, the insurer must remove
29 from the corporation ~~association~~ one additional policy
30 covering a risk similar to the risk covered by the canceled or
31 nonrenewed policy.

1 (c) A take-out plan is deemed approved unless the
2 office department, within 120 days after the board votes to
3 recommend the plan, disapproves the plan based on:

4 1. The capacity of the insurer to absorb the policies
5 proposed to be taken out of the corporation ~~association~~ and
6 the concentration of risks of those policies.

7 2. Whether the geographic and risk characteristics of
8 policies in the proposed take-out plan serve to reduce the
9 exposure of the corporation ~~association~~ sufficiently to
10 justify the bonus.

11 3. Whether coverage for risks to be taken out
12 otherwise exists in the admitted voluntary market.

13 4. The degree to which the take-out bonus is promoting
14 new capital being allocated by the insurer to residential
15 property coverage in this state.

16 (d) The calculation of an insurer's regular assessment
17 liability under s. 627.351(b)3.a. and b., but not emergency
18 assessments collected from policyholders pursuant to s.
19 627.351(6)(b)3.d., shall, with respect to commercial
20 residential policies removed from the corporation ~~association~~
21 under an approved take-out plan, exclude such removed policies
22 for the succeeding 3 years, as follows:

23 1. In the first year following removal of the
24 policies, the policies are excluded from the calculation to
25 the extent of 100 percent.

26 2. In the second year following removal of the
27 policies, the policies are excluded from the calculation to
28 the extent of 75 percent.

29 3. In the third year following removal of the
30 policies, the policies are excluded from the calculation to
31 the extent of 50 percent.

1 (e) An insurer that first wrote commercial residential
2 property coverage in this state on or after June 1, 1996, is
3 exempt from regular assessments under s. 627.351(6)(b)3.a. and
4 b., but not emergency assessments collected from policyholders
5 pursuant to s. 627.351(6)(b)3.d., with respect to commercial
6 residential policies until the earlier of:

7 1. The end of the calendar year in which such insurer
8 first wrote 0.5 percent or more of the statewide aggregate
9 direct written premium for commercial residential property
10 coverage; or

11 2. December 31 of the third year in which such insurer
12 wrote commercial residential property coverage in this state.

13 (f) An insurer that is not otherwise exempt from
14 regular assessments under s. 627.351(6)(b)3.a. and b. with
15 respect to commercial residential policies is, for any
16 calendar year in which such insurer increased its total
17 commercial residential hurricane exposure by 25 percent or
18 more over its exposure for the preceding calendar year, exempt
19 from regular assessments under s. 627.351(6)(b)3.a. and b.,
20 but not emergency assessments collected from policyholders
21 pursuant to s. 627.351(6)(b)3.d., attributable to such
22 increased exposure.

23 (7) A minority business, which is at least 51 percent
24 owned by minority persons as described in s. 288.703(3),
25 desiring to operate or become licensed as a property and
26 casualty insurer may exempt up to \$50 of the escrow
27 requirements of the take-out bonus, as described in this
28 section. Such minority business, which has applied for a
29 certificate of authority to engage in business as a property
30 and casualty insurer, may simultaneously file the business'
31 proposed take-out plan, as described in this section, with the

1 ~~corporation to the Residential Property and Casualty Joint~~
2 ~~Underwriting Association.~~

3 Section 1103. Subsections (3) and (4) of section
4 627.3512, Florida Statutes, are amended to read:

5 627.3512 Recoupment of residual market deficit
6 assessments.--

7 (3) The insurer or insurer group shall file with the
8 office ~~department~~ a statement setting forth the amount of the
9 assessment factor and an explanation of how the factor will be
10 applied, at least 15 days prior to the factor being applied to
11 any policies. The statement shall include documentation of
12 the assessment paid by the insurer or insurer group and the
13 arithmetic calculations supporting the assessment factor. The
14 office ~~department~~ shall complete its review within 15 days
15 after receipt of the filing and shall limit its review to
16 verification of the arithmetic calculations. The insurer or
17 insurer group may use the assessment factor at any time after
18 the expiration of the 15-day period unless the office
19 ~~department~~ has notified the insurer or insurer group in
20 writing that the arithmetic calculations are incorrect.

21 (4) The commission ~~department~~ may adopt rules to
22 implement this section.

23 Section 1104. Section 627.3513, Florida Statutes, is
24 amended to read:

25 627.3513 Standards for sale of bonds by Citizens
26 Property Insurance Corporation ~~underwriting associations~~.--

27 (1)(a) The purpose of this section is to provide
28 standards for the sale of bonds pursuant to s. 627.351(2) and
29 (6).

30 (b) The term "corporation," as used in this section,
31 means the Citizens Property Insurance Corporation.

1 ~~"Association" or "associations," for purposes of this section,~~
2 ~~means the Florida Windstorm Underwriting Association and the~~
3 ~~Residential Property and Casualty Joint Underwriting~~
4 ~~Association as established pursuant to s. 627.351(2) and (6),~~
5 ~~and any corporation or other entity established pursuant to~~
6 ~~those subsections.~~

7 (2) The plan of operation of the corporation ~~each~~
8 ~~association~~ shall provide for the selection of financial
9 services providers and underwriters. Such provisions shall
10 include the method for publicizing or otherwise providing
11 reasonable notice to potential financial services providers,
12 underwriters, and other interested parties, which may include
13 expedited procedures and methods for emergency situations. The
14 corporation ~~associations~~ shall not engage the services of any
15 person or firm as a securities broker or bond underwriter that
16 is not eligible to be engaged by the state under the
17 provisions of s. 215.684. The corporation ~~associations~~ shall
18 make all selections of financial service providers and
19 managing underwriters at a noticed public meeting.

20 (3) The plan of operation of the corporation ~~each~~
21 ~~association~~ shall provide for any managing underwriter or
22 financial adviser to provide to the corporation ~~association~~ a
23 disclosure statement containing at least the following
24 information:

25 (a) An itemized list setting forth the nature and
26 estimated amounts of expenses to be incurred by the managing
27 underwriter in connection with the issuance of such bonds.
28 Notwithstanding the foregoing, any such list may include an
29 item for miscellaneous expenses, provided such item includes
30 only minor items of expense which cannot be easily categorized
31 elsewhere in the statement.

1 (b) The names, addresses, and estimated amounts of
2 compensation of any finders connected with the issuance of the
3 bonds.

4 (c) The amount of underwriting spread expected to be
5 realized and the amount of fees and expenses expected to be
6 paid to the financial adviser.

7 (d) Any management fee charged by the managing
8 underwriter.

9 (e) Any other fee, bonus, or compensation estimated to
10 be paid by the managing underwriter in connection with the
11 bond issue to any person not regularly employed or retained by
12 it.

13 (f) The name and address of each financial adviser or
14 managing underwriter, if any, connected with the bond issue.

15 (g) Any other disclosure which the corporation
16 ~~association~~ may require.

17 (4)(a) No underwriter, commercial bank, investment
18 banker, or financial consultant or adviser shall pay any
19 finder any bonus, fee, or gratuity in connection with the sale
20 of bonds issued by the corporation ~~association~~ unless full
21 disclosure is made in writing to the corporation ~~association~~
22 prior to or concurrently with the submission of a purchase
23 proposal for bonds by the underwriter, commercial bank,
24 investment banker, or financial consultant or adviser,
25 providing the name and address of any finder and the amount of
26 bonus, fee, or gratuity paid to such finder. A violation of
27 this subsection shall not affect the validity of the bond
28 issue.

29 (b) As used in this subsection, the term "finder"
30 means a person who is neither regularly employed by, nor a
31 partner or officer of, an underwriter, bank, banker, or

1 financial consultant or adviser and who enters into an
2 understanding with either the issuer or the managing
3 underwriter, or both, for any paid or promised compensation or
4 valuable consideration, directly or indirectly, expressed or
5 implied, to act solely as an intermediary between such issuer
6 and managing underwriter for the purpose of influencing any
7 transaction in the purpose of such bonds.

8 (5) This section is not intended to restrict or
9 prohibit the employment of professional services relating to
10 bonds issued under s. 627.351(6)~~s. 627.351(2) or (6)~~ or the
11 issuance of bonds by the corporation ~~associations~~.

12 (6) The failure of the corporation ~~association~~ to
13 comply with one or more provisions of this section shall not
14 affect the validity of the bond issue; however, the failure of
15 the corporation ~~either association~~ to comply in good faith
16 both with this section and with the plan as amended shall be a
17 violation of its plan of operation and a violation of the
18 insurance code.

19 Section 1105. Section 627.3515, Florida Statutes, is
20 amended to read:

21 627.3515 Market assistance plan; property and casualty
22 risks.--

23 (1) The office ~~department~~ shall adopt a market
24 assistance plan to assist in the placement of risks of
25 applicants who are unable to procure property insurance as
26 defined in s. 624.604 or casualty insurance as defined in s.
27 624.605(1)(b), (e), (f), (g), or (h) from authorized insurers
28 when such insurance is otherwise generally available from
29 insurers authorized to transact and actually writing that kind
30 and class of insurance in this state. Through such measures as
31 are found appropriate by the board of governors, the market

1 assistance plan shall take affirmative steps to assist in the
2 removal from the Citizens Property Insurance Corporation
3 ~~Residential Property and Casualty Joint Underwriting~~
4 ~~Association~~ any risk that can be placed in the voluntary
5 market. All property and casualty insurers licensed in this
6 state shall participate in the plan.

7 (2)(a) Each person serving as a member of the board of
8 governors of the Citizens Property Insurance Corporation
9 ~~Residential Property and Casualty Joint Underwriting~~
10 ~~Association~~ shall also serve as a member of the board of
11 governors of the market assistance plan.

12 (b) The plan shall be funded through payments from the
13 Citizens Property Insurance Corporation ~~Residential Property~~
14 ~~and Casualty Joint Underwriting Association~~ and annual
15 assessments of residential property insurers in the amount of
16 \$450.

17 (c) The plan is not required to assist in the
18 placement of any workers' compensation, employer's liability,
19 malpractice, or motor vehicle insurance coverage.

20 Section 1106. Section 627.3517, Florida Statutes, is
21 amended to read:

22 627.3517 Consumer choice.--No provision of s. 627.351,
23 s. 627.3511, or s. 627.3515 shall be construed to impair the
24 right of any insurance risk apportionment plan policyholder,
25 upon receipt of any keepout or take-out offer, to retain his
26 or her current agent, so long as that agent is duly licensed
27 and appointed by the insurance risk apportionment plan or
28 otherwise authorized to place business with the insurance risk
29 apportionment plan. This right shall not be canceled,
30 suspended, impeded, abridged, or otherwise compromised by any
31 rule, plan of operation, or depopulation plan, whether through

1 keepout, take-out, midterm assumption, or any other means, of
2 any insurance risk apportionment plan or depopulation plan,
3 including, but not limited to, those described in s. 627.351,
4 s. 627.3511, or s. 627.3515. The commission ~~department~~ shall
5 adopt any rules necessary to cause any insurance risk
6 apportionment plan or market assistance plan under such
7 sections to demonstrate that the operations of the plan do not
8 interfere with, promote, or allow interference with the rights
9 created under this section. If the policyholder's current
10 agent is unable or unwilling to be appointed with the insurer
11 making the take-out or keepout offer, the policyholder shall
12 not be disqualified from participation in the appropriate
13 insurance risk apportionment plan because of an offer of
14 coverage in the voluntary market. An offer of full property
15 insurance coverage by the insurer currently insuring either
16 the ex-wind or wind-only coverage on the policy to which the
17 offer applies shall not be considered a take-out or keepout
18 offer. Any rule, plan of operation, or plan of depopulation,
19 through keepout, take-out, midterm assumption, or any other
20 means, of any property insurance risk apportionment plan under
21 s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and
22 (6)(c) and 627.3511(4).

23 Section 1107. Subsections (2), (4), and (6),
24 paragraphs (c) and (h) of subsection (7), and subsection (8)
25 of section 627.357, Florida Statutes, are amended to read:

26 627.357 Medical malpractice self-insurance.--

27 (2) A group or association of health care providers
28 composed of any number of members, is authorized to
29 self-insure against claims arising out of the rendering of, or
30 failure to render, medical care or services, or against claims
31 for injury or death to the insured's patients arising out of

1 the insured's activities, upon obtaining approval from the
2 office ~~department~~ and upon complying with the following
3 conditions:

4 (a) Establishment of a Medical Malpractice Risk
5 Management Trust Fund to provide coverage against professional
6 medical malpractice liability.

7 (b) Employment of professional consultants for loss
8 prevention and claims management coordination under a risk
9 management program.

10 (4) The fund is subject to regulation and
11 investigation by the office ~~department~~. The fund is subject
12 to rules of the commission ~~department~~ and to part IX of
13 chapter 626, relating to trade practices and frauds.

14 (6) The commission ~~department~~ shall adopt rules to
15 implement this section, including rules that ensure that a
16 trust fund maintains a sufficient reserve to cover contingent
17 liabilities under subsection (7) in the event of its
18 dissolution.

19 (7)

20 (c) The trust fund may from time to time assess
21 members of the fund liable therefor under the terms of their
22 policies and pursuant to this section. The office ~~department~~
23 may assess the members in the event of liquidation of the
24 fund.

25 (h) If the trust fund fails to make an assessment as
26 required by paragraph (g), the office ~~department~~ shall order
27 the fund to do so. If the deficiency is not sufficiently made
28 up within 60 days after the date of the order, the fund is
29 deemed insolvent and grounds exist to proceed against the fund
30 as provided for in part I of chapter 631.

31

1 (8) The expense factors associated with rates used by
2 a fund shall be filed with the office ~~department~~ at least 30
3 days prior to use and may not be used until approved by the
4 office ~~department~~. The office ~~department~~ shall disapprove the
5 rates unless the filed expense factors associated therewith
6 are justified and reasonable for the benefits and services
7 provided.

8 Section 1108. Section 627.361, Florida Statutes, is
9 amended to read:

10 627.361 False or misleading information.--No person
11 shall willfully withhold information from or knowingly give
12 false or misleading information to the office ~~department~~, any
13 statistical agency designated by the office ~~department~~, any
14 rating organization, or any insurer, which will affect the
15 rates or premiums chargeable under this part.

16 Section 1109. Section 627.371, Florida Statutes, is
17 amended to read:

18 627.371 Hearings.--

19 (1) Any person aggrieved by any rate charged, rating
20 plan, rating system, or underwriting rule followed or adopted
21 by an insurer, and any person aggrieved by any rating plan,
22 rating system, or underwriting rule followed or adopted by a
23 rating organization, may herself or himself or by her or his
24 authorized representative make written request of the insurer
25 or rating organization to review the manner in which the rate,
26 plan, system, or rule has been applied with respect to
27 insurance afforded her or him. If the request is not granted
28 within 30 days after it is made, the requester may treat it as
29 rejected. Any person aggrieved by the refusal of an insurer
30 or rating organization to grant the review requested, or by
31 the failure or refusal to grant all or part of the relief

1 requested, may file a written complaint with the office
2 ~~department~~, specifying the grounds relied upon. If the office
3 ~~department~~ has already disposed of the issue as raised by a
4 similar complaint or believes that probable cause for the
5 complaint does not exist or that the complaint is not made in
6 good faith, it shall so notify the complainant. Otherwise, and
7 if it also finds that the complaint charges a violation of
8 this chapter and that the complainant would be aggrieved if
9 the violation is proven, it shall proceed as provided in
10 subsection (2).

11 (2) If after examination of an insurer, rating
12 organization, advisory organization, or group, association, or
13 other organization of insurers which engages in joint
14 underwriting or joint reinsurance, upon the basis of other
15 information, or upon sufficient complaint as provided in
16 subsection (1), the office ~~department~~ has good cause to
17 believe that such insurer, organization, group, or
18 association, or any rate, rating plan, or rating system made
19 or used by any such insurer or rating organization, does not
20 comply with the requirements and standards of this part
21 applicable to it, it shall, unless it has good cause to
22 believe such noncompliance is willful, give notice in writing
23 to such insurer, organization, group, or association stating
24 therein in what manner and to what extent noncompliance is
25 alleged to exist and specifying therein a reasonable time, not
26 less than 10 days thereafter, in which the noncompliance may
27 be corrected, including any premium adjustment.

28 (3) If the office ~~department~~ has good cause to believe
29 that such noncompliance is willful or if, within the period
30 prescribed by the office ~~department~~ in the notice required by
31 subsection (2), the insurer, organization, group, or

1 association does not make such changes as may be necessary to
2 correct the noncompliance specified by the office ~~department~~
3 or establish to the satisfaction of the office ~~department~~ that
4 such specified noncompliance does not exist, then the office
5 ~~department~~ is required to proceed to further determine the
6 matter. If no notice has been given as provided in subsection
7 (2), the notice shall state in what manner and to what extent
8 noncompliance is alleged to exist. The proceedings shall not
9 consider any subject not specified in the notice required by
10 subsections (2) and (3).

11 Section 1110. Section 627.381, Florida Statutes, is
12 amended to read:

13 627.381 Penalty for violation.--

14 (1) The office ~~department~~ may, if it finds that any
15 person or organization has violated any provision of this
16 part, impose an administrative fine pursuant to s. 624.4211.

17 (2) The office ~~department~~ may suspend the license or
18 authority of any rating organization or insurer which fails to
19 comply with an order of the office ~~department~~ within the time
20 limited by such order, or any extension thereof which the
21 office ~~department~~ may grant. The office ~~department~~ shall not
22 suspend the license or authority of any rating organization or
23 insurer for failure to comply with an order until the time
24 prescribed for an appeal therefrom has expired or, if an
25 appeal has been taken, until such order has been affirmed. The
26 office ~~department~~ may determine when a suspension of license
27 or authority shall become effective and it shall remain in
28 effect for the period fixed by it, unless it modifies or
29 rescinds such suspension, or until the order upon which such
30 suspension is based is modified, rescinded, or reversed.

31

1 Section 1111. Paragraph (i) of subsection (2) of
2 section 627.4035, Florida Statutes, is amended to read:

3 627.4035 Cash payment of premiums; claims.--

4 (2) Subsection (1) is not applicable to:

5 (i) Such other methods of paying for life insurance as
6 may be permitted by the commission ~~department~~ pursuant to rule
7 or regulation.

8 Section 1112. Section 627.410, Florida Statutes, is
9 amended to read:

10 627.410 Filing, approval of forms.--

11 (1) No basic insurance policy or annuity contract
12 form, or application form where written application is
13 required and is to be made a part of the policy or contract,
14 or group certificates issued under a master contract delivered
15 in this state, or printed rider or endorsement form or form of
16 renewal certificate, shall be delivered or issued for delivery
17 in this state, unless the form has been filed with the office
18 ~~department at its offices in Tallahassee~~ by or in behalf of
19 the insurer which proposes to use such form and has been
20 approved by the office ~~department~~. This provision does not
21 apply to surety bonds or to policies, riders, endorsements, or
22 forms of unique character which are designed for and used with
23 relation to insurance upon a particular subject (other than as
24 to health insurance), or which relate to the manner of
25 distribution of benefits or to the reservation of rights and
26 benefits under life or health insurance policies and are used
27 at the request of the individual policyholder, contract
28 holder, or certificateholder. As to group insurance policies
29 effectuated and delivered outside this state but covering
30 persons resident in this state, the group certificates to be

31

1 delivered or issued for delivery in this state shall be filed
2 with the office ~~department~~ for information purposes only.

3 (2) Every such filing must be made not less than 30
4 days in advance of any such use or delivery. At the
5 expiration of such 30 days, the form so filed will be deemed
6 approved unless prior thereto it has been affirmatively
7 approved or disapproved by order of the office ~~department~~. The
8 approval of any such form by the office ~~department~~ constitutes
9 a waiver of any unexpired portion of such waiting period. The
10 office ~~department~~ may extend by not more than an additional 15
11 days the period within which it may so affirmatively approve
12 or disapprove any such form, by giving notice of such
13 extension before expiration of the initial 30-day period. At
14 the expiration of any such period as so extended, and in the
15 absence of such prior affirmative approval or disapproval, any
16 such form shall be deemed approved.

17 (3) The office ~~department~~ may, for cause, withdraw a
18 previous approval. No insurer shall issue or use any form
19 disapproved by the office ~~department~~, or as to which the
20 office ~~department~~ has withdrawn approval, after the effective
21 date of the order of the office ~~department~~.

22 (4) The office ~~department~~ may, by order, exempt from
23 the requirements of this section for so long as it deems
24 proper any insurance document or form or type thereof as
25 specified in such order, to which, in its opinion, this
26 section may not practicably be applied, or the filing and
27 approval of which are, in its opinion, not desirable or
28 necessary for the protection of the public.

29 (5) This section also applies to any such form used by
30 domestic insurers for delivery in a jurisdiction outside this
31 state if the insurance supervisory official of such

1 jurisdiction informs the office ~~department~~ that such form is
2 not subject to approval or disapproval by such official, and
3 upon the order of the office ~~department~~ requiring the form to
4 be submitted to it for the purpose. The applicable same
5 standards apply to such forms as apply to forms for domestic
6 use.

7 (6)(a) An insurer shall not deliver or issue for
8 delivery or renew in this state any health insurance policy
9 form until it has filed with the office ~~department~~ a copy of
10 every applicable rating manual, rating schedule, change in
11 rating manual, and change in rating schedule; if rating
12 manuals and rating schedules are not applicable, the insurer
13 must file with the order ~~department~~ applicable premium rates
14 and any change in applicable premium rates. This paragraph
15 does not apply to group health insurance policies, effectuated
16 and delivered in this state, insuring groups of 51 or more
17 persons, except for Medicare supplement insurance, long-term
18 care insurance, and any coverage under which the increase in
19 claim costs over the lifetime of the contract due to advancing
20 age or duration is prefunded in the premium.

21 (b) The commission ~~department~~ may establish by rule,
22 for each type of health insurance form, procedures to be used
23 in ascertaining the reasonableness of benefits in relation to
24 premium rates and may, by rule, exempt from any requirement of
25 paragraph (a) any health insurance policy form or type thereof
26 (as specified in such rule) to which form or type such
27 requirements may not be practically applied or to which form
28 or type the application of such requirements is not desirable
29 or necessary for the protection of the public. With respect to
30 any health insurance policy form or type thereof which is
31 exempted by rule from any requirement of paragraph (a),

1 premium rates filed pursuant to ss. 627.640 and 627.662 shall
2 be for informational purposes.

3 (c) Every filing made pursuant to this subsection
4 shall be made within the same time period provided in, and
5 shall be deemed to be approved under the same conditions as
6 those provided in, subsection (2).

7 (d) Every filing made pursuant to this subsection,
8 except disability income policies and accidental death
9 policies, shall be prohibited from applying the following
10 rating practices:

11 1. Select and ultimate premium schedules.

12 2. Premium class definitions which classify insured
13 based on year of issue or duration since issue.

14 3. Attained age premium structures on policy forms
15 under which more than 50 percent of the policies are issued to
16 persons age 65 or over.

17 (e) Except as provided in subparagraph 1., an insurer
18 shall continue to make available for purchase any individual
19 policy form issued on or after October 1, 1993. A policy form
20 shall not be considered to be available for purchase unless
21 the insurer has actively offered it for sale in the previous
22 12 months.

23 1. An insurer may discontinue the availability of a
24 policy form if the insurer provides to the office ~~department~~
25 in writing its decision at least 30 days prior to
26 discontinuing the availability of the form of the policy or
27 certificate. After receipt of the notice by the office
28 ~~department~~, the insurer shall no longer offer for sale the
29 policy form or certificate form in this state.

30 2. An insurer that discontinues the availability of a
31 policy form pursuant to subparagraph 1. shall not file for

1 approval a new policy form providing similar benefits as the
2 discontinued form for a period of 5 years after the insurer
3 provides notice to the office ~~department~~ of the
4 discontinuance. The period of discontinuance may be reduced if
5 the office ~~department~~ determines that a shorter period is
6 appropriate.

7 3. The experience of all policy forms providing
8 similar benefits shall be combined for all rating purposes.

9 (7)(a) Each insurer subject to the requirements of
10 subsection (6) shall make an annual filing with the office
11 ~~department~~ no later than 12 months after its previous filing,
12 demonstrating the reasonableness of benefits in relation to
13 premium rates. The office ~~department~~, after receiving a
14 request to be exempted from the provisions of this section,
15 may, for good cause due to insignificant numbers of policies
16 in force or insignificant premium volume, exempt a company, by
17 line of coverage, from filing rates or rate certification as
18 required by this section.

19 (b) The filing required by this subsection shall be
20 satisfied by one of the following methods:

21 1. A rate filing prepared by an actuary which contains
22 documentation demonstrating the reasonableness of benefits in
23 relation to premiums charged in accordance with the applicable
24 rating laws and rules promulgated by the commission
25 ~~department~~.

26 2. If no rate change is proposed, a filing which
27 consists of a certification by an actuary that benefits are
28 reasonable in relation to premiums currently charged in
29 accordance with applicable laws and rules promulgated by the
30 commission ~~department~~.

31

1 (c) As used in this section, "actuary" means an
2 individual who is a member of the Society of Actuaries or the
3 American Academy of Actuaries. If an insurer does not employ
4 or otherwise retain the services of an actuary, the insurer's
5 certification shall be prepared by insurer personnel or
6 consultants with a minimum of 5 years' experience in insurance
7 ratemaking. The chief executive officer of the insurer shall
8 review and sign the certification indicating his or her
9 agreement with its conclusions.

10 (d) If at the time a filing is required under this
11 section an insurer is in the process of completing a rate
12 review, the insurer may apply to the office ~~department~~ for an
13 extension of up to an additional 30 days in which to make the
14 filing. The request for extension must be received by the
15 office ~~department in its offices in Tallahassee~~ no later than
16 the date the filing is due.

17 (e) If an insurer fails to meet the filing
18 requirements of this subsection and does not submit the filing
19 within 60 days following the date the filing is due, the
20 office ~~department~~ may, in addition to any other penalty
21 authorized by law, order the insurer to discontinue the
22 issuance of policies for which the required filing was not
23 made, until such time as the office ~~department~~ determines that
24 the required filing is properly submitted.

25 (8)(a) For the purposes of subsections (6) and (7),
26 benefits of an individual accident and health insurance policy
27 form, including Medicare supplement policies as defined in s.
28 627.672, when authorized by rules adopted by the commission
29 ~~department~~, and excluding long-term care insurance policies as
30 defined in s. 627.9404, and other policy forms under which
31 more than 50 percent of the policies are issued to individuals

1 age 65 and over, are deemed to be reasonable in relation to
2 premium rates if the rates are filed pursuant to a loss ratio
3 guarantee and both the initial rates and the durational and
4 lifetime loss ratios have been approved by the office
5 ~~department~~, and such benefits shall continue to be deemed
6 reasonable for renewal rates while the insurer complies with
7 such guarantee, provided the currently expected lifetime loss
8 ratio is not more than 5 percent less than the filed lifetime
9 loss ratio as certified to by an actuary. The office
10 ~~department~~ shall have the right to bring an administrative
11 action should it deem that the lifetime loss ratio will not be
12 met. For Medicare supplement filings, the office ~~department~~
13 may withdraw a previously approved filing which was made
14 pursuant to a loss ratio guarantee if it determines that the
15 filing is not in compliance with ss. 627.671-627.675 or the
16 currently expected lifetime loss ratio is less than the filed
17 lifetime loss ratio as certified by an actuary in the initial
18 guaranteed loss ratio filing. If this section conflicts with
19 ss. 627.671-627.675, ss. 627.671-627.675 shall control.

20 (b) The renewal premium rates shall be deemed to be
21 approved upon filing with the office ~~department~~ if the filing
22 is accompanied by the most current approved loss ratio
23 guarantee. The loss ratio guarantee shall be in writing, shall
24 be signed by an officer of the insurer, and shall contain at
25 least:

26 1. A recitation of the anticipated lifetime and
27 durational target loss ratios contained in the actuarial
28 memorandum filed with the policy form when it was originally
29 approved. The durational target loss ratios shall be
30 calculated for 1-year experience periods. If statutory
31 changes have rendered any portion of such actuarial memorandum

1 obsolete, the loss ratio guarantee shall also include an
2 amendment to the actuarial memorandum reflecting current law
3 and containing new lifetime and durational loss ratio targets.

4 2. A guarantee that the applicable loss ratios for the
5 experience period in which the new rates will take effect, and
6 for each experience period thereafter until new rates are
7 filed, will meet the loss ratios referred to in subparagraph
8 1.

9 3. A guarantee that the applicable loss ratio results
10 for the experience period will be independently audited at the
11 insurer's expense. The audit shall be performed in the second
12 calendar quarter of the year following the end of the
13 experience period, and the audited results shall be reported
14 to the office ~~department~~ no later than the end of such
15 quarter. The commission ~~department~~ shall establish by rule
16 the minimum information reasonably necessary to be included in
17 the report. The audit shall be done in accordance with
18 accepted accounting and actuarial principles.

19 4. A guarantee that affected policyholders in this
20 state shall be issued a proportional refund, based on the
21 premium earned, of the amount necessary to bring the
22 applicable experience period loss ratio up to the durational
23 target loss ratio referred to in subparagraph 1. The refund
24 shall be made to all policyholders in this state who are
25 insured under the applicable policy form as of the last day of
26 the experience period, except that no refund need be made to a
27 policyholder in an amount less than \$10. Refunds less than \$10
28 shall be aggregated and paid pro rata to the policyholders
29 receiving refunds. The refund shall include interest at the
30 then-current variable loan interest rate for life insurance
31 policies established by the National Association of Insurance

1 Commissioners, from the end of the experience period until the
2 date of payment. Payments shall be made during the third
3 calendar quarter of the year following the experience period
4 for which a refund is determined to be due. However, no
5 refunds shall be made until 60 days after the filing of the
6 audit report in order that the office ~~department~~ has adequate
7 time to review the report.

8 5. A guarantee that if the applicable loss ratio
9 exceeds the durational target loss ratio for that experience
10 period by more than 20 percent, provided there are at least
11 2,000 policyholders on the form nationwide or, if not, then
12 accumulated each calendar year until 2,000 policyholder years
13 is reached, the insurer, if directed by the office ~~department~~,
14 shall withdraw the policy form for the purposes of issuing new
15 policies.

16 (c) As used in this subsection:

17 1. "Loss ratio" means the ratio of incurred claims to
18 earned premium.

19 2. "Applicable loss ratio" means the loss ratio
20 attributable solely to this state if there are 2,000 or more
21 policyholders in the state. If there are 500 or more
22 policyholders in this state but less than 2,000, it is the
23 linear interpolation of the nationwide loss ratio and the loss
24 ratio for this state. If there are less than 500
25 policyholders in this state, it is the nationwide loss ratio.

26 3. "Experience period" means the period, ordinarily a
27 calendar year, for which a loss ratio guarantee is calculated.

28 Section 1113. Section 627.4101, Florida Statutes, is
29 amended to read:

30 627.4101 Credit insurance enrollment forms.--~~Effective~~
31 ~~October 1, 2002,~~All credit insurance enrollment forms must be

1 approved by the office ~~Department of Insurance~~ pursuant to the
2 provisions of s. 627.410 or s. 627.682.

3 Section 1114. Section 627.4105, Florida Statutes, is
4 amended to read:

5 627.4105 Life and health insurance; reduced premiums
6 upon rigorous physical examination.--Upon request, the office
7 ~~department~~ may approve special life and health insurance
8 policy forms providing for reduced premiums for each applicant
9 passing a rigorous physical examination.

10 Section 1115. Section 627.411, Florida Statutes, is
11 amended to read:

12 627.411 Grounds for disapproval.--

13 (1) The office ~~department~~ shall disapprove any form
14 filed under s. 627.410, or withdraw any previous approval
15 thereof, only if the form:

16 (a) Is in any respect in violation of, or does not
17 comply with, this code.

18 (b) Contains or incorporates by reference, where such
19 incorporation is otherwise permissible, any inconsistent,
20 ambiguous, or misleading clauses, or exceptions and conditions
21 which deceptively affect the risk purported to be assumed in
22 the general coverage of the contract.

23 (c) Has any title, heading, or other indication of its
24 provisions which is misleading.

25 (d) Is printed or otherwise reproduced in such manner
26 as to render any material provision of the form substantially
27 illegible.

28 (e) Is for health insurance, and provides benefits
29 which are unreasonable in relation to the premium charged,
30 contains provisions which are unfair or inequitable or
31 contrary to the public policy of this state or which encourage

1 misrepresentation, or which apply rating practices which
2 result in premium escalations that are not viable for the
3 policyholder market or result in unfair discrimination in
4 sales practices.

5 (f) Excludes coverage for human immunodeficiency virus
6 infection or acquired immune deficiency syndrome or contains
7 limitations in the benefits payable, or in the terms or
8 conditions of such contract, for human immunodeficiency virus
9 infection or acquired immune deficiency syndrome which are
10 different than those which apply to any other sickness or
11 medical condition.

12 (2) In determining whether the benefits are reasonable
13 in relation to the premium charged, the office ~~department~~, in
14 accordance with reasonable actuarial techniques, shall
15 consider:

16 (a) Past loss experience and prospective loss
17 experience within and without this state.

18 (b) Allocation of expenses.

19 (c) Risk and contingency margins, along with
20 justification of such margins.

21 (d) Acquisition costs.

22 Section 1116. Section 627.412, Florida Statutes, is
23 amended to read:

24 627.412 Standard provisions, in general.--

25 (1) Insurance contracts shall contain such standard or
26 uniform provisions as are required by the applicable
27 provisions of this code pertaining to contracts of particular
28 kinds of insurance. The office ~~department~~ may waive the
29 required use of a particular provision in a particular
30 insurance policy form if:

31

1 (a) It finds such provision unnecessary for the
2 protection of the insured and inconsistent with the purposes
3 of the policy; and

4 (b) The policy is otherwise approved by it.

5 (2) No policy shall contain any provision inconsistent
6 with or contradictory to any standard or uniform provision
7 used or required to be used, but the office ~~department~~ may
8 approve any substitute provision which is, in its opinion, not
9 less favorable in any particular to the insured or beneficiary
10 than the provisions otherwise required.

11 (3) In lieu of the provisions required by this code
12 for contracts for particular kinds of insurance, substantially
13 similar provisions required by the law of the domicile of a
14 foreign or alien insurer may be used when approved by the
15 office ~~department~~.

16 Section 1117. Paragraph (g) of subsection (1) and
17 subsections (4) and (5) of section 627.413, Florida Statutes,
18 are amended to read:

19 627.413 Contents of policies, in general;
20 identification.--

21 (1) Every policy shall specify:

22 (g) The form numbers and edition dates or numeric code
23 indicating edition dates, when such code has been supplied to
24 the office ~~department~~, of all endorsements attached to a
25 policy. This requirement applies to life insurance policies
26 and health insurance policies only at the time of original
27 issue.

28 (4) All policies and annuity contracts issued by
29 insurers, and the forms thereof filed with the office
30 ~~department~~, shall have printed thereon an appropriate
31 designating letter or figure, or combination of letters or

1 figures or terms identifying the respective forms of policies
2 or contracts. Whenever any change is made in any such form,
3 the designating letters, figures, or terms thereon shall be
4 correspondingly changed.

5 (5) Any policy that is a minimum premium policy issued
6 by an insurer pursuant to the minimum premium provisions of
7 rules adopted by rating organizations licensed by the office
8 ~~Department of Insurance~~, shall have typed, printed, stamped,
9 or legibly handwritten on the certificate the words "minimum
10 premium policy" or equivalent language. The office ~~department~~
11 may impose an administrative fine pursuant to s. 624.4211 if
12 the office ~~department~~ finds any violation of this subsection.

13 Section 1118. Subsections (1), (2), and (3) and
14 paragraph (f) of subsection (5) of section 627.4145, Florida
15 Statutes, are amended to read:

16 627.4145 Readable language in insurance policies.--

17 (1) Every policy shall be readable as required by this
18 section. For the purposes of this section, the term "policy"
19 means a policy form or endorsement. A policy is deemed
20 readable if:

21 (a) The text achieves a minimum score of 45 on the
22 Flesch reading ease test as computed in subsection (5) or an
23 equivalent score on any other test comparable in result and
24 approved by the office ~~department~~;

25 (b) It uses layout and spacing which separate the
26 paragraphs from each other and from the border of the paper;

27 (c) It has section titles that are captioned in
28 boldfaced type or that otherwise stand out significantly from
29 the text;

30
31

1 (d) It avoids the use of unnecessarily long,
2 complicated, or obscure words, sentences, paragraphs, or
3 constructions;

4 (e) The style, arrangement, and overall appearance of
5 the policy give no undue prominence to any portion of the text
6 of the policy or to any endorsements or riders; and

7 (f) It contains a table of contents or an index of the
8 principal sections of the policy, if the policy has more than
9 3,000 words or more than three pages.

10 (2) The office ~~department~~ may authorize a lower score
11 than the Flesch reading ease test score required in subsection
12 (1) whenever it finds that a lower score will provide a more
13 accurate reflection of the readability of a policy form, is
14 warranted by the nature of a particular policy form or type or
15 class of policy forms, or is the result of language which is
16 used to conform to the requirements of any law.

17 (3) A filing subject to this section shall be
18 accompanied by a certification signed by an officer of the
19 insurer stating that the policy meets the requirements of
20 subsection (1). Such certification shall state that the policy
21 meets the minimum reading ease test score on the test used or
22 that the score is lower than the minimum required but should
23 be approved in accordance with subsection (2). The office
24 ~~department~~ may require the submission of further information
25 to verify any certification.

26 (5) A Flesch reading ease test score shall be measured
27 by the following method:

28 (f) The term "text" as used in this subsection
29 includes all printed matter except:

30 1. The name and address of the insurer; the name,
31 number, or title of the policy; the table of contents or

1 index; captions and subcaptions; specification pages;
2 schedules; or tables;
3 2. Policy language required by any collectively
4 bargained agreement;
5 3. Any medical terminology;
6 4. Words which are defined in the policy; and
7 5. Any policy language required by law, if the insurer
8 identifies the language or terminology excepted by this
9 paragraph and certifies to the office department, in writing,
10 that the language or terminology is entitled to be excepted
11 under this paragraph.

12 Section 1119. Subsection (2) of section 627.417,
13 Florida Statutes, is amended to read:

14 627.417 Underwriters' and combination policies.--

15 (2) Two or more authorized insurers may, with the
16 approval of the office department, issue a combination policy
17 which shall contain provisions substantially as follows:

18 (a) That the insurers executing the policy shall be
19 severally liable for the full amount of any loss or damage,
20 according to the terms of the policy, or for specified
21 percentages or amounts thereof, aggregating the full amount of
22 insurance under the policy; and

23 (b) That service of process, or of any notice or proof
24 of loss required by such policy, upon any of the insurers
25 executing the policy, shall constitute service upon all such
26 insurers.

27 Section 1120. Subsection (2) of section 627.418,
28 Florida Statutes, is amended to read:

29 627.418 Validity of noncomplying contracts.--

30 (2) Any insurance contract delivered or issued for
31 delivery in this state covering a subject or subjects of

1 insurance resident, located, or to be performed in this state,
2 which subjects, pursuant to the provisions of this code, the
3 insurer may not lawfully insure under such a contract, shall
4 be cancelable at any time by the insurer, any provision of the
5 contract to the contrary notwithstanding; and the insurer
6 shall promptly cancel the contract in accordance with the
7 request of the office ~~department~~ therefor. No such illegality
8 or cancellation shall be deemed to relieve the insurer of any
9 liability incurred by it under the contract while in force, or
10 to prohibit the insurer from retaining the pro rata earned
11 premium thereon. This provision does not relieve the insurer
12 from any penalty otherwise incurred by the insurer under this
13 code on account of any such violation.

14 Section 1121. Subsection (7) of section 627.4234,
15 Florida Statutes, is amended to read:

16 627.4234 Health insurance cost containment provisions
17 required.--A health insurance policy or health care services
18 plan which provides medical, hospital, or surgical expense
19 coverage delivered or issued for delivery in this state must
20 contain one or more of the following procedures or provisions
21 to contain health insurance costs or cost increases:

22 (7) Any lawful measure or combination of measures for
23 which the insurer provides to the office ~~department~~
24 information demonstrating that the measure or combination of
25 measures is reasonably expected to have an effect toward
26 containing health insurance costs or cost increases.

27 Section 1122. Paragraph (a) of subsection (3) of
28 section 627.4236, Florida Statutes, is amended to read:

29 627.4236 Coverage for bone marrow transplant
30 procedures.--

31

1 (3)(a) The Agency for Health Care Administration shall
2 adopt rules specifying the bone marrow transplant procedures
3 that are accepted within the appropriate oncological specialty
4 and are not experimental for purposes of this section. The
5 rules must be based upon recommendations of an advisory panel
6 appointed by the secretary of the agency, composed of:

7 1. One adult oncologist, selected from a list of three
8 names recommended by the Florida Medical Association;

9 2. One pediatric oncologist, selected from a list of
10 three names recommended by the Florida Pediatric Society;

11 3. One representative of the J. Hillis Miller Health
12 Center at the University of Florida;

13 4. One representative of the H. Lee Moffitt Cancer
14 Center and Research Institute, Inc.;

15 5. One consumer representative, selected from a list
16 of three names recommended by the Chief Financial Officer
17 ~~Insurance Commissioner~~;

18 6. One representative of the Health Insurance
19 Association of America;

20 7. Two representatives of health insurers, one of whom
21 represents the insurer with the largest Florida health
22 insurance premium volume and one of whom represents the
23 insurer with the second largest Florida health insurance
24 premium volume; and

25 8. One representative of the insurer with the largest
26 Florida small group health insurance premium volume.

27 Section 1123. Section 627.4238, Florida Statutes, is
28 amended to read:

29 627.4238 Health insurer examinations.--The office
30 ~~department~~ may examine each authorized health insurer which
31 transacts health insurance in this state. The purpose of the

1 examination is to ascertain compliance by the insurer with the
2 applicable provisions of this chapter. In lieu of the
3 examination, the office ~~department~~ may accept the report of a
4 similar examination made by the insurance supervisory official
5 of this state or another state. The reasonable cost of the
6 examination shall be paid by the person examined, and such
7 person is subject to the provisions of s. 624.320. Any
8 examination is also subject to the applicable provisions of
9 ss. 624.318, 624.319, 624.321, and 624.322. An examination
10 under this section may not exceed 10 working days in length,
11 may not be conducted more often than annually, and may not be
12 conducted during the same calendar year as a market conduct
13 examination conducted by the office ~~department~~, except in a
14 case in which the office ~~department~~ has prima facie evidence
15 of a violation of this chapter or of chapter 626, which
16 violation is of a nature so as to provide an immediate danger
17 to the insurance-consuming public.

18 Section 1124. Subsection (2) of section 627.427,
19 Florida Statutes, is amended to read:

20 627.427 Payment of judgment by insurer; penalty for
21 failure.--

22 (2) If the judgment or decree is not satisfied as
23 required under subsection (1), and proof of such failure to
24 satisfy is made by filing with the office ~~department~~ a
25 certified transcript of the docket of the judgment or decree
26 together with a certificate by the clerk of the court wherein
27 the judgment or decree was entered that the judgment or decree
28 remains unsatisfied, in whole or in part, after the time
29 aforesaid, the office ~~department~~ shall forthwith revoke the
30 insurer's certificate of authority. The office ~~department~~
31 shall not issue to such insurer any new certificate of

1 authority until the judgment or decree is wholly paid and
2 satisfied and proof thereof filed with the office ~~department~~
3 under the official certificate of the clerk of the court
4 wherein the judgment was recovered, showing that the same is
5 satisfied of record, and until the expenses and fees incurred
6 in the case are also paid by the insurer.

7 Section 1125. Paragraph (b) of subsection (4) of
8 section 627.429, Florida Statutes, is amended to read:

9 627.429 Medical tests for HIV infection and AIDS for
10 insurance purposes.--

11 (4) USE OF MEDICAL TESTS FOR UNDERWRITING.--

12 (b) Prior to testing, the insurer shall disclose its
13 intent to test the person for the HIV infection or for a
14 specific sickness or medical condition derived therefrom and
15 shall obtain the person's written informed consent to
16 administer the test. The written informed consent required by
17 this paragraph shall include a fair explanation of the test,
18 including its purpose, potential uses, and limitations, and
19 the meaning of its results and the right to confidential
20 treatment of information. Use of a form approved by the
21 office ~~department~~ raises a conclusive presumption of informed
22 consent.

23 Section 1126. Subsection (1) of section 627.452,
24 Florida Statutes, is amended to read:

25 627.452 Standard provisions required.--

26 (1) No policy of life insurance, except as stated in
27 subsection (3), shall be delivered or issued for delivery in
28 this state unless it contains in substance each of the
29 provisions as required by ss. 627.453-627.462 inclusive and
30 ss. 627.475 and 627.476, or provisions which in the opinion of
31 the office ~~department~~ are more favorable to the policyholder.

1 Section 1127. Subsection (1) of section 627.458,
2 Florida Statutes, is amended to read:

3 627.458 Policy loan.--

4 (1) There shall be a provision that after the policy
5 has a cash surrender value and while no premium is in default,
6 the insurer will advance, on proper assignment or pledge of
7 the policy and on the sole security thereof, at a rate of
8 interest not exceeding 10 percent per year, for policies
9 issued prior to October 1, 1981, payable in advance, an amount
10 equal to or, at the option of the party entitled thereto, less
11 than the loan value of the policy. The loan value of the
12 policy shall be at least equal to the cash surrender value at
13 the end of the then-current policy year, except that the
14 insurer may deduct, either from such loan value or from the
15 proceeds of the loan, any existing indebtedness not already
16 deducted in determining such cash surrender value, including
17 any interest then accrued but not due, any unpaid balance of
18 the premium for the current policy year, and interest on the
19 loan to the end of the current policy year. However, as a
20 condition for approval of a policy loan interest rate in
21 excess of 6 percent per year, the office ~~department~~ shall
22 require the insurer to furnish such assurances as the office
23 ~~department~~ deems necessary that the interest rate on such
24 loans will bear a reasonable relationship to other interest
25 rates and that the holders of such policies will benefit
26 through higher dividends or lower premiums, or both.

27 Section 1128. Section 627.462, Florida Statutes, is
28 amended to read:

29 627.462 Table of installments.--If a policy provides
30 for payment of its proceeds in installments, a table showing
31 the amount and period of such installments shall be included

1 in the policy; except that certain tables may be omitted from
2 the policy if in the judgment of the office ~~department~~ it is
3 not practical to include them.

4 Section 1129. Subsection (1) of section 627.464,
5 Florida Statutes, is amended to read:

6 627.464 Annuity contracts, pure endowment contracts;
7 standard provisions.--

8 (1) No fixed-dollar annuity, variable annuity, or pure
9 endowment contract, other than a reversionary annuity,
10 survivorship annuity, or group annuity, shall be delivered or
11 issued for delivery in this state unless it contains in
12 substance each of the provisions set forth in ss.

13 627.465-627.470, inclusive, or provisions which in the opinion
14 of the office ~~department~~ are more favorable to the
15 policyholder. Any of such provisions not applicable to
16 single-premium annuities or single-premium pure endowment
17 contracts shall not to that extent be incorporated therein.

18 Section 1130. Subsections (2) and (8), paragraphs (h)
19 and (k) of subsection (9), and subsections (10) and (14) of
20 section 627.476, Florida Statutes, are amended to read:

21 627.476 Standard Nonforfeiture Law for Life
22 Insurance.--

23 (2) NONFORFEITURE PROVISIONS.--In the case of policies
24 issued on or after the operative date of this section as
25 defined in subsection (14), no policy of life insurance,
26 except as set forth in subsection (13), shall be delivered or
27 issued for delivery in this state unless it contains in
28 substance the following provisions, or corresponding
29 provisions which in the opinion of the office ~~department~~ are
30 at least as favorable to the defaulting or surrendering
31 policyholder as are the minimum requirements hereinafter

1 specified and are essentially in compliance with subsection
2 (12):

3 (a) That in the event of default in any premium
4 payment, after premiums have been paid for at least 1 full
5 year in the case of ordinary insurance or 3 full years in the
6 case of industrial insurance, the insurer will grant, upon
7 proper request not later than 60 days after the due date of
8 the premium in default, a paid-up nonforfeiture benefit on a
9 plan stipulated in the policy, effective as of such due date,
10 of such amount as may be hereinafter specified. In lieu of
11 such stipulated paid-up nonforfeiture benefit, the company may
12 substitute, upon proper request not later than 60 days after
13 the due date of the premium in default, an actuarially
14 equivalent alternative paid-up nonforfeiture benefit which
15 provides a greater amount or longer period of death benefits
16 or, if applicable, a greater amount or earlier payment of
17 endowment benefits. With respect to all policy forms filed on
18 or after October 1, 1990, the policy forms shall include, but
19 not be limited to, a reduced paid-up nonforfeiture benefit.
20 For the purposes of this subsection, the term "reduced paid-up
21 nonforfeiture benefit" means a benefit whereby the policy may
22 be continued at the option of the insured as reduced paid-up
23 life insurance, the amount of which shall be as much as the
24 surrender value of the policy will provide on the date of
25 default, calculated using the surrender value of the policy as
26 a net single premium on the due date of the first unpaid
27 premium at the then-current age of the insured.

28 (b) That upon surrender of the policy within 60 days
29 after the due date of any premium payment in default after
30 premiums have been paid for at least 3 full years in the case
31 of ordinary insurance or 5 full years in the case of

1 industrial insurance, the insurer will pay, in lieu of any
2 paid-up nonforfeiture benefit, a cash surrender value of such
3 amount as may be hereinafter specified.

4 (c) That a specified paid-up nonforfeiture benefit
5 shall become effective as specified in the policy unless the
6 person entitled to make such election elects another available
7 option not later than 60 days after the due date of the
8 premium in default.

9 (d) That if the policy becomes paid up by completion
10 of all premium payments, or if it is continued under any
11 paid-up nonforfeiture benefit which became effective on or
12 after the third policy anniversary in the case of ordinary
13 insurance or the fifth policy anniversary in the case of
14 industrial insurance, the insurer will pay, upon surrender of
15 the policy within 30 days after any policy anniversary, a cash
16 surrender value of such amount as may be hereinafter
17 specified.

18 (e) In the case of a policy which causes on a basis
19 guaranteed in the policy unscheduled changes in benefits or
20 premiums, or which provides an option for changes in benefits
21 or premiums other than a change to a new policy, a statement
22 of the mortality table, interest rate, and method used in
23 calculating cash surrender values and the paid-up
24 nonforfeiture benefits available under the policy. In the
25 case of any other policy, a statement of the mortality table
26 and interest rate used in calculating the cash surrender
27 values and the paid-up nonforfeiture benefits available under
28 the policy, together with a table showing the cash surrender
29 value, if any, and paid-up nonforfeiture benefit, if any,
30 available under the policy on each policy anniversary, either
31 during the first 20 policy years or during the term of the

1 policy, whichever is shorter, such values and benefits to be
2 calculated upon the assumption that there are no dividends or
3 paid-up additions credited to the policy and that there is no
4 indebtedness to the insurer on the policy.

5 (f) A statement that the cash surrender values and the
6 paid-up nonforfeiture benefits available under the policy are
7 not less than the minimum values and benefits required by or
8 pursuant to the insurance law of this state; an explanation of
9 the manner in which the cash surrender values and the paid-up
10 nonforfeiture benefits are altered by the existence of any
11 paid-up additions credited to the policy or any indebtedness
12 to the insurer on the policy; if a detailed statement of the
13 method of computation of the values and benefits shown in the
14 policy is not stated therein, a statement that such method of
15 computation has been filed with the insurance supervisory
16 official of the state in which the policy is delivered; and a
17 statement of the method to be used in calculating the cash
18 surrender value and paid-up nonforfeiture benefit available
19 under the policy on any policy anniversary beyond the last
20 anniversary for which such values and benefits are
21 consecutively shown in the policy.

22 (8) MORTALITY TABLES; INTEREST.--This subsection shall
23 not apply to policies issued on or after the operative date of
24 subsection (9), as defined therein. All adjusted premiums and
25 present values referred to in this section shall for all
26 policies of ordinary insurance be calculated on the basis of
27 the Commissioners' 1958 Standard Ordinary Mortality Table,
28 except that, for any category of such policies issued on
29 female risks, adjusted premiums and present values may be
30 calculated according to an age not more than 6 years younger
31 than the actual age of the insured. Such calculations for all

1 policies of industrial insurance shall be made on the basis of
2 the following tables:

3 (a) For policies issued on and after the operative
4 date of this section but before January 1, 1968, the 1941
5 Standard Industrial Mortality Table, unless the Commissioners'
6 1961 Standard Industrial Mortality Table is applicable
7 according to subsection (14);

8 (b) For policies issued on and after January 1, 1968,
9 the Commissioners' 1961 Standard Industrial Mortality Table.

10

11 All calculations shall be made on the basis of the rate of
12 interest specified in the policy for calculating cash
13 surrender values and paid-up nonforfeiture benefits; however,
14 such rate of interest shall not exceed 3.5 percent per year,
15 except that a rate of interest not exceeding 4 percent per
16 year may be used for policies issued on or after July 1, 1973,
17 and prior to October 1, 1979, and a rate of interest not
18 exceeding 4.5 percent per year may be used for policies issued
19 on or after October 1, 1979, and a rate of interest not
20 exceeding 5.5 percent per year may be used for policies issued
21 on or after October 1, 1980. In calculating the present value
22 of any paid-up term insurance with accompanying pure
23 endowment, if any, offered as a nonforfeiture benefit, the
24 rates of mortality assumed may be not more than those shown in
25 the Commissioners' 1958 Extended Term Insurance Table, for
26 ordinary policies. In the case of industrial policies:

27 (c) For policies issued on and after the operative
28 date of this section but before January 1, 1968, not more than
29 130 percent of the rates of mortality according to the 1941
30 Standard Industrial Mortality Table, unless the Commissioners'
31 1961 Industrial Extended Term Insurance Table is applicable

1 according to subsection (14), in which case not more than
2 those of the latter table;

3 (d) For policies issued on and after January 1, 1968,
4 not more than those of the Commissioners' 1961 Industrial
5 Extended Term Insurance Table.

6
7 For insurance issued on a substandard basis, the calculation
8 of any such adjusted premiums and present values may be based
9 on such other table of mortality as may be specified by the
10 insurer and approved by the office ~~department~~.

11 (9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT
12 VALUES FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS
13 SUBSECTION.--

14 (h) All adjusted premiums and present values referred
15 to in this section shall for all policies of ordinary
16 insurance be calculated on the basis of the Commissioners'
17 1980 Standard Ordinary Mortality Table or, at the election of
18 the insurer for any one or more specified plans of life
19 insurance, the Commissioners' 1980 Standard Ordinary Mortality
20 Table with Ten-Year Select Mortality Factors; shall for all
21 policies of industrial insurance be calculated on the basis of
22 the Commissioners' 1961 Standard Industrial Mortality Table;
23 and shall for all policies issued in a particular calendar
24 year be calculated on the basis of a rate of interest not
25 exceeding the nonforfeiture interest rate as defined in this
26 subsection for policies issued in that calendar year. However:

27 1. At the option of the insurer, calculations for all
28 policies issued in a particular calendar year may be made on
29 the basis of a rate of interest not exceeding the
30 nonforfeiture interest rate, as defined in this subsection,
31

1 for policies issued in the immediately preceding calendar
2 year.

3 2. Under any paid-up nonforfeiture benefit, including
4 any paid-up dividend additions, any cash surrender value
5 available, whether or not required by subsection (2), shall be
6 calculated on the basis of the mortality table and rate of
7 interest used in determining the amount of such paid-up
8 nonforfeiture benefit and paid-up dividend additions, if any.

9 3. An insurer may calculate the amount of any
10 guaranteed paid-up nonforfeiture benefit, including any
11 paid-up additions under the policy, on the basis of an
12 interest rate no lower than that specified in the policy for
13 calculating cash surrender values.

14 4. In calculating the present value of any paid-up
15 term insurance with accompanying pure endowment, if any,
16 offered as a nonforfeiture benefit, the rates of mortality
17 assumed may be not more than those shown in the Commissioners'
18 1980 Extended Term Insurance Table for policies of ordinary
19 insurance and not more than the Commissioners' 1961 Industrial
20 Extended Term Insurance Table for policies of industrial
21 insurance.

22 5. In lieu of the mortality tables specified in this
23 section, at the option of the insurance company and subject to
24 rules adopted by the commission ~~department~~, the insurance
25 company may substitute:

26 a. The 1958 CSO or CET Smoker and Nonsmoker Mortality
27 Tables, whichever is applicable, for policies issued on or
28 after the operative date of this subsection and before January
29 1, 1989;

30
31

1 b. The 1980 CSO or CET Smoker and Nonsmoker Mortality
2 Tables, whichever is applicable, for policies issued on or
3 after the operative date of this subsection;

4 c. A mortality table that is a blend of the
5 sex-distinct 1980 CSO or CET mortality table standard,
6 whichever is applicable, or a mortality table that is a blend
7 of the sex-distinct 1980 CSO or CET smoker and nonsmoker
8 mortality table standards, whichever is applicable, for
9 policies that are subject to the United States Supreme Court
10 decision in Arizona Governing Committee v. Norris to prevent
11 unfair discrimination in employment situations.

12 6. For insurance issued on a substandard basis, the
13 calculation of any such adjusted premiums and present values
14 may be based on appropriate modifications of the
15 aforementioned tables.

16 (k) After October 1, 1981, any insurer may file with
17 the office ~~department~~ a written notice of its election to
18 comply with the provisions of this subsection after a
19 specified date before January 1, 1989, which shall be the
20 operative date of this subsection for that insurer. If an
21 insurer makes no such election, the operative date of this
22 subsection for the insurer shall be January 1, 1989.

23 (10) INDETERMINATE PREMIUMS OR MINIMUM VALUES.--In the
24 case of any plan of life insurance which provides for future
25 premium determination, the amounts of which are to be
26 determined by the insurer based on then estimates of future
27 experience, or in the case of any plan of life insurance which
28 is of such a nature that minimum values cannot be determined
29 by the methods described in subsections (2)-(9):

30 (a) The office ~~department~~ must be satisfied that the
31 benefits provided under the plan are substantially as

1 favorable to policyholders and insureds as the minimum
2 benefits otherwise required by subsections (2)-(9);

3 (b) The office ~~department~~ must be satisfied that the
4 benefits and the pattern of premiums of that plan are not such
5 as to mislead prospective policyholders or insureds; and

6 (c) The cash surrender values and paid-up
7 nonforfeiture benefits provided by such plan must not be less
8 than the minimum values and benefits required for the plan
9 computed by a method consistent with the principles of this
10 Standard Nonforfeiture Law for Life Insurance, as determined
11 by rules promulgated by the commission ~~department~~.

12 (14) OPERATIVE DATE.--After the effective date of this
13 code, any insurer may file with the office ~~department~~ a
14 written notice or notices of its election to comply with the
15 provisions of this section on and after a specified date or
16 dates before January 1, 1966, as to either or both of its
17 policies of ordinary and industrial insurance, in which case
18 such specified date or dates shall be the operative date of
19 this section with respect to such policies. The operative
20 date of this section for policies of both ordinary and
21 industrial insurance shall be the earlier of January 1, 1966,
22 and any prior operative date or dates resulting from such
23 previously filed written notices. With respect to policies of
24 industrial insurance issued on and after the operative date of
25 this section for such policies but before January 1, 1968, any
26 insurer may file with the office ~~department~~ written notice of
27 its election to have the Commissioners' 1961 Standard
28 Industrial Mortality Table and the Commissioners' 1961
29 Industrial Extended Term Insurance Table applicable with
30 respect to subsection (8) for policies issued on and after the
31 date specified in such election.

1 Section 1131. Subsections (2) and (3) of section
2 627.479, Florida Statutes, are amended to read:

3 627.479 Prohibited policy plans.--

4 (2) No insurer shall issue policies containing annual
5 endowments or other specialty-type policies such as founder's
6 policies or coupon-bearing policies. The commission
7 ~~department~~ shall, by rule, define such prohibited policies.

8 (3) The office ~~department~~ shall revoke the certificate
9 of authority of any insurer which violates this section.

10 Section 1132. Section 627.480, Florida Statutes, is
11 amended to read:

12 627.480 Cash payments of single-premium life
13 policies.--Premiums for single-premium life insurance policies
14 shall be paid in cash. This section is not applicable to the
15 use of dividends to purchase paid-up additional insurance or
16 to such other usual and customary methods of paying for life
17 insurance as may be permitted by rule of the commission
18 ~~department~~.

19 Section 1133. Paragraph (a) of subsection (2) and
20 subsections (4), (6), and (11) of section 627.481, Florida
21 Statutes, are amended to read:

22 627.481 Requirements for certain annuity agreements.--

23 (2)(a) Every such domestic corporation or such
24 domestic or foreign trust shall have and maintain admitted
25 assets at least equal to the sum of the reserves on its
26 outstanding annuity agreements, and a surplus of 10 percent of
27 such reserves, calculated using:

28 1.a. The present value of future guaranteed benefits
29 for individual annuities that have either commenced paying
30 benefits or have fixed a future date of the first benefit
31 payment.

1 b. The commissioner's annuity reserve method, as set
2 forth in s. 625.121(7)(c), for individual deferred annuities
3 that have not fixed a date for the first benefit payment.

4 2. The mortality tables used to value individual
5 annuities, as defined in s. 625.121(5).

6 a. For annuities issued prior to July 1, 1998:

7 (I) The mortality tables described in s.
8 625.121(5)(h), for individual annuities;

9 (II) At the option of the corporation or trust, the
10 1983 Individual Annuity Mortality Table; or

11 (III) At the option of the corporation or trust, the
12 2000 Individual Annuity Mortality Table for annuities issued
13 between January 1, 1998, and June 30, 1998, inclusive.

14 b. For annuities issued on or after July 1, 1998:

15 (I) The mortality tables set forth in s.
16 625.121(5)(i)3.;

17 (II) Any other mortality tables required to be used by
18 insurers in accordance with s. 625.121; or

19 (III) At the option of the corporation or trust, any
20 other mortality tables authorized to be used by insurers in
21 accordance with s. 625.121.

22 3. An interest rate not greater than the maximum
23 interest rate permitted for the valuation of individual
24 annuities issued during the same calendar year as the
25 charitable gift annuity for individual annuities as set forth
26 in s. 625.121(6)(b)-(f).

27 a. The maximum statutory valuation interest rates for
28 single-premium immediate annuities for 1992 may be used for
29 annuities issued in 1992 or any prior year. The maximum
30 statutory valuation interest rates for single-premium
31

1 immediate annuities issued in 1992 through 2001 are as
2 follows:

3	4 Year of Issue	5 Single Premium Immediate 6 Annuity Interest Rate
7	1992	7.75 percent
8	1993	7.00 percent
9	1994	6.50 percent
10	1995	7.25 percent
11	1996	6.75 percent
12	1997	6.75 percent
13	1998	6.25 percent
14	1999	6.25 percent
15	2000	7.00 percent
16	2001	6.75 percent

17
18 b. For 2002 and subsequent years, until an interest
19 rate for a specified year can be determined in accordance with
20 s. 625.121(6), the prior year's rate shall be used unless the
21 office ~~department~~ requires use of a lower rate.

22 (4) Any corporation or trust that engages in the
23 business of issuing these annuity agreements shall notify the
24 office ~~department~~ in writing by the later of 90 days after the
25 effective date of this act or the date on which it enters into
26 the first of these annuity agreements. The notice must:

27 (a) Be signed by two or more officers or directors of
28 the organization;

29 (b) Identify the organization; and

30 (c) Certify that the organization meets the
31 requirements of this section.

1 (6) If the office ~~department~~ finds that any such
2 corporation or trust has failed to comply with the
3 requirements of this section, it may order such corporation or
4 trust to cease making any new annuity agreements until such
5 requirements have been satisfied. The office ~~department~~ may,
6 in its discretion, require annual statements by such
7 corporation or trust and may accept in lieu thereof a sworn
8 statement by two or more of the principal officers thereof, in
9 such form as will satisfy the office ~~department~~ that the
10 requirements of this section are being complied with.

11 (11) The commission ~~department~~ shall adopt rules and
12 forms for the filing of annual statements and agreements
13 pertaining to donor annuity organizations.

14 Section 1134. Subsection (2) of section 627.482,
15 Florida Statutes, is amended to read:

16 627.482 Interest payable on cash surrender of
17 policy.--

18 (2) An insurer shall be exempt from the requirements
19 of this section if, upon petition by the insurer to the office
20 ~~department~~, it is determined by the office ~~department~~ that
21 payment of such interest threatens the solvency of the
22 insurer.

23 Section 1135. Subsection (2) of section 627.502,
24 Florida Statutes, is amended to read:

25 627.502 "Industrial life insurance" defined;
26 reporting.--

27 (2) Every life insurer transacting industrial life
28 insurance shall report to the office ~~department~~ all annual
29 statement data regarding the exhibit of life insurance,
30 including relevant information for industrial life insurance.
31

1 Section 1136. Subsection (1) of section 627.503,
2 Florida Statutes, is amended to read:

3 627.503 Required provisions.--

4 (1) No policy of industrial life insurance shall be
5 delivered or issued for delivery in this state unless it
6 contains in substance each of the provisions as required in s.
7 627.476 and ss. 627.504-627.521, or provisions which in the
8 opinion of the office ~~department~~ are more favorable to the
9 policyholder.

10 Section 1137. Subsection (2) of section 627.510,
11 Florida Statutes, is amended to read:

12 627.510 Settlement on proof of death.--

13 (2) Insurers transacting industrial life insurance
14 business in the state who require a claim form to be filed by
15 a claimant for settlement of a policy shall allow the claimant
16 to file the claim using the uniform life insurance claim form
17 developed by the commission ~~department~~. The commission
18 ~~department~~ shall establish by rule a uniform life insurance
19 claim form to be used by claimants for settlement of any
20 industrial life insurance policy issued by an insurer
21 transacting life insurance business in this state.

22 Section 1138. Subsections (4) and (5) of section
23 627.5515, Florida Statutes, are amended to read:

24 627.5515 Out-of-state groups.--

25 (4) Prior to solicitation in this state, a copy of the
26 master policy and a copy of the form of the certificate
27 evidencing coverage that will be issued to residents of this
28 state shall be filed with the office ~~department~~ for
29 informational purposes.

30 (5) Prior to solicitation in this state, an officer of
31 the insurer shall truthfully certify to the office ~~department~~

1 that the policy and certificates evidencing coverage have been
2 reviewed and approved by the state in which the group policy
3 is issued.

4 Section 1139. Subsection (2) of section 627.5565,
5 Florida Statutes, is amended to read:

6 627.5565 Additional groups.--

7 (2) An insurer shall inform the office ~~department~~ of
8 the effectuation of any coverage under this section within 30
9 days after effectuation of coverage. The insurer is
10 responsible for establishing that the criteria of subsection
11 (1) have been satisfied.

12 Section 1140. Section 627.558, Florida Statutes, is
13 amended to read:

14 627.558 Provisions required in group contracts.--No
15 policy of group life insurance shall be delivered in this
16 state unless it contains in substance the provisions set forth
17 in ss. 627.559-627.568 or provisions which in the opinion of
18 the office ~~department~~ are more favorable to the persons
19 insured, or at least as favorable to the persons insured and
20 more favorable to the policyholder; except that:

21 (1) Sections 627.564-627.568 inclusive do not apply to
22 policies issued to a creditor to insure debtors of such
23 creditor;

24 (2) The standard provisions required for individual
25 life insurance policies do not apply to group life insurance
26 policies; and

27 (3) If the group life insurance policy is on a plan of
28 insurance other than the term plan, it shall contain a
29 nonforfeiture provision or provisions which in the opinion of
30 the office ~~department~~ is or are equitable to the insured
31 persons and to the policyholder, but nothing in this section

1 shall be construed to require that group life insurance
2 policies contain the same nonforfeiture provisions as are
3 required for individual life insurance policies.

4 Section 1141. Paragraph (g) of subsection (1) and
5 subsection (2) of section 627.602, Florida Statutes, are
6 amended to read:

7 627.602 Scope, format of policy.--

8 (1) Each health insurance policy delivered or issued
9 for delivery to any person in this state must comply with all
10 applicable provisions of this code and all of the following
11 requirements:

12 (g) The policy may not contain any provision
13 purporting to make any portion of the charter, rules,
14 constitution, or bylaws of the insurer a part of the policy
15 unless the portion is set forth in full in the policy, except
16 in the case of the incorporation of, or reference to, a
17 statement of rates, statement of classification of risks, or
18 short-rate table filed with the office ~~department~~.

19 (2) The office ~~department~~ may require any health
20 insurance policy or certificate containing a provision
21 commonly known as a "deductible provision" to have printed or
22 stamped on such policy or certificate: "This policy or
23 certificate contains a deductible provision."; or appropriate
24 words of similar import approved by the office ~~department~~. The
25 statement shall appear on the first page of the policy or
26 certificate in at least 18-point type and may be printed or
27 stamped either as an overprint or by means of a rubber stamp
28 impression.

29 Section 1142. Section 627.604, Florida Statutes, is
30 amended to read:

31

1 627.604 Nonresident insured.--If any health insurance
2 policy is issued by an insurer domiciled in this state for
3 delivery to a person residing in another state, and if the
4 official having responsibility for the administration of the
5 insurance laws of such other state has advised the office
6 ~~department~~ that any such policy is not subject to approval or
7 disapproval by such official, the commission ~~department~~ may by
8 rule require that such policy meet the standards set forth in
9 this part.

10 Section 1143. Section 627.605, Florida Statutes, is
11 amended to read:

12 627.605 Required provisions; captions, omissions,
13 substitutions.--

14 (1) Except as provided in subsection (2), each such
15 policy delivered or issued for delivery to any person in this
16 state shall contain the provisions specified in ss.
17 627.606-627.617, inclusive, in the words in which the same
18 appear; except that the insurer may, at its option, substitute
19 for one or more of such provisions corresponding provisions of
20 different wording approved by the office ~~department~~ which are
21 in each instance not less favorable in any respect to the
22 insured or the beneficiary. Each such provision shall be
23 preceded individually by the applicable caption shown or, at
24 the option of the insurer, by such appropriate individual or
25 group captions or subcaptions as the office ~~department~~ may
26 approve.

27 (2) If any such provision is in whole or in part
28 inapplicable to or inconsistent with the coverage provided by
29 a particular form of policy, the insurer, with the approval of
30 the office ~~department~~, shall omit from such policy any
31 inapplicable provision or part of a provision and shall modify

1 any inconsistent provision or part of a provision in such
2 manner as to make the provision as contained in the policy
3 consistent with the coverage provided by the policy.

4 Section 1144. Subsection (14) of section 627.6131,
5 Florida Statutes, is amended to read:

6 627.6131 Payment of claims.--

7 (14) A permissible error ratio of 5 percent is
8 established for insurer's claims payment violations of
9 paragraphs (4)(a), (b), (c), and (e) and (5)(a), (b), (c), and
10 (e). If the error ratio of a particular insurer does not
11 exceed the permissible error ratio of 5 percent for an audit
12 period, no fine shall be assessed for the noted claims
13 violations for the audit period. The error ratio shall be
14 determined by dividing the number of claims with violations
15 found on a statistically valid sample of claims for the audit
16 period by the total number of claims in the sample. If the
17 error ratio exceeds the permissible error ratio of 5 percent,
18 a fine may be assessed according to s. 624.4211 for those
19 claims payment violations which exceed the error ratio.
20 Notwithstanding the provisions of this section, the office
21 ~~department~~ may fine a health insurer for claims payment
22 violations of paragraphs (4)(e) and (5)(e) which create an
23 uncontestable obligation to pay the claim. The office
24 ~~department~~ shall not fine insurers for violations which the
25 office ~~department~~ determines were due to circumstances beyond
26 the insurer's control.

27 Section 1145. Section 627.618, Florida Statutes, is
28 amended to read:

29 627.618 Optional policy provisions.--Except as
30 provided in s. 627.605(2), no health insurance policy
31 delivered or issued for delivery to any person in this state

1 shall contain any provision respecting the matters set forth
2 in ss. 627.619-627.629, inclusive, unless such provision is in
3 the words in which the same appears in the applicable section,
4 except that the insurer may, at its option, use in lieu of any
5 such provision a corresponding provision of different wording
6 approved by the office ~~department~~ which is not less favorable
7 in any respect to the insured or the beneficiary. Any such
8 provision contained in the policy shall be preceded
9 individually by the appropriate caption or, at the option of
10 the insurer, by such appropriate individual or group captions
11 or subcaptions as the office ~~department~~ may approve.

12 Section 1146. Subsection (2) of section 627.622,
13 Florida Statutes, is amended to read:

14 627.622 Insurance with other insurers.--

15 (2) If the foregoing policy provision is included in a
16 policy which also contains the policy provision set out in s.
17 627.623, there shall be added to the caption of the foregoing
18 provision the phrase: "--Expense-incurred Benefits." The
19 insurer may, at its option, include in this provision a
20 definition of "other valid coverage," approved as to form by
21 the office ~~department~~, which definition shall be limited to
22 coverage provided by organizations subject to regulation by
23 the insurance law of any jurisdiction. In the absence of such
24 definition, such term does not include group insurance,
25 automobile medical payments insurance, or coverage provided by
26 health care services plans or by union welfare plans or
27 employer or employee benefit organizations. Any benefit
28 provided for an insured pursuant to any compulsory benefit
29 statute shall in all cases be deemed to be "other valid
30 coverage" of which the insurer has had notice. In applying

31

1 the foregoing policy provision, no third-party liability
2 coverage shall be included as "other valid coverage."

3 Section 1147. Subsection (2) of section 627.623,
4 Florida Statutes, Florida Statutes, Florida Statutes, is
5 amended to read:

6 627.623 Insurance with other insurers; other
7 benefits.--

8 (2) If the foregoing policy provision is included in a
9 policy which also contains the policy provision set out in s.
10 627.622, there shall be added to the caption of the foregoing
11 provision the phrase: "--Other Benefits." The insurer may, at
12 its option, include in this provision a definition of "other
13 valid coverage," approved as to form by the office ~~department~~,
14 which definition shall be limited to coverage provided by
15 organizations subject to regulation by the insurance law of
16 any jurisdiction. In the absence of such definition, such
17 term does not include group insurance, or benefits provided by
18 union welfare plans or by employer or employee benefit
19 organizations. Any benefit provided for an insured pursuant
20 to any compulsory benefit statute shall in all cases be deemed
21 to be "other valid coverage" of which the insurer has had
22 notice. In applying the foregoing policy provision, no
23 third-party liability coverage shall be included as "other
24 valid coverage."

25 Section 1148. Subsection (2) of section 627.624,
26 Florida Statutes, is amended to read:

27 627.624 Relation of earnings to insurance.--

28 (2) The foregoing policy provision may be inserted
29 only in a policy which the insured has the right to continue
30 in force subject to its terms by the timely payment of
31 premiums until at least age 50 or, in the case of a policy

1 issued after age 44, for at least 5 years from its date of
2 issue. The insurer may, at its option, include in this
3 provision a definition of "valid loss-of-time coverage,"
4 approved as to form by the office ~~department~~, which definition
5 shall be limited to coverage provided by governmental agencies
6 or by organizations subject to regulation by insurance law, or
7 any combination of such coverages. In the absence of such
8 definition, such term does not include any coverage provided
9 for such insured pursuant to any compulsory benefit statute or
10 benefits provided by union welfare plans or by employer or
11 employee benefit organizations.

12 Section 1149. Subsection (2) of section 627.635,
13 Florida Statutes, is amended to read:

14 627.635 Excess insurance.--

15 (2) Any excess insurance policy, or any policy
16 containing any excess insurance provision, shall have
17 imprinted or stamped conspicuously upon the face thereof the
18 designation "excess insurance" or appropriate words of similar
19 import approved by the office ~~department~~.

20 Section 1150. Section 627.640, Florida Statutes, is
21 amended to read:

22 627.640 Filing of classifications and rates.--An
23 insurer shall not deliver or issue for delivery in this state
24 any health insurance policy until it has filed with the office
25 ~~department~~ a copy of any applicable classification of risks
26 and premium rates.

27 Section 1151. Paragraph (b) of subsection (3) of
28 section 627.6425, Florida Statutes, is amended to read:

29 627.6425 Renewability of individual coverage.--

30 (3)

31

1 (b)1. Subject to subparagraph (a)3., in any case in
2 which an insurer elects to discontinue offering all health
3 insurance coverage in the individual market in this state,
4 health insurance coverage may be discontinued by the insurer
5 only if:

6 a. The insurer provides notice to the office
7 ~~department~~ and to each individual of such discontinuation at
8 least 180 days prior to the date of the nonrenewal of such
9 coverage; and

10 b. All health insurance issued or delivered for
11 issuance in the state in the individual market is discontinued
12 and coverage under such health insurance coverage in such
13 market is not renewed.

14 2. In the case of a discontinuation under subparagraph
15 1. in the individual market, the insurer may not provide for
16 the issuance of any individual health insurance coverage in
17 this state during the 5-year period beginning on the date of
18 the discontinuation of the last health insurance coverage not
19 so renewed.

20 Section 1152. Section 627.643, Florida Statutes, is
21 amended to read:

22 627.643 Uniform minimum standards.--

23 (1) The commission ~~department~~ shall adopt rules which
24 establish minimum standards for the general content of forms
25 of individual and family health insurance policies. The rules
26 must include terms of renewability, initial and subsequent
27 conditions of eligibility, termination of insurance,
28 probationary periods, exclusions, limitations, and reductions.
29 The minimum standards are in addition to, and must comply
30 with, the individual health insurance policy provisions
31 provided in part II and in this part.

1 (2) The commission ~~department~~ shall adopt rules which
2 establish minimum standards of benefits and identification for
3 each of the following categories of coverage in individual and
4 family accident and health insurance policy forms, other than
5 conversion policy forms:

6 (a) Basic hospital expense insurance.

7 (b) Basic medical expense insurance.

8 (c) Basic surgical expense insurance.

9 (d) Hospital confinement indemnity insurance.

10 (e) Major medical expense insurance.

11 (f) Disability income protection insurance.

12 (g) Accident-only insurance.

13 (h) Limited benefit insurance.

14 (i) Supplemental insurance.

15 (j) Home health care coverage.

16 (k) Nonconventional coverage.

17
18 This subsection does not preclude the issuance of a policy
19 which combines two or more of the categories of coverage
20 enumerated in paragraphs (a)-(e). This subsection does not
21 preclude the issuance of a policy that does not meet the
22 prescribed minimum standards for categories of coverage in
23 paragraphs (a)-(g) if the office ~~department~~ determines that
24 the policy is either experimental in nature or is demonstrated
25 to be a type of coverage that fulfills a reasonable need of
26 the person or persons to be insured. Any policy not meeting
27 the minimum standards that is approved by the office
28 ~~department~~ must be identified as to category only as
29 prescribed by the office ~~department~~.

30 (3) The office ~~department~~ may, within the time
31 provided by law for the disapproval of an individual or family

1 form of accident or health insurance, disapprove any form if
2 it finds that the form does not comply with applicable law or
3 it finds that the form is unjust, unfair, or inequitable to
4 the policyholder, any insured, or any beneficiary. In acting
5 upon any submission, the office ~~department~~ shall consider
6 whether the benefits afforded under the submitted policy or
7 benefit form fulfill a reasonable need of a policyholder.

8 Section 1153. Subsection (1) of section 627.647,
9 Florida Statutes, is amended to read:

10 627.647 Standard health claim form.--

11 (1) The commission ~~department~~ shall prescribe a
12 standard health claim form to be used by all hospitals and a
13 standard health claim form to be used by all physicians,
14 dentists, and pharmacists. Such forms shall be in a format
15 that allows for the use of generally accepted coding systems
16 by providers in order to facilitate the processing of claims.
17 Such forms shall provide for the disclosure by the claimant of
18 the name, policy number, and address of every insurance policy
19 which may cover the claimant with respect to the submitted
20 claim except those policies specified in s. 627.4235(5). The
21 required information on diagnosis, dental procedures, medical
22 procedures, services, date of service, supplies, and fees may
23 also be met by an attachment to the appropriate physician
24 claim form. However, for the purpose of filing Medicaid
25 claims, such attachments shall be prohibited. Such standard
26 health claim forms shall be accepted by all insurers and all
27 agencies, departments, and divisions of the state.

28 Section 1154. Paragraph (c) of subsection (14) of
29 section 627.6472, Florida Statutes, is amended to read:

30 627.6472 Exclusive provider organizations.--

31 (14)

1 (c) The failure of the insurer to pay the assessment
2 within the time specified in s. 641.58 constitutes grounds for
3 suspension or revocation of the insurer's certificate of
4 authority by the office ~~Department of Insurance~~.

5 Section 1155. Paragraphs (a) and (b) of subsection
6 (5), subsection (6), paragraphs (b), (c), (e), and (g) of
7 subsection (7), and subsection (9) of section 627.6475,
8 Florida Statutes, are amended to read:

9 627.6475 Individual reinsurance pool.--

10 (5) ISSUER'S ELECTION TO BECOME A RISK-ASSUMING
11 CARRIER.--

12 (a) Each health insurance issuer that offers
13 individual health insurance must elect to become a
14 risk-assuming carrier or a reinsuring carrier for purposes of
15 this section. Each such issuer must make an initial election,
16 binding through December 31, 1999. The issuer's initial
17 election must be made no later than October 31, 1997. By
18 October 31, 1997, all issuers must file a final election,
19 which is binding for 2 years, from January 1, 1998, through
20 December 31, 1999, after which an election shall be binding
21 for a period of 5 years. The office ~~department~~ may permit an
22 issuer to modify its election at any time for good cause
23 shown, after a hearing.

24 (b) The office ~~department~~ shall establish an
25 application process for issuers seeking to change their status
26 under this subsection.

27 (6) ELECTION PROCESS TO BECOME A RISK-ASSUMING
28 CARRIER.--

29 (a)1. A health insurance issuer that offers individual
30 health insurance may become a risk-assuming carrier by filing
31 with the office ~~department~~ a designation of election under

1 this subsection in a format and manner prescribed by the
2 commission ~~department~~. The office ~~department~~ shall approve the
3 election of a health insurance issuer to become a
4 risk-assuming carrier if the office ~~department~~ finds that the
5 issuer is capable of assuming that status pursuant to the
6 criteria set forth in paragraph (b).

7 2. The office ~~department~~ must approve or disapprove
8 any designation as a risk-assuming carrier within 60 days
9 after a filing.

10 (b) In determining whether to approve an application
11 by an issuer to become a risk-assuming carrier, the office
12 ~~department~~ shall consider:

13 1. The issuer's financial ability to support the
14 assumption of the risk of individuals.

15 2. The issuer's history of rating and underwriting
16 individuals.

17 3. The issuer's commitment to market fairly to all
18 individuals in the state or its service area, as applicable.

19 4. The issuer's ability to assume and manage the risk
20 of enrolling individuals without the protection of the
21 reinsurance program provided in subsection (7).

22 (c) The office ~~department~~ shall provide public notice
23 of an issuer's designation of election under this subsection
24 to become a risk-assuming carrier and shall provide at least a
25 21-day period for public comment prior to making a decision on
26 the election. The office ~~department~~ shall hold a hearing on
27 the election at the request of the issuer.

28 (d) The office ~~department~~ may rescind the approval
29 granted to a risk-assuming carrier under this subsection if
30 the office ~~department~~ finds that the carrier no longer meets
31 the criteria of paragraph (b).

1 (7) INDIVIDUAL HEALTH REINSURANCE PROGRAM.--

2 (b) A reinsuring carrier may reinsure with the program
3 coverage of an eligible individual, subject to each of the
4 following provisions:

5 1. A reinsuring carrier may reinsure an eligible
6 individual within 60 days after commencement of the coverage
7 of the eligible individual.

8 2. The program may not reimburse a participating
9 carrier with respect to the claims of a reinsured eligible
10 individual until the carrier has paid incurred claims of at
11 least \$5,000 in a calendar year for benefits covered by the
12 program. In addition, the reinsuring carrier is responsible
13 for 10 percent of the next \$50,000 and 5 percent of the next
14 \$100,000 of incurred claims during a calendar year, and the
15 program shall reinsure the remainder.

16 3. The board shall annually adjust the initial level
17 of claims and the maximum limit to be retained by the carrier
18 to reflect increases in costs and utilization within the
19 standard market for health benefit plans within the state. The
20 adjustment may not be less than the annual change in the
21 medical component of the "Commerce Price Index for All Urban
22 Consumers" of the Bureau of Labor Statistics of the United
23 States Department of Labor, unless the board proposes and the
24 office ~~department~~ approves a lower adjustment factor.

25 4. A reinsuring carrier may terminate reinsurance for
26 all reinsured eligible individuals on any plan anniversary.

27 5. The premium rate charged for reinsurance by the
28 program to a health maintenance organization that is approved
29 by the Secretary of Health and Human Services as a federally
30 qualified health maintenance organization pursuant to 42
31 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to

1 requirements that limit the amount of risk that may be ceded
2 to the program, which requirements are more restrictive than
3 subparagraph 2., shall be reduced by an amount equal to that
4 portion of the risk, if any, which exceeds the amount set
5 forth in subparagraph 2., which may not be ceded to the
6 program.

7 6. The board may consider adjustments to the premium
8 rates charged for reinsurance by the program or carriers that
9 use effective cost-containment measures, including high-cost
10 case management, as defined by the board.

11 7. A reinsuring carrier shall apply its
12 case-management and claims-handling techniques, including, but
13 not limited to, utilization review, individual case
14 management, preferred provider provisions, other managed-care
15 provisions, or methods of operation consistently with both
16 reinsured business and nonreinsured business.

17 (c)1. The board, as part of the plan of operation,
18 shall establish a methodology for determining premium rates to
19 be charged by the program for reinsuring eligible individuals
20 pursuant to this section. The methodology must include a
21 system for classifying individuals which reflects the types of
22 case characteristics commonly used by carriers in this state.
23 The methodology must provide for the development of basic
24 reinsurance premium rates, which shall be multiplied by the
25 factors set for them in this paragraph to determine the
26 premium rates for the program. The basic reinsurance premium
27 rates shall be established by the board, subject to the
28 approval of the office ~~department~~, and shall be set at levels
29 that reasonably approximate gross premiums charged to eligible
30 individuals for individual health insurance by health
31 insurance issuers. The premium rates set by the board may vary

1 by geographical area, as determined under this section, to
2 reflect differences in cost. An eligible individual may be
3 reinsured for a rate that is five times the rate established
4 by the board.

5 2. The board shall periodically review the methodology
6 established, including the system of classification and any
7 rating factors, to ensure that it reasonably reflects the
8 claims experience of the program. The board may propose
9 changes to the rates that are subject to the approval of the
10 office ~~department~~.

11 (e)1. Before March 1 of each calendar year, the board
12 shall determine and report to the office ~~department~~ the
13 program net loss in the individual account for the previous
14 year, including administrative expenses for that year and the
15 incurred losses for that year, taking into account investment
16 income and other appropriate gains and losses.

17 2. Any net loss in the individual account for the year
18 shall be recouped by assessing the carriers as follows:

19 a. The operating losses of the program shall be
20 assessed in the following order subject to the specified
21 limitations. The first tier of assessments shall be made
22 against reinsuring carriers in an amount that may not exceed 5
23 percent of each reinsuring carrier's premiums for individual
24 health insurance. If such assessments have been collected and
25 additional moneys are needed, the board shall make a second
26 tier of assessments in an amount that may not exceed 0.5
27 percent of each carrier's health benefit plan premiums.

28 b. Except as provided in paragraph (f), risk-assuming
29 carriers are exempt from all assessments authorized pursuant
30 to this section. The amount paid by a reinsuring carrier for
31

1 the first tier of assessments shall be credited against any
2 additional assessments made.

3 c. The board shall equitably assess reinsuring
4 carriers for operating losses of the individual account based
5 on market share. The board shall annually assess each carrier
6 a portion of the operating losses of the individual account.
7 The first tier of assessments shall be determined by
8 multiplying the operating losses by a fraction, the numerator
9 of which equals the reinsuring carrier's earned premium
10 pertaining to direct writings of individual health insurance
11 in the state during the calendar year for which the assessment
12 is levied, and the denominator of which equals the total of
13 all such premiums earned by reinsuring carriers in the state
14 during that calendar year. The second tier of assessments
15 shall be based on the premiums that all carriers, except
16 risk-assuming carriers, earned on all health benefit plans
17 written in this state. The board may levy interim assessments
18 against reinsuring carriers to ensure the financial ability of
19 the plan to cover claims expenses and administrative expenses
20 paid or estimated to be paid in the operation of the plan for
21 the calendar year prior to the association's anticipated
22 receipt of annual assessments for that calendar year. Any
23 interim assessment is due and payable within 30 days after
24 receipt by a carrier of the interim assessment notice. Interim
25 assessment payments shall be credited against the carrier's
26 annual assessment. Health benefit plan premiums and benefits
27 paid by a carrier that are less than an amount determined by
28 the board to justify the cost of collection may not be
29 considered for purposes of determining assessments.

30 d. Subject to the approval of the office ~~department~~,
31 the board shall adjust the assessment formula for reinsuring

1 carriers that are approved as federally qualified health
2 maintenance organizations by the Secretary of Health and Human
3 Services pursuant to 42 U.S.C. s. 300e(c)(2)(A) to the extent,
4 if any, that restrictions are placed on them which are not
5 imposed on other carriers.

6 3. Before March 1 of each year, the board shall
7 determine and file with the office ~~department~~ an estimate of
8 the assessments needed to fund the losses incurred by the
9 program in the individual account for the previous calendar
10 year.

11 4. If the board determines that the assessments needed
12 to fund the losses incurred by the program in the individual
13 account for the previous calendar year will exceed the amount
14 specified in subparagraph 2., the board shall evaluate the
15 operation of the program and report its findings and
16 recommendations to the office ~~department~~ in the format
17 established in s. 627.6699(11) for the comparable report for
18 the small employer reinsurance program.

19 (g) Except as otherwise provided in this section, the
20 board and the office ~~department~~ shall have all powers, duties,
21 and responsibilities with respect to carriers that issue and
22 reinsure individual health insurance, as specified for the
23 board and the office ~~department~~ in s. 627.6699(11) with
24 respect to small employer carriers, including, but not limited
25 to, the provisions of s. 627.6699(11) relating to:

26 1. Use of assessments that exceed the amount of actual
27 losses and expenses.

28 2. The annual determination of each carrier's
29 proportion of the assessment.

30 3. Interest for late payment of assessments.

31

1 4. Authority for the office ~~department~~ to approve
2 deferment of an assessment against a carrier.

3 5. Limited immunity from legal actions or carriers.

4 6. Development of standards for compensation to be
5 paid to agents. Such standards shall be limited to those
6 specifically enumerated in s. 627.6699(13)(d).

7 7. Monitoring compliance by carriers with this
8 section.

9 (9) RULEMAKING AUTHORITY.--The commission ~~department~~
10 may adopt rules to administer this section, including rules
11 governing compliance by carriers.

12 Section 1156. Subsections (11) and (12) of section
13 627.6482, Florida Statutes, are amended to read:

14 627.6482 Definitions.--As used in ss.
15 627.648-627.6498, the term:

16 (11) "Plan" means the comprehensive health insurance
17 plan adopted by the association or by rule of the commission
18 ~~Department of Insurance~~.

19 (12) "Premium" means the entire cost of an insurance
20 plan, including the administrative fee, the risk assumption
21 charge, and, in the instance of a minimum premium plan or
22 stop-loss coverage, the incurred claims whether or not such
23 claims are paid directly by the insurer. "Premium" shall not
24 include a health maintenance organization's annual earned
25 premium revenue for Medicare and Medicaid contracts for any
26 assessment due for calendar years 1990 and 1991. For
27 assessments due for calendar year 1992 and subsequent years, a
28 health maintenance organization's annual earned premium
29 revenue for Medicare and Medicaid contracts is subject to
30 assessments unless the office ~~department~~ determines that the
31 health maintenance organization has made a reasonable effort

1 to amend its Medicare or Medicaid government contract for 1992
2 and subsequent years to provide reimbursement for any
3 assessment on Medicare or Medicaid premiums paid by the health
4 maintenance organization and the contract does not provide for
5 such reimbursement.

6 Section 1157. Subsections (1) and (2) of section
7 627.6484, Florida Statutes, are amended to read:

8 627.6484 Termination of enrollment; availability of
9 other coverage.--

10 (1) The association shall accept applications for
11 insurance only until June 30, 1991, after which date no
12 further applications may be accepted. Upon receipt of an
13 application for insurance, the association shall issue
14 coverage for an eligible applicant. When appropriate, the
15 administrator shall forward a copy of the application to a
16 market assistance plan created by the office ~~department~~, which
17 shall conduct a diligent search of the private marketplace for
18 a carrier willing to accept the application.

19 (2) The office ~~department~~ shall, after consultation
20 with the health insurers licensed in this state, adopt a
21 market assistance plan to assist in the placement of risks of
22 Florida Comprehensive Health Association applicants. All
23 health insurers and health maintenance organizations licensed
24 in this state shall participate in the plan.

25 Section 1158. Paragraph (b) of subsection (4),
26 paragraph (a) of subsection (5), and subsection (6) of section
27 627.6487, Florida Statutes, are amended to read:

28 627.6487 Guaranteed availability of individual health
29 insurance coverage to eligible individuals.--

30 (4)

31

1 (b) The requirement of this subsection is met for
2 health insurance coverage policy forms offered by an issuer in
3 the individual market if the issuer offers the policy forms
4 for individual health insurance coverage with the largest, and
5 next to largest, premium volume of all such policy forms
6 offered by the issuer in this state or applicable marketing or
7 service area, as prescribed in rules adopted by the commission
8 ~~department~~, in the individual market in the period involved.
9 To the greatest extent possible, such rules must be consistent
10 with regulations adopted by the United States Department of
11 Health and Human Services.

12 (5)(a) In the case of a health insurance issuer that
13 offers individual health insurance coverage through a network
14 plan, the issuer may:

15 1. Limit the individuals who may be enrolled under
16 such coverage to those who live, reside, or work within the
17 service area for such network plan; and

18 2. Within the service area of such plan, deny such
19 coverage to such individuals if the issuer has demonstrated to
20 the office ~~department~~ that:

21 a. It will not have the capacity to deliver services
22 adequately to additional individual enrollees because of its
23 obligations to existing group contract holders and enrollees
24 and individual enrollees; and

25 b. It is applying this paragraph uniformly to
26 individuals without regard to any health-status-related factor
27 of such individuals and without regard to whether the
28 individuals are eligible individuals.

29 (6)(a) A health insurance issuer may deny individual
30 health insurance coverage to an eligible individual if the
31 issuer has demonstrated to the office ~~department~~ that:

1 1. It does not have the financial reserves necessary
2 to underwrite additional coverage; and

3 2. It is applying this paragraph uniformly to all
4 individuals in the individual market in this state consistent
5 with the laws of this state and without regard to any
6 health-status-related factor of such individuals and without
7 regard to whether the individuals are eligible individuals.

8 (b) An issuer, upon denying individual health
9 insurance coverage in any service area in accordance with
10 paragraph (a), may not offer such coverage in the individual
11 market within such service area for a period of 180 days after
12 the date such coverage is denied or until the issuer has
13 demonstrated to the office ~~department~~ that the issuer has
14 sufficient financial reserves to underwrite additional
15 coverage, whichever occurs later.

16 Section 1159. Paragraphs (a) and (e) of subsection
17 (2), subsection (3), paragraphs (e), (j), and (k) of
18 subsection (4), and subsection (6) of section 627.6488,
19 Florida Statutes, are amended to read:

20 627.6488 Florida Comprehensive Health Association.--

21 (2)(a) The association shall operate subject to the
22 supervision and approval of a three-member board of directors.
23 The board of directors shall be appointed by the Chief
24 Financial Officer ~~Insurance Commissioner~~ as follows:

25 1. The chair of the board shall be the Chief Financial
26 Officer ~~Insurance Commissioner~~ or his or her designee.

27 2. One representative of policyholders who is not
28 associated with the medical profession, a hospital, or an
29 insurer.

30 3. One representative of insurers.

31

1 The administrator or his or her affiliate shall not be a
2 member of the board. Any board member appointed by the Chief
3 Financial Officer ~~commissioner~~ may be removed and replaced by
4 him or her at any time without cause.

5 (e) There shall be no liability on the part of, and no
6 cause of action of any nature shall arise against, any member
7 insurer, or its agents or employees, agents or employees of
8 the association, members of the board of directors of the
9 association, or the Chief Financial Officer's ~~departmental~~
10 representatives for any act or omission taken by them in the
11 performance of their powers and duties under this act, unless
12 such act or omission by such person is in intentional
13 disregard of the rights of the claimant.

14 (3) The association shall adopt a plan pursuant to
15 this act and submit its articles, bylaws, and operating rules
16 to the office ~~department~~ for approval. If the association
17 fails to adopt such plan and suitable articles, bylaws, and
18 operating rules within 180 days after the appointment of the
19 board, the commission ~~department~~ shall adopt rules to
20 effectuate the provisions of this act; and such rules shall
21 remain in effect until superseded by a plan and articles,
22 bylaws, and operating rules submitted by the association and
23 approved by the office ~~department~~.

24 (4) The association shall:

25 (e) Require that all policy forms issued by the
26 association conform to standard forms developed by the
27 association. The forms shall be approved by the office
28 ~~department~~.

29 (j) Make a report to the Governor, the office
30 ~~Insurance Commissioner~~, the President of the Senate, the
31 Speaker of the House of Representatives, and the Minority

1 Leaders of the Senate and House of Representatives, not later
2 than 45 days after the close of each calendar quarter, which
3 includes, for the prior quarter, current data and estimates of
4 net written and earned premiums, the expenses of
5 administration, and the paid and incurred losses. The report
6 shall identify any statutorily mandated program that has not
7 been fully implemented by the board.

8 (k) To facilitate preparation of assessments and for
9 other purposes, the board shall direct preparation of annual
10 audited financial statements for each calendar year as soon as
11 feasible following the conclusion of that calendar year, and
12 shall, within 30 days after rendition of such statements, file
13 with the office ~~department~~ the annual report containing such
14 information as required by the office ~~department~~ to be filed
15 on March 1 of each year.

16 (6) The office ~~department~~ shall examine and
17 investigate the association in the manner provided in part II
18 of chapter 624.

19 Section 1160. Paragraph (f) of subsection (3) of
20 section 627.649, Florida Statutes, is amended to read:

21 627.649 Administrator.--

22 (3) The administrator shall:

23 (f) Following the close of each calendar year,
24 determine net premiums, reinsurance premiums less
25 administrative expense allowance, the expense of
26 administration pertaining to the reinsurance operations of the
27 association, and the incurred losses of the year and report
28 this information to the association and the office ~~department~~.

29 Section 1161. Subsection (2) of section 627.6494,
30 Florida Statutes, is amended to read:

31 627.6494 Assessments; deferment, limitation.--

1 (2) The association, upon approval of the office
2 ~~department~~, may abate or defer, in whole or in part, the
3 assessment of a participating insurer if, in the opinion of
4 the board, payment of the assessment would endanger the
5 ability of the participating insurer to fulfill its
6 contractual obligations. In the event that an assessment
7 against a participating insurer is abated or deferred, in
8 whole or in part, the amount by which such assessment is
9 abated or deferred may be assessed against the other
10 participating insurers in a manner consistent with the basis
11 for assessments set forth in s. 627.6492; and the insurer
12 receiving such abatement or deferment shall remain liable to
13 the association for the deficiency for 4 years.

14 Section 1162. Paragraph (a) of subsection (4) of
15 section 627.6498, Florida Statutes, is amended to read:

16 627.6498 Minimum benefits coverage; exclusions;
17 premiums; deductibles.--

18 (4) PREMIUMS, DEDUCTIBLES, AND COINSURANCE.--

19 (a) The plan shall provide for annual deductibles for
20 major medical expense coverage in the amount of \$1,000 or any
21 higher amounts proposed by the board and approved by the
22 office ~~department~~, plus the benefits payable under any other
23 type of insurance coverage or workers' compensation. The
24 schedule of premiums and deductibles shall be established by
25 the association. With regard to any preferred provider
26 arrangement utilized by the association, the deductibles
27 provided in this paragraph shall be the minimum deductibles
28 applicable to the preferred providers and higher deductibles,
29 as approved by the office ~~department~~, may be applied to
30 providers who are not preferred providers.

31

1 1. Separate schedules of premium rates based on age
2 may apply for individual risks.

3 2. Rates are subject to approval by the office
4 ~~department~~.

5 3. Standard risk rates for coverages issued by the
6 association shall be established by the office ~~department~~,
7 pursuant to s. 627.6675(3).

8 4. The board shall establish separate premium
9 schedules for low-risk individuals, medium-risk individuals,
10 and high-risk individuals and shall revise premium schedules
11 annually beginning January 1999. No rate shall exceed 200
12 percent of the standard risk rate for low-risk individuals,
13 225 percent of the standard risk rate for medium-risk
14 individuals, or 250 percent of the standard risk rate for
15 high-risk individuals. For the purpose of determining what
16 constitutes a low-risk individual, medium-risk individual, or
17 high-risk individual, the board shall consider the anticipated
18 claims payment for individuals based upon an individual's
19 health condition.

20 Section 1163. Section 627.6499, Florida Statutes, is
21 amended to read:

22 627.6499 Reporting by insurers and third-party
23 administrators.--The office ~~department~~ may require any
24 insurer, third-party administrator, or service company to
25 report any information reasonably required to assist the board
26 in assessing insurers as required by this act.

27 Section 1164. Subsections (4) and (5) of section
28 627.6515, Florida Statutes, are amended to read:

29 627.6515 Out-of-state groups.--

30 (4) Prior to solicitation in this state, a copy of the
31 master policy and a copy of the form of the certificate

1 evidencing coverage that will be issued to residents of this
2 state shall be filed with the office ~~department~~ for
3 informational purposes.

4 (5) Prior to solicitation in this state, an officer of
5 the insurer shall truthfully certify to the office ~~department~~
6 that the policy and certificates evidencing coverage have been
7 reviewed and approved by the state in which the group policy
8 is issued.

9 Section 1165. Paragraphs (a), (b), and (c) of
10 subsection (5), paragraph (b) of subsection (7), paragraphs
11 (a) and (e) of subsection (8), and paragraph (b) of subsection
12 (9) of section 627.6561, Florida Statutes, are amended to
13 read:

14 627.6561 Preexisting conditions.--

15 (5)(a) The term, "creditable coverage," means, with
16 respect to an individual, coverage of the individual under any
17 of the following:

18 1. A group health plan, as defined in s. 2791 of the
19 Public Health Service Act.

20 2. Health insurance coverage consisting of medical
21 care, provided directly, through insurance or reimbursement,
22 or otherwise and including terms and services paid for as
23 medical care, under any hospital or medical service policy or
24 certificate, hospital or medical service plan contract, or
25 health maintenance contract offered by a health insurance
26 issuer.

27 3. Part A or part B of Title XVIII of the Social
28 Security Act.

29 4. Title XIX of the Social Security Act, other than
30 coverage consisting solely of benefits under s. 1928.

31 5. Chapter 55 of Title 10, United States Code.

1 6. A medical care program of the Indian Health Service
2 or of a tribal organization.

3 7. The Florida Comprehensive Health Association or
4 another state health benefit risk pool.

5 8. A health plan offered under chapter 89 of Title 5,
6 United States Code.

7 9. A public health plan as defined by rules adopted by
8 the commission ~~department~~. To the greatest extent possible,
9 such rules must be consistent with regulations adopted by the
10 United States Department of Health and Human Services.

11 10. A health benefit plan under s. 5(e) of the Peace
12 Corps Act (22 U.S.C. s. 2504(e)).

13 (b) Creditable coverage does not include coverage that
14 consists solely of one or more or any combination thereof of
15 the following excepted benefits:

16 1. Coverage only for accident, or disability income
17 insurance, or any combination thereof.

18 2. Coverage issued as a supplement to liability
19 insurance.

20 3. Liability insurance, including general liability
21 insurance and automobile liability insurance.

22 4. Workers' compensation or similar insurance.

23 5. Automobile medical payment insurance.

24 6. Credit-only insurance.

25 7. Coverage for on-site medical clinics, including
26 prepaid health clinics under part II of chapter 641.

27 8. Other similar insurance coverage, specified in
28 rules adopted by the commission ~~department~~, under which
29 benefits for medical care are secondary or incidental to other
30 insurance benefits. To the extent possible, such rules must be
31

1 consistent with regulations adopted by the United States
2 Department of Health and Human Services.

3 (c) The following benefits are not subject to the
4 creditable coverage requirements, if offered separately:

5 1. Limited scope dental or vision benefits.

6 2. Benefits for long-term care, nursing home care,
7 home health care, community-based care, or any combination
8 thereof.

9 3. Such other similar, limited benefits as are
10 specified in rules adopted by the commission ~~department~~.

11 (7)

12 (b) An insurer may elect to count, as creditable
13 coverage, coverage of benefits within each of several classes
14 or categories of benefits specified in rules adopted by the
15 commission ~~department~~ rather than as provided under paragraph
16 (a). To the extent possible, such rules must be consistent
17 with regulations adopted by the United States Department of
18 Health and Human Services. Such election shall be made on a
19 uniform basis for all participants and beneficiaries. Under
20 such election, an insurer shall count a period of creditable
21 coverage with respect to any class or category of benefits if
22 any level of benefits is covered within such class or
23 category.

24 (8)(a) Periods of creditable coverage with respect to
25 an individual shall be established through presentation of
26 certifications described in this subsection or in such other
27 manner as is specified in rules adopted by the commission
28 ~~department~~. To the extent possible, such rules must be
29 consistent with regulations adopted by the United States
30 Department of Health and Human Services.

31

1 (e) The commission ~~department~~ shall adopt rules to
2 prevent an insurer's failure to provide information under this
3 subsection with respect to previous coverage of an individual
4 from adversely affecting any subsequent coverage of the
5 individual under another group health plan or health insurance
6 coverage. To the greatest extent possible, such rules must be
7 consistent with regulations adopted by the United States
8 Department of Health and Human Services.

9 (9)

10 (b) The commission ~~department~~ shall adopt rules that
11 provide a process whereby individuals who need to establish
12 creditable coverage for periods before July 1, 1996, and who
13 would have such coverage credited but for paragraph (a), may
14 be given credit for creditable coverage for such periods
15 through the presentation of documents or other means. To the
16 greatest extent possible, such rules must be consistent with
17 regulations adopted by the United States Department of Health
18 and Human Services.

19 Section 1166. Paragraph (b) of subsection (3) of
20 section 627.6571, Florida Statutes, is amended to read:

21 627.6571 Guaranteed renewability of coverage.--

22 (3)

23 (b)1. In any case in which an insurer elects to
24 discontinue offering all health insurance coverage in the
25 small-group market or the large-group market, or both, in this
26 state, health insurance coverage may be discontinued by the
27 insurer only if:

28 a. The insurer provides notice to the office
29 ~~department~~ and to each policyholder, and participants and
30 beneficiaries covered under such coverage, of such

31

1 discontinuation at least 180 days prior to the date of the
2 nonrenewal of such coverage; and

3 b. All health insurance issued or delivered for
4 issuance in this state in such market is discontinued and
5 coverage under such health insurance coverage in such market
6 is not renewed.

7 2. In the case of a discontinuation under subparagraph
8 1. in a market, the insurer may not provide for the issuance
9 of any health insurance coverage in the market in this state
10 during the 5-year period beginning on the date of the
11 discontinuation of the last insurance coverage not renewed.

12 Section 1167. Section 627.6675, Florida Statutes, is
13 amended to read:

14 627.6675 Conversion on termination of
15 eligibility.--Subject to all of the provisions of this
16 section, a group policy delivered or issued for delivery in
17 this state by an insurer or nonprofit health care services
18 plan that provides, on an expense-incurred basis, hospital,
19 surgical, or major medical expense insurance, or any
20 combination of these coverages, shall provide that an employee
21 or member whose insurance under the group policy has been
22 terminated for any reason, including discontinuance of the
23 group policy in its entirety or with respect to an insured
24 class, and who has been continuously insured under the group
25 policy, and under any group policy providing similar benefits
26 that the terminated group policy replaced, for at least 3
27 months immediately prior to termination, shall be entitled to
28 have issued to him or her by the insurer a policy or
29 certificate of health insurance, referred to in this section
30 as a "converted policy." A group insurer may meet the
31 requirements of this section by contracting with another

1 insurer, authorized in this state, to issue an individual
2 converted policy, which policy has been approved by the office
3 ~~department~~ under s. 627.410. An employee or member shall not
4 be entitled to a converted policy if termination of his or her
5 insurance under the group policy occurred because he or she
6 failed to pay any required contribution, or because any
7 discontinued group coverage was replaced by similar group
8 coverage within 31 days after discontinuance.

9 (1) TIME LIMIT.--Written application for the converted
10 policy shall be made and the first premium must be paid to the
11 insurer, not later than 63 days after termination of the group
12 policy. However, if termination was the result of failure to
13 pay any required premium or contribution and such nonpayment
14 of premium was due to acts of an employer or policyholder
15 other than the employee or certificateholder, written
16 application for the converted policy must be made and the
17 first premium must be paid to the insurer not later than 63
18 days after notice of termination is mailed by the insurer or
19 the employer, whichever is earlier, to the employee's or
20 certificateholder's last address as shown by the record of the
21 insurer or the employer, whichever is applicable. In such case
22 of termination due to nonpayment of premium by the employer or
23 policyholder, the premium for the converted policy may not
24 exceed the rate for the prior group coverage for the period of
25 coverage under the converted policy prior to the date notice
26 of termination is mailed to the employee or certificateholder.
27 For the period of coverage after such date, the premium for
28 the converted policy is subject to the requirements of
29 subsection (3).

30 (2) EVIDENCE OF INSURABILITY.--The converted policy
31 shall be issued without evidence of insurability.

1 (3) CONVERSION PREMIUM; EFFECT ON PREMIUM RATES FOR
2 GROUP COVERAGE.--

3 (a) The premium for the converted policy shall be
4 determined in accordance with premium rates applicable to the
5 age and class of risk of each person to be covered under the
6 converted policy and to the type and amount of insurance
7 provided. However, the premium for the converted policy may
8 not exceed 200 percent of the standard risk rate as
9 established by the office ~~department~~, pursuant to this
10 subsection.

11 (b) Actual or expected experience under converted
12 policies may be combined with such experience under group
13 policies for the purposes of determining premium and loss
14 experience and establishing premium rate levels for group
15 coverage.

16 (c) The office ~~department~~ shall annually determine
17 standard risk rates, using reasonable actuarial techniques and
18 standards adopted by the commission ~~department~~ by rule. The
19 standard risk rates must be determined as follows:

20 1. Standard risk rates for individual coverage must be
21 determined separately for indemnity policies, preferred
22 provider/exclusive provider policies, and health maintenance
23 organization contracts.

24 2. The office ~~department~~ shall survey insurers and
25 health maintenance organizations representing at least an 80
26 percent market share, based on premiums earned in the state
27 for the most recent calendar year, for each of the categories
28 specified in subparagraph 1.

29 3. Standard risk rate schedules must be determined,
30 computed as the average rates charged by the carriers

31

1 surveyed, giving appropriate weight to each carrier's
2 statewide market share of earned premiums.

3 4. The rate schedule shall be determined from analysis
4 of the one county with the largest market share in the state
5 of all such carriers.

6 5. The rate for other counties must be determined by
7 using the weighted average of each carrier's county factor
8 relationship to the county determined in subparagraph 4.

9 6. The rate schedule must be determined for different
10 age brackets and family size brackets.

11 (4) EFFECTIVE DATE OF COVERAGE.--The effective date of
12 the converted policy shall be the day following the
13 termination of insurance under the group policy.

14 (5) SCOPE OF COVERAGE.--The converted policy shall
15 cover the employee or member and his or her dependents who
16 were covered by the group policy on the date of termination of
17 insurance. At the option of the insurer, a separate converted
18 policy may be issued to cover any dependent.

19 (6) OPTIONAL COVERAGE.--The insurer shall not be
20 required to issue a converted policy covering any person who
21 is or could be covered by Medicare. The insurer shall not be
22 required to issue a converted policy covering a person if
23 paragraphs (a) and (b) apply to the person:

24 (a) If any of the following apply to the person:

25 1. The person is covered for similar benefits by
26 another hospital, surgical, medical, or major medical expense
27 insurance policy or hospital or medical service subscriber
28 contract or medical practice or other prepayment plan, or by
29 any other plan or program.

30 2. The person is eligible for similar benefits,
31 whether or not actually provided coverage, under any

1 arrangement of coverage for individuals in a group, whether on
2 an insured or uninsured basis.

3 3. Similar benefits are provided for or are available
4 to the person under any state or federal law.

5 (b) If the benefits provided under the sources
6 referred to in subparagraph (a)1. or the benefits provided or
7 available under the sources referred to in subparagraphs (a)2.
8 and 3., together with the benefits provided by the converted
9 policy, would result in overinsurance according to the
10 insurer's standards. The insurer's standards must bear some
11 reasonable relationship to actual health care costs in the
12 area in which the insured lives at the time of conversion and
13 must be filed with the office ~~department~~ prior to their use in
14 denying coverage.

15 (7) INFORMATION REQUESTED BY INSURER.--

16 (a) A converted policy may include a provision under
17 which the insurer may request information, in advance of any
18 premium due date, of any person covered thereunder as to
19 whether:

20 1. The person is covered for similar benefits by
21 another hospital, surgical, medical, or major medical expense
22 insurance policy or hospital or medical service subscriber
23 contract or medical practice or other prepayment plan or by
24 any other plan or program.

25 2. The person is covered for similar benefits under
26 any arrangement of coverage for individuals in a group,
27 whether on an insured or uninsured basis.

28 3. Similar benefits are provided for or are available
29 to the person under any state or federal law.

30
31

1 (b) The converted policy may provide that the insurer
2 may refuse to renew the policy or the coverage of any person
3 only for one or more of the following reasons:

4 1. Either the benefits provided under the sources
5 referred to in subparagraphs (a)1. and 2. for the person or
6 the benefits provided or available under the sources referred
7 to in subparagraph (a)3. for the person, together with the
8 benefits provided by the converted policy, would result in
9 overinsurance according to the insurer's standards on file
10 with the office department.

11 2. The converted policyholder fails to provide the
12 information requested pursuant to paragraph (a).

13 3. Fraud or intentional misrepresentation in applying
14 for any benefits under the converted policy.

15 4. Other reasons approved by the office department.

16 (8) BENEFITS OFFERED.--

17 (a) An insurer shall not be required to issue a
18 converted policy that provides benefits in excess of those
19 provided under the group policy from which conversion is made.

20 (b) An insurer shall offer the benefits specified in
21 s. 627.668 and the benefits specified in s. 627.669 if those
22 benefits were provided in the group plan.

23 (c) An insurer shall offer maternity benefits and
24 dental benefits if those benefits were provided in the group
25 plan.

26 (9) PREEXISTING CONDITION PROVISION.--The converted
27 policy shall not exclude a preexisting condition not excluded
28 by the group policy. However, the converted policy may provide
29 that any hospital, surgical, or medical benefits payable under
30 the converted policy may be reduced by the amount of any such
31 benefits payable under the group policy after the termination

1 of coverage ~~covered~~ under the group policy. The converted
2 policy may also provide that during the first policy year the
3 benefits payable under the converted policy, together with the
4 benefits payable under the group policy, shall not exceed
5 those that would have been payable had the individual's
6 insurance under the group policy remained in force.

7 (10) REQUIRED OPTION FOR MAJOR MEDICAL
8 COVERAGE.--Subject to the provisions and conditions of this
9 part, the employee or member shall be entitled to obtain a
10 converted policy providing major medical coverage under a plan
11 meeting the following requirements:

12 (a) A maximum benefit equal to the lesser of the
13 policy limit of the group policy from which the individual
14 converted or \$500,000 per covered person for all covered
15 medical expenses incurred during the covered person's
16 lifetime.

17 (b) Payment of benefits at the rate of 80 percent of
18 covered medical expenses which are in excess of the
19 deductible, until 20 percent of such expenses in a benefit
20 period reaches \$2,000, after which benefits will be paid at
21 the rate of 90 percent during the remainder of the contract
22 year unless the insured is in the insurer's case management
23 program, in which case benefits shall be paid at the rate of
24 100 percent during the remainder of the contract year. For
25 the purposes of this paragraph, "case management program"
26 means the specific supervision and management of the medical
27 care provided or prescribed for a specific individual, which
28 may include the use of health care providers designated by the
29 insurer. Payment of benefits for outpatient treatment of
30 mental illness, if provided in the converted policy, may be at
31 a lesser rate but not less than 50 percent.

1 (c) A deductible for each calendar year that must be
2 \$500, \$1,000, or \$2,000, at the option of the policyholder.

3 (d) The term "covered medical expenses," as used in
4 this subsection, shall be consistent with those customarily
5 offered by the insurer under group or individual health
6 insurance policies but is not required to be identical to the
7 covered medical expenses provided in the group policy from
8 which the individual converted.

9 (11) ALTERNATIVE PLANS.--The insurer shall, in
10 addition to the option required by subsection (10), offer the
11 standard health benefit plan, as established pursuant to s.
12 627.6699(12). The insurer may, at its option, also offer
13 alternative plans for group health conversion in addition to
14 the plans required by this section.

15 (12) RETIREMENT COVERAGE.--If coverage would be
16 continued under the group policy on an employee following the
17 employee's retirement prior to the time he or she is or could
18 be covered by Medicare, the employee may elect, instead of
19 such continuation of group insurance, to have the same
20 conversion rights as would apply had his or her insurance
21 terminated at retirement by reason or termination of
22 employment or membership.

23 (13) REDUCTION OF COVERAGE DUE TO MEDICARE.--The
24 converted policy may provide for reduction of coverage on any
25 person upon his or her eligibility for coverage under Medicare
26 or under any other state or federal law providing for benefits
27 similar to those provided by the converted policy.

28 (14) CONVERSION PRIVILEGE ALLOWED.--The conversion
29 privilege shall also be available to any of the following:

30 (a) The surviving spouse, if any, at the death of the
31 employee or member, with respect to the spouse and the

1 children whose coverages under the group policy terminate by
2 reason of the death, otherwise to each surviving child whose
3 coverage under the group policy terminates by reason of such
4 death, or, if the group policy provides for continuation of
5 dependents' coverages following the employee's or member's
6 death, at the end of such continuation.

7 (b) The former spouse whose coverage would otherwise
8 terminate because of annulment or dissolution of marriage, if
9 the former spouse is dependent for financial support.

10 (c) The spouse of the employee or member upon
11 termination of coverage of the spouse, while the employee or
12 member remains insured under the group policy, by reason of
13 ceasing to be a qualified family member under the group
14 policy, with respect to the spouse and the children whose
15 coverages under the group policy terminate at the same time.

16 (d) A child solely with respect to himself or herself
17 upon termination of his or her coverage by reason of ceasing
18 to be a qualified family member under the group policy, if a
19 conversion privilege is not otherwise provided in this
20 subsection with respect to such termination.

21 (15) BENEFIT LEVELS.--If the benefit levels required
22 in subsection (10) exceed the benefit levels provided under
23 the group policy, the conversion policy may offer benefits
24 which are substantially similar to those provided under the
25 group policy in lieu of those required in subsection (10).

26 (16) GROUP COVERAGE INSTEAD OF INDIVIDUAL
27 COVERAGE.--The insurer may elect to provide group insurance
28 coverage instead of issuing a converted individual policy.

29 (17) NOTIFICATION.--A notification of the conversion
30 privilege shall be included in each certificate of coverage.
31 The insurer shall mail an election and premium notice form,

1 including an outline of coverage, on a form approved by the
2 office ~~department~~, within 14 days after an individual who is
3 eligible for a converted policy gives notice to the insurer
4 that the individual is considering applying for the converted
5 policy or otherwise requests such information. The outline of
6 coverage must contain a description of the principal benefits
7 and coverage provided by the policy and its principal
8 exclusions and limitations, including, but not limited to,
9 deductibles and coinsurance.

10 (18) OUTSIDE CONVERSIONS.--A converted policy that is
11 delivered outside of this state must be on a form that could
12 be delivered in the other jurisdiction as a converted policy
13 had the group policy been issued in that jurisdiction.

14 (19) APPLICABILITY.--This section does not require
15 conversion on termination of eligibility for a policy or
16 contract that provides benefits for specified diseases, or for
17 accidental injuries only, disability income, Medicare
18 supplement, hospital indemnity, limited benefit,
19 nonconventional, or excess policies.

20 (20) Nothing in this section or in the incorporation
21 of it into insurance policies shall be construed to require
22 insurers to provide benefits equal to those provided in the
23 group policy from which the individual converted; provided,
24 however, that comprehensive benefits are offered which shall
25 be subject to approval by the office ~~Insurance Commissioner~~.

26 Section 1168. Paragraph (a) of subsection (2) of
27 section 627.6685, Florida Statutes, is amended to read:

28 627.6685 Mental health coverage.--

29 (2) BENEFITS.--

30 (a)1. In the case of a group health plan, or health
31 insurance coverage offered in connection with such a plan,

1 which provides both medical and surgical benefits and mental
2 health benefits:

3 a. If the plan or coverage does not include an
4 aggregate lifetime limit on substantially all medical and
5 surgical benefits, the plan or coverage may not impose any
6 aggregate lifetime limit on mental health benefits.

7 b. If the plan or coverage includes an aggregate
8 lifetime limit on substantially all medical and surgical
9 benefits, the plan or coverage must:

10 (I) Apply that applicable lifetime limit both to the
11 medical and surgical benefits to which it otherwise would
12 apply and to mental health benefits and not distinguish in the
13 application of such limit between such medical and surgical
14 benefits and mental health benefits; or

15 (II) Not include any aggregate lifetime limit on
16 mental health benefits which is less than that applicable
17 lifetime limit.

18 c. For any plan or coverage that is not described in
19 sub-subparagraph a. or sub-subparagraph b. and that includes
20 no or different aggregate lifetime limits on different
21 categories of medical and surgical benefits, the commission
22 ~~department~~ shall establish rules under which sub-subparagraph
23 b. is applied to such plan or coverage with respect to mental
24 health benefits by substituting for the applicable lifetime
25 limit an average aggregate lifetime limit that is computed
26 taking into account the weighted average of the aggregate
27 lifetime limits applicable to such categories.

28 2. In the case of a group health plan, or health
29 insurance coverage offered in connection with such a plan,
30 which provides both medical and surgical benefits and mental
31 health benefits:

1 a. If the plan or coverage does not include an annual
2 limit on substantially all medical and surgical benefits, the
3 plan or coverage may not impose any annual limit on mental
4 health benefits.

5 b. If the plan or coverage includes an annual limit on
6 substantially all medical and surgical benefits, the plan or
7 coverage must:

8 (I) Apply that applicable annual limit both to medical
9 and surgical benefits to which it otherwise would apply and to
10 mental health benefits and not distinguish in the application
11 of such limit between such medical and surgical benefits and
12 mental health benefits; or

13 (II) Not include any annual limit on mental health
14 benefits which is less than the applicable annual limit.

15 c. For any plan or coverage that is not described in
16 sub-subparagraph a. or sub-subparagraph b. and that includes
17 no or different annual limits on different categories of
18 medical and surgical benefits, the commission ~~department~~ shall
19 establish rules under which sub-subparagraph b. is applied to
20 such plan or coverage with respect to mental health benefits
21 by substituting for the applicable annual limit an average
22 annual limit that is computed taking into account the weighted
23 average of the annual limits applicable to such categories.

24 Section 1169. Paragraph (d) of subsection (5) and
25 subsection (9) of section 627.6692, Florida Statutes, are
26 amended to read:

27 627.6692 Florida Health Insurance Coverage
28 Continuation Act.--

29 (5) CONTINUATION OF COVERAGE UNDER GROUP HEALTH
30 PLANS.--

31

1 (d)1. A qualified beneficiary must give written notice
2 to the insurance carrier within 30 days after the occurrence
3 of a qualifying event. Unless otherwise specified in the
4 notice, a notice by any qualified beneficiary constitutes
5 notice on behalf of all qualified beneficiaries. The written
6 notice must inform the insurance carrier of the occurrence and
7 type of the qualifying event giving rise to the potential
8 election by a qualified beneficiary of continuation of
9 coverage under the group health plan issued by that insurance
10 carrier, except that in cases where the covered employee has
11 been involuntarily discharged, the nature of such discharge
12 need not be disclosed. The written notice must, at a minimum,
13 identify the employer, the group health plan number, the name
14 and address of all qualified beneficiaries, and such other
15 information required by the insurance carrier under the terms
16 of the group health plan or the commission ~~department~~ by rule,
17 to the extent that such information is known by the qualified
18 beneficiary.

19 2. Within 14 days after the receipt of written notice
20 under subparagraph 1., the insurance carrier shall send each
21 qualified beneficiary by certified mail an election and
22 premium notice form, approved by the office ~~department~~, which
23 form must provide for the qualified beneficiary's election or
24 nonelection of continuation of coverage under the group health
25 plan and the applicable premium amount due after the election
26 to continue coverage. This subparagraph does not require
27 separate mailing of notices to qualified beneficiaries
28 residing in the same household, but requires a separate
29 mailing for each separate household.

30
31

1 (9) RULES.--The commission ~~department~~ shall adopt
2 rules establishing standards for the initial notice of rights
3 and as otherwise necessary to administer this section.

4 Section 1170. Paragraph (a) of subsection (3),
5 paragraphs (c), (d), (e), and (i) of subsection (5),
6 paragraphs (a) and (b) of subsection (6), paragraphs (b), (c),
7 and (d) of subsection (8), paragraphs (a) and (b) of
8 subsection (9), subsection (10), paragraphs (b), (c), (d),
9 (e), (g), (h), (j), and (m) of subsection (11), subsection
10 (12), paragraph (i) of subsection (13), paragraph (a) of
11 subsection (15), and subsection (16) of section 627.6699,
12 Florida Statutes, are amended to read:

13 627.6699 Employee Health Care Access Act.--

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

15 (a) "Actuarial certification" means a written
16 statement, by a member of the American Academy of Actuaries or
17 another person acceptable to the office ~~department~~, that a
18 small employer carrier is in compliance with subsection (6),
19 based upon the person's examination, including a review of the
20 appropriate records and of the actuarial assumptions and
21 methods used by the carrier in establishing premium rates for
22 applicable health benefit plans.

23 (5) AVAILABILITY OF COVERAGE.--

24 (c) Every small employer carrier must, as a condition
25 of transacting business in this state:

26 1. ~~Beginning July 1, 2000,~~ Offer and issue all small
27 employer health benefit plans on a guaranteed-issue basis to
28 every eligible small employer, with 2 to 50 eligible
29 employees, that elects to be covered under such plan, agrees
30 to make the required premium payments, and satisfies the other
31 provisions of the plan. A rider for additional or increased

1 benefits may be medically underwritten and may only be added
2 to the standard health benefit plan. The increased rate
3 charged for the additional or increased benefit must be rated
4 in accordance with this section.

5 ~~2. Beginning July 1, 2000, and until July 31, 2001,~~
6 ~~offer and issue basic and standard small employer health~~
7 ~~benefit plans on a guaranteed-issue basis to every eligible~~
8 ~~small employer which is eligible for guaranteed renewal, has~~
9 ~~less than two eligible employees, is not formed primarily for~~
10 ~~the purpose of buying health insurance, elects to be covered~~
11 ~~under such plan, agrees to make the required premium payments,~~
12 ~~and satisfies the other provisions of the plan. A rider for~~
13 ~~additional or increased benefits may be medically underwritten~~
14 ~~and may be added only to the standard benefit plan. The~~
15 ~~increased rate charged for the additional or increased benefit~~
16 ~~must be rated in accordance with this section. For purposes of~~
17 ~~this subparagraph, a person, his or her spouse, and his or her~~
18 ~~dependent children shall constitute a single eligible employee~~
19 ~~if that person and spouse are employed by the same small~~
20 ~~employer and either one has a normal work week of less than 25~~
21 ~~hours.~~

22 2.3. ~~Beginning August 1, 2001,~~ Offer and issue basic
23 and standard small employer health benefit plans on a
24 guaranteed-issue basis, during a 31-day open enrollment period
25 of August 1 through August 31 of each year, to every eligible
26 small employer, with fewer than two eligible employees, which
27 small employer is not formed primarily for the purpose of
28 buying health insurance and which elects to be covered under
29 such plan, agrees to make the required premium payments, and
30 satisfies the other provisions of the plan. Coverage provided
31 under this subparagraph shall begin on October 1 of the same

1 year as the date of enrollment, unless the small employer
2 carrier and the small employer agree to a different date. A
3 rider for additional or increased benefits may be medically
4 underwritten and may only be added to the standard health
5 benefit plan. The increased rate charged for the additional
6 or increased benefit must be rated in accordance with this
7 section. For purposes of this subparagraph, a person, his or
8 her spouse, and his or her dependent children constitute a
9 single eligible employee if that person and spouse are
10 employed by the same small employer and either that person or
11 his or her spouse has a normal work week of less than 25
12 hours.

13 ~~3.4.~~ This paragraph does not limit a carrier's ability
14 to offer other health benefit plans to small employers if the
15 standard and basic health benefit plans are offered and
16 rejected.

17 (d) A small employer carrier must file with the office
18 ~~department~~, in a format and manner prescribed by the
19 committee, a standard health care plan and a basic health care
20 plan to be used by the carrier.

21 (e) The office ~~department~~ at any time may, after
22 providing notice and an opportunity for a hearing, disapprove
23 the continued use by the small employer carrier of the
24 standard or basic health benefit plan on the grounds that such
25 plan does not meet the requirements of this section.

26 (i)1. A small employer carrier need not offer coverage
27 or accept applications pursuant to paragraph (a):

28 a. To a small employer if the small employer is not
29 physically located in an established geographic service area
30 of the small employer carrier, provided such geographic
31 service area shall not be less than a county;

1 b. To an employee if the employee does not work or
2 reside within an established geographic service area of the
3 small employer carrier; or

4 c. To a small employer group within an area in which
5 the small employer carrier reasonably anticipates, and
6 demonstrates to the satisfaction of the office ~~department~~,
7 that it cannot, within its network of providers, deliver
8 service adequately to the members of such groups because of
9 obligations to existing group contract holders and enrollees.

10 2. A small employer carrier that cannot offer coverage
11 pursuant to sub-subparagraph 1.c. may not offer coverage in
12 the applicable area to new cases of employer groups having
13 more than 50 eligible employees or small employer groups until
14 the later of 180 days following each such refusal or the date
15 on which the carrier notifies the office ~~department~~ that it
16 has regained its ability to deliver services to small employer
17 groups.

18 3.a. A small employer carrier may deny health
19 insurance coverage in the small-group market if the carrier
20 has demonstrated to the office ~~department~~ that:

21 (I) It does not have the financial reserves necessary
22 to underwrite additional coverage; and

23 (II) It is applying this sub-subparagraph uniformly to
24 all employers in the small-group market in this state
25 consistent with this section and without regard to the claims
26 experience of those employers and their employees and their
27 dependents or any health-status-related factor that relates to
28 such employees and dependents.

29 b. A small employer carrier, upon denying health
30 insurance coverage in connection with health benefit plans in
31 accordance with sub-subparagraph a., may not offer coverage in

1 connection with group health benefit plans in the small-group
2 market in this state for a period of 180 days after the date
3 such coverage is denied or until the insurer has demonstrated
4 to the office ~~department~~ that the insurer has sufficient
5 financial reserves to underwrite additional coverage,
6 whichever is later. The office ~~department~~ may provide for the
7 application of this sub-subparagraph on a
8 service-area-specific basis.

9 4. ~~Beginning in 1994,~~The commission ~~department~~ shall,
10 by rule, require each small employer carrier to report, on or
11 before March 1 of each year, its gross annual premiums for all
12 health benefit plans issued to small employers during the
13 previous calendar year, and also to report its gross annual
14 premiums for new, but not renewal, standard and basic health
15 benefit plans subject to this section issued during the
16 previous calendar year. No later than May 1 of each year, the
17 office ~~department~~ shall calculate each carrier's percentage of
18 all small employer group health premiums for the previous
19 calendar year and shall calculate the aggregate gross annual
20 premiums for new, but not renewal, standard and basic health
21 benefit plans for the previous calendar year.

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

23 (a) The commission ~~department~~ may, by rule, establish
24 regulations to administer this section and to assure that
25 rating practices used by small employer carriers are
26 consistent with the purpose of this section, including
27 assuring that differences in rates charged for health benefit
28 plans by small employer carriers are reasonable and reflect
29 objective differences in plan design, not including
30 differences due to the nature of the groups assumed to select
31 particular health benefit plans.

1 (b) For all small employer health benefit plans that
2 are subject to this section and are issued by small employer
3 carriers on or after January 1, 1994, premium rates for health
4 benefit plans subject to this section are subject to the
5 following:

6 1. Small employer carriers must use a modified
7 community rating methodology in which the premium for each
8 small employer must be determined solely on the basis of the
9 eligible employee's and eligible dependent's gender, age,
10 family composition, tobacco use, or geographic area as
11 determined under paragraph (5)(j) and in which the premium may
12 be adjusted as permitted by this paragraph.

13 2. Rating factors related to age, gender, family
14 composition, tobacco use, or geographic location may be
15 developed by each carrier to reflect the carrier's experience.
16 The factors used by carriers are subject to office ~~department~~
17 review and approval.

18 3. Small employer carriers may not modify the rate for
19 a small employer for 12 months from the initial issue date or
20 renewal date, unless the composition of the group changes or
21 benefits are changed. However, a small employer carrier may
22 modify the rate one time prior to 12 months after the initial
23 issue date for a small employer who enrolls under a previously
24 issued group policy that has a common anniversary date for all
25 employers covered under the policy if:

26 a. The carrier discloses to the employer in a clear
27 and conspicuous manner the date of the first renewal and the
28 fact that the premium may increase on or after that date.

29 b. The insurer demonstrates to the office ~~department~~
30 that efficiencies in administration are achieved and reflected
31

1 in the rates charged to small employers covered under the
2 policy.

3 4. A carrier may issue a group health insurance policy
4 to a small employer health alliance or other group association
5 with rates that reflect a premium credit for expense savings
6 attributable to administrative activities being performed by
7 the alliance or group association if such expense savings are
8 specifically documented in the insurer's rate filing and are
9 approved by the office ~~department~~. Any such credit may not be
10 based on different morbidity assumptions or on any other
11 factor related to the health status or claims experience of
12 any person covered under the policy. Nothing in this
13 subparagraph exempts an alliance or group association from
14 licensure for any activities that require licensure under the
15 insurance code. A carrier issuing a group health insurance
16 policy to a small employer health alliance or other group
17 association shall allow any properly licensed and appointed
18 agent of that carrier to market and sell the small employer
19 health alliance or other group association policy. Such agent
20 shall be paid the usual and customary commission paid to any
21 agent selling the policy.

22 5. Any adjustments in rates for claims experience,
23 health status, or duration of coverage may not be charged to
24 individual employees or dependents. For a small employer's
25 policy, such adjustments may not result in a rate for the
26 small employer which deviates more than 15 percent from the
27 carrier's approved rate. Any such adjustment must be applied
28 uniformly to the rates charged for all employees and
29 dependents of the small employer. A small employer carrier may
30 make an adjustment to a small employer's renewal premium, not
31 to exceed 10 percent annually, due to the claims experience,

1 health status, or duration of coverage of the employees or
2 dependents of the small employer. Semiannually, small group
3 carriers shall report information on forms adopted by rule by
4 the commission ~~department~~, to enable the office ~~department~~ to
5 monitor the relationship of aggregate adjusted premiums
6 actually charged policyholders by each carrier to the premiums
7 that would have been charged by application of the carrier's
8 approved modified community rates. If the aggregate resulting
9 from the application of such adjustment exceeds the premium
10 that would have been charged by application of the approved
11 modified community rate by 5 percent for the current reporting
12 period, the carrier shall limit the application of such
13 adjustments only to minus adjustments beginning not more than
14 60 days after the report is sent to the office ~~department~~. For
15 any subsequent reporting period, if the total aggregate
16 adjusted premium actually charged does not exceed the premium
17 that would have been charged by application of the approved
18 modified community rate by 5 percent, the carrier may apply
19 both plus and minus adjustments. A small employer carrier may
20 provide a credit to a small employer's premium based on
21 administrative and acquisition expense differences resulting
22 from the size of the group. Group size administrative and
23 acquisition expense factors may be developed by each carrier
24 to reflect the carrier's experience and are subject to office
25 ~~department~~ review and approval.

26 6. A small employer carrier rating methodology may
27 include separate rating categories for one dependent child,
28 for two dependent children, and for three or more dependent
29 children for family coverage of employees having a spouse and
30 dependent children or employees having dependent children
31 only. A small employer carrier may have fewer, but not

1 greater, numbers of categories for dependent children than
2 those specified in this subparagraph.

3 7. Small employer carriers may not use a composite
4 rating methodology to rate a small employer with fewer than 10
5 employees. For the purposes of this subparagraph, a "composite
6 rating methodology" means a rating methodology that averages
7 the impact of the rating factors for age and gender in the
8 premiums charged to all of the employees of a small employer.

9 8.a. A carrier may separate the experience of small
10 employer groups with less than 2 eligible employees from the
11 experience of small employer groups with 2-50 eligible
12 employees for purposes of determining an alternative modified
13 community rating.

14 b. If a carrier separates the experience of small
15 employer groups as provided in sub-subparagraph a., the rate
16 to be charged to small employer groups of less than 2 eligible
17 employees may not exceed 150 percent of the rate determined
18 for small employer groups of 2-50 eligible employees. However,
19 the carrier may charge excess losses of the experience pool
20 consisting of small employer groups with less than 2 eligible
21 employees to the experience pool consisting of small employer
22 groups with 2-50 eligible employees so that all losses are
23 allocated and the 150-percent rate limit on the experience
24 pool consisting of small employer groups with less than 2
25 eligible employees is maintained. Notwithstanding s.

26 627.411(1), the rate to be charged to a small employer group
27 of fewer than 2 eligible employees, insured as of July 1,
28 2002, may be up to 125 percent of the rate determined for
29 small employer groups of 2-50 eligible employees for the first
30 annual renewal and 150 percent for subsequent annual renewals.

31 (8) MAINTENANCE OF RECORDS.--

1 (b) Each small employer carrier must file with the
2 office department on or before March 15 of each year an
3 actuarial certification that the carrier is in compliance with
4 this section and that the rating methods of the carrier are
5 actuarially sound. The certification must be in a form and
6 manner and contain the information prescribed by the
7 commission department. The carrier must retain a copy of the
8 certification at its principal place of business.

9 (c) A small employer carrier must make the information
10 and documentation described in paragraph (a) available to the
11 office department upon request. The information constitutes
12 proprietary and trade secret information and may not be
13 disclosed by the office department to persons outside the
14 office department, except as agreed to by the carrier or as
15 ordered by a court of competent jurisdiction.

16 (d) Each small employer carrier must file with the
17 office department quarterly an enrollment report as directed
18 by the office department. Such report shall not constitute
19 proprietary or trade secret information.

20 (9) SMALL EMPLOYER CARRIER'S ELECTION TO BECOME A
21 RISK-ASSUMING CARRIER OR A REINSURING CARRIER.--

22 (a) A small employer carrier must elect to become
23 either a risk-assuming carrier or a reinsuring carrier. Each
24 small employer carrier must make an initial election, binding
25 through January 1, 1994. The carrier's initial election must
26 be made no later than October 31, 1992. By October 31, 1993,
27 all small employer carriers must file a final election, which
28 is binding for 2 years, from January 1, 1994, through December
29 31, 1995, after which an election shall be binding for a
30 period of 5 years. Any carrier that is not a small employer
31 carrier on October 31, 1992, and intends to become a small

1 employer carrier after October 31, 1992, must file its
2 designation when it files the forms and rates it intends to
3 use for small employer group health insurance; such
4 designation shall be binding for 2 years after the date of
5 approval of the forms and rates, and any subsequent
6 designation is binding for 5 years. The office ~~department~~ may
7 permit a carrier to modify its election at any time for good
8 cause shown, after a hearing.

9 (b) The commission ~~department~~ shall establish an
10 application process for small employer carriers seeking to
11 change their status under this subsection.

12 (10) ELECTION PROCESS TO BECOME A RISK-ASSUMING
13 CARRIER.--

14 (a)1. A small employer carrier may become a
15 risk-assuming carrier by filing with the office ~~department~~ a
16 designation of election under subsection (9) in a format and
17 manner prescribed by the commission ~~department~~. The office
18 ~~department~~ shall approve the election of a small employer
19 carrier to become a risk-assuming carrier if the office
20 ~~department~~ finds that the carrier is capable of assuming that
21 status pursuant to the criteria set forth in paragraph (b).

22 2. The office ~~department~~ must approve or disapprove
23 any designation as a risk-assuming carrier within 60 days
24 after filing.

25 (b) In determining whether to approve an application
26 by a small employer carrier to become a risk-assuming carrier,
27 the office ~~department~~ shall consider:

28 1. The carrier's financial ability to support the
29 assumption of the risk of small employer groups.

30 2. The carrier's history of rating and underwriting
31 small employer groups.

1 3. The carrier's commitment to market fairly to all
2 small employers in the state or its service area, as
3 applicable.

4 4. The carrier's ability to assume and manage the risk
5 of enrolling small employer groups without the protection of
6 the reinsurance program provided in subsection (11).

7 (c) A small employer carrier that becomes a
8 risk-assuming carrier pursuant to this subsection is not
9 subject to the assessment provisions of subsection (11).

10 (d) The office department shall provide public notice
11 of a small employer carrier's designation of election under
12 subsection (9) to become a risk-assuming carrier and shall
13 provide at least a 21-day period for public comment prior to
14 making a decision on the election. The office department
15 shall hold a hearing on the election at the request of the
16 carrier.

17 (e) The office department may rescind the approval
18 granted to a risk-assuming carrier under this subsection if
19 the office department finds that the carrier no longer meets
20 the criteria of paragraph (b).

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

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

24 2. Effective upon this act becoming a law, the board
25 shall consist of the Chief Financial Officer ~~commissioner~~ or
26 his or her designee, who shall serve as the chairperson, and
27 13 additional members who are representatives of carriers and
28 insurance agents and are appointed by the Chief Financial
29 Officer ~~commissioner~~ and serve as follows:

30 a. The Chief Financial Officer ~~commissioner~~ shall
31 include representatives of small employer carriers subject to

1 assessment under this subsection. If two or more carriers
2 elect to be risk-assuming carriers, the membership must
3 include at least two representatives of risk-assuming
4 carriers; if one carrier is risk-assuming, one member must be
5 a representative of such carrier. At least one member must be
6 a carrier who is subject to the assessments, but is not a
7 small employer carrier. Subject to such restrictions, at
8 least five members shall be selected from individuals
9 recommended by small employer carriers pursuant to procedures
10 provided by rule of the commission ~~department~~. Three members
11 shall be selected from a list of health insurance carriers
12 that issue individual health insurance policies. At least two
13 of the three members selected must be reinsuring carriers. Two
14 members shall be selected from a list of insurance agents who
15 are actively engaged in the sale of health insurance.

16 b. A member appointed under this subparagraph shall
17 serve a term of 4 years and shall continue in office until the
18 member's successor takes office, except that, in order to
19 provide for staggered terms, the Chief Financial Officer
20 ~~commissioner~~ shall designate two of the initial appointees
21 under this subparagraph to serve terms of 2 years and shall
22 designate three of the initial appointees under this
23 subparagraph to serve terms of 3 years.

24 3. The Chief Financial Officer ~~commissioner~~ may remove
25 a member for cause.

26 4. Vacancies on the board shall be filled in the same
27 manner as the original appointment for the unexpired portion
28 of the term.

29 5. The Chief Financial Officer ~~commissioner~~ may
30 require an entity that recommends persons for appointment to
31 submit additional lists of recommended appointees.

1 (c)1. ~~No later than August 15, 1992,~~The board shall
2 submit to the office ~~department~~ a plan of operation to assure
3 the fair, reasonable, and equitable administration of the
4 program. The board may at any time submit to the office
5 ~~department~~ any amendments to the plan that the board finds to
6 be necessary or suitable.

7 2. ~~No later than September 15, 1992,~~The office
8 ~~department~~ shall, after notice and hearing, approve the plan
9 of operation if it determines that the plan submitted by the
10 board is suitable to assure the fair, reasonable, and
11 equitable administration of the program and provides for the
12 sharing of program gains and losses equitably and
13 proportionately in accordance with paragraph (j).

14 3. The plan of operation, or any amendment thereto,
15 becomes effective upon written approval of the office
16 ~~department~~.

17 (d) The plan of operation must, among other things:

18 1. Establish procedures for handling and accounting
19 for program assets and moneys and for an annual fiscal
20 reporting to the office ~~department~~.

21 2. Establish procedures for selecting an administering
22 carrier and set forth the powers and duties of the
23 administering carrier.

24 3. Establish procedures for reinsuring risks.

25 4. Establish procedures for collecting assessments
26 from participating carriers to provide for claims reinsured by
27 the program and for administrative expenses, other than
28 amounts payable to the administrative carrier, incurred or
29 estimated to be incurred during the period for which the
30 assessment is made.

31

1 5. Provide for any additional matters at the
2 discretion of the board.

3 (e) The board shall recommend to the office ~~department~~
4 market conduct requirements and other requirements for
5 carriers and agents, including requirements relating to:

6 1. Registration by each carrier with the office
7 ~~department~~ of its intention to be a small employer carrier
8 under this section;

9 2. Publication by the office ~~department~~ of a list of
10 all small employer carriers, including a requirement
11 applicable to agents and carriers that a health benefit plan
12 may not be sold by a carrier that is not identified as a small
13 employer carrier;

14 3. The availability of a broadly publicized, toll-free
15 telephone number for access by small employers to information
16 concerning this section;

17 4. Periodic reports by carriers and agents concerning
18 health benefit plans issued; and

19 5. Methods concerning periodic demonstration by small
20 employer carriers and agents that they are marketing or
21 issuing health benefit plans to small employers.

22 (g) A reinsuring carrier may reinsure with the program
23 coverage of an eligible employee of a small employer, or any
24 dependent of such an employee, subject to each of the
25 following provisions:

26 1. With respect to a standard and basic health care
27 plan, the program must reinsure the level of coverage
28 provided; and, with respect to any other plan, the program
29 must reinsure the coverage up to, but not exceeding, the level
30 of coverage provided under the standard and basic health care
31 plan.

1 2. Except in the case of a late enrollee, a reinsuring
2 carrier may reinsure an eligible employee or dependent within
3 60 days after the commencement of the coverage of the small
4 employer. A newly employed eligible employee or dependent of a
5 small employer may be reinsured within 60 days after the
6 commencement of his or her coverage.

7 3. A small employer carrier may reinsure an entire
8 employer group within 60 days after the commencement of the
9 group's coverage under the plan. The carrier may choose to
10 reinsure newly eligible employees and dependents of the
11 reinsured group pursuant to subparagraph 1.

12 4. The program may not reimburse a participating
13 carrier with respect to the claims of a reinsured employee or
14 dependent until the carrier has paid incurred claims of at
15 least \$5,000 in a calendar year for benefits covered by the
16 program. In addition, the reinsuring carrier shall be
17 responsible for 10 percent of the next \$50,000 and 5 percent
18 of the next \$100,000 of incurred claims during a calendar year
19 and the program shall reinsure the remainder.

20 5. The board annually shall adjust the initial level
21 of claims and the maximum limit to be retained by the carrier
22 to reflect increases in costs and utilization within the
23 standard market for health benefit plans within the state. The
24 adjustment shall not be less than the annual change in the
25 medical component of the "Consumer Price Index for All Urban
26 Consumers" of the Bureau of Labor Statistics of the Department
27 of Labor, unless the board proposes and the office ~~department~~
28 approves a lower adjustment factor.

29 6. A small employer carrier may terminate reinsurance
30 for all reinsured employees or dependents on any plan
31 anniversary.

1 7. The premium rate charged for reinsurance by the
2 program to a health maintenance organization that is approved
3 by the Secretary of Health and Human Services as a federally
4 qualified health maintenance organization pursuant to 42
5 U.S.C. s. 300e(c)(2)(A) and that, as such, is subject to
6 requirements that limit the amount of risk that may be ceded
7 to the program, which requirements are more restrictive than
8 subparagraph 4., shall be reduced by an amount equal to that
9 portion of the risk, if any, which exceeds the amount set
10 forth in subparagraph 4. which may not be ceded to the
11 program.

12 8. The board may consider adjustments to the premium
13 rates charged for reinsurance by the program for carriers that
14 use effective cost containment measures, including high-cost
15 case management, as defined by the board.

16 9. A reinsuring carrier shall apply its
17 case-management and claims-handling techniques, including, but
18 not limited to, utilization review, individual case
19 management, preferred provider provisions, other managed care
20 provisions or methods of operation, consistently with both
21 reinsured business and nonreinsured business.

22 (h)1. The board, as part of the plan of operation,
23 shall establish a methodology for determining premium rates to
24 be charged by the program for reinsuring small employers and
25 individuals pursuant to this section. The methodology shall
26 include a system for classification of small employers that
27 reflects the types of case characteristics commonly used by
28 small employer carriers in the state. The methodology shall
29 provide for the development of basic reinsurance premium
30 rates, which shall be multiplied by the factors set for them
31 in this paragraph to determine the premium rates for the

1 program. The basic reinsurance premium rates shall be
2 established by the board, subject to the approval of the
3 office ~~department~~, and shall be set at levels which reasonably
4 approximate gross premiums charged to small employers by small
5 employer carriers for health benefit plans with benefits
6 similar to the standard and basic health benefit plan. The
7 premium rates set by the board may vary by geographical area,
8 as determined under this section, to reflect differences in
9 cost. The multiplying factors must be established as follows:

10 a. The entire group may be reinsured for a rate that
11 is 1.5 times the rate established by the board.

12 b. An eligible employee or dependent may be reinsured
13 for a rate that is 5 times the rate established by the board.

14 2. The board periodically shall review the methodology
15 established, including the system of classification and any
16 rating factors, to assure that it reasonably reflects the
17 claims experience of the program. The board may propose
18 changes to the rates which shall be subject to the approval of
19 the office ~~department~~.

20 (j)1. Before March 1 of each calendar year, the board
21 shall determine and report to the office ~~department~~ the
22 program net loss for the previous year, including
23 administrative expenses for that year, and the incurred losses
24 for the year, taking into account investment income and other
25 appropriate gains and losses.

26 2. Any net loss for the year shall be recouped by
27 assessment of the carriers, as follows:

28 a. The operating losses of the program shall be
29 assessed in the following order subject to the specified
30 limitations. The first tier of assessments shall be made
31 against reinsuring carriers in an amount which shall not

1 exceed 5 percent of each reinsuring carrier's premiums from
2 health benefit plans covering small employers. If such
3 assessments have been collected and additional moneys are
4 needed, the board shall make a second tier of assessments in
5 an amount which shall not exceed 0.5 percent of each carrier's
6 health benefit plan premiums. Except as provided in paragraph
7 (n), risk-assuming carriers are exempt from all assessments
8 authorized pursuant to this section. The amount paid by a
9 reinsuring carrier for the first tier of assessments shall be
10 credited against any additional assessments made.

11 b. The board shall equitably assess carriers for
12 operating losses of the plan based on market share. The board
13 shall annually assess each carrier a portion of the operating
14 losses of the plan. The first tier of assessments shall be
15 determined by multiplying the operating losses by a fraction,
16 the numerator of which equals the reinsuring carrier's earned
17 premium pertaining to direct writings of small employer health
18 benefit plans in the state during the calendar year for which
19 the assessment is levied, and the denominator of which equals
20 the total of all such premiums earned by reinsuring carriers
21 in the state during that calendar year. The second tier of
22 assessments shall be based on the premiums that all carriers,
23 except risk-assuming carriers, earned on all health benefit
24 plans written in this state. The board may levy interim
25 assessments against carriers to ensure the financial ability
26 of the plan to cover claims expenses and administrative
27 expenses paid or estimated to be paid in the operation of the
28 plan for the calendar year prior to the association's
29 anticipated receipt of annual assessments for that calendar
30 year. Any interim assessment is due and payable within 30
31 days after receipt by a carrier of the interim assessment

1 notice. Interim assessment payments shall be credited against
2 the carrier's annual assessment. Health benefit plan premiums
3 and benefits paid by a carrier that are less than an amount
4 determined by the board to justify the cost of collection may
5 not be considered for purposes of determining assessments.

6 c. Subject to the approval of the office ~~department~~,
7 the board shall make an adjustment to the assessment formula
8 for reinsuring carriers that are approved as federally
9 qualified health maintenance organizations by the Secretary of
10 Health and Human Services pursuant to 42 U.S.C. s.
11 300e(c)(2)(A) to the extent, if any, that restrictions are
12 placed on them that are not imposed on other small employer
13 carriers.

14 3. Before March 1 of each year, the board shall
15 determine and file with the office ~~department~~ an estimate of
16 the assessments needed to fund the losses incurred by the
17 program in the previous calendar year.

18 4. If the board determines that the assessments needed
19 to fund the losses incurred by the program in the previous
20 calendar year will exceed the amount specified in subparagraph
21 2., the board shall evaluate the operation of the program and
22 report its findings, including any recommendations for changes
23 to the plan of operation, to the office ~~department~~ within 90
24 days following the end of the calendar year in which the
25 losses were incurred. The evaluation shall include an
26 estimate of future assessments, the administrative costs of
27 the program, the appropriateness of the premiums charged and
28 the level of carrier retention under the program, and the
29 costs of coverage for small employers. If the board fails to
30 file a report with the office ~~department~~ within 90 days
31 following the end of the applicable calendar year, the office

1 ~~department~~ may evaluate the operations of the program and
2 implement such amendments to the plan of operation the office
3 ~~department~~ deems necessary to reduce future losses and
4 assessments.

5 5. If assessments exceed the amount of the actual
6 losses and administrative expenses of the program, the excess
7 shall be held as interest and used by the board to offset
8 future losses or to reduce program premiums. As used in this
9 paragraph, the term "future losses" includes reserves for
10 incurred but not reported claims.

11 6. Each carrier's proportion of the assessment shall
12 be determined annually by the board, based on annual
13 statements and other reports considered necessary by the board
14 and filed by the carriers with the board.

15 7. Provision shall be made in the plan of operation
16 for the imposition of an interest penalty for late payment of
17 an assessment.

18 8. A carrier may seek, from the office ~~commissioner~~, a
19 deferment, in whole or in part, from any assessment made by
20 the board. The office ~~department~~ may defer, in whole or in
21 part, the assessment of a carrier if, in the opinion of the
22 office ~~department~~, the payment of the assessment would place
23 the carrier in a financially impaired condition. If an
24 assessment against a carrier is deferred, in whole or in part,
25 the amount by which the assessment is deferred may be assessed
26 against the other carriers in a manner consistent with the
27 basis for assessment set forth in this section. The carrier
28 receiving such deferment remains liable to the program for the
29 amount deferred and is prohibited from reinsuring any
30 individuals or groups in the program if it fails to pay
31 assessments.

1 (m) The board shall monitor compliance with this
2 section, including the market conduct of small employer
3 carriers, and shall report to the office ~~department~~ any unfair
4 trade practices and misleading or unfair conduct by a small
5 employer carrier that has been reported to the board by
6 agents, consumers, or any other person. The office ~~department~~
7 shall investigate all reports and, upon a finding of
8 noncompliance with this section or of unfair or misleading
9 practices, shall take action against the small employer
10 carrier as permitted under the insurance code or chapter 641.
11 The board is not given investigatory or regulatory powers, but
12 must forward all reports of cases or abuse or
13 misrepresentation to the office ~~department~~.

14 (12) STANDARD, BASIC, AND LIMITED HEALTH BENEFIT
15 PLANS.--

16 (a)1. ~~By May 15, 1993,~~The Chief Financial Officer
17 ~~commissioner~~ shall appoint a health benefit plan committee
18 composed of four representatives of carriers which shall
19 include at least two representatives of HMOs, at least one of
20 which is a staff model HMO, two representatives of agents,
21 four representatives of small employers, and one employee of a
22 small employer. The carrier members shall be selected from a
23 list of individuals recommended by the board. The Chief
24 Financial Officer ~~commissioner~~ may require the board to submit
25 additional recommendations of individuals for appointment.

26 2. The plans shall comply with all of the requirements
27 of this subsection.

28 3. The plans must be filed with and approved by the
29 office ~~department~~ prior to issuance or delivery by any small
30 employer carrier.

31

1 4. After approval of the revised health benefit plans,
2 if the office ~~department~~ determines that modifications to a
3 plan might be appropriate, the Chief Financial Officer
4 ~~commissioner~~ shall appoint a new health benefit plan committee
5 in the manner provided in subparagraph 1. to submit
6 recommended modifications to the office ~~department~~ for
7 approval.

8 (b)1. Each small employer carrier issuing new health
9 benefit plans shall offer to any small employer, upon request,
10 a standard health benefit plan and a basic health benefit plan
11 that meets the criteria set forth in this section.

12 2. For purposes of this subsection, the terms
13 "standard health benefit plan" and "basic health benefit plan"
14 mean policies or contracts that a small employer carrier
15 offers to eligible small employers that contain:

16 a. An exclusion for services that are not medically
17 necessary or that are not covered preventive health services;
18 and

19 b. A procedure for preauthorization by the small
20 employer carrier, or its designees.

21 3. A small employer carrier may include the following
22 managed care provisions in the policy or contract to control
23 costs:

24 a. A preferred provider arrangement or exclusive
25 provider organization or any combination thereof, in which a
26 small employer carrier enters into a written agreement with
27 the provider to provide services at specified levels of
28 reimbursement or to provide reimbursement to specified
29 providers. Any such written agreement between a provider and a
30 small employer carrier must contain a provision under which
31 the parties agree that the insured individual or covered

1 member has no obligation to make payment for any medical
2 service rendered by the provider which is determined not to be
3 medically necessary. A carrier may use preferred provider
4 arrangements or exclusive provider arrangements to the same
5 extent as allowed in group products that are not issued to
6 small employers.

7 b. A procedure for utilization review by the small
8 employer carrier or its designees.

9
10 This subparagraph does not prohibit a small employer carrier
11 from including in its policy or contract additional managed
12 care and cost containment provisions, subject to the approval
13 of the office ~~department~~, which have potential for controlling
14 costs in a manner that does not result in inequitable
15 treatment of insureds or subscribers. The carrier may use
16 such provisions to the same extent as authorized for group
17 products that are not issued to small employers.

18 4. The standard health benefit plan shall include:

19 a. Coverage for inpatient hospitalization;

20 b. Coverage for outpatient services;

21 c. Coverage for newborn children pursuant to s.

22 627.6575;

23 d. Coverage for child care supervision services

24 pursuant to s. 627.6579;

25 e. Coverage for adopted children upon placement in the
26 residence pursuant to s. 627.6578;

27 f. Coverage for mammograms pursuant to s. 627.6613;

28 g. Coverage for handicapped children pursuant to s.

29 627.6615;

30 h. Emergency or urgent care out of the geographic
31 service area; and

1 i. Coverage for services provided by a hospice
2 licensed under s. 400.602 in cases where such coverage would
3 be the most appropriate and the most cost-effective method for
4 treating a covered illness.

5 5. The standard health benefit plan and the basic
6 health benefit plan may include a schedule of benefit
7 limitations for specified services and procedures. If the
8 committee develops such a schedule of benefits limitation for
9 the standard health benefit plan or the basic health benefit
10 plan, a small employer carrier offering the plan must offer
11 the employer an option for increasing the benefit schedule
12 amounts by 4 percent annually.

13 6. The basic health benefit plan shall include all of
14 the benefits specified in subparagraph 4.; however, the basic
15 health benefit plan shall place additional restrictions on the
16 benefits and utilization and may also impose additional cost
17 containment measures.

18 7. Sections 627.419(2), (3), and (4), 627.6574,
19 627.6612, 627.66121, 627.66122, 627.6616, 627.6618, 627.668,
20 and 627.66911 apply to the standard health benefit plan and to
21 the basic health benefit plan. However, notwithstanding said
22 provisions, the plans may specify limits on the number of
23 authorized treatments, if such limits are reasonable and do
24 not discriminate against any type of provider.

25 8. Each small employer carrier that provides for
26 inpatient and outpatient services by allopathic hospitals may
27 provide as an option of the insured similar inpatient and
28 outpatient services by hospitals accredited by the American
29 Osteopathic Association when such services are available and
30 the osteopathic hospital agrees to provide the service.

31

1 (c) If a small employer rejects, in writing, the
2 standard health benefit plan and the basic health benefit
3 plan, the small employer carrier may offer the small employer
4 a limited benefit policy or contract.

5 (d)1. Upon offering coverage under a standard health
6 benefit plan, a basic health benefit plan, or a limited
7 benefit policy or contract for any small employer, the small
8 employer carrier shall provide such employer group with a
9 written statement that contains, at a minimum:

10 a. An explanation of those mandated benefits and
11 providers that are not covered by the policy or contract;

12 b. An explanation of the managed care and cost control
13 features of the policy or contract, along with all appropriate
14 mailing addresses and telephone numbers to be used by insureds
15 in seeking information or authorization; and

16 c. An explanation of the primary and preventive care
17 features of the policy or contract.

18
19 Such disclosure statement must be presented in a clear and
20 understandable form and format and must be separate from the
21 policy or certificate or evidence of coverage provided to the
22 employer group.

23 2. Before a small employer carrier issues a standard
24 health benefit plan, a basic health benefit plan, or a limited
25 benefit policy or contract, it must obtain from the
26 prospective policyholder a signed written statement in which
27 the prospective policyholder:

28 a. Certifies as to eligibility for coverage under the
29 standard health benefit plan, basic health benefit plan, or
30 limited benefit policy or contract;

31

1 b. Acknowledges the limited nature of the coverage and
2 an understanding of the managed care and cost control features
3 of the policy or contract;

4 c. Acknowledges that if misrepresentations are made
5 regarding eligibility for coverage under a standard health
6 benefit plan, a basic health benefit plan, or a limited
7 benefit policy or contract, the person making such
8 misrepresentations forfeits coverage provided by the policy or
9 contract; and

10 d. If a limited plan is requested, acknowledges that
11 the prospective policyholder had been offered, at the time of
12 application for the insurance policy or contract, the
13 opportunity to purchase any health benefit plan offered by the
14 carrier and that the prospective policyholder had rejected
15 that coverage.

16
17 A copy of such written statement shall be provided to the
18 prospective policyholder no later than at the time of delivery
19 of the policy or contract, and the original of such written
20 statement shall be retained in the files of the small employer
21 carrier for the period of time that the policy or contract
22 remains in effect or for 5 years, whichever period is longer.

23 3. Any material statement made by an applicant for
24 coverage under a health benefit plan which falsely certifies
25 as to the applicant's eligibility for coverage serves as the
26 basis for terminating coverage under the policy or contract.

27 4. Each marketing communication that is intended to be
28 used in the marketing of a health benefit plan in this state
29 must be submitted for review by the office ~~department~~ prior to
30 use and must contain the disclosures stated in this
31 subsection.

1 (e) A small employer carrier may not use any policy,
2 contract, form, or rate under this section, including
3 applications, enrollment forms, policies, contracts,
4 certificates, evidences of coverage, riders, amendments,
5 endorsements, and disclosure forms, until the insurer has
6 filed it with the office ~~department~~ and the office ~~department~~
7 has approved it under ss. 627.410 and 627.411 and this
8 section.

9 (13) STANDARDS TO ASSURE FAIR MARKETING.--

10 (i) The commission ~~department~~ may establish
11 regulations setting forth additional standards to provide for
12 the fair marketing and broad availability of health benefit
13 plans to small employers in this state.

14 (15) APPLICABILITY OF OTHER STATE LAWS.--

15 (a) Except as expressly provided in this section, a
16 law requiring coverage for a specific health care service or
17 benefit, or a law requiring reimbursement, utilization, or
18 consideration of a specific category of licensed health care
19 practitioner, does not apply to a standard or basic health
20 benefit plan policy or contract or a limited benefit policy or
21 contract offered or delivered to a small employer unless that
22 law is made expressly applicable to such policies or
23 contracts. A law restricting or limiting deductibles,
24 coinsurance, copayments, or annual or lifetime maximum
25 payments does not apply to any health plan policy, including a
26 standard or basic health benefit plan policy or contract,
27 offered or delivered to a small employer unless such law is
28 made expressly applicable to such policy or contract. However,
29 every small employer carrier must offer to eligible small
30 employers the standard benefit plan and the basic benefit
31

1 plan, as required by subsection (5), as such plans have been
2 approved by the office ~~department~~ pursuant to subsection (12).

3 (16) RULEMAKING AUTHORITY.--The commission ~~department~~
4 may adopt rules to administer this section, including rules
5 governing compliance by small employer carriers and small
6 employers.

7 Section 1171. Subsection (2) of section 627.673,
8 Florida Statutes, is amended to read:

9 627.673 Designation as Medicare supplement policy;
10 penalties for violations.--

11 (2) A violation of this part is punishable under s.
12 624.4211. In addition, the office ~~department~~ may require
13 insurers violating this part to cease marketing any Medicare
14 supplement policy in this state which is related directly or
15 indirectly to a violation of this part, or the office
16 ~~department~~ may require the insurer to take any action
17 necessary to comply with this part.

18 Section 1172. Section 627.6735, Florida Statutes, is
19 amended to read:

20 627.6735 Order to discontinue certain advertising.--An
21 insurer must file with the office ~~department~~ all
22 advertisements for Medicare supplement policies pursuant to
23 rules adopted by the commission ~~department~~. If, in the
24 opinion of the office ~~department~~, any advertisement by a
25 Medicare supplement policy insurer violates any of the
26 provisions of part IX of chapter 626 or any rule of the
27 commission ~~department~~, the office ~~department~~ may enter an
28 immediate order requiring that the use of the advertisement be
29 discontinued. If requested by the insurer, the office
30 ~~department~~ shall conduct a hearing within 10 days of the entry
31 of such order. If, after the hearing or by agreement with the

1 insurer, a final determination is made that the advertising
2 was in fact violative of any provision of part IX of chapter
3 626 or of any rule of the commission ~~department~~, the office
4 ~~department~~ may, in lieu of revocation of the certificate of
5 authority, require the publication of a corrective
6 advertisement; impose an administrative penalty of up to
7 \$10,000; and, in the case of an initial solicitation, require
8 that the insurer, prior to accepting any application received
9 in response to the advertisement, provide an acceptable
10 clarification of the advertisement to each individual
11 applicant.

12 Section 1173. Section 627.674, Florida Statutes, is
13 amended to read:

14 627.674 Minimum standards; filing requirements.--

15 (1) An insurance policy or subscriber contract may not
16 be advertised, solicited, or issued for delivery in this state
17 as a Medicare supplement policy unless it meets the minimum
18 standards adopted under this section. The minimum standards
19 do not preclude other provisions or benefits which are not
20 inconsistent with the minimum standards.

21 (2)(a) The commission ~~department~~ must adopt rules
22 establishing minimum standards for Medicare supplement
23 policies that, taken together with the requirements of this
24 part, are no less comprehensive or beneficial to persons
25 insured or covered under Medicare supplement policies issued,
26 delivered, or issued for delivery in this state, including
27 certificates under group or blanket policies issued,
28 delivered, or issued for delivery in this state, than the
29 standards provided in 42 U.S.C. s. 1395ss, or the most recent
30 version of the NAIC Model Regulation To Implement the NAIC
31 Medicare Supplement Insurance Minimum Standards Model Act

1 adopted by the National Association of Insurance
2 Commissioners.

3 (b) The rules must establish specific standards,
4 including standards of full and fair disclosure, that set
5 forth the manner, content, and required disclosure for the
6 sale of group, blanket, franchise, and individual Medicare
7 supplement policies and Medicare supplement subscriber
8 contracts of dental service plans and nonprofit health care
9 services plans. The standards may cover, but not be limited
10 to:

- 11 1. Terms of renewability.
- 12 2. Initial and subsequent conditions of eligibility.
- 13 3. Nonduplication of coverage.
- 14 4. Probationary periods.
- 15 5. Benefit limitations, exceptions, and reductions.
- 16 6. Elimination periods.
- 17 7. Requirements for replacement coverage.
- 18 8. Recurrent conditions.
- 19 9. Definitions of terms.
- 20 10. Application forms.

21 (c) The commission ~~department~~ may adopt rules that
22 specify prohibited policies or policy provisions, not
23 otherwise specifically authorized by statute, which in the
24 opinion of the office ~~department~~ are unjust, unfair, or
25 unfairly discriminatory to the policyholder, the person
26 insured under the policy, or the beneficiary.

27 (d) For policies issued on or after January 1, 1991,
28 the commission ~~department~~ may adopt rules to establish minimum
29 policy standards to authorize the types of policies specified
30 by 42 U.S.C. s. 1395ss(p)(2)(C) and any optional benefits to
31 facilitate policy comparisons.

1 (3) A policy may not be filed with the office
2 ~~department~~ as a Medicare supplement policy unless the policy
3 meets or exceeds the requirements of 42 U.S.C. s. 1395ss, or
4 the most recent version of the NAIC Medicare Supplement
5 Insurance Minimum Standards Model Act, adopted by the National
6 Association of Insurance Commissioners.

7 (4) A policy filed with the office ~~department~~ as a
8 Medicare supplement policy must:

9 (a) Have a definition of "Medicare eligible expense"
10 that is not more restrictive than health care expenses of the
11 kinds covered by Medicare or to the extent recognized as
12 reasonable by Medicare. Payment of benefits by insurers for
13 Medicare eligible expenses may be conditioned upon the same or
14 less restrictive payment conditions, including determinations
15 of medical necessity, as apply to Medicare claims.

16 (b) Provide that benefits designed to cover
17 cost-sharing amounts under Medicare will be changed
18 automatically to coincide with any changes in the applicable
19 Medicare deductible amount and copayment percentage factor.
20 Premiums may be modified to correspond with such changes,
21 subject to prior approval by the office ~~department~~.

22 (c) Be written in simplified language, be easily
23 understood by purchasers, and otherwise comply with s.
24 627.602.

25 (d) Contain a prominently displayed no-loss
26 cancellation clause enabling the applicant to return the
27 policy within 30 days after receiving the policy, or the
28 certificate issued thereunder, with return in full of any
29 premium paid. The insurer must, in a timely manner, pay a
30 refund under this paragraph directly to the individual who
31 paid the premium.

1 (e) Contain a prominently displayed notice of any
2 coordination-of-benefits clause which might in any way
3 restrict payment under the policy.

4 (f)1. Be accompanied by a copy of the Medicare
5 Supplement Buyer's Guide developed jointly by the National
6 Association of Insurance Commissioners and the Health Care
7 Financing Administration of the United States Department of
8 Health and Human Services.

9 2. A policy referred to in subparagraph (g)4. that
10 does not qualify as a Medicare supplement policy under this
11 part must also be accompanied by the buyer's guide pursuant to
12 this paragraph.

13 3. Except in the case of a direct response insurer,
14 delivery of the buyer's guide shall be made at the time of
15 application, and acknowledgment of receipt or certification of
16 delivery of the buyer's guide shall be provided to the
17 insurer. Direct response insurers shall deliver the buyer's
18 guide upon request, but not later than at the time the policy
19 is delivered.

20 (g)1. Be accompanied by an outline of coverage in the
21 form prescribed by the National Association of Insurance
22 Commissioners in the NAIC Model Regulation To Implement the
23 NAIC Medicare Supplement Insurance Minimum Standards Model
24 Act, adopted by the National Association of Insurance
25 Commissioners on July 31, 1991, and as prescribed in s.
26 627.6743.

27 2. The outline shall be delivered to the applicant at
28 the time application is made, and, except for the direct
29 response policy, acknowledgment of receipt or certification of
30 delivery of the outline of coverage shall be provided to the
31 insurer.

1 3. If the policy is issued on a basis which would
2 require revision of the outline, a substitute outline of
3 coverage properly describing the policy, contract, or group
4 certificate must accompany the policy, when it is delivered,
5 and contain the following statement, in no less than 12-point
6 type, immediately above the company name: "NOTICE: Read this
7 outline of coverage carefully. It is not identical to the
8 outline of coverage provided upon application, and the
9 coverage originally applied for has not been issued."

10 4. The following language must be printed on or
11 attached to the first page of the outline of coverage
12 delivered in conjunction with an individual policy of hospital
13 confinement insurance, indemnity insurance, specified disease
14 insurance, specified accident insurance, supplemental health
15 insurance other than Medicare supplement insurance, or
16 nonconventional health insurance coverage, as defined by law
17 in this state, to a person eligible for Medicare: "This policy
18 IS NOT A MEDICARE SUPPLEMENT policy. If you are eligible for
19 Medicare, review the Medicare Supplement Buyer's Guide
20 available from the company."

21 (5) A Medicare supplement policy may not contain
22 benefits which duplicate benefits provided by Medicare.

23 Section 1174. Subsection (5) of section 627.6741,
24 Florida Statutes, is amended to read:

25 627.6741 Issuance, cancellation, nonrenewal, and
26 replacement.--

27 (5) The commission ~~department~~ shall by rule prescribe
28 standards relating to the guaranteed issue of coverage,
29 without exclusions for preexisting conditions, for
30 continuously covered individuals consistent with the
31 provisions of 42 U.S.C. s. 1395ss(s)(3).

1 Section 1175. Subsection (1) of section 627.6742,
2 Florida Statutes, is amended to read:

3 627.6742 Permitted compensation arrangements.--

4 (1) The commission ~~department~~ shall adopt rules
5 governing the permitted compensation arrangements between
6 insurers and agents with respect to Medicare supplement
7 policies.

8 Section 1176. Subsection (1) of section 627.6744,
9 Florida Statutes, is amended to read:

10 627.6744 Recommended purchase and excessive
11 insurance.--

12 (1) Medicare supplement insurance may not be issued or
13 sold, whether directly, through the mail, or otherwise, to an
14 individual unless the issuer or seller obtains from the
15 individual, as a part of the application, a written statement
16 signed by the individual stating what Medicare supplement
17 policies the individual has, from what source, and whether the
18 individual has applied for and been determined to be entitled
19 to Medicaid. The written statement must be accompanied by a
20 written acknowledgment, signed by the seller, of the request
21 for and receipt of the statement. The written acknowledgment
22 does not constitute a verification or affirmation by the
23 seller of the truth of any information supplied by the
24 individual in the written statement. The written statement
25 shall be on forms prescribed by the commission ~~department~~ in
26 accordance with the Omnibus Budget Reconciliation Act of 1990
27 (Pub. L. No. 101-508).

28 Section 1177. Subsections (4) and (7) of section
29 627.6745, Florida Statutes, are amended to read:

30 627.6745 Loss ratio standards; public rate hearings.--

31

1 (4) Each insurer providing Medicare supplement
2 insurance to residents of this state shall annually submit to
3 the office ~~department~~ information on actual loss ratios on
4 forms prescribed by the National Association of Insurance
5 Commissioners pursuant to the Omnibus Budget Reconciliation
6 Act of 1990 (Pub. L. No. 101-508).

7 (7) The commission ~~department~~ shall adopt a written
8 policy statement regarding the holding of public hearings
9 prior to approval of any premium increases for Medicare
10 supplement insurance policies.

11 Section 1178. Section 627.678, Florida Statutes, is
12 amended to read:

13 627.678 Rules.--

14 (1) For the effective protection of the public
15 interest, the commission ~~department~~ shall have full power and
16 authority to adopt, ~~promulgate,~~ and the office shall enforce,
17 separate rules pertaining to issuance and use of each type of
18 credit insurance defined in s. 627.677.

19 (2) Rules made pursuant to this section shall be
20 principally designed, and shall be promulgated with the
21 purpose of protecting the borrower from excessive charges by
22 or collected through the lender for insurance in relation to
23 the amount of the loan, to avoid duplication or overlapping of
24 insurance coverage and to avoid loss of the borrower's funds
25 by short-rate cancellation or termination of such insurance.
26 However, nothing in such rules shall be construed to authorize
27 the department, commission, or office to prohibit operation of
28 normal dividend distributions under participating insurance
29 contracts.

30 Section 1179. Subsections (1) and (2) of section
31 627.6785, Florida Statutes, are amended to read:

1 627.6785 Filing of rates with department.--

2 (1) Credit disability and credit life insurers shall
3 file with the office ~~department~~ a copy of all rates and any
4 rate changes used in this state.

5 (2) No credit disability rate and no credit life rate
6 shall exceed the maximum allowable rate promulgated by the
7 commission ~~department~~.

8 Section 1180. Section 627.682, Florida Statutes, is
9 amended to read:

10 627.682 Filing, approval of forms.--All forms of
11 policies, certificates of insurance, statements of insurance,
12 applications for insurance, binders, endorsements, and riders
13 of credit life or disability insurance delivered or issued for
14 delivery in this state shall be filed with and approved by the
15 office ~~department~~ before use as provided in ss. 627.410 and
16 627.411. In addition to grounds as specified in s. 627.411,
17 the office ~~department~~, upon compliance with the procedures set
18 forth in s. 627.410, shall disapprove any such form and may
19 withdraw any previous approval thereof if the benefits
20 provided therein are not reasonable in relation to the
21 premiums charged, or if it contains provisions which are
22 unjust, unfair, inequitable, misleading, or deceptive or which
23 encourage misrepresentation of such policy.

24 Section 1181. Section 627.6844, Florida Statutes, is
25 amended to read:

26 627.6844 Replacement rules.--Group-to-group
27 consolidations are exempt from any rule of the commission
28 ~~department~~ relating to the replacement of existing life or
29 health insurance. Sections 627.6841-627.6845 do not create an
30 exemption from any such rule for consolidations that involve
31 individual policies.

1 Section 1182. Section 627.6845, Florida Statutes, is
2 amended to read:

3 627.6845 Policy forms used in connection with
4 consolidations.--A policy or group certificate of credit
5 insurance used in connection with any consolidation, or an
6 application, endorsement, or rider which becomes a part of any
7 such policy or certificate, may not be issued or delivered in
8 this state until a copy of the form has been filed with and
9 approved by the office ~~department~~ pursuant to s. 627.682.

10 Section 1183. Subsection (2), paragraph (b) of
11 subsection (3), paragraph (d) of subsection (5), and
12 subsections (6) and (8) of section 627.701, Florida Statutes,
13 are amended to read:

14 627.701 Liability of insureds; coinsurance;
15 deductibles.--

16 (2) Unless the office ~~department~~ determines that the
17 deductible provision is clear and unambiguous, a property
18 insurer may not issue an insurance policy or contract covering
19 real property in this state which contains a deductible
20 provision that:

21 (a) Applies solely to hurricane losses.

22 (b) States the deductible as a percentage rather than
23 as a specific amount of money.

24 (3)

25 (b)1. Except as otherwise provided in this paragraph,
26 prior to issuing a personal lines residential property
27 insurance policy on or after April 1, 1996, or prior to the
28 first renewal of a residential property insurance policy on or
29 after April 1, 1996, the insurer must offer alternative
30 deductible amounts applicable to hurricane or wind losses
31 equal to \$500 and 2 percent of the policy dwelling limits,

1 unless the 2 percent deductible is less than \$500. The written
2 notice of the offer shall specify the hurricane or wind
3 deductible to be applied in the event that the applicant or
4 policyholder fails to affirmatively choose a hurricane
5 deductible. The insurer must provide such policyholder with
6 notice of the availability of the deductible amounts specified
7 in this paragraph in a form approved ~~specified~~ by the office
8 ~~department~~ in conjunction with each renewal of the policy. The
9 failure to provide such notice constitutes a violation of this
10 code but does not affect the coverage provided under the
11 policy.

12 2. This paragraph does not apply with respect to a
13 deductible program lawfully in effect on June 14, 1995, or to
14 any similar deductible program, if the deductible program
15 requires a minimum deductible amount of no less than 2 percent
16 of the policy limits.

17 3. With respect to a policy covering a risk with
18 dwelling limits of at least \$100,000, but less than \$250,000,
19 the insurer may, in lieu of offering a policy with a \$500
20 hurricane or wind deductible as required by subparagraph 1.,
21 offer a policy that the insurer guarantees it will not
22 nonrenew for reasons of reducing hurricane loss for one
23 renewal period and that contains up to a 2 percent hurricane
24 or wind deductible as required by subparagraph 1.

25 4. With respect to a policy covering a risk with
26 dwelling limits of \$250,000 or more, the insurer need not
27 offer the \$500 hurricane or wind deductible as required by
28 subparagraph 1., but must, except as otherwise provided in
29 this subsection, offer the 2 percent hurricane or wind
30 deductible as required by subparagraph 1.

31 (5)

1 (d) The office ~~department~~ shall draft and formally
2 propose as a rule the form for the certificate of security ~~no~~
3 ~~later than July 1, 1996~~. The certificate of security may be
4 issued in any of the following circumstances:

5 1. A mortgage lender or other financial institution
6 may issue a certificate of security after granting the
7 applicant a line of credit, secured by equity in real property
8 or other reasonable security, which line of credit may be
9 drawn on only to pay for the deductible portion of insured
10 construction or reconstruction after a hurricane loss. In the
11 sole discretion of the mortgage lender or other financial
12 institution, the line of credit may be issued to an applicant
13 on an unsecured basis.

14 2. A licensed insurance agent may issue a certificate
15 of security after obtaining for an applicant a line of credit,
16 secured by equity in real property or other reasonable
17 security, which line of credit may be drawn on only to pay for
18 the deductible portion of insured construction or
19 reconstruction after a hurricane loss. The Florida Hurricane
20 Catastrophe Fund shall negotiate agreements creating a
21 financing consortium to serve as an additional source of lines
22 of credit to secure deductibles. Any licensed insurance agent
23 may act as the agent of such consortium.

24 3. Any person qualified to act as a trustee for any
25 purpose may issue a certificate of security secured by a
26 pledge of assets, with the restriction that the assets may be
27 drawn on only to pay for the deductible portion of insured
28 construction or reconstruction after a hurricane loss.

29 4. Any insurer, including any admitted insurer or any
30 surplus lines insurer, may issue a certificate of security
31 after issuing the applicant a policy of supplemental insurance

1 that will pay for 100 percent of the deductible portion of
2 insured construction or reconstruction after a hurricane loss.

3 5. Any other method approved by the office ~~department~~
4 upon finding that such other method provides a similar level
5 of security as the methods specified in this paragraph and
6 that such other method has no negative impact on residential
7 property insurance catastrophic capacity. The legislative
8 intent of this subparagraph is to provide the flexibility
9 needed to achieve the public policy of expanding property
10 insurance capacity while improving the affordability of
11 property insurance.

12 (6) Prior to issuing a personal lines residential
13 property insurance policy on or after April 1, 1997, or prior
14 to the first renewal of a residential property insurance
15 policy on or after April 1, 1997, the insurer must offer a
16 deductible equal to \$500 applicable to losses from perils
17 other than hurricane. The insurer must provide the
18 policyholder with notice of the availability of the deductible
19 specified in this subsection in a form approved ~~specified~~ by
20 the office ~~department~~ at least once every 3 years. The failure
21 to provide such notice constitutes a violation of this code
22 but does not affect the coverage provided under the policy. An
23 insurer may require a higher deductible only as part of a
24 deductible program lawfully in effect on June 1, 1996, or as
25 part of a similar deductible program.

26 (8) Notwithstanding the other provisions of this
27 section or of other law, but only as to hurricane coverage as
28 defined in s. 627.4025 for commercial lines residential
29 coverages, an insurer may offer a deductible in an amount not
30 exceeding 5 percent of the insured value with respect to a
31 condominium association or cooperative association policy, or

1 in an amount not exceeding 10 percent of the insured value
2 with respect to any other commercial lines residential policy,
3 if, at the time of such offer and at each renewal, the insurer
4 also offers to the policyholder a deductible in the amount of
5 3 percent of the insured value. Nothing in this subsection
6 prohibits any deductible otherwise authorized by this section.
7 All forms by which the offers authorized in this subsection
8 are made or required to be made shall be on forms that are
9 adopted or approved by the commission or office ~~department~~.

10 Section 1184. Subsection (2) of section 627.7011,
11 Florida Statutes, is amended to read:

12 627.7011 Homeowners' policies; offer of replacement
13 cost coverage and law and ordinance coverage.--

14 (2) Unless the insurer obtains the policyholder's
15 written refusal of the policies or endorsements specified in
16 subsection (1), any policy covering the dwelling is deemed to
17 include the coverage specified in paragraph (1)(b). The
18 rejection or selection of alternative coverage shall be made
19 on a form approved by the office ~~department~~. The form shall
20 fully advise the applicant of the nature of the coverage being
21 rejected. If this form is signed by a named insured, it will
22 be conclusively presumed that there was an informed, knowing
23 rejection of the coverage or election of the alternative
24 coverage on behalf of all insureds. Unless the policyholder
25 requests in writing the coverage specified in this section, it
26 need not be provided in or supplemental to any other policy
27 that renews, insures, extends, changes, supersedes, or
28 replaces an existing policy when the policyholder has rejected
29 the coverage specified in this section or has selected
30 alternative coverage. The insurer must provide such
31 policyholder with notice of the availability of such coverage

1 in a form approved ~~specified~~ by the office ~~department~~ at least
2 once every 3 years. The failure to provide such notice
3 constitutes a violation of this code, but does not affect the
4 coverage provided under the policy.

5 Section 1185. Section 627.7012, Florida Statutes, is
6 amended to read:

7 627.7012 Pools of insurance adjusters.--The Commission
8 ~~Department of Insurance~~ may, by rule, establish a pool of
9 qualified insurance adjusters. The rules must provide that, if
10 a hurricane occurs or an emergency is declared, the office
11 ~~department~~ may assign members of the pool to the affected area
12 and that an insurer may request that a member of the pool
13 adjust claims in the assigned area. The rules may not require
14 that an insurer use those adjusters assigned by the office
15 ~~department~~.

16 Section 1186. Section 627.7015, Florida Statutes, is
17 amended to read:

18 627.7015 Alternative procedure for resolution of
19 disputed property insurance claims.--

20 (1) PURPOSE AND SCOPE.--This section sets forth a
21 nonadversarial alternative dispute resolution procedure for a
22 mediated claim resolution conference prompted by the need for
23 effective, fair, and timely handling of property insurance
24 claims. There is a particular need for an informal,
25 nonthreatening forum for helping parties who elect this
26 procedure to resolve their claims disputes because most
27 homeowner's insurance policies obligate insureds to
28 participate in a potentially expensive and time-consuming
29 adversarial appraisal process prior to litigation. The
30 procedure set forth in this section is designed to bring the
31 parties together for a mediated claims settlement conference

1 without any of the trappings or drawbacks of an adversarial
2 process. Before resorting to these procedures, insureds and
3 insurers are encouraged to resolve claims as quickly and
4 fairly as possible. This section is available with respect to
5 claims under personal lines policies for all claimants and
6 insurers prior to commencing the appraisal process, or
7 commencing litigation. If requested by the insured,
8 participation by legal counsel shall be permitted. Mediation
9 under this section is also available to litigants referred to
10 the department by a county court or circuit court. This
11 section does not apply to commercial coverages, to private
12 passenger motor vehicle insurance coverages, or to disputes
13 relating to liability coverages in policies of property
14 insurance.

15 (2) At the time a first-party claim within the scope
16 of this section is filed, the insurer shall notify all
17 first-party claimants of their right to participate in the
18 mediation program under this section. The department shall
19 prepare a consumer information pamphlet for distribution to
20 persons participating in mediation under this section.

21 (3) The costs of mediation shall be reasonable, and
22 the insurer shall bear all of the cost of conducting mediation
23 conferences, except as otherwise provided in this section. If
24 an insured fails to appear at the conference, the conference
25 shall be rescheduled upon the insured's payment of the costs
26 of a rescheduled conference. If the insurer fails to appear at
27 the conference, the insurer shall pay the insured's actual
28 cash expenses incurred in attending the conference if the
29 insurer's failure to attend was not due to a good cause
30 acceptable to the department. An insurer will be deemed to
31 have failed to appear if the insurer's representative lacks

1 authority to settle the full value of the claim. The insurer
2 shall incur an additional fee for a rescheduled conference
3 necessitated by the insurer's failure to appear at a scheduled
4 conference. The fees assessed by the administrator shall
5 include a charge necessary to defray the expenses of the
6 department related to its duties under this section and shall
7 be deposited in the Insurance ~~Commissioner's~~ Regulatory Trust
8 Fund.

9 (4) The department shall adopt by rule a property
10 insurance mediation program to be administered by the
11 department or its designee. The department may also adopt
12 special rules which are applicable in cases of an emergency
13 within the state. The rules shall be modeled after practices
14 and procedures set forth in mediation rules of procedure
15 adopted by the Supreme Court. The rules shall provide for:

16 (a) Reasonable requirement for processing and
17 scheduling of requests for mediation.

18 (b) Qualifications of mediators as provided in s.
19 627.745 and in the Florida Rules of Certified and Court
20 Appointed Mediators, and for such other individuals as are
21 qualified by education, training, or experience as the
22 department determines to be appropriate.

23 (c) Provisions governing who may attend mediation
24 conferences.

25 (d) Selection of mediators.

26 (e) Criteria for the conduct of mediation conferences.

27 (f) Right to legal counsel.

28 (5) All statements made and documents produced at a
29 mediation conference shall be deemed to be settlement
30 negotiations in anticipation of litigation within the scope of
31 s. 90.408. All parties to the mediation must negotiate in good

1 faith and must have the authority to immediately settle the
2 claim. Mediators are deemed to be agents of the department and
3 shall have the immunity from suit provided in s. 44.107.

4 (6) Mediation is nonbinding; however, if a written
5 settlement is reached, the insured has 3 business days within
6 which the insured may rescind the settlement unless the
7 insured has cashed or deposited any check or draft disbursed
8 to the insured for the disputed matters as a result of the
9 conference. If a settlement agreement is reached and is not
10 rescinded, it shall be binding and act as a release of all
11 specific claims that were presented in that mediation
12 conference.

13 (7) If the insurer requests the mediation, and the
14 mediation results are rejected by either party, the insured
15 shall not be required to submit to or participate in any
16 contractual loss appraisal process of the property loss damage
17 as a precondition to legal action for breach of contract
18 against the insurer for its failure to pay the policyholder's
19 claims covered by the policy.

20 (8) The department may designate an entity or person
21 to serve as administrator to carry out any of the provisions
22 of this section and may take this action by means of a written
23 contract or agreement.

24 Section 1187. Section 627.7017, Florida Statutes, is
25 amended to read:

26 627.7017 Hurricane loss mitigation projects.--In
27 addition to any other hurricane loss mitigation activities
28 authorized or required by law, the office ~~department~~ may
29 contract with public or private entities for hurricane loss
30 mitigation projects.

31

1 Section 1188. Subsection (6) of section 627.702,
2 Florida Statutes, is amended to read:

3 627.702 Valued policy law.--

4 (6) With regard to mobile homes included in subsection
5 (1), any total loss shall be adjusted on the basis of the
6 amount of money for which such property was insured as
7 specified in the policy, whether on an actual cash value
8 basis, replacement cost basis, or stated amount, and for which
9 a premium has been charged and paid only if the insured has
10 elected to purchase such coverage at the inception of the
11 policy. However, when coverage is written for a mobile home
12 on any basis other than stated value, a complete disclosure of
13 the relative cost between that policy and the stated value
14 policy shall be made to the insured on a form and in a format
15 approved by the office ~~department~~. Such forms shall disclose
16 and describe the differences between the types of policies and
17 shall be signed by the insured. Copies shall be maintained in
18 the insurer's file, and a copy shall be made available to the
19 insured. Each insurer licensed to write insurance covering
20 mobile homes shall make such stated value coverage available
21 at the option of the insured.

22 Section 1189. Subsection (4) of section 627.706,
23 Florida Statutes, is amended to read:

24 627.706 Sinkhole insurance.--

25 (4) Every insurer authorized to transact property
26 insurance in this state shall make a proper filing with the
27 office ~~department~~ for the purpose of extending the appropriate
28 forms of property insurance to include coverage for insurable
29 sinkhole losses.

30 Section 1190. Subsections (1), (5), and (9) of section
31 627.727, Florida Statutes, are amended to read:

1 627.727 Motor vehicle insurance; uninsured and
2 underinsured vehicle coverage; insolvent insurer protection.--

3 (1) No motor vehicle liability insurance policy which
4 provides bodily injury liability coverage shall be delivered
5 or issued for delivery in this state with respect to any
6 specifically insured or identified motor vehicle registered or
7 principally garaged in this state unless uninsured motor
8 vehicle coverage is provided therein or supplemental thereto
9 for the protection of persons insured thereunder who are
10 legally entitled to recover damages from owners or operators
11 of uninsured motor vehicles because of bodily injury,
12 sickness, or disease, including death, resulting therefrom.
13 However, the coverage required under this section is not
14 applicable when, or to the extent that, an insured named in
15 the policy makes a written rejection of the coverage on behalf
16 of all insureds under the policy. When a motor vehicle is
17 leased for a period of 1 year or longer and the lessor of such
18 vehicle, by the terms of the lease contract, provides
19 liability coverage on the leased vehicle, the lessee of such
20 vehicle shall have the sole privilege to reject uninsured
21 motorist coverage or to select lower limits than the bodily
22 injury liability limits, regardless of whether the lessor is
23 qualified as a self-insurer pursuant to s. 324.171. Unless an
24 insured, or lessee having the privilege of rejecting uninsured
25 motorist coverage, requests such coverage or requests higher
26 uninsured motorist limits in writing, the coverage or such
27 higher uninsured motorist limits need not be provided in or
28 supplemental to any other policy which renews, extends,
29 changes, supersedes, or replaces an existing policy with the
30 same bodily injury liability limits when an insured or lessee
31 had rejected the coverage. When an insured or lessee has

1 initially selected limits of uninsured motorist coverage lower
2 than her or his bodily injury liability limits, higher limits
3 of uninsured motorist coverage need not be provided in or
4 supplemental to any other policy which renews, extends,
5 changes, supersedes, or replaces an existing policy with the
6 same bodily injury liability limits unless an insured requests
7 higher uninsured motorist coverage in writing. The rejection
8 or selection of lower limits shall be made on a form approved
9 by the office ~~Insurance Commissioner~~. The form shall fully
10 advise the applicant of the nature of the coverage and shall
11 state that the coverage is equal to bodily injury liability
12 limits unless lower limits are requested or the coverage is
13 rejected. The heading of the form shall be in 12-point bold
14 type and shall state: "You are electing not to purchase
15 certain valuable coverage which protects you and your family
16 or you are purchasing uninsured motorist limits less than your
17 bodily injury liability limits when you sign this form.
18 Please read carefully." If this form is signed by a named
19 insured, it will be conclusively presumed that there was an
20 informed, knowing rejection of coverage or election of lower
21 limits on behalf of all insureds. The insurer shall notify
22 the named insured at least annually of her or his options as
23 to the coverage required by this section. Such notice shall
24 be part of, and attached to, the notice of premium, shall
25 provide for a means to allow the insured to request such
26 coverage, and shall be given in a manner approved by the
27 office ~~department~~. Receipt of this notice does not constitute
28 an affirmative waiver of the insured's right to uninsured
29 motorist coverage where the insured has not signed a selection
30 or rejection form. The coverage described under this section
31 shall be over and above, but shall not duplicate, the benefits

1 available to an insured under any workers' compensation law,
2 personal injury protection benefits, disability benefits law,
3 or similar law; under any automobile medical expense coverage;
4 under any motor vehicle liability insurance coverage; or from
5 the owner or operator of the uninsured motor vehicle or any
6 other person or organization jointly or severally liable
7 together with such owner or operator for the accident; and
8 such coverage shall cover the difference, if any, between the
9 sum of such benefits and the damages sustained, up to the
10 maximum amount of such coverage provided under this section.
11 The amount of coverage available under this section shall not
12 be reduced by a setoff against any coverage, including
13 liability insurance. Such coverage shall not inure directly
14 or indirectly to the benefit of any workers' compensation or
15 disability benefits carrier or any person or organization
16 qualifying as a self-insurer under any workers' compensation
17 or disability benefits law or similar law.

18 (5) Any person having a claim against an insolvent
19 insurer as defined in s. 631.54(5)~~s. 631.54(6)~~ under the
20 provisions of this section shall present such claim for
21 payment to the Florida Insurance Guaranty Association only.
22 In the event of a payment to any person in settlement of a
23 claim arising under the provisions of this section, the
24 association is not subrogated or entitled to any recovery
25 against the claimant's insurer. The association, however, has
26 the rights of recovery as set forth in chapter 631 in the
27 proceeds recoverable from the assets of the insolvent insurer.

28 (9) Insurers may offer policies of uninsured motorist
29 coverage containing policy provisions, in language approved by
30 the office ~~department~~, establishing that if the insured
31 accepts this offer:

1 (a) The coverage provided as to two or more motor
2 vehicles shall not be added together to determine the limit of
3 insurance coverage available to an injured person for any one
4 accident, except as provided in paragraph (c).

5 (b) If at the time of the accident the injured person
6 is occupying a motor vehicle, the uninsured motorist coverage
7 available to her or him is the coverage available as to that
8 motor vehicle.

9 (c) If the injured person is occupying a motor vehicle
10 which is not owned by her or him or by a family member
11 residing with her or him, the injured person is entitled to
12 the highest limits of uninsured motorist coverage afforded for
13 any one vehicle as to which she or he is a named insured or
14 insured family member. Such coverage shall be excess over the
15 coverage on the vehicle the injured person is occupying.

16 (d) The uninsured motorist coverage provided by the
17 policy does not apply to the named insured or family members
18 residing in her or his household who are injured while
19 occupying any vehicle owned by such insureds for which
20 uninsured motorist coverage was not purchased.

21 (e) If, at the time of the accident the injured person
22 is not occupying a motor vehicle, she or he is entitled to
23 select any one limit of uninsured motorist coverage for any
24 one vehicle afforded by a policy under which she or he is
25 insured as a named insured or as an insured resident of the
26 named insured's household.

27
28 In connection with the offer authorized by this subsection,
29 insurers shall inform the named insured, applicant, or lessee,
30 on a form approved by the office ~~department~~, of the
31 limitations imposed under this subsection and that such

1 coverage is an alternative to coverage without such
2 limitations. If this form is signed by a named insured,
3 applicant, or lessee, it shall be conclusively presumed that
4 there was an informed, knowing acceptance of such limitations.
5 When the named insured, applicant, or lessee has initially
6 accepted such limitations, such acceptance shall apply to any
7 policy which renews, extends, changes, supersedes, or replaces
8 an existing policy unless the named insured requests deletion
9 of such limitations and pays the appropriate premium for such
10 coverage. Any insurer who provides coverage which includes
11 the limitations provided in this subsection shall file revised
12 premium rates with the office ~~department~~ for such uninsured
13 motorist coverage to take effect prior to initially providing
14 such coverage. The revised rates shall reflect the
15 anticipated reduction in loss costs attributable to such
16 limitations but shall in any event reflect a reduction in the
17 uninsured motorist coverage premium of at least 20 percent for
18 policies with such limitations. Such filing shall not
19 increase the rates for coverage which does not contain the
20 limitations authorized by this subsection, and such rates
21 shall remain in effect until the insurer demonstrates the need
22 for a change in uninsured motorist rates pursuant to s.
23 627.0651.

24 Section 1191. Subsection (1) of section 627.7275,
25 Florida Statutes, is amended to read:

26 627.7275 Motor vehicle property damage liability.--

27 (1) No motor vehicle insurance policy providing
28 personal injury protection as set forth in s. 627.736 shall be
29 delivered or issued for delivery in this state with respect to
30 any specifically insured or identified motor vehicle
31 registered or principally garaged in this state unless the

1 policy also provides coverage for property damage liability in
2 the amount of at least \$10,000 because of damage to, or
3 destruction of, property of others in any one accident arising
4 out of the use of the motor vehicle or provides coverage in
5 the amount of at least \$30,000 for combined property damage
6 liability and bodily injury liability in any one accident
7 arising out of the use of the motor vehicle. The policy, as
8 to coverage of property damage liability, shall meet the
9 applicable requirements of s. 324.151, subject to the usual
10 policy exclusions such as have been approved in policy forms
11 by the office ~~department~~.

12 Section 1192. Subsections (7), (8), and (9) of section
13 627.728, Florida Statutes, are amended to read:

14 627.728 Cancellations; nonrenewals.--

15 (7) Except in the case of cancellation for nonpayment
16 of premium or nonrenewal of the policy, the notice of
17 cancellation as provided by this section must contain the
18 following words which are to be prominently displayed: "You
19 are permitted by law to appeal this cancellation. An appeal
20 must be filed no later than 20 days before the effective date
21 of cancellation set forth in this notice. Forms for such
22 appeal and the regulations pertaining thereto may be obtained
23 from the office ~~offices of the Department of Insurance~~. The
24 office ~~Department of Insurance~~ does not have the authority to
25 extend the effective date of cancellation; therefore you
26 should obtain replacement coverage prior to the effective date
27 of cancellation."

28 (8)(a) Within 2 working days after receipt of a timely
29 appeal of the notice of cancellation, the office ~~department~~
30 shall initiate a proceeding. If informal procedures fail to
31 resolve the appeal, the office ~~department~~ shall, upon request

1 of the insured, call a hearing upon 10 days' notice to the
2 parties to be held by a disinterested employee of the office
3 ~~department~~. Proceedings pursuant to this subsection are not
4 subject to the provisions of chapter 120.

5 (b) Each insurer subject to this section shall
6 maintain on file with the office ~~department~~ the name and
7 address of the person authorized to receive notices pursuant
8 to this section on behalf of the insurer.

9 (c) The office ~~department~~ shall, at the conclusion of
10 the proceeding or hearing or not later than 2 working days
11 thereafter, issue its written findings to the parties; and, if
12 it finds for the named insured, it shall either order the
13 insurer to rescind its notice of cancellation or, if the date
14 cancellation is to be effective has elapsed, order the policy
15 reinstated from the date of cancellation, and such coverage
16 shall be continuous to, and shall operate prospectively from,
17 the date of cancellation. However, no policy shall be
18 reinstated while the named insured is in arrears in payment of
19 premium on such policy. If the office ~~department~~ finds for
20 the insurer, its written findings shall so state.

21 (d) Reinstatement of a policy under this subsection
22 shall not operate in any way to extend the expiration,
23 termination, or anniversary date provided in the policy. Upon
24 such reinstatement, costs and attorney's fees may be assessed
25 by the office ~~department~~ and paid to the named insured by an
26 insurer who has wrongfully canceled a policy, as determined by
27 the proceeding or hearing provided for in paragraph (c).

28 (9) The office ~~department~~ shall deposit all fees
29 provided for in this section into the Insurance ~~Commissioner's~~
30 Regulatory Trust Fund.

31

1 Section 1193. Subsection (5) of section 627.7282,
2 Florida Statutes, is amended to read:

3 627.7282 Notice of additional premium; cancellation
4 upon nonpayment.--

5 (5) The commission ~~department~~ may adopt rules
6 prescribing the format of the notice.

7 Section 1194. Paragraph (a) of subsection (5) of
8 section 627.7295, Florida Statutes, is amended to read:

9 627.7295 Motor vehicle insurance contracts.--

10 (5)(a) A licensed general lines agent may charge a
11 per-policy fee not to exceed \$10 to cover the administrative
12 costs of the agent associated with selling the motor vehicle
13 insurance policy if the policy covers only personal injury
14 protection coverage as provided by s. 627.736 and property
15 damage liability coverage as provided by s. 627.7275 and if no
16 other insurance is sold or issued in conjunction with or
17 collateral to the policy. The per-policy fee must be a
18 component of the insurer's rate filing and may not be charged
19 by an agent unless the fee is included in the filing. The fee
20 is not considered part of the premium except for purposes of
21 the office's ~~department's~~ review of expense factors in a
22 filing made pursuant to s. 627.062.

23 Section 1195. Paragraph (c) of subsection (4),
24 paragraphs (a) and (e) of subsection (5), paragraph (a) of
25 subsection (6), and paragraph (c) of subsection (11) of
26 section 627.736, Florida Statutes, are amended to read:

27 627.736 Required personal injury protection benefits;
28 exclusions; priority; claims.--

29 (4) BENEFITS; WHEN DUE.--Benefits due from an insurer
30 under ss. 627.730-627.7405 shall be primary, except that
31 benefits received under any workers' compensation law shall be

1 credited against the benefits provided by subsection (1) and
2 shall be due and payable as loss accrues, upon receipt of
3 reasonable proof of such loss and the amount of expenses and
4 loss incurred which are covered by the policy issued under ss.
5 627.730-627.7405. When the Agency for Health Care
6 Administration provides, pays, or becomes liable for medical
7 assistance under the Medicaid program related to injury,
8 sickness, disease, or death arising out of the ownership,
9 maintenance, or use of a motor vehicle, benefits under ss.
10 627.730-627.7405 shall be subject to the provisions of the
11 Medicaid program.

12 (c) All overdue payments shall bear simple interest at
13 the rate established ~~by the Comptroller~~ under s. 55.03 or the
14 rate established in the insurance contract, whichever is
15 greater, for the year in which the payment became overdue,
16 calculated from the date the insurer was furnished with
17 written notice of the amount of covered loss. Interest shall
18 be due at the time payment of the overdue claim is made.

19 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.--

20 (a) Any physician, hospital, clinic, or other person
21 or institution lawfully rendering treatment to an injured
22 person for a bodily injury covered by personal injury
23 protection insurance may charge only a reasonable amount for
24 the services and supplies rendered, and the insurer providing
25 such coverage may pay for such charges directly to such person
26 or institution lawfully rendering such treatment, if the
27 insured receiving such treatment or his or her guardian has
28 countersigned the invoice, bill, or claim form approved by the
29 office ~~Department of Insurance~~ upon which such charges are to
30 be paid for as having actually been rendered, to the best
31 knowledge of the insured or his or her guardian. In no event,

1 however, may such a charge be in excess of the amount the
2 person or institution customarily charges for like services or
3 supplies in cases involving no insurance.

4 (e) All statements and bills for medical services
5 rendered by any physician, hospital, clinic, or other person
6 or institution shall be submitted to the insurer on a Health
7 Care Finance Administration 1500 form, UB 92 forms, or any
8 other standard form approved by the office or adopted by the
9 commission ~~department~~ for purposes of this paragraph. All
10 billings for such services shall, to the extent applicable,
11 follow the Physicians' Current Procedural Terminology (CPT) in
12 the year in which services are rendered. No statement of
13 medical services may include charges for medical services of a
14 person or entity that performed such services without
15 possessing the valid licenses required to perform such
16 services. For purposes of paragraph (4)(b), an insurer shall
17 not be considered to have been furnished with notice of the
18 amount of covered loss or medical bills due unless the
19 statements or bills comply with this paragraph.

20 (6) DISCOVERY OF FACTS ABOUT AN INJURED PERSON;
21 DISPUTES.--

22 (a) Every employer shall, if a request is made by an
23 insurer providing personal injury protection benefits under
24 ss. 627.730-627.7405 against whom a claim has been made,
25 furnish forthwith, in a form approved by the office
26 ~~department~~, a sworn statement of the earnings, since the time
27 of the bodily injury and for a reasonable period before the
28 injury, of the person upon whose injury the claim is based.

29 (11) DEMAND LETTER.--

30 (c) Each notice required by this section must be
31 delivered to the insurer by United States certified or

1 registered mail, return receipt requested. Such postal costs
2 shall be reimbursed by the insurer if so requested by the
3 provider in the notice, when the insurer pays the overdue
4 claim. Such notice must be sent to the person and address
5 specified by the insurer for the purposes of receiving notices
6 under this section, on the document denying or reducing the
7 amount asserted by the filer to be overdue. Each licensed
8 insurer, whether domestic, foreign, or alien, may file with
9 the office ~~department~~ designation of the name and address of
10 the person to whom notices pursuant to this section shall be
11 sent when such document does not specify the name and address
12 to whom the notices under this section are to be sent or when
13 there is no such document. The name and address on file with
14 the office ~~department~~ pursuant to s. 624.422 shall be deemed
15 the authorized representative to accept notice pursuant to
16 this section in the event no other designation has been made.

17 Section 1196. Subsection (5) of section 627.739,
18 Florida Statutes, is amended to read:

19 627.739 Personal injury protection; optional
20 limitations; deductibles.--

21 (5) All such offers shall be made in clear and
22 unambiguous language at the time the initial application is
23 taken and prior to each annual renewal and shall indicate that
24 a premium reduction will result from each election. At the
25 option of the insurer, the requirements of the preceding
26 sentence are met by using forms of notice approved by the
27 office ~~department~~, or by providing the following notice in
28 10-point type in the insurer's application for initial
29 issuance of a policy of motor vehicle insurance and the
30 insurer's annual notice of renewal premium:

31

1 For personal injury protection insurance, the
2 named insured may elect a deductible and to
3 exclude coverage for loss of gross income and
4 loss of earning capacity ("lost wages"). These
5 elections apply to the named insured alone, or
6 to the named insured and all dependent resident
7 relatives. A premium reduction will result from
8 these elections. The named insured is hereby
9 advised not to elect the lost wage exclusion if
10 the named insured or dependent resident
11 relatives are employed, since lost wages will
12 not be payable in the event of an accident.

13 Section 1197. Section 627.7401, Florida Statutes, is
14 amended to read:

15 627.7401 Notification of insured's rights.--

16 (1) The commission ~~department~~, by rule, shall adopt a
17 form for the notification of insureds of their right to
18 receive personal injury protection benefits under the Florida
19 Motor Vehicle No-Fault Law. Such notice shall include a
20 description of the benefits provided by personal injury
21 protection, including, but not limited to, the specific types
22 of services for which medical benefits are paid, disability
23 benefits, death benefits, significant exclusions from and
24 limitations on personal injury protection benefits, when
25 payments are due, how benefits are coordinated with other
26 insurance benefits that the insured may have, penalties and
27 interest that may be imposed on insurers for failure to make
28 timely payments of benefits, and rights of parties regarding
29 disputes as to benefits.

30 (2) Each insurer issuing a policy in this state
31 providing personal injury protection benefits must mail or

1 deliver the notice as specified in subsection (1) to an
2 insured within 21 days after receiving from the insured notice
3 of an automobile accident or claim involving personal injury
4 to an insured who is covered under the policy. The office
5 ~~department~~ may allow an insurer additional time to provide the
6 notice specified in subsection (1) not to exceed 30 days, upon
7 a showing by the insurer that an emergency justifies an
8 extension of time.

9 (3) The notice required by this section does not alter
10 or modify the terms of the insurance contract or other
11 requirements of this act.

12 Section 1198. Paragraph (h) of subsection (2) and
13 subsections (4), (5), and (7) of section 627.744, Florida
14 Statutes, are amended to read:

15 627.744 Required preinsurance inspection of private
16 passenger motor vehicles.--

17 (2) This section does not apply:

18 (h) To any other vehicle or policy exempted by rule of
19 the commission ~~department~~. The commission ~~department~~ may base
20 a rule under this paragraph only on a determination that the
21 likelihood of a fraudulent physical damage claim is remote or
22 that the inspection would cause a serious hardship to the
23 insurer or the applicant.

24 (4) The inspection required by this section shall be
25 provided by the insurer or by a person or organization
26 authorized by the insurer. The applicant may be required to
27 pay the cost of the inspection, not to exceed \$5. The
28 inspection shall be recorded on a form prescribed by the
29 commission ~~department~~, and the form or a copy shall be
30 retained by the insurer with its policy records for the
31 insured. The insurer shall provide a copy of the form to the

1 insured upon request. Any inspection fee paid directly by the
2 applicant may not be considered part of the premium. However,
3 an insurer that provides the inspection at no cost to the
4 applicant may include the expense of the inspection within a
5 rate filing.

6 (5) The inspection shall include at least the
7 following:

8 (a) Taking a physical imprint of the vehicle
9 identification number of the vehicle or otherwise recording
10 the vehicle identification number in a manner prescribed by
11 the commission ~~department~~.

12 (b) Recording the presence of accessories required by
13 the commission ~~department~~ to be recorded.

14 (c) Recording the locations of and a description of
15 existing damage to the vehicle.

16 (7) The commission ~~department~~ may, by rule, establish
17 such procedures and notice requirements that it finds
18 necessary to implement this section.

19 Section 1199. Subsections (1) and (2) of section
20 627.758, Florida Statutes, are amended to read:

21 627.758 Surety on auto club traffic arrest bond;
22 conditions, limit; bail bond.--

23 (1) Any authorized surety insurer may, in any year,
24 become surety in an amount not to exceed \$1,000 with respect
25 to any guaranteed traffic arrest bond certificate issued in
26 such year by an automobile club or association by filing with
27 the office ~~department~~ an undertaking to become surety.

28 (2) The undertaking shall be in the form prescribed by
29 the commission ~~department~~ and shall state the following:

30 (a) The name and address of the automobile club or
31 association with respect to the guaranteed traffic arrest bond

1 certificates for which the surety insurer undertakes to be
2 surety.

3 (b) The unqualified obligation of the surety insurer
4 to pay the fine or forfeiture in an amount not to exceed
5 \$1,000 for any person who, after posting a guaranteed traffic
6 arrest bond certificate with respect to which the insurer has
7 undertaken to be surety, fails to make the appearance for
8 which the certificate was posted.

9 Section 1200. Subsection (2) of section 627.7711,
10 Florida Statutes, is amended to read:

11 627.7711 Definitions.--As used in this part, the term:

12 (2) "Premium" means the charge, as specified by rule
13 of the commission ~~department~~, that is made by a title insurer
14 for a title insurance policy, including the charge for
15 performance of primary title services by a title insurer or
16 title insurance agent or agency, and incurring the risks
17 incident to such policy, under the several classifications of
18 title insurance contracts and forms, and upon which charge a
19 premium tax is paid under s. 624.509. As used in this part or
20 in any other law, with respect to title insurance, the word
21 "premium" does not include a commission.

22 Section 1201. Section 627.777, Florida Statutes, is
23 amended to read:

24 627.777 Approval of forms.--A title insurer may not
25 issue or agree to issue any form of title insurance
26 commitment, title insurance policy, other contract of title
27 insurance, or related form until it is filed with and approved
28 by the office ~~department~~. The office ~~department~~ may not
29 disapprove a title guarantee or policy form on the ground that
30 it has on it a blank form for an attorney's opinion on the
31 title.

1 Section 1202. Subsection (2) of section 627.7773,
2 Florida Statutes, is amended to read:

3 627.7773 Accounting and auditing of forms by title
4 insurers.--

5 (2) If the office ~~department~~ has reason to believe
6 that an audit of outstanding forms should be required of any
7 title insurer as to a title insurance agent or agency, the
8 office ~~department~~ may require the title insurer to make a
9 special audit of the forms. The title insurer shall complete
10 the audit not later than 60 days after the request is received
11 from the office ~~department~~, and shall report the results of
12 the special audit to the office ~~department~~ no later than 90
13 days after the request is received.

14 Section 1203. Subsection (1) of section 627.780,
15 Florida Statutes, is amended to read:

16 627.780 Illegal dealings in risk premium.--

17 (1) A person may not knowingly quote, charge, accept,
18 collect, or receive a premium for title insurance other than
19 the premium adopted by the commission ~~department~~.

20 Section 1204. Subsections (1), (2), (7), and (8) of
21 section 627.782, Florida Statutes, are amended to read:

22 627.782 Adoption of rates.--

23 (1) Subject to the rating provisions of this code, the
24 commission ~~department~~ must adopt a rule specifying the premium
25 to be charged in this state by title insurers for the
26 respective types of title insurance contracts and, for
27 policies issued through agents or agencies, the percentage of
28 such premium required to be retained by the title insurer
29 which shall not be less than 30 percent. However, in a
30 transaction subject to the Real Estate Settlement Procedures
31 Act of 1974, 12 U.S.C. ss. 2601 et seq., as amended, no

1 portion of the premium attributable to providing a primary
2 title service shall be paid to or retained by any person who
3 does not actually perform or is not liable for the performance
4 of such service. The commission ~~department~~ may, by rule,
5 establish limitations on related title services charges made
6 in addition to the premium based upon the expenses associated
7 with the services rendered and other relevant factors.

8 (2) In adopting premium rates, the commission
9 ~~department~~ must give due consideration to the following:

10 (a) The title insurers' loss experience and
11 prospective loss experience under closing protection letters
12 and policy liabilities.

13 (b) A reasonable margin for underwriting profit and
14 contingencies, including contingent liability under s.
15 627.7865, sufficient to allow title insurers, agents, and
16 agencies to earn a rate of return on their capital that will
17 attract and retain adequate capital investment in the title
18 insurance business and maintain an efficient title insurance
19 delivery system.

20 (c) Past expenses and prospective expenses for
21 administration and handling of risks.

22 (d) Liability for defalcation.

23 (e) Other relevant factors.

24 (7) The commission ~~department~~ shall, in accordance
25 with the standards provided in subsection (2), review the
26 premium as needed, but not less frequently than once every 3
27 years, and shall, based upon the review required by this
28 subsection, revise the premium if the results of the review so
29 warrant.

30 (8) The commission ~~department~~ may, by rule, require
31 licensees under this part to annually submit statistical

1 information, including loss and expense data, as the
2 department determines to be necessary to analyze premium
3 rates, retention rates, and the condition of the title
4 insurance industry.

5 Section 1205. Section 627.783, Florida Statutes, is
6 amended to read:

7 627.783 Rate deviation.--

8 (1) A title insurer may petition the office ~~department~~
9 for an order authorizing a specific deviation from the adopted
10 premium, and a title insurer or title insurance agent may
11 petition the office ~~department~~ for an order authorizing and
12 permitting a specific deviation above the reasonable charge
13 for related title services rendered specified in s.

14 627.782(1). The petition shall be in writing and sworn to and
15 shall set forth allegations of fact upon which the petitioner
16 will rely, including the petitioner's reasons for requesting
17 the deviation. Any authorized title insurer, agent, or agency
18 may join in the petition for like authority to deviate or may
19 file a separate petition praying for like authority or
20 opposing the deviation. The office ~~department~~ shall rule on
21 all such petitions simultaneously.

22 (2) If, in the judgment of the office ~~department~~, the
23 requested deviation is not justified, the office ~~department~~
24 may enter an order denying the petition. An order granting a
25 petition constitutes an amendment to the adopted premium as to
26 the petitioners named in the order, and is subject to s.
27 627.782.

28 Section 1206. Subsection (3) of section 627.7843,
29 Florida Statutes, is amended to read:

30 627.7843 Ownership and encumbrance reports.--

31

1 (3) Any ownership and encumbrance report or similar
2 report that is relied on or intended to be relied on by a
3 consumer must be on forms approved by the office ~~department~~,
4 and must provide for a maximum liability for incorrect
5 information of not more than \$1,000.

6 Section 1207. Subsections (2) and (3) of section
7 627.7845, Florida Statutes, are amended to read:

8 627.7845 Determination of insurability required;
9 preservation of evidence of title search and examination.--

10 (2) The title insurer shall cause the evidence of the
11 reasonable search and examination of the title to be preserved
12 and retained in its files or in the files of its title
13 insurance agent or agency for a period of not less than 7
14 years after the title insurance commitment, title insurance
15 policy, or guarantee of title was issued. The title insurer
16 or agent or agency must produce the evidence required to be
17 maintained by this subsection at its offices upon the demand
18 of the office ~~department~~. Instead of retaining the original
19 evidence, the title insurer or the title insurance agent or
20 agency may, in the regular course of business, establish a
21 system under which all or part of the evidence is recorded,
22 copied, or reproduced by any photographic, photostatic,
23 microfilm, microcard, miniature photographic, or other process
24 which accurately reproduces or forms a durable medium for
25 reproducing the original.

26 (3) The title insurer or its agent or agency must
27 maintain a record of the actual risk premium and related title
28 service charges made for issuance of the policy and any
29 endorsements in its files for a period of not less than 7
30 years. The title insurer, agent, or agency must produce the
31 record at its office upon demand of the office ~~department~~.

1 Section 1208. Subsection (3) of section 627.786,
2 Florida Statutes, is amended to read:

3 627.786 Transaction of title insurance and any other
4 kind of insurance prohibited.--

5 (3) Subsection (1) does not preclude a title insurer
6 from providing instruments to any prospective insured, in the
7 form and content approved by the office ~~department~~, under
8 which the title insurer assumes liability for loss due to the
9 fraud of, dishonesty of, misappropriation of funds by, or
10 failure to comply with written closing instructions by, its
11 contract agents, agencies, or approved attorneys in connection
12 with a real property transaction for which the title insurer
13 is to issue a title insurance policy.

14 Section 1209. Section 627.7865, Florida Statutes, is
15 amended to read:

16 627.7865 Title insurer assessments.--As a condition of
17 doing business in this state, each title insurer shall be
18 liable for an assessment to pay all unpaid title insurance
19 claims on real property in this state for any title insurer
20 which is liquidated with unpaid outstanding claims. The
21 office ~~department~~ shall assess all title insurers on a pro
22 rata basis determined by their writings in this state for
23 amounts necessary to pay the claims. A title insurer is not
24 required to pay an amount in excess of one-tenth of its
25 surplus as to policyholders.

26 Section 1210. Section 627.791, Florida Statutes, is
27 amended to read:

28 627.791 Penalties against title insurers for
29 violations by persons or entities not licensed.--A title
30 insurer is subject to the penalties in ss. 624.418(2) and
31 624.4211 for any violation of a lawful order or rule of the

1 office or commission ~~department~~, or for any violation of this
2 code, committed by:

3 (1) A person, firm, association, corporation,
4 cooperative, joint-stock company, or other legal entity not
5 licensed under this part when issuing and countersigning
6 commitments or policies of title insurance on behalf of the
7 title insurer.

8 (2) An attorney when issuing and countersigning
9 commitments or policies of title insurance on behalf of the
10 title insurer.

11 Section 1211. Section 627.793, Florida Statutes, is
12 amended to read:

13 627.793 Rulemaking authority.--The commission may
14 ~~department is authorized to~~ adopt rules implementing the
15 provisions of this part.

16 Section 1212. Section 627.798, Florida Statutes, is
17 amended to read:

18 627.798 Rulemaking authority.--The commission
19 ~~department~~ shall by rule adopt a form to be used to provide
20 notice to a purchaser-mortgagor that the purchaser-mortgagor
21 is not protected by the title policy of the mortgagee.

22 Section 1213. Section 627.805, Florida Statutes, is
23 amended to read:

24 627.805 ~~Departmental~~ Regulation of variable and
25 indeterminate value contracts; rules.--The office ~~department~~,
26 notwithstanding any other provision of law, shall have the
27 sole authority to regulate the issuance and sale of variable
28 and indeterminate value contracts, and the commission has
29 authority to adopt rules pursuant to ss. 120.536(1) and 120.54
30 to implement the provisions of this part.

31

1 Section 1214. Section 627.8055, Florida Statutes, is
2 amended to read:

3 627.8055 Qualification of companies to issue variable
4 or indeterminate value contracts.--No insurance company shall
5 issue or deliver any contract on a variable or indeterminate
6 value basis until it has satisfied the office ~~department~~ that
7 its financial condition, management, history, and methods of
8 operation are not such as would render its operation harmful
9 to the public welfare.

10 Section 1215. Section 627.828, Florida Statutes, is
11 amended to read:

12 627.828 License required.--

13 (1) Except as provided in ss. 627.901 and 627.902, no
14 person shall engage in the business of a premium finance
15 company unless licensed by the office ~~department~~. Every
16 premium finance company licensed under the provisions of this
17 part shall maintain at all times a net worth of \$35,000.
18 However, in lieu of having a net worth of \$35,000, a premium
19 finance company that has a net worth of \$10,000 may file a
20 surety bond with the office or other acceptable collateral
21 with the department as approved by the office or department ~~it~~
22 in the amount of \$35,000, which bond or collateral must be
23 maintained.

24 (2) The application for a license shall be in writing
25 and in the form prescribed by the commission ~~department~~.
26 Every applicant shall provide evidence of a net worth of
27 \$35,000 attested by two officers of the company, or a \$35,000
28 surety bond and evidence of a net worth of \$10,000 attested by
29 two officers of the company. Assets to be used in computing
30 the required net worth shall be determined by rules adopted by
31 the commission ~~department~~.

1 (3)(a) Each premium finance company authorized under
2 the provisions of this part shall maintain at all times an
3 errors and omissions insurance policy of no less than \$500,000
4 covering the acts of its officers, employees, and agents. The
5 policy may contain reasonable deductibles not to exceed 2
6 percent of the policy limits.

7 (b)1. A premium finance company with an unencumbered
8 net worth of at least \$15 million may self-insure the errors
9 and omissions coverage if it meets the requirements of this
10 paragraph.

11 2. To qualify as a self-insurer the premium finance
12 company must:

13 a. Have and maintain an unencumbered net worth of \$15
14 million, which shall be determined based on assets permissible
15 for insurers pursuant to ss. 625.012 and 625.031;

16 b. Annually demonstrate as part of its annual report,
17 to the satisfaction of the department, that the net-worth
18 requirement is being met; and

19 c. Obtain, as a part of its annual application for
20 licensure as a premium finance company, a certificate of
21 self-insurance from the office ~~department~~ to be renewed
22 annually.

23 3. If the office ~~department~~ finds that the premium
24 finance company:

25 a. Is not maintaining at all times an unencumbered net
26 worth of at least \$15 million; or

27 b. Is not, in good faith, covering the errors and
28 omissions of its officers, employees and agents,

29
30 the office ~~department~~ shall, in addition to other penalties
31 under this code, revoke or suspend the certificate of

1 self-insurance, and the premium finance company shall be
2 subject to the requirements of paragraph (a).

3 (c) The commission ~~department~~ may adopt rules
4 necessary to administer this subsection, including rules
5 prescribing the necessary forms.

6 (4) A single license shall entitle the holder to
7 operate more than one office.

8 (5) At the time of filing an application for a
9 license, the applicant shall pay to the office ~~department~~ the
10 license fee and, upon original application or upon application
11 subsequent to denial of application, or revocation, suspension
12 or surrender of a license, an investigation fee.

13 (6) Such license shall state the name and address of
14 the licensee, and a copy shall be kept conspicuously posted in
15 each office of the licensee and shall not be transferable or
16 assignable.

17 (7) Prior to moving an existing office to another
18 location, a licensee shall notify the office ~~department~~ in
19 writing of its intention to do so.

20 Section 1216. Section 627.829, Florida Statutes, is
21 amended to read:

22 627.829 Approval, disapproval of application; license
23 renewal.--

24 (1) The office ~~department~~ shall issue the license,
25 unless it finds that the management of the premium finance
26 company filing the application is so lacking in managerial
27 experience as to make the proposed operation hazardous to the
28 insurance-buying public or unless it has good reason to
29 believe the management of the premium finance company is
30 affiliated directly or indirectly through ownership, control,
31 or in other business relations with any person whose business

1 operations are or have been marked as detrimental to the
2 public, policyholders, stockholders, investors, or creditors
3 by manipulation of assets or of accounts or by bad faith.

4 (2) If the office ~~department~~ refuses to issue a
5 license, it shall notify the applicant of the denial and
6 return to the applicant the sum paid as a license fee, but
7 shall retain the investigation fee to cover the costs of
8 investigating the applicant.

9 (3) Each license shall remain in force until September
10 30 of the year for which issued, unless earlier surrendered,
11 suspended, or revoked, and may be renewed for the ensuing
12 license year upon the filing of an application therefor. If
13 an application for renewal is filed with the office ~~department~~
14 before October 1 of any year, the license sought to be renewed
15 shall be continued in force either until the issuance by the
16 office ~~department~~ of the renewal license applied for or until
17 5 days after the office ~~department~~ refuses to renew the
18 license.

19 Section 1217. Section 627.832, Florida Statutes, is
20 amended to read:

21 627.832 Grounds for refusal, suspension, or revocation
22 of license.--

23 (1) The office ~~department~~ may deny, suspend, revoke,
24 or refuse to renew any license, if it finds:

25 (a) That the licensee has failed to pay the annual
26 license fee or any sum of money lawfully demanded under
27 authority of any other section of this part or has failed to
28 comply with any order of the office ~~department~~.

29 (b) That the licensee has violated any provision of
30 this part or any rule of the commission ~~department~~.

31

1 (c) That any fact or condition exists which, if it had
2 existed at the time of the original application, clearly would
3 have warranted a refusal to issue the license.

4 (d) Material misstatement, misrepresentation, or fraud
5 in obtaining the license or permit, or in attempting to obtain
6 the license or permit.

7 (e) That the license or permit is being willfully
8 used, or is to be used, to circumvent any of the requirements
9 or prohibitions of this code.

10 (f) Willful misrepresentation of any premium finance
11 contract or willful deception with regard to any such
12 contract, accomplished either in person or by any form of
13 dissemination of information.

14 (g) A demonstrated lack of fitness or trustworthiness.

15 (h) Fraudulent or dishonest practices in the conduct
16 of business.

17 (i) Misappropriation, conversion, or unlawful
18 withholding of moneys belonging to insurers, insureds, or
19 beneficiaries or to others and received in the conduct of
20 business.

21 (j) That the licensee has been found guilty of, or has
22 pleaded guilty to, a felony in this state or any other state.

23 (2) A licensee may surrender a license by delivering
24 to the office ~~department~~ written notice that she or he thereby
25 surrenders such license, but such surrender shall not affect
26 such licensee's civil or criminal liability for acts committed
27 prior to such surrender.

28 (3) No revocation, suspension, or surrender of a
29 license shall impair or affect the obligation of any insured
30 under any lawful premium finance agreement previously acquired
31 or held by the licensee.

1 (4) Every license issued hereunder shall remain in
2 force and effect until it has been surrendered, revoked, or
3 suspended or expires in accordance with the provisions of this
4 part; but the office ~~may department~~ shall have authority to
5 reinstate a suspended license or to issue a new license to a
6 licensee whose license has been revoked, if no fact or
7 condition then exists which clearly would have warranted
8 office ~~departmental~~ refusal originally to issue such license
9 under this part.

10 Section 1218. Section 627.833, Florida Statutes, is
11 amended to read:

12 627.833 Administrative fine and probation in lieu of
13 suspension, revocation, or refusal to renew license.--The
14 office ~~department~~ may, in its discretion in lieu of a
15 suspension, revocation, or refusal to renew or continue any
16 license, impose on the licensee an administrative penalty or
17 place such licensee on probation pursuant to ss. 626.681 and
18 626.691.

19 Section 1219. Section 627.834, Florida Statutes, is
20 amended to read:

21 627.834 Examinations.--

22 (1) The office ~~department~~ may conduct examinations and
23 investigations of premium finance companies under the
24 provisions of ss. 624.307 and 626.601.

25 (2) As often as it deems necessary and not less
26 frequently than each 3 years, the office ~~department~~ shall
27 examine each licensed premium finance company. The
28 examination shall be for the purpose of ascertaining
29 compliance by the person examined with the applicable
30 provisions of this code.

31

1 Section 1220. Section 627.836, Florida Statutes, is
2 amended to read:

3 627.836 Licensee's books and records; reports.--

4 (1) The licensee shall keep and use in her or his
5 business such books, accounts, and records as will enable the
6 office ~~department~~ to determine whether the licensee is
7 complying with the provisions of this part and with the rules
8 pertaining thereto. Every licensee shall preserve such books,
9 accounts, and records, including cards used in a card system,
10 if any, for at least 3 years after making the final entry in
11 respect to any premium finance agreement recorded therein;
12 however, the preservation of photographic reproductions
13 thereof or records in photographic form shall constitute
14 compliance with this requirement.

15 (2) Each licensee shall annually, on or before March
16 1, file a report with the office ~~department~~ giving such
17 information as the office ~~department~~ may require. The report
18 shall be made under oath and in the form prescribed by the
19 commission ~~department~~ and shall be accompanied by the annual
20 report filing fee specified in s. 627.849. The office
21 ~~department~~ may make and publish annually an analysis and
22 recapitulation of such reports. In addition, the office
23 ~~department~~ may require such additional regular or special
24 reports as it may deem necessary.

25 Section 1221. Section 627.838, Florida Statutes, is
26 amended to read:

27 627.838 Filing and approval of forms; service
28 charges.--

29 (1) No premium finance agreement form or related form
30 shall be used in this state by a premium finance company
31 unless it has been filed with and approved by the office

1 ~~department~~. Every filing shall be made within 30 days of
2 issuance or use.

3 (2) Each premium finance company shall file with the
4 office ~~department~~ the service charge and interest rate plan,
5 including all modifications thereto, for informational
6 purposes only. Every filing shall be made within 30 days of
7 its effective date.

8 (3) Each filing shall be accompanied by the filing fee
9 specified in s. 627.849.

10 Section 1222. Paragraph (b) of subsection (3) of
11 section 627.840, Florida Statutes, is amended to read:

12 627.840 Limitation on service and other charges.--

13 (3)

14 (b) The service charge shall be a maximum of \$12 per
15 \$100 per year plus an additional charge not exceeding \$20,
16 which additional charge need not be refunded upon prepayment.
17 Such additional charge may be charged only once in a 12-month
18 period for any one customer unless that customer's policy has
19 been canceled due to nonpayment within the immediately
20 preceding 12-month period. However, any insured may prepay her
21 or his premium finance agreement in full at any time before
22 the due date of the final payment; and in such event the
23 unearned service charge shall be refunded in accordance with
24 the "Rule of 78ths," or any other method at least as
25 beneficial to the insured and approved by the office
26 ~~department~~, and shall represent at least as great a proportion
27 of the service charge, if any, as the sum of the periodic
28 balances after the month in which prepayment is made bears to
29 the sum of all periodic balances under the schedule of
30 payments in the agreement. When the amount of the refund is

31

1 less than \$1, no refund need be made if the agreement so
2 states.

3 Section 1223. Section 627.8405, Florida Statutes, is
4 amended to read:

5 627.8405 Prohibited acts; financing companies.--No
6 premium finance company shall, in a premium finance agreement
7 or other agreement, finance the cost of or otherwise provide
8 for the collection or remittance of dues, assessments, fees,
9 or other periodic payments of money for the cost of:

10 (1) A membership in an automobile club. The term
11 "automobile club" means a legal entity which, in consideration
12 of dues, assessments, or periodic payments of money, promises
13 its members or subscribers to assist them in matters relating
14 to the ownership, operation, use, or maintenance of a motor
15 vehicle; however, this definition of "automobile club" does
16 not include persons, associations, or corporations which are
17 organized and operated solely for the purpose of conducting,
18 sponsoring, or sanctioning motor vehicle races, exhibitions,
19 or contests upon racetracks, or upon racecourses established
20 and marked as such for the duration of such particular events.
21 The words "motor vehicle" used herein have the same meaning as
22 defined in chapter 320.

23 (2) An accidental death and dismemberment policy sold
24 in combination with a personal injury protection and property
25 damage only policy.

26 (3) Any product not regulated under the provisions of
27 this insurance code.

28

29 This section also applies to premium financing by any
30 insurance agent or insurance company under part XVI. The
31 commission ~~department~~ shall adopt rules to assure disclosure,

1 at the time of sale, of coverages financed with personal
2 injury protection and shall prescribe the form of such
3 disclosure.

4 Section 1224. Paragraph (e) of subsection (1) and
5 subsection (3) of section 627.848, Florida Statutes, are
6 amended to read:

7 627.848 Cancellation of insurance contract upon
8 default.--

9 (1) When a premium finance agreement contains a power
10 of attorney or other authority enabling the premium finance
11 company to cancel any insurance contract listed in the
12 agreement, the insurance contract shall not be canceled unless
13 cancellation is in accordance with the following provisions:

14 (e) Whenever an insurance contract is canceled in
15 accordance with this section, the insurer shall promptly
16 return the unpaid balance due under the finance contract, up
17 to the gross amount available upon the cancellation of the
18 policy, to the premium finance company and any remaining
19 unearned premium to the agent or the insured, or both, for the
20 benefit of the insured or insureds. The insurer shall notify
21 the insured and the agent of the amount of unearned premium
22 returned to the premium finance company and the amount of
23 unearned commission held by the agent. The premium finance
24 company within 15 days shall notify the insured and the agent
25 of the amount of unearned premium. Within 15 days of receipt
26 of notification from the premium finance company, the agent
27 shall return such amount including any unearned commission to
28 the insured or with the written approval of the insured apply
29 such amount to the purchase of other insurance products
30 regulated by the office ~~department~~. The commission ~~department~~

31

1 may adopt rules necessary to implement the provisions of this
2 subsection.

3 (3) The commission ~~department~~ shall adopt a standard
4 cancellation notice for use by premium finance companies in
5 canceling insurance policies. The commission ~~department~~ shall
6 specify the color of the notice so as to promote usability and
7 standardization.

8 Section 1225. Section 627.849, Florida Statutes, is
9 amended to read:

10 627.849 Fees.--

11 (1) The office ~~department~~ shall collect in advance,
12 and the persons so served shall pay to it in advance, the
13 following fees:

14 (a) Annual license fee.....\$250

15 (b) Investigation fee.....100

16 (c) Annual report filing fee.....25

17 (d) Form filing fee.....10

18 (2) The fees received under this section shall be
19 credited to the Insurance ~~Commissioner's~~ Regulatory Trust
20 Fund.

21 Section 1226. Section 627.912, Florida Statutes, is
22 amended to read:

23 627.912 Professional liability claims and actions;
24 reports by insurers.--

25 (1) Each self-insurer authorized under s. 627.357 and
26 each insurer or joint underwriting association providing
27 professional liability insurance to a practitioner of medicine
28 licensed under chapter 458, to a practitioner of osteopathic
29 medicine licensed under chapter 459, to a podiatric physician
30 licensed under chapter 461, to a dentist licensed under
31 chapter 466, to a hospital licensed under chapter 395, to a

1 crisis stabilization unit licensed under part IV of chapter
2 394, to a health maintenance organization certificated under
3 part I of chapter 641, to clinics included in chapter 390, to
4 an ambulatory surgical center as defined in s. 395.002, or to
5 a member of The Florida Bar shall report in duplicate to the
6 office ~~Department of Insurance~~ any claim or action for damages
7 for personal injuries claimed to have been caused by error,
8 omission, or negligence in the performance of such insured's
9 professional services or based on a claimed performance of
10 professional services without consent, if the claim resulted
11 in:

12 (a) A final judgment in any amount.

13 (b) A settlement in any amount.

14

15 Reports shall be filed with the office ~~department~~ and, if the
16 insured party is licensed under chapter 458, chapter 459,
17 chapter 461, or chapter 466, with the Department of Health, no
18 later than 30 days following the occurrence of any event
19 listed in paragraph (a) or paragraph (b). The Department of
20 Health shall review each report and determine whether any of
21 the incidents that resulted in the claim potentially involved
22 conduct by the licensee that is subject to disciplinary
23 action, in which case the provisions of s. 456.073 shall
24 apply. The Department of Health, as part of the annual report
25 required by s. 456.026, shall publish annual statistics,
26 without identifying licensees, on the reports it receives,
27 including final action taken on such reports by the Department
28 of Health or the appropriate regulatory board.

29 (2) The reports required by subsection (1) shall
30 contain:

31

- 1 (a) The name, address, and specialty coverage of the
2 insured.
- 3 (b) The insured's policy number.
- 4 (c) The date of the occurrence which created the
5 claim.
- 6 (d) The date the claim was reported to the insurer or
7 self-insurer.
- 8 (e) The name and address of the injured person. This
9 information is confidential and exempt from the provisions of
10 s. 119.07(1), and must not be disclosed by the office
11 ~~department~~ without the injured person's consent, except for
12 disclosure by the office ~~department~~ to the Department of
13 Health. This information may be used by the office ~~department~~
14 for purposes of identifying multiple or duplicate claims
15 arising out of the same occurrence.
- 16 (f) The date of suit, if filed.
- 17 (g) The injured person's age and sex.
- 18 (h) The total number and names of all defendants
19 involved in the claim.
- 20 (i) The date and amount of judgment or settlement, if
21 any, including the itemization of the verdict, together with a
22 copy of the settlement or judgment.
- 23 (j) In the case of a settlement, such information as
24 the office ~~department~~ may require with regard to the injured
25 person's incurred and anticipated medical expense, wage loss,
26 and other expenses.
- 27 (k) The loss adjustment expense paid to defense
28 counsel, and all other allocated loss adjustment expense paid.
- 29 (l) The date and reason for final disposition, if no
30 judgment or settlement.
- 31

1 (m) A summary of the occurrence which created the
2 claim, which shall include:

3 1. The name of the institution, if any, and the
4 location within the institution at which the injury occurred.

5 2. The final diagnosis for which treatment was sought
6 or rendered, including the patient's actual condition.

7 3. A description of the misdiagnosis made, if any, of
8 the patient's actual condition.

9 4. The operation, diagnostic, or treatment procedure
10 causing the injury.

11 5. A description of the principal injury giving rise
12 to the claim.

13 6. The safety management steps that have been taken by
14 the insured to make similar occurrences or injuries less
15 likely in the future.

16 (n) Any other information required by the office
17 ~~department~~ to analyze and evaluate the nature, causes,
18 location, cost, and damages involved in professional liability
19 cases.

20 (3) Upon request by the Department of Health, the
21 office ~~department~~ shall provide the Department of Health with
22 any information received under this section related to persons
23 licensed under chapter 458, chapter 459, chapter 461, or
24 chapter 466. For purposes of safety management, the office
25 ~~department~~ shall annually provide the Department of Health
26 with copies of the reports in cases resulting in an indemnity
27 being paid to the claimants.

28 (4) There shall be no liability on the part of, and no
29 cause of action of any nature shall arise against, any insurer
30 reporting hereunder or its agents or employees or the office
31 ~~department~~ or its employees for any action taken by them under

1 this section. The office ~~department~~ may impose a fine of \$250
2 per day per case, but not to exceed a total of \$1,000 per
3 case, against an insurer that violates the requirements of
4 this section. This subsection applies to claims accruing on or
5 after October 1, 1997.

6 (5) Any self-insurance program established under s.
7 1004.24 shall report in duplicate to the office ~~Department of~~
8 ~~Insurance~~ any claim or action for damages for personal
9 injuries claimed to have been caused by error, omission, or
10 negligence in the performance of professional services
11 provided by the state university board of trustees through an
12 employee or agent of the state university board of trustees,
13 including practitioners of medicine licensed under chapter
14 458, practitioners of osteopathic medicine licensed under
15 chapter 459, podiatric physicians licensed under chapter 461,
16 and dentists licensed under chapter 466, or based on a claimed
17 performance of professional services without consent if the
18 claim resulted in a final judgment in any amount, or a
19 settlement in any amount. The reports required by this
20 subsection shall contain the information required by
21 subsection (3) and the name, address, and specialty of the
22 employee or agent of the state university board of trustees
23 whose performance or professional services is alleged in the
24 claim or action to have caused personal injury.

25 Section 1227. Section 627.9122, Florida Statutes, is
26 amended to read:

27 627.9122 Officers' and directors' liability claims;
28 reports by insurers.--

29 (1) Each insurer providing coverage for officers' and
30 directors' liability coverage shall report to the office
31 ~~Department of Insurance~~ any claim or action for damages

1 claimed to have been caused by error, omission, or negligence
2 in the performance of the officer's or director's services, if
3 the claim resulted in:

4 (a) A final judgment in any amount.

5 (b) A settlement in any amount.

6 (c) A final disposition not resulting in payment on
7 behalf of the insured.

8
9 Reports shall be filed with the office ~~department~~ no later
10 than 60 days following the occurrence of any event listed in
11 paragraph (a), paragraph (b), or paragraph (c).

12 (2) The reports required by subsection (1) shall
13 contain:

14 (a) The name, address, and position held by the
15 insured, and the type of corporation or organization,
16 including classifications as provided in s. 501(c) of the
17 Internal Revenue Code of 1986, as amended.

18 (b) The insured's policy number.

19 (c) The date of the occurrence which created the
20 claim.

21 (d) The date the claim was reported to the insurer.

22 (e) The name of the injured person. This information
23 is confidential and exempt from the provisions of s.
24 119.07(1), and must not be disclosed by the office ~~department~~
25 without the consent of the injured person. This information
26 may be used by the office ~~department~~ for purposes of
27 identifying multiple or duplicate claims arising out of the
28 same occurrence.

29 (f) The date of suit, if filed.

30 (g) The total number and names of all defendants
31 involved in the claim.

1 (h) The date and amount of judgment or settlement,
2 together with a copy of the settlement or judgment.

3 (i) In the case of a settlement, such information as
4 the office ~~department~~ may require with regard to the
5 claimant's anticipated future losses.

6 (j) The loss adjustment expense paid to defense
7 counsel, and all other allocated loss adjustment expenses
8 paid.

9 (k) The date and reason for final disposition, if no
10 judgment or settlement.

11 (l) A summary of the occurrence which created the
12 claim, which shall include:

13 1. Whether the injuries claimed were the result of
14 physical damage to the claimant, were the result of damage to
15 the reputation of the claimant, were based on self-dealing by
16 the defendant, or were in the nature of a shareholder dispute.

17 2. A description of the type of activity which caused
18 the injury.

19 3. The steps taken by the officers or directors to
20 assure that similar occurrences are less likely in the future.

21 (m) Any other information required by the office
22 ~~department~~ to analyze and evaluate the nature, causes, costs,
23 and damages involved in officers' and directors' liability
24 cases.

25 (3) The office ~~department~~ shall include a summary of
26 this information in its annual report.

27 Section 1228. Section 627.9126, Florida Statutes, is
28 amended to read:

29 627.9126 Reports by liability insurers.--

30 (1) Each insurer transacting commercial multiperil,
31 products liability, commercial automobile liability, private

1 passenger automobile liability, or other line of liability
2 insurance shall maintain information as specified in this
3 section. Such information shall be maintained for each line of
4 insurance and for direct Florida business only. The office
5 ~~department~~ may conduct a sampling of claims or actions for
6 damages for personal injury or property damage claimed to have
7 been caused by error, omission, or negligence of insureds if
8 the claim resulted in:

9 (a) A final judgment in any amount.
10 (b) A settlement in any amount.
11 (c) A final disposition not resulting in payment on
12 behalf of the insured.

13 (2) Upon request of the office ~~department~~, an insurer
14 shall, within 60 days, submit to the office ~~department~~ a
15 report that contains:

16 (a) A final judgment in any amount.
17 (b) A settlement in any amount.
18 (c) A final disposition not resulting in payment on
19 behalf of the insured.

20 (3) The reports required by subsection (2) shall
21 contain:

22 (a)1. The name, address, and class or line of coverage
23 of the insured.
24 2. The insured's policy number.
25 3. The date of the occurrence which created the claim.
26 4. The date the claim was reported to the insurer or
27 self-insurer.
28 5. The date of suit, if filed.
29 6. The claimant's name, age, and sex; however, the
30 name of the claimant is confidential and exempt from the
31 provisions of s. 119.07(1).

- 1 7. The total number and names of all defendants
2 involved in the claim.
- 3 8. Claims settled after a suit was filed.
- 4 9. Claims paid based on a judgment.
- 5 10. Judgments appealed by the insurer, together with
6 the total results of such appeals.
- 7 11. The date and amount of final judgment or
8 settlement, if any, including the itemization of the verdict,
9 together with a copy of the settlement or final judgment.
- 10 12. In the case of a settlement, such information as
11 the office ~~department~~ may require with regard to the injured
12 person's incurred and anticipated medical expense, wage loss,
13 and other expenses.
- 14 13. The loss adjustment expense paid to defense
15 counsel and other allocated loss adjustment expense paid.
- 16 14. The date and reason for final disposition, if no
17 judgment or settlement.
- 18 (b) A summary of the occurrence which created the
19 claim, which shall include:
- 20 1. The name of the facility, business, or institution,
21 if any, and the location within the facility, business, or
22 institution at which the injury occurred.
- 23 2. A description of the principal injury giving rise
24 to the claim.
- 25 3. The safety management steps that have been taken by
26 the insured to make similar occurrences or injuries less
27 likely in the future.
- 28 (c) Any other information required by the office
29 ~~department~~ to analyze and evaluate the nature, causes,
30 location, cost, and damages involved in liability cases.
- 31

1 (4) There shall be no liability on the part of, and no
2 cause of action of any nature shall arise against, any insurer
3 reporting hereunder or its agents or employees or the office
4 ~~department~~ or its employees for any action taken by them
5 pursuant to this section.

6 Section 1229. Section 627.913, Florida Statutes, is
7 amended to read:

8 627.913 Reports by products liability insurers.--The
9 office ~~department~~ may require any insurer authorized to write
10 a policy of products liability insurance in the state to
11 transmit the following information, based on its statewide
12 products liability insurance writings. Upon the request of the
13 office ~~department~~, an insurer shall, within 60 days, submit to
14 the office ~~department~~ a report that contains:

- 15 (1) Premiums written;
- 16 (2) Premiums earned;
- 17 (3) Unearned premiums;
- 18 (4) The dollar amount of claims paid;
- 19 (5) Incurred claims, not including claims incurred but
20 not reported;
- 21 (6) Claims closed without payment, and the amount
22 reserved for such claims;
- 23 (7) Loss reserves for all claims except claims
24 incurred but not reported;
- 25 (8) Reserves for claims incurred but not reported;
- 26 (9) Losses paid as a percentage of the amount reserved
27 for such losses;
- 28 (10) Net investment gain or loss and other income gain
29 or loss allocated to products liability lines according to the
30 allocation formula used in the annual insurance expense
31 exhibit;

- 1 (11) Underwriting income or loss;
2 (12) Actual expenses in detail, including, but not
3 limited to, loss adjustment expense; commissions; general
4 expense; and advertising, home office, and defense costs;
5 (13) Claims settled after a suit was filed;
6 (14) Claims paid based on a judgment; and
7 (15) Judgments appealed by the insurer, together with
8 the total results of such appeals.

9 Section 1230. Section 627.914, Florida Statutes, is
10 amended to read:

11 627.914 Reports of information by workers'
12 compensation insurers required.--

13 (1) The commission ~~department~~ shall adopt rules and
14 statistical plans that must thereafter be used by each insurer
15 and self-insurance fund as defined in s. 624.461 in the
16 recording and reporting of loss, expense, and claims
17 experience, in order that the experience of all insurers and
18 self-insurance funds may be made available at least annually
19 in such form and detail as may be necessary to aid the office
20 ~~department~~ in determining whether Florida experience for
21 workers' compensation insurance is sufficient for establishing
22 rates.

23 (2) Each insurer and self-insurance fund authorized to
24 write a policy of workers' compensation insurance shall
25 transmit the following information annually on both Florida
26 experience and nationwide experience separately:

- 27 (a) Payrolls by classification.
28 (b) Manual premiums by classification.
29 (c) Standard premiums by classification.
30 (d) Losses by classification and injury type.
31 (e) Expenses.

1
2 A report of this information shall be filed no later than July
3 1 of each year. All reports shall be filed in accordance with
4 standard reporting procedures for insurers, which procedures
5 have received approval by the office ~~department~~, and shall
6 contain data for the most recent policy period available. A
7 statistical or rating organization may be used by insurers and
8 self-insurance funds to report the data required by this
9 section. The statistical or rating organization shall report
10 each data element in the aggregate only for insurers and
11 self-insurance funds required to report under this section who
12 elect to have the organization report on their behalf. Such
13 insurers and self-insurance funds shall be named in the
14 report.

15 (3) Individual self-insurers as defined in s. 440.02
16 shall report only Florida data as prescribed in paragraphs
17 (2)(a)-(e) to the office ~~department~~.

18 (a) The office ~~department~~ shall publish the dates and
19 forms necessary to enable individual self-insurers to comply
20 with this section.

21 (b) A statistical or rating organization may be used
22 by individual self-insurers for the purposes of reporting the
23 data required by this section and calculating experience
24 ratings.

25 (4) The office ~~department~~ shall provide a summary of
26 information provided pursuant to subsection (2) in its annual
27 report.

28 Section 1231. Section 627.915, Florida Statutes, is
29 amended to read:

30 627.915 Insurer experience reporting.--
31

1 (1) Each insurer transacting private passenger
2 automobile insurance in this state shall report certain
3 information annually to the office ~~department~~. The
4 information will be due on or before July 1 of each year. The
5 information shall be divided into the following categories:
6 bodily injury liability; property damage liability; uninsured
7 motorist; personal injury protection benefits; medical
8 payments; comprehensive and collision. The information given
9 shall be on direct insurance writings in the state alone and
10 shall represent total limits data. The information set forth
11 in paragraphs (a)-(f) is applicable to voluntary private
12 passenger and Joint Underwriting Association private passenger
13 writings and shall be reported for each of the latest 3
14 calendar-accident years, with an evaluation date of March 31
15 of the current year. The information set forth in paragraphs
16 (g)-(j) is applicable to voluntary private passenger writings
17 and shall be reported on a calendar-accident year basis
18 ultimately seven times at seven different stages of
19 development.

20 (a) Premiums earned for the latest 3 calendar-accident
21 years.

22 (b) Loss development factors and the historic
23 development of those factors.

24 (c) Policyholder dividends incurred.

25 (d) Expenses for other acquisition and general
26 expense.

27 (e) Expenses for agents' commissions and taxes,
28 licenses, and fees.

29 (f) Profit and contingency factors as utilized in the
30 insurer's automobile rate filings for the applicable years.

31 (g) Losses paid.

- 1 (h) Losses unpaid.
- 2 (i) Loss adjustment expenses paid.
- 3 (j) Loss adjustment expenses unpaid.
- 4 (2) Each insurer transacting fire, homeowner's
- 5 multiple peril, commercial multiple peril, medical
- 6 malpractice, products liability, workers' compensation,
- 7 private passenger automobile liability, commercial automobile
- 8 liability, private passenger automobile physical damage,
- 9 commercial automobile physical damage, officers' and
- 10 directors' liability insurance, or other liability insurance
- 11 shall report, for each such line of insurance, the information
- 12 specified in this subsection to the office ~~department~~. The
- 13 information shall be reported for direct Florida business only
- 14 and shall be reported on a calendar-year basis annually by
- 15 April 1 for the preceding calendar year:
- 16 (a) Direct premiums written.
- 17 (b) Direct premiums earned.
- 18 (c) Loss reserves for all known claims:
- 19 1. At beginning of the year.
- 20 2. At end of the year.
- 21 (d) Reserves for losses incurred but not reported:
- 22 1. At beginning of the year.
- 23 2. At end of the year.
- 24 (e) Allocated loss adjustment expense:
- 25 1. Reserve at beginning of the year.
- 26 2. Reserve at end of the year.
- 27 3. Paid during the year.
- 28 (f) Unallocated loss adjustment expense:
- 29 1. Reserve at beginning of the year.
- 30 2. Reserve at end of the year.
- 31 3. Paid during the year.

- 1 (g) Direct losses paid.
2 (h) Underwriting income or loss.
3 (i) Commissions and brokerage fees.
4 (j) Taxes, licenses, and fees.
5 (k) Other acquisition costs.
6 (l) General expenses.
7 (m) Policyholder dividends.
8 (n) Net investment gain or loss and other income gain
9 or loss allocated pro rata by earned premium to Florida
10 business utilizing the investment allocation formula contained
11 in the National Association of Insurance Commissioner's
12 Profitability Report by line by state.

13 (3) There shall be no liability on the part of, and no
14 cause of action of any nature shall arise against, any insurer
15 reporting hereunder or its agents or employees or the office
16 ~~department~~ or its employees for any action taken by them
17 pursuant to this section unless such action otherwise
18 constitutes a violation of this code.

19 (4) The office ~~department~~ shall provide a summary of
20 information provided pursuant to subsections (1) and (2) in
21 its annual report.

22 (5) Any insurer or insurer group which does not write
23 at least 0.5 percent of the Florida market based on premiums
24 written shall not have to file any report required by
25 subsection (2) other than a report indicating its percentage
26 of the market share. That percentage shall be calculated by
27 dividing the current premiums written by the preceding year's
28 total premiums written in the state for that line of
29 insurance.

30 Section 1232. Section 627.917, Florida Statutes, is
31 amended to read:

1 627.917 Uniform risk classification reporting system
2 for motor vehicle insurance.--

3 (1) The commission ~~department~~ shall establish and
4 promulgate a uniform statewide reporting system to classify
5 risks for the purpose of evaluating rates and premiums and for
6 the purpose of evaluating competition and the availability of
7 motor vehicle insurance in the voluntary market. The system
8 shall divide risks into classifications based upon variations
9 in hazards or expenses of claims. The classification system
10 may include any difference among risks that can be
11 demonstrated to have a probable effect upon losses or
12 expenses, but in no event shall the system adopted by the
13 commission ~~department~~ discriminate among risks based upon
14 race, creed, color, or national origin. The classification
15 system shall divide the state into geographical areas based
16 upon hazards or expenses of claims.

17 (2) Each insurer shall annually file with the office
18 ~~department~~ a statement reflecting the total number of persons
19 insured by the insurer within each classification by coverage,
20 the premium volume in each classification by coverage, the
21 paid and reserved losses incurred in each classification by
22 coverage, the number of cancellations or nonrenewals by the
23 insurer during the period, and the number of new insureds
24 during the period. This statement shall be filed annually on
25 a date determined by the commission ~~department~~ and shall cover
26 a 1-year period.

27 (3) The commission ~~department~~ may adopt ~~promulgate~~
28 rules to require each insurer to report its loss and expense
29 experience by classification, in such detail and as often as
30 may be necessary to aid the office ~~department~~ in determining
31

1 the reasonableness of rates, the validity of loss projections,
2 and the validity of the risk classification system.

3 Section 1233. Section 627.9175, Florida Statutes, is
4 amended to read:

5 627.9175 Reports of information on health insurance.--

6 (1) Each health insurer shall submit annually to the
7 office ~~department~~ as to policies of individual health
8 insurance:

9 (a) A summary of typical benefits, exclusions, and
10 limitations for each type of individual policy form currently
11 being issued in the state. The summary shall include, as
12 appropriate:

- 13 1. The deductible amount;
- 14 2. The coinsurance percentage;
- 15 3. The out-of-pocket maximum;
- 16 4. Outpatient benefits;
- 17 5. Inpatient benefits; and
- 18 6. Any exclusions for preexisting conditions.

19
20 The commission ~~department~~ shall determine other appropriate
21 benefits, exclusions, and limitations to be reported for
22 inclusion in the consumer's guide published pursuant to this
23 section.

24 (b) A schedule of rates for each type of individual
25 policy form reflecting typical variations by age, sex, region
26 of the state, or any other applicable factor which is in use
27 and is determined to be appropriate for inclusion by the
28 commission ~~department~~.

29
30 The commission ~~department~~ shall provide by rule a uniform
31 format for the submission of this information in order to

1 allow for meaningful comparisons of premiums charged for
2 comparable benefits. The office ~~department~~ shall provide this
3 information to the department, which shall publish annually a
4 consumer's guide which summarizes and compares the information
5 required to be reported under this subsection.

6 (2)(a) Every insurer transacting health insurance in
7 this state shall report annually to the office ~~department~~, not
8 later than April 1, information relating to any measure the
9 insurer has implemented or proposes to implement during the
10 next calendar year for the purpose of containing health
11 insurance costs or cost increases. The reports shall identify
12 each measure and the forms to which the measure is applied,
13 shall provide an explanation as to how the measure is used,
14 and shall provide an estimate of the cost effect of the
15 measure.

16 (b) The commission ~~department~~ shall promulgate forms
17 to be used by insurers in reporting information pursuant to
18 this subsection and shall utilize such forms to analyze the
19 effects of health care cost containment programs used by
20 health insurers in this state.

21 (c) The office ~~department~~ shall analyze the data
22 reported under this subsection and shall annually make
23 available to the department which shall provide to the public
24 a summary of its findings as to the types of cost containment
25 measures reported and the estimated effect of these measures.

26 Section 1234. Section 627.918, Florida Statutes, is
27 amended to read:

28 627.918 Reporting formats.--

29 (1) The office ~~department~~ shall require that the
30 reporting provided for in this part be made on forms
31 established by the commission ~~department~~ or in a format

1 compatible with the office's ~~its~~ electronic data processing
2 equipment.

3 (2) The reporting forms and formats established by the
4 commission ~~department~~ shall not provide for repeated
5 collection of identical information relating to a single
6 independent data element except when repeated collection of
7 such information is necessary to accomplish the purpose of the
8 section under which the information is reported.

9 Section 1235. Section 627.919, Florida Statutes, is
10 amended to read:

11 627.919 Maintenance of insurance data.--The office
12 ~~department~~ shall maintain data elements required in insurers'
13 annual statements and information reported by insurers
14 pursuant to this part in a computer file which will be
15 available for the generation of reports and calculations on a
16 scheduled or demand basis by the office ~~department~~ and
17 Legislature. The acquisition by the office ~~department~~ of data
18 processing software, hardware, and services necessary to carry
19 out the provisions of this section ~~by the Treasurer's~~
20 ~~Management Information Center~~ shall be exempt from the
21 provisions of part I of chapter 287.

22 Section 1236. Section 627.9403, Florida Statutes, is
23 amended to read:

24 627.9403 Scope.--The provisions of this part shall
25 apply to long-term care insurance policies delivered or issued
26 for delivery in this state, and to policies delivered or
27 issued for delivery outside this state to the extent provided
28 in s. 627.9406, by an insurer, a fraternal benefit society as
29 defined in s. 632.601, a health maintenance organization as
30 defined in s. 641.19, a prepaid health clinic as defined in s.
31 641.402, or a multiple-employer welfare arrangement as defined

1 in s. 624.437. A policy which is advertised, marketed, or
2 offered as a long-term care policy and as a Medicare
3 supplement policy shall meet the requirements of this part and
4 the requirements of ss. 627.671-627.675 and, to the extent of
5 a conflict, be subject to the requirement that is more
6 favorable to the policyholder or certificateholder. The
7 provisions of this part shall not apply to a continuing care
8 contract issued pursuant to chapter 651 and shall not apply to
9 guaranteed renewable policies issued prior to October 1, 1988.
10 Any limited benefit policy that limits coverage to care in a
11 nursing home or to one or more lower levels of care required
12 or authorized to be provided by this part or by commission
13 ~~department~~ rule must meet all requirements of this part that
14 apply to long-term care insurance policies, except ss.
15 627.9407(3)(c), (9), (10)(f), and (12) and 627.94073(2). If
16 the limited benefit policy does not provide coverage for care
17 in a nursing home, but does provide coverage for one or more
18 lower levels of care, the policy shall also be exempt from the
19 requirements of s. 627.9407(3)(d).

20 Section 1237. Subsections (6) and (7) of section
21 627.9404, Florida Statutes, are amended to read:

22 627.9404 Definitions.--For the purposes of this part:

23 (6) "Licensed health care practitioner" means any
24 physician, nurse licensed under part I of chapter 464, or
25 psychotherapist licensed under chapter 490 or chapter 491, or
26 any individual who meets any requirements prescribed by rule
27 by the commission ~~department~~.

28 (7) "Limited benefit policy" means any policy that
29 limits coverage to care in a nursing home or to one or more
30 lower levels of care required or authorized to be provided by
31 this part or by commission ~~department~~ rule.

1 Section 1238. Paragraph (d) of subsection (1) and
2 subsection (3) of section 627.9405, Florida Statutes, are
3 amended to read:

4 627.9405 Authorized groups; filing requirements.--

5 (1) No group long-term care insurance policy shall be
6 delivered or issued for delivery in this state insuring more
7 than one individual unless issued to one of the following
8 groups:

9 (d) A group other than as described in paragraph (a),
10 paragraph (b), or paragraph (c), subject to a determination by
11 the office ~~department~~ that:

12 1. The issuance of the group policy is not contrary to
13 the best interest of the public;

14 2. The issuance of the group policy would result in
15 economies of acquisition or administration; and

16 3. The benefits are reasonable in relation to the
17 premiums charged.

18 (3) Prior to advertising, marketing, or soliciting a
19 group long-term care insurance policy in this state, the
20 insurer shall demonstrate to the office ~~department~~ that the
21 requirements of this section have been met pursuant to the
22 filing procedures specified in s. 627.410.

23 Section 1239. Section 627.9406, Florida Statutes, is
24 amended to read:

25 627.9406 Out-of-state group long-term care
26 insurance.--No group long-term care insurance coverage may be
27 offered to a resident of this state under a group policy
28 issued in another state to a group described in s.

29 627.9405(1)(c) or (d), unless this state or such other state
30 having statutory and regulatory long-term care insurance
31 requirements substantially similar to those adopted in this

1 state has made a determination that such requirements have
2 been met. Evidence to this effect shall be filed by the
3 insurer with the office ~~department~~ pursuant to the procedures
4 specified in s. 627.410.

5 Section 1240. Subsections (1) and (2), paragraphs (a)
6 and (c) of subsection (3), paragraph (c) of subsection (4),
7 and subsection (6) of section 627.9407, Florida Statutes, are
8 amended to read:

9 627.9407 Disclosure, advertising, and performance
10 standards for long-term care insurance.--

11 (1) STANDARDS.--The commission ~~department~~ shall adopt
12 rules that include standards for full and fair disclosure
13 setting forth the manner, content, and required disclosures of
14 the sale of long-term care insurance policies, terms of
15 renewability, initial and subsequent conditions of
16 eligibility, nonduplication of coverage provisions, coverage
17 of dependents, preexisting conditions, termination of
18 insurance, continuation or conversion, probationary periods,
19 limitations, exceptions, reductions, elimination periods,
20 requirements for replacement, recurrent conditions, disclosure
21 of tax consequences, benefit triggers, prohibition against
22 post-claims underwriting, reporting requirements, standards
23 for marketing, and definitions of terms.

24 (2) ADVERTISING.--The commission ~~department~~ shall
25 adopt rules setting forth standards for advertising,
26 marketing, and sale of long-term care policies in order to
27 protect applicants from unfair or deceptive sales or
28 enrollment practices. An insurer shall file with the office
29 ~~department~~ any long-term care insurance advertising material
30 intended for use in this state at least 30 days before the
31 date of use of the advertisement in this state. Within 30

1 days after the date of receipt of the advertising material,
2 the office ~~department~~ shall review the material and shall
3 disapprove any advertisement if, in the opinion of the office
4 ~~department~~, such advertisement violates any of the provisions
5 of this part or of part IX of chapter 626 or any rule of the
6 commission ~~department~~. The office ~~department~~ may disapprove
7 an advertisement at any time and enter an immediate order
8 requiring that the use of the advertisement be discontinued if
9 it determines that the advertisement violates any of the
10 provisions of this part or of part IX of chapter 626 or any
11 rule of the commission ~~department~~.

12 (3) RESTRICTIONS.--A long-term care insurance policy
13 may not:

14 (a) Be canceled, nonrenewed, or otherwise terminated
15 on the grounds of the age or the deterioration of the mental
16 or physical health of the insured individual or
17 certificateholder; however, the office ~~department~~ may
18 authorize nonrenewal for an insurer on a statewide basis on
19 terms and conditions determined to be necessary by the office
20 ~~department~~ to protect the interests of the insureds, if the
21 insurer demonstrates that renewal will jeopardize the
22 insurer's solvency or that substantial and unexpected loss
23 experience cannot reasonably be mitigated or remedied.

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

31 (4) PREEXISTING CONDITION.--

1 (c) The office ~~department~~ may extend the limitation
2 periods set forth in paragraphs (a) and (b) as to specific age
3 group categories in specific policy forms upon findings that
4 the extension is in the best interest of the public.

5 (6) LOSS RATIO AND RESERVE STANDARDS.--The commission
6 ~~department~~ shall adopt rules establishing loss ratio and
7 reserve standards for long-term care insurance policies. The
8 rules must contain a specific reference to long-term care
9 insurance policies. Such loss ratio and reserve standards
10 shall be established at levels at which benefits are
11 reasonable in relation to premiums and that provide for
12 adequate reserving of the long-term care insurance risk.

13 Section 1241. Subsection (2) of section 627.94072,
14 Florida Statutes, is amended to read:

15 627.94072 Mandatory offers.--

16 (2) An insurer that offers a long-term care insurance
17 policy, certificate, or rider in this state must offer a
18 nonforfeiture protection provision providing reduced paid-up
19 insurance, extended term, shortened benefit period, or any
20 other benefits approved by the office ~~department~~ if all or
21 part of a premium is not paid. Nonforfeiture benefits and any
22 additional premium for such benefits must be computed in an
23 actuarially sound manner, using a methodology that has been
24 filed with and approved by the office ~~department~~.

25 Section 1242. Subsection (1) of section 627.94074,
26 Florida Statutes, is amended to read:

27 627.94074 Standards for benefit triggers.--

28 (1)(a) A long-term care insurance policy shall
29 condition the payment of benefits on a determination of the
30 insured's ability to perform activities of daily living and on
31 cognitive impairment. Eligibility for the payment of benefits

1 shall not be more restrictive than requiring either a
2 deficiency in the ability to perform not more than three of
3 the activities of daily living or the presence of cognitive
4 impairment; or

5 (b) If a policy is a qualified long-term care
6 insurance policy, the policy shall condition the payment of
7 benefits on a determination of the insured's being chronically
8 ill; having a level of disability similar, as provided by rule
9 of the commission ~~Insurance Commissioner~~, to the insured's
10 ability to perform activities of daily living; or being
11 cognitively impaired as described in paragraph (6)(b).
12 Eligibility for the payment of benefits shall not be more
13 restrictive than requiring a deficiency in the ability to
14 perform not more than three of the activities of daily living.

15 Section 1243. Section 627.9408, Florida Statutes, is
16 amended to read:

17 627.9408 Rules.--

18 (1) The commission ~~department~~ may adopt rules pursuant
19 to ss. 120.536(1) and 120.54 to administer this part.

20 (2) The commission ~~department~~ may adopt by rule the
21 provisions of the Long-Term Care Insurance Model Regulation
22 adopted by the National Association of Insurance Commissioners
23 in the second quarter of the year 2000 which are not in
24 conflict with the Florida Insurance Code.

25 Section 1244. Paragraph (g) of subsection (6) of
26 section 627.942, Florida Statutes, is amended to read:

27 627.942 Definitions.--As used in this part, unless the
28 context otherwise requires:

29 (6) "Plan of operation or a feasibility study" means
30 an analysis which presents the expected activities and results
31 of a risk retention group, including, at a minimum:

1 (g) Such other matters as are ~~may be~~ requested by the
2 office ~~department~~.

3 Section 1245. Subsections (2) and (3) of section
4 627.943, Florida Statutes, are amended to read:

5 627.943 Risk retention groups certified in Florida.--

6 (2) Before it may offer insurance in any state, each
7 risk retention group shall also submit for approval to the
8 office ~~department~~ a plan of operation or a feasibility study.
9 Before additional lines of liability insurance are offered in
10 this or any other state approval shall be obtained from the
11 office ~~department~~.

12 (3) A proposed risk retention group shall provide to
13 the office ~~department~~ a summary of the application for a
14 certificate of authority at the time it files the application.
15 The summary information shall include the name of the risk
16 retention group, the identity of those individuals who
17 organized the group or who will provide administrative
18 services or otherwise influence or control the activities of
19 the group, the amount and nature of initial capitalization,
20 and the states in which the group intends to operate. A copy
21 of the summary shall be provided by the office ~~department~~ to
22 the National Association of Insurance Commissioners.

23 Section 1246. Subsections (1), (2), (5), (6), and (11)
24 of section 627.944, Florida Statutes, are amended to read:

25 627.944 Risk retention groups not certificated in this
26 state.--Risk retention groups certificated or licensed in
27 states other than this state and seeking to do business as a
28 risk retention group in this state must observe and abide by
29 the laws of this state as follows:

30 (1) NOTICE OF OPERATIONS AND DESIGNATION OF CHIEF
31 FINANCIAL OFFICER ~~COMMISSIONER~~ AS AGENT.--Before offering

1 insurance in this state, a risk retention group shall submit
2 to the office ~~department~~:

3 (a) A statement identifying the state or states in
4 which the risk retention group is certificated or licensed as
5 a liability insurance company, date of certification or
6 licensing, its principal place of business, and such other
7 information, including information on its membership, as the
8 office ~~department~~ may require to verify that the risk
9 retention group is qualified as a risk retention group under
10 the provisions of this part.

11 (b) A copy of its plan of operations or a feasibility
12 study and revisions of such plan or study submitted to its
13 state of domicile; provided, however, that the provision
14 relating to the submission of a plan of operation or a
15 feasibility study shall not apply with respect to any line or
16 classification of liability insurance which was defined in the
17 Product Liability Risk Retention Act of 1981 before October
18 27, 1986, and which was offered before such date by any risk
19 retention group which had been certificated or licensed and
20 operating for not less than 3 years before such date.

21 (c) A statement of registration which designates the
22 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~
23 or her or his designee as its agent for the purpose of
24 receiving service of legal documents of process.

25 (2) FINANCIAL CONDITION.--Any risk retention group
26 doing business in this state shall submit to the office
27 ~~department~~:

28 (a) A copy of the group's financial statement
29 submitted to its state of domicile, which shall be certified
30 by an independent public accountant and contain a statement of
31 opinion on loss and loss adjustment expense reserves made by a

1 member of the American Academy of Actuaries or a qualified
2 loss reserve specialist under criteria established by rule of
3 the commission ~~department~~ after considering any criteria
4 established by the National Association of Insurance
5 Commissioners.

6 (b) A copy of each examination of the risk retention
7 group as certified by the insurance commissioner or public
8 official conducting the examination.

9 (c) Upon request by the office ~~department~~, a copy of
10 any audit performed with respect to the risk retention group.

11 (d) Such information as may be required to verify its
12 continuing qualification as a risk retention group under the
13 provisions of this part.

14 (5) DECEPTIVE, FALSE, OR FRAUDULENT PRACTICES.--Any
15 risk retention group shall comply with and be subject to the
16 laws of this state regarding deceptive, false, or fraudulent
17 acts or practices, including the provisions of part IX of
18 chapter 626. If the office ~~department~~ seeks an injunction
19 regarding conduct in violation of these laws, the injunction
20 may be obtained from any Florida court of competent
21 jurisdiction.

22 (6) EXAMINATION REGARDING FINANCIAL CONDITION.--Any
23 risk retention group must submit to an examination by the
24 office ~~department~~ to determine its financial condition if the
25 insurance commissioner of the jurisdiction in which the group
26 is certificated or licensed has not initiated an examination
27 or does not initiate an examination within 30 days after a
28 request by the office ~~department~~. Any examination shall be
29 coordinated to avoid unjustified repetition and conducted in
30 an expeditious manner.

31

1 (11) DELINQUENCY PROCEEDINGS.--A risk retention group
2 not domiciled in this state but doing business in this state
3 shall comply with a lawful order issued in a voluntary
4 dissolution proceeding or in a delinquency proceeding
5 commenced by the office ~~department~~ if there has been a finding
6 of financial impairment after an examination under subsection
7 (6).

8 Section 1247. Section 627.948, Florida Statutes, is
9 amended to read:

10 627.948 Notice and registration requirements of
11 purchasing groups.--

12 (1) A purchasing group which intends to do business in
13 this state shall furnish notice to the office ~~department~~ which
14 shall:

15 (a) Identify the state in which the group is
16 domiciled.

17 (b) Specify the lines and classifications of liability
18 insurance which the purchasing group intends to purchase.

19 (c) Identify the insurance company or companies from
20 which the group intends to purchase its insurance and the
21 domicile of such company or companies.

22 (d) Identify the principal place of business of the
23 group.

24 (e) Provide such other information as may be required
25 by the office ~~department~~ to verify that the purchasing group
26 is qualified as a purchasing group under the provisions of
27 this part.

28 (2) The purchasing group shall register with and
29 designate the Chief Financial Officer ~~Insurance Commissioner~~
30 ~~and Treasurer~~ or her or his designee as its agent solely for
31 the purpose of receiving service of legal documents or

1 process. This requirement shall not apply in the case of a
2 purchasing group:

3 (a) Which:

4 1. Was domiciled before April 1, 1986.

5 2. Is domiciled on and after October 27, 1986, in any
6 state of the United States.

7 (b) Which:

8 1. Before October 27, 1986, purchased insurance from
9 an insurance carrier licensed in any state; and

10 2. Since October 27, 1986, purchased its insurance
11 from an insurance carrier licensed in any state.

12 (c) Which was a purchasing group under the
13 requirements of the Product Liability Risk Retention Act of
14 1981 before October 27, 1986.

15 (d) Which does not purchase insurance that was not
16 authorized for purposes of an exemption under that act, as in
17 effect before October 27, 1986.

18 Section 1248. Section 627.950, Florida Statutes, is
19 amended to read:

20 627.950 Administrative and procedural authority
21 regarding risk retention and purchasing groups.--The office
22 ~~department~~ is authorized to make use of any of the powers
23 established under the Florida Insurance Code to enforce the
24 laws of this state so long as those powers are not
25 specifically preempted by the Product Liability Risk Retention
26 Act of 1981 as amended by the Risk Retention Amendments of
27 1986. This includes, but is not limited to, the office's
28 ~~department's~~ administrative authority to investigate, issue
29 subpoenas, conduct depositions and hearings, issue orders, and
30 impose penalties. With regard to any investigation,
31 administrative proceedings, or litigation, the office

1 ~~department~~ may rely on the procedural law and regulations of
2 the state. The injunctive authority of the office ~~department~~
3 in regard to risk retention groups is restricted to the extent
4 that any injunction shall be issued by a court of competent
5 jurisdiction.

6 Section 1249. Section 627.951, Florida Statutes, is
7 amended to read:

8 627.951 Penalties; cease and desist orders;
9 injunctions.--

10 (1) A risk retention group which violates any
11 applicable provision of the Florida Insurance Code shall be
12 subject to fines and penalties applicable to licensed insurers
13 generally, including revocation of its license or the right to
14 do business in this state. In addition, any such risk
15 retention group shall be subject to the issuance of a cease
16 and desist order of the office ~~department~~ or an injunction
17 issued by a court of competent jurisdiction prohibiting such
18 violation or prohibiting the soliciting, selling, or
19 transacting of insurance or otherwise operating or conducting
20 business in this state in violation of the laws of this state.
21 The office ~~department~~ may obtain an order from a court of
22 competent jurisdiction to enjoin a risk retention group from
23 further operation or from transacting insurance in this state
24 if the risk retention group is in hazardous financial
25 condition or financially impaired or to enjoin a risk
26 retention group from the soliciting, selling, or transacting
27 of insurance with respect to any person who is not eligible
28 for membership in the group under state or federal law.

29 (2) A purchasing group which violates any applicable
30 provision of the Florida Insurance Code shall be subject to
31 fines and penalties applicable to licensed insurers and agents

1 generally. In addition, any such purchasing group shall be
2 subject to the issuance of a cease and desist order of the
3 office department or an injunction issued by any court of
4 competent jurisdiction prohibiting the soliciting, selling,
5 transacting, or purchasing of insurance or otherwise operating
6 or conducting business in this state.

7 Section 1250. Subsection (4) of section 627.952,
8 Florida Statutes, is amended to read:

9 627.952 Risk retention and purchasing group agents.--

10 (4) Any person retained or employed to solicit, offer,
11 sell, or purchase memberships in a purchasing group may be
12 ordered to cease any such enrollment activity in this state
13 whenever the office department has reason to believe that any
14 such purchasing group has liability insurance coverage from a
15 risk retention group or insurance company which is insolvent
16 or in a hazardous financial condition. Orders entered under
17 this subsection shall be issued in accordance with the
18 procedures set forth in s. 627.951.

19 Section 1251. Section 627.954, Florida Statutes, is
20 amended to read:

21 627.954 Rules.--The commission department may
22 establish and from time to time amend such rules relating to
23 risk retention groups and purchasing groups as may be
24 necessary or desirable to carry out the provisions of this
25 part.

26 Section 1252. Subsections (1), (4), (10), and (11) of
27 section 627.971, Florida Statutes, are amended to read:

28 627.971 Definitions.--As used in this part:

29 (1)(a) "Financial guaranty insurance" means a surety
30 bond, insurance policy, an indemnity contract issued by an
31 insurer, or any similar guaranty, under which loss is payable

- 1 upon proof of occurrence of financial loss to an insured
2 claimant, obligee, or indemnitee as a result of:
- 3 1. The failure of an obligor on a debt instrument or
4 other monetary obligation, including common or preferred stock
5 guaranteed under a surety bond, insurance policy, or indemnity
6 contract, to make principal, interest, premium, dividend, or
7 purchase price payments when due, if the failure is the result
8 of a financial default or insolvency, whether such obligation
9 is incurred directly or as guarantor by or on behalf of
10 another obligor who also defaulted;
 - 11 2. Changes in the levels of interest rates or the
12 differential in interest rates between various markets or
13 products;
 - 14 3. Changes in the rate of exchange of currency;
 - 15 4. Changes in the value of specific assets or
16 commodities, financial or commodity indices, or price levels
17 in general; or
 - 18 5. Other events which the office ~~department~~ determines
19 are substantially similar to any of the foregoing.
- 20 (b) However, "financial guaranty insurance" does not
21 include:
- 22 1. Insurance of a loss resulting from an event
23 described in paragraph (a), if the loss is payable only upon
24 the occurrence of any of the following, as specified in a
25 surety bond, insurance policy, or indemnity contract:
 - 26 a. A fortuitous physical event;
 - 27 b. A failure of or deficiency in the operation of
28 equipment; or
 - 29 c. An inability to extract or recover a natural
30 resource;
 - 31 2. An individual or schedule public official bond;

1 3. A court bond required in connection with judicial,
2 probate, bankruptcy, or equity proceedings, including a
3 waiver, probate, open estate, or life tenant bond;

4 4. A bond running to a federal, state, county,
5 municipal government, or other political subdivision, as a
6 condition precedent to the granting of a license to engage in
7 a particular business or of a permit to exercise a particular
8 privilege;

9 5. A loss security bond or utility payment indemnity
10 bond running to a governmental unit, railroad, or charitable
11 organization;

12 6. A lease, purchase and sale, or concessionaire
13 surety bond;

14 7. Credit unemployment insurance on a debtor in
15 connection with a specific loan or other credit transaction,
16 to provide payments to a creditor in the event of unemployment
17 of the debtor for the installments or other periodic payments
18 becoming due while a debtor is unemployed;

19 8. Credit insurance indemnifying a manufacturer,
20 merchant, or educational institution which extends credit
21 against loss or damage resulting from nonpayment of debts owed
22 to her or him for goods or services provided in the normal
23 course of her or his business;

24 9. Guaranteed investment contracts that are issued by
25 life insurance companies and that provide that the life
26 insurer will make specified payments in exchange for specific
27 premiums or contributions;

28 10. Mortgage guaranty insurance as defined in s.
29 635.011(1) or s. 635.021;

30
31

1 11. Indemnity contracts or similar guaranties, to the
2 extent that they are not otherwise limited or proscribed by
3 this part, in which a life insurer guarantees:

4 a. Its obligations or indebtedness or the obligations
5 or indebtedness of a subsidiary of which it owns more than 50
6 percent, other than a financial guaranty insurance
7 corporation, if:

8 (I) For any such obligations or indebtedness that are
9 backed by specific assets, such assets are at all times owned
10 by the insurer or the subsidiary; and

11 (II) For the obligations or indebtedness of the
12 subsidiary that are not backed by specific assets of the life
13 insurer, the guaranty terminates once the subsidiary ceases to
14 be a subsidiary; or

15 b. The obligations or indebtedness, including the
16 obligation to substitute assets where appropriate, with
17 respect to specific assets acquired by a life insurer in the
18 course of normal investment activities and not for the purpose
19 of resale with credit enhancement, or guarantees obligations
20 or indebtedness acquired by its subsidiary, provided that the
21 assets so acquired have been:

22 (I) Acquired by a special purpose entity where the
23 sole purpose is to acquire specific assets of the life insurer
24 or the subsidiary and issue securities or participation
25 certificates backed by such assets; or

26 (II) Sold to an independent third party; or

27 c. The obligations or indebtedness of an employee or
28 agent of the life insurer;

29 12. Any form of surety insurance as defined in s.
30 624.606; or

31

1 13. Any other form of insurance covering risks which
2 the office ~~department~~ determines to be substantially similar
3 to any of the foregoing.

4 (4) "Collateral" means:

5 (a) Cash;

6 (b) The market value of investment grade securities,
7 other than securities evidencing an interest in the projects
8 financed with the proceeds of the insured obligations;

9 (c) The scheduled cash flow from investment grade
10 obligations scheduled to be received on or prior to the date
11 of scheduled debt service on the insured obligation;

12 (d) A conveyance or mortgage of real property; or

13 (e) A letter of credit;

14
15 if deposited with or held by the corporation; held in trust by
16 a trustee, acceptable to the office ~~department~~, for the
17 benefit of the corporation; or held in trust, pursuant to the
18 bond indenture, by a trustee acceptable to the office
19 ~~department~~, for the benefit of bondholders in the form of
20 sinking funds or other reserves which may be used solely for
21 the payment of debt service.

22 (10) An "investment grade obligation" means an
23 obligation that:

24 (a) Has been determined to be in one of the top four
25 generic lettered rating classifications by a securities rating
26 agency acceptable to the office ~~department~~;

27 (b) Has been identified in writing by such a rating
28 agency as an insurable risk deemed to be of investment grade
29 quality for purposes of insurance;

30
31

1 (c) Has received a "yes" rating by the Securities
2 Valuation Office of the National Association of Insurance
3 Commissioners; or

4 (d) Has been submitted for review to the appropriate
5 rating agency or Securities Valuation Office and will be
6 qualified pursuant to paragraph (a), paragraph (b), or
7 paragraph (c).

8 (11) "Letter of credit" means:

9 (a) The stated amount of a clean unconditional,
10 irrevocable letter of credit issued by a bank or trust company
11 whose debt rating applicable to the term of the insured
12 obligation is in one of the two highest generic lettered
13 rating classifications by a securities rating agency
14 acceptable to the office ~~department~~; or

15 (b) Fifty percent of the stated amount of a clean
16 unconditional, irrevocable letter of credit issued by a bank
17 or trust company whose debt rating applicable to the term of
18 the insured obligation is in a rating classification other
19 than as set forth in paragraph (a).

20 (c) An issuing or confirming bank referred to in
21 paragraph (a) or paragraph (b) shall be:

22 1. Determined by the Securities Valuation office of
23 the National Association of Insurance Commissioners to meet
24 such standards of financial condition and standing as are
25 considered necessary and appropriate to regulate the quality
26 of banks and trust companies whose letters of credit shall be
27 acceptable to insurance regulatory authorities; provided, that
28 the letter of credit is issued for the full term of the
29 insured obligation, or the insured obligation is subject to
30 mandatory call and redemption from the proceeds of the letter
31

1 of credit if the letter of credit is not renewed or replaced;
2 and

3 2.a. A member of the federal reserve system or
4 chartered by a state of the United States; or

5 b. Organized and existing under the laws of a foreign
6 country whose sovereign debt is rated in the highest major
7 rating classification by a securities rating agency acceptable
8 to the office ~~department~~; and which has been licensed as a
9 domestic branch or agency by the Federal Government or a state
10 of the United States; and which is regulated, supervised, and
11 examined by United States federal or state authorities having
12 regulatory authority over banks and trust companies.

13 Section 1253. Paragraph (b) of subsection (1),
14 paragraph (d) of subsection (3), and subsections (4) and (5)
15 of section 627.972, Florida Statutes, are amended to read:

16 627.972 Organization; financial requirements.--

17 (1) A financial guaranty insurance corporation must be
18 organized and licensed in the manner prescribed in this code
19 for stock property and casualty insurers except that:

20 (b)1. Prior to the issuance of a license, a
21 corporation must submit to the office ~~department~~ for approval,
22 a plan of operation detailing:

23 a. The types and projected diversification of
24 guaranties to be issued;

25 b. The underwriting procedures to be followed;

26 c. The managerial oversight methods;

27 d. The investment policies; and

28 e. Any other matters prescribed by the office
29 ~~department~~;

30 2. An insurer which is writing only the types of
31 insurance allowed under this part on July 1, 1988, and

1 otherwise meets the requirements of this part, is exempt from
2 the requirements of this paragraph.

3 (3) An insurer may not transact financial guaranty
4 insurance unless it establishes a contingency reserve, net of
5 reinsurance, as follows:

6 (d) Withdrawals from the contingency reserve, to the
7 extent of any excess, may be made with the approval of the
8 office ~~department~~ from the earliest contributions to the
9 reserve remaining therein:

10 1. In any year in which the actual incurred losses
11 exceed 35 percent of earned premiums, or

12 2. If the contingency reserve has been in existence
13 for 40 quarters for reserves subject to subparagraph (b)1.,
14 and 20 quarters for reserves subject to subparagraph (b)2.,
15 upon demonstration that the amount carried is excessive in
16 relation to the insurer's outstanding obligations.

17 (4) In addition to the contingency reserve, the case
18 basis method or other method prescribed by the office
19 ~~department~~ is used to determine loss reserves, in a manner
20 consistent with the requirements of part I of chapter 625,
21 which must include a reserve for claims reported and unpaid
22 net of collateral. A deduction from loss reserves shall be
23 allowed for the time value of money by application of a
24 discount rate equal to the average rate of return on the
25 admitted assets of the insurer as of the date of the
26 computation of any such reserve. The discount rate must be
27 adjusted at the end of each calendar year.

28 (5) The insurer maintains an unearned premium reserve,
29 net of reinsurance, computed on the monthly pro rata basis,
30 where the premiums are paid on an installment basis. All
31 other such premiums paid must be earned proportionately with

1 the expiration of exposure or by such other method the office
2 ~~department~~ prescribes or approves.

3 Section 1254. Section 627.973, Florida Statutes, is
4 amended to read:

5 627.973 Limitations.--

6 (1) Financial guaranty insurance shall be transacted
7 in this state only by a corporation licensed for such purpose,
8 except that a property and casualty insurer transacting
9 business pursuant to the provisions of this code may transact
10 financial guaranty insurance in this state if the following
11 conditions are met:

12 (a) Total policyholders' surplus exceeds \$100 million;

13 (b) Not more than 20 percent of total net premiums
14 written are applicable to or for financial guaranty insurance;

15 (c) The provisions of this part are applied to the
16 insurer's financial guaranty insurance business;

17 (d) Not more than 20 percent of the insurer's total
18 policyholder's surplus is applied toward meeting the
19 provisions of this part;

20 (e) The policyholders' surplus once utilized to meet
21 the requirements of this part shall not be available for
22 meeting any policyholders' surplus requirements for any other
23 type of insurance;

24 (f) The insurer is licensed to write financial
25 guaranty insurance; and

26 (g) Unless the insurer is transacting financial
27 guaranty insurance prior to July 1, 1988, and otherwise meets
28 the requirements of this section, prior to the issuance of a
29 license, the insurer must submit to the office ~~department~~ for
30 approval, a plan of operation complying with s. 627.972(1)(b).

31

1 (2) Financial guaranty insurance shall be written only
2 to insure obligations defined in s. 627.971(1)(a)1., except
3 that obligations defined in s. 627.971(1)(a)2., 3., 4., and 5.
4 may be written with the prior written approval of the office
5 ~~department~~ pursuant to limitations and restrictions
6 promulgated by rule that the commission ~~department~~ deems
7 appropriate and necessary to protect the policyholders of the
8 insurer.

9 (3) At least 95 percent of the outstanding total
10 liability on municipal obligation bonds of an insurer
11 transacting financial guaranty insurance must be investment
12 grade.

13 (4) An insurer transacting financial guaranty
14 insurance must at all times maintain capital, surplus, and
15 contingency reserves, subject to the restrictions in paragraph
16 (1)(d) if applicable, in the aggregate no less than the sum
17 of:

18 (a) One-third of one percent of the total liabilities
19 outstanding under guaranties of municipal obligation bonds;

20 (b) One percent of the total liabilities outstanding
21 under guaranties of investment grade obligations, including
22 industrial development bonds and investment grade consumer
23 debt obligations;

24 (c) One and one-third percent of the total liabilities
25 outstanding under guaranties of noninvestment grade consumer
26 debt obligations;

27 (d) Two percent of the total liabilities outstanding
28 under guaranties of other obligations not of investment grade,
29 other than consumer debt obligations; and

30 (e) Surplus determined by the office ~~department~~ to be
31 adequate to support the writing of residual value insurance,

1 surety insurance, and credit insurance, if the corporation has
2 elected to transact these kinds of insurance pursuant to s.
3 627.972(1).

4 (5) An insurer transacting financial guaranty
5 insurance must limit its exposure to loss, net of collateral
6 and reinsurance, as follows:

7 (a) For municipal bonds:

8 1. The insured average annual debt service with
9 respect to any one entity and backed by a single revenue
10 source may not exceed 10 percent of the aggregate of the
11 corporation's capital, surplus, and contingency reserves,
12 subject to the restrictions of paragraph (1)(d) if applicable;
13 and

14 2. The insured unpaid principal issued by a single
15 entity and backed by a single revenue source may not exceed 75
16 percent of the aggregate of the corporation's capital,
17 surplus, and contingency reserves, subject to the restrictions
18 in paragraph (1)(d) if applicable; and

19 (b) For all other financial guaranties, the insured
20 unpaid principal for any one risk may not exceed 10 percent of
21 the aggregate of the corporation's capital, surplus, and
22 contingency reserves, subject to the restrictions in paragraph
23 (1)(d) if applicable. Single risk liability shall be defined
24 with respect to any one issuer, except that, if the risk is
25 payable from a specified revenue source or adequately secured
26 by loan obligations or other assets, such risk shall be
27 defined by the revenue source.

28 (6) If the exposure to loss of an insurer transacting
29 financial guaranty insurance exceeds the limitations in
30 subsection (4), it may not transact any new financial guaranty
31

1 insurance business until its exposure to loss no longer
2 exceeds those limitations.

3 (7) An insurer which wrote financial guaranty
4 insurance in this state during the 12-month period immediately
5 preceding July 1, 1988, but which does not meet the
6 requirements of subsection (1) or of s. 627.972(2), may,
7 nevertheless, continue to write financial guaranty insurance
8 as authorized by subsection (2) after July 1, 1988, subject to
9 all other provisions of this part, provided:

10 (a) Within 45 days after such date the insurer files
11 with the office ~~department~~ a statement of its intentions to
12 limit its writings to financial guaranty, surety, and fidelity
13 insurance. Effective upon such filing, the insurer shall be
14 subject to the requirements of this part except that the
15 surplus to policyholders requirement of s. 627.972(2) shall
16 not apply to such insurer until July 1, 1998, at which time
17 such insurer shall have and thereafter maintain the minimum
18 surplus requirement of at least \$35 million. Failure of the
19 insurer to meet the conditions of such statement of intent
20 filed with the office ~~department~~, until such time as it meets
21 the requirements of subsection (1), shall be grounds to
22 subject the insurer to the penalties provided under this code,
23 including immediate suspension or revocation of its
24 certificate of authority. If the insurer does not file such
25 statement of intent, it shall cease writing any new financial
26 guaranty insurance business within 6 months after the
27 effective date of this act. The insurer may:

28 1. Reinsure its net in-force business with a licensed
29 financial guaranty insurance corporation or an insurer exempt
30 under subsection (1);

31

1 2. Subject to the prior approval of its domiciliary
2 insurance commissioner, reinsure all or part of its net
3 in-force business pursuant to s. 627.975(1)(b), except that
4 subparagraphs 2. and 4. do not apply. The assuming insurer
5 must maintain reserves for the reinsured business in the
6 manner applicable to the ceding insurer under paragraph (b);
7 or

8 3. May continue the risks in force and, with 30 days
9 prior written notice to its domiciliary insurance
10 commissioner, write new financial guaranty policies if the
11 writing of those policies is reasonably prudent to mitigate
12 either the amount of or possibility of loss in connection with
13 business written prior to July 1, 1988. However, an insurer
14 must receive the prior approval of its domiciliary insurance
15 commissioner before writing any new financial guaranty
16 insurance policies that would increase its risk of loss.

17 (b) Must, for all guaranties in force prior to July 1,
18 1988, including those which fall under the definition of
19 financial guaranty insurance, maintain the reserves applicable
20 for municipal bond guaranties in effect prior to July 1, 1988.
21 If the insurer's contingency reserves maintained as of July 1,
22 1988, are less than those required for municipal bond
23 guaranties, the insurer has 3 years to bring its reserves into
24 compliance, except that a part of the reserve may be released
25 proportional to the reduction in net total liabilities
26 resulting from reinsurance if the reinsurer, on the effective
27 date of the reinsurance, establishes a reserve in an amount
28 equal to the amount released and except that a part of the
29 reserve may be released with office ~~departmental~~ approval,
30 upon demonstration that the amount carried is excessive in
31 relation to the corporation's outstanding obligations.

1 (c) Shall be subject to the reserve requirements
2 applicable to financial guaranty insurance corporations, for
3 business written on or after July 1, 1988.

4 (d) This subsection shall not apply to insurers
5 permitted to write financial guaranty insurance pursuant to
6 the exception set forth in subsection (1) and such insurers
7 may write financial guaranty insurance subject to the
8 requirements of the Florida Insurance Code.

9 Section 1255. Section 627.974, Florida Statutes, is
10 amended to read:

11 627.974 Filing of policy forms and rates.--

12 (1) Policy forms and any amendments thereto must be
13 filed with the office ~~department~~ within 30 days after their
14 use by the insurer. A policy may not provide coverage of the
15 acceleration of payments due under the guaranteed obligations,
16 including any payment in advance of scheduled maturity to be
17 made by the issuer of the guaranteed obligations at the sole
18 option of the owner of the guaranteed obligations, unless the
19 acceleration is at the sole option of the insurer. Each
20 policy must disclose that the insurance provided by the policy
21 is not covered by the Florida Insurance Guaranty Association
22 created under part II of chapter 631. The commission
23 ~~department~~ may prescribe additional minimum policy provisions
24 which are determined by the commission ~~department~~ to be
25 necessary or appropriate to protect policyholders, claimants,
26 obligees, or indemnitees.

27 (2) Rates may not be excessive, inadequate, unfairly
28 discriminatory, destructive of competition, or detrimental to
29 the solvency of the insurer.

30 (3) Criteria and guidelines used by insurers
31 transacting financial guaranty insurance in establishing

1 rating categories and ranges of rates to be used must be filed
2 with the office ~~department~~ for information prior to their use
3 by the insurer.

4 (4) All such filings must be available for public
5 inspection at the office ~~department~~.

6 (5) This section is in lieu of the requirements of ss.
7 627.062 and 627.410.

8 Section 1256. Section 627.986, Florida Statutes, is
9 amended to read:

10 627.986 Replacement rules.--Group-to-group
11 consolidations shall be exempt from any rule of the commission
12 ~~department~~ relating to the replacement of existing life or
13 health insurance. Nothing in this part shall be interpreted as
14 creating an exemption for consolidations which involve
15 individual policies.

16 Section 1257. Section 627.987, Florida Statutes, is
17 amended to read:

18 627.987 Policy forms.--No policy or group certificate
19 of mortgage insurance used in connection with any
20 consolidation, and no application, endorsement, or rider which
21 becomes a part of any such policy or certificate, shall be
22 issued or delivered in this state until a copy of the form has
23 been filed with and approved by the office ~~department~~.

24 Section 1258. Section 628.051, Florida Statutes, is
25 amended to read:

26 628.051 Application for permit to form insurer;
27 contents; fee.--

28 (1) No domestic insurer shall be formed unless the
29 persons so proposing have received a permit from the office
30 ~~department~~.

31

1 (2) Written application for such permit shall be filed
2 with the office ~~department~~. Such application and filing shall
3 include:

4 (a) The name, type, and purpose of insurer.

5 (b) The name, residence address, business background,
6 and qualifications of each person associated or to be
7 associated in the formation or financing of the insurer. Each
8 such person with an ownership interest of 10 percent or more,
9 or who will hold a position as an officer or director, must
10 furnish on forms adopted by the commission and supplied by the
11 office ~~department~~ a sworn biographical statement, legible
12 copies of fingerprints, and authority for release of
13 information in regard to the investigation of such person's
14 background.

15 (c) A full disclosure of the terms of all
16 understandings and agreements existing or proposed among
17 persons so associated relative to the insurer, or the
18 formation or financing thereof, accompanied by a copy of each
19 such agreement or understanding.

20 (d) A full disclosure of the terms of all
21 understandings and agreements existing or proposed for
22 management or exclusive agency contracts.

23 (e) A copy of all proposed articles or certificates of
24 incorporation and proposed bylaws of the proposed insurer.

25 (f) A copy of all articles or certificates of
26 incorporation of involved corporations, if a copy of the same
27 is not already on file in the office ~~department~~.

28 (g) A copy of all syndicate, association, firm,
29 partnership, organization, or other similar agreements, by
30 whatever name called, involved in the formation of the
31 proposed insurer or its financing.

1 (h) If the applicant is a reciprocal insurer, a copy
2 of the power of attorney and of other agreements existing or
3 proposed as affecting investors, subscribers, the attorney in
4 fact, or the applicant.

5 (i) A copy of any security, or of any proposed
6 document evidencing any right or interest, proposed to be
7 offered.

8 (j) Such other pertinent information and documents as
9 reasonably requested by the commission or office ~~department~~.

10 (3) The application shall be accompanied by the filing
11 fee specified in s. 624.501.

12 Section 1259. Section 628.061, Florida Statutes, is
13 amended to read:

14 628.061 Investigation of proposed organization.--In
15 connection with any proposal to incorporate a domestic
16 insurer, the office ~~department~~ shall make an investigation of:

17 (1) The character, reputation, financial standing, and
18 motives of the organizers, incorporators, and subscribers
19 organizing the proposed insurer.

20 (2) The character, financial responsibility, insurance
21 experience, and business qualifications of its proposed
22 officers.

23 (3) The character, financial responsibility, business
24 experience, and standing of the proposed stockholders and
25 directors.

26 Section 1260. Section 628.071, Florida Statutes, is
27 amended to read:

28 628.071 Granting, denial of permit.--

29 (1) The office ~~department~~ shall expeditiously examine
30 and investigate the application for a permit as referred to in
31 s. 628.051. If the office ~~department~~ finds that:

- 1 (a) The application is complete;
- 2 (b) The documents therewith filed are in compliance
3 with law;
- 4 (c) None of the stockholders, organizers,
5 incorporators, subscribers, and other persons who directly or
6 indirectly exercise or have the ability to exercise effective
7 control of the proposed insurer or who will be involved in its
8 management have been found guilty of, or have pleaded guilty
9 or nolo contendere to, a felony or a crime punishable by
10 imprisonment of 1 year or more under the law of the United
11 States or any state thereof, or under the law of any other
12 country, which involves moral turpitude, without regard to
13 whether a judgment of conviction has been entered by the court
14 having jurisdiction of such cases;
- 15 (d) The proposed financial structure is adequate; and
- 16 (e) All stockholders, organizers, incorporators,
17 subscribers, and other persons who directly or indirectly
18 exercise or have the ability to exercise effective control of
19 the proposed insurer or who will be involved in management of
20 the proposed insurer possess the financial standing and
21 business experience to form an insurer;
- 22
- 23 it shall issue to the applicant a permit to form the proposed
24 insurer.
- 25 (2) If the office ~~department~~ does not so find, or
26 finds that the insurer if formed or financed would not be able
27 to qualify for or retain a certificate of authority by reason
28 of the provisions of s. 624.404(3), a permit shall not be
29 granted.
- 30 (3) A permit granted under the provisions of this
31 section shall be valid for 1 year from the date of issue, and

1 during any extension of such period, not to exceed an
2 additional year, as may be authorized by the office ~~department~~
3 upon cause shown. The articles of incorporation and all other
4 proceedings thereunder shall become void 1 year from the issue
5 date of such permit or upon the expiration of such extended
6 period, unless the formation of the proposed insurer has been
7 completed and a certificate of authority has been issued by
8 the office ~~department~~.

9 Section 1261. Section 628.091, Florida Statutes, is
10 amended to read:

11 628.091 Filing, approval of articles of
12 incorporation.--

13 (1) No domestic stock or mutual insurer shall be
14 formed unless its articles of incorporation are approved by
15 the office ~~department~~ prior to filing the same with and
16 approval by the Department of State as provided by law.

17 (2) The incorporators shall file the triplicate
18 originals of the articles of incorporation with the office
19 ~~department~~, accompanied by the filing fee specified in s.
20 624.501.

21 (3) The office ~~department~~ shall promptly examine the
22 articles of incorporation. If it finds that the articles of
23 incorporation conform to law, and that a permit has been or
24 will be issued, it shall endorse its approval on each of the
25 triplicate originals of the articles of incorporation, retain
26 one copy for its files, and return the remaining copies to the
27 incorporators for filing with the Department of State.

28 (4) If the office ~~department~~ does not so find, it
29 shall refuse to approve the articles of incorporation and
30 shall return the originals.

31

1 Section 1262. Section 628.101, Florida Statutes, is
2 amended to read:

3 628.101 Amendment of certificate of incorporation;
4 stock insurer.--A domestic stock insurer shall not amend its
5 certificate of incorporation until a copy of the proposed
6 amendment has been filed with and approved by the office
7 ~~department~~. The office ~~department~~ shall promptly examine any
8 such proposed amendment and shall approve the same unless it
9 finds that the proposed amendment does not comply with law.

10 Section 1263. Subsections (2) and (3) of section
11 628.111, Florida Statutes, are amended to read:

12 628.111 Amendment of articles of incorporation; mutual
13 insurer.--

14 (2)(a) Upon adoption of the amendment, the insurer
15 shall make in triplicate under its corporate seal a
16 certificate thereof, setting forth the amendment and the date
17 and manner of the adoption thereof, which certificate shall be
18 executed by the insurer's president or vice president and
19 secretary or assistant secretary and acknowledged before an
20 officer authorized to take acknowledgments. The insurer shall
21 deliver the triplicate originals of the certificate to the
22 office ~~department~~, together with the filing fee specified in
23 s. 624.501.

24 (b) The office ~~department~~ shall promptly examine the
25 certificate of amendment; and, if it finds that the
26 certificate and the amendment comply with law, it shall
27 endorse its approval upon each of the triplicate originals,
28 place one on file in its office, and return the remaining sets
29 to the insurer. The insurer shall forthwith file such
30 endorsed certificates of amendment with the Department of
31

1 State. The amendment shall be effective when filed with and
2 approved by the Department of State.

3 (3) If the office ~~department~~ finds that the proposed
4 amendment or certificate does not comply with the law, it
5 shall not approve the same, and shall return the triplicate
6 certificate of amendment to the insurer.

7 Section 1264. Subsections (1) and (3) of section
8 628.152, Florida Statutes, are amended to read:

9 628.152 Domestic stock insurers; proxies, consents,
10 and authorizations with respect to any voting security.--

11 (1) The commission ~~department~~ may, by rule, prescribe
12 the form, content, and manner of solicitation of any proxy,
13 consent, or authorization with respect to any voting security
14 issued by a domestic stock insurer, as may be necessary or
15 appropriate in the public interest or for the proper
16 protection of investors in the voting securities issued by
17 such insurer or to ensure the fair dealing in such voting
18 securities.

19 (3) Any proxy or consent obtained in violation of this
20 section is void. The domestic stock insurer, any stockholder
21 of record, or the office ~~department~~ may enforce compliance
22 with this section, by an appropriate civil action.

23 Section 1265. Subsection (6) of section 628.161,
24 Florida Statutes, is amended to read:

25 628.161 Initial qualifications; mutuals.--

26 (6) A self-insured fund organized under s. 624.4621 ~~s.~~
27 ~~440.57~~ and holding a certificate of authority as a
28 self-insurer's fund on December 31, 1993, may become a mutual
29 insurer under this part, pursuant to a plan of reorganization
30 approved by the office ~~department~~. A plan of reorganization
31 must be approved by the office ~~department~~ if:

1 (a) The self-insurer's fund has sufficient financial
2 resources to satisfy all of its obligations under all policies
3 and coverages afforded by the fund before the reorganization
4 and has sufficient financial resources to satisfy all of its
5 other liabilities;

6 (b) The self-insurer's fund has a minimum of \$5
7 million of surplus;

8 (c) The self-insurer's fund submits a plan that
9 demonstrates its ability to satisfy the requirements of this
10 chapter pertaining to mutual insurers on an ongoing basis; and

11 (d) The mutual insurer resulting from the
12 reorganization of the self-insurer's fund retains ownership of
13 all of the assets of the self-insurer's fund, retains all of
14 the liabilities of the self-insurer's fund, and agrees to hold
15 all fund members harmless from any assessment for liabilities
16 of the self-insurer's fund before the date of reorganization.

17
18 Upon approval of the plan by the office ~~department~~, any
19 contingent liability of the members or former members of the
20 self-insurer's fund for assessment for losses of the
21 self-insurer's fund is considered satisfied, and all liability
22 for any such contingent assessment is extinguished as of the
23 date the self-insurer's fund becomes an authorized mutual
24 insurer and retains all of the assets and liabilities of the
25 self-insurer's fund.

26 Section 1266. Section 628.171, Florida Statutes, is
27 amended to read:

28 628.171 Formation of mutual insurer; bond.--The
29 incorporators of the proposed insurer shall file with the
30 office ~~department~~ a copy of a fidelity bond or insurance
31 policy providing coverage in an amount equal to not less than

1 10 percent of the funds handled annually and issued in the
2 name of the insurer covering its directors, employees,
3 administrator, or other individuals managing or handling the
4 funds or assets of the insurer. In no case may such bond or
5 policy be less than \$1,000 or more than \$500,000.

6 Section 1267. Subsection (3) of section 628.221,
7 Florida Statutes, is amended to read:

8 628.221 Bylaws of mutual insurer.--

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

19 Section 1268. Subsections (1) and (3) of section
20 628.251, Florida Statutes, are amended to read:

21 628.251 Management and exclusive agency contracts.--

22 (1) No domestic mutual insurer or stock insurer shall
23 make any contract whereby any person is granted or is to enjoy
24 in fact the management of the insurer to the substantial
25 exclusion of its board of directors or to have the controlling
26 or preemptive right to produce substantially all insurance
27 business for the insurer, unless the contract is filed with
28 and approved by the office ~~department~~.

29 (3) The office ~~department~~ shall disapprove any such
30 contract if it finds that it:

31 (a) Subjects the insurer to excessive charges; ~~or~~

1 (b) Is to extend for an unreasonable length of time;

2 ~~or~~

3 (c) Does not contain fair and adequate standards of
4 performance; or

5 (d) Contains other inequitable provision or provisions
6 which impair the proper interests of policyholders or members
7 of the insurer.

8 Section 1269. Subsection (1) of section 628.255,
9 Florida Statutes, is amended to read:

10 628.255 Person with effective control cannot receive
11 commission unless contract approved; penalties.--

12 (1) No director, officer, or other person having
13 effective control of a domestic insurer shall receive, and no
14 such insurer shall pay to such person, a commission or other
15 compensation with respect to particular risks insured by the
16 insurer, unless such commission or other compensation is paid
17 pursuant to a contract filed with and approved by the office
18 ~~department~~.

19 Section 1270. Section 628.261, Florida Statutes, is
20 amended to read:

21 628.261 Notice of change of director or officer.--An
22 insurer shall give the office ~~department~~ written notice of any
23 change of personnel among the directors or principal officers
24 of the insurer within 45 days of such change. The written
25 notice shall include all information necessary to allow the
26 office ~~department~~ to determine that the insurer will be in
27 compliance with s. 624.404(3) and at a minimum shall contain
28 the information required by s. 628.051(2)(b), (c), and (d).

29 Section 1271. Subsections (1) and (3) of section
30 628.271, Florida Statutes, are amended to read:

31

1 628.271 Office and records; penalty for unlawful
2 removal of records.--

3 (1) Every domestic insurer shall have an office in
4 this state and shall keep therein complete records of its
5 assets, transactions, and affairs, specifically including:

6 (a) Financial records;
7 (b) Corporate records;
8 (c) Reinsurance documents;
9 (d) Access to all accounting transactions and access
10 in this state, upon demand by the office ~~department~~, to all
11 original accounting documents;
12 (e) Claim files; and
13 (f) Payment of claims,
14

15 in accordance with such methods and systems as are customary
16 or suitable as to the kind or kinds of insurance transacted.

17 (3) The removal of all or a material part of the
18 records or assets of a domestic insurer from this state except
19 pursuant to a plan of merger or consolidation approved by the
20 office ~~department~~ under this code or for such reasonable
21 purposes and periods of time as may be approved by the office
22 ~~department~~ in writing in advance of such removal, or the
23 concealment of such records or assets or material part thereof
24 from the office ~~department~~, is prohibited. Any person who
25 removes or attempts to remove such records or assets or such
26 material part thereof from the home office or other place of
27 business or of safekeeping of the insurer in this state with
28 the intent to remove the same from this state, or who conceals
29 or attempts to conceal the same from the office ~~department~~, in
30 violation of this subsection, is guilty of a felony of the
31 third degree, punishable as provided in s. 775.082, s.

1 775.083, or s. 775.084. Upon any removal or attempted removal
2 of such records or assets or upon retention of such records or
3 assets or material part thereof outside this state, beyond the
4 period therefor specified in the consent of the office
5 ~~department~~ under which consent the records were so removed
6 thereat, or upon concealment of or attempt to conceal records
7 or assets in violation of this section, the office ~~department~~
8 may institute delinquency proceedings against the insurer
9 pursuant to the provisions of chapter 631.

10 Section 1272. Subsection (1) of section 628.281,
11 Florida Statutes, is amended to read:

12 628.281 Exceptions to requirement that office,
13 records, and assets be maintained in this state.--

14 (1) The provisions of s. 628.271 shall not be deemed
15 to prohibit or prevent an insurer from:

16 (a) Establishing and maintaining branch offices or
17 regional home offices in other states where necessary or
18 convenient to the transaction of its business and keeping
19 therein the detailed records and assets customary and
20 reasonably necessary for the servicing of its insurance in
21 force and affairs in the territory served by such an office,
22 as long as such records and assets are made readily available
23 at such office for examination by the Office of Insurance
24 Regulation ~~department~~ at its request.

25 (b) Having, depositing, or transmitting funds and
26 assets of the insurer in or to jurisdictions outside this
27 state as required by other jurisdictions as a condition of
28 transacting insurance in such jurisdictions reasonably and
29 customarily required in the regular course of its business.

30 (c) Establishing and maintaining its principal
31 operations offices, its usual operations records, and such of

1 its assets as may be necessary or convenient for the purpose,
2 in another state in which the insurer is authorized to
3 transact insurance in order that general administration of its
4 affairs may be combined with that of an affiliated insurer or
5 insurers, but subject to the following conditions:

6 1. That the office ~~department~~ consent in writing to
7 such removal of offices, records, and assets from this state
8 upon evidence satisfactory to it that the same will facilitate
9 and make more economical the operations of the insurer and
10 will not unreasonably diminish the service or protection
11 thereafter to be given the insurer's policyholders in this
12 state and elsewhere;

13 2. That the insurer will continue to maintain in this
14 state its principal corporate office or place of business, and
15 maintain therein available to the inspection of the office
16 ~~department~~ complete records of its corporate proceedings and a
17 copy of each financial statement of the insurer current within
18 the preceding 5 years, including a copy of each interim
19 financial statement prepared for the information of the
20 insurer's officers or directors;

21 3. That, upon the written request of the office
22 ~~department~~, the insurer will with reasonable promptness
23 produce at its principal corporate offices in this state for
24 examination or for subpoena its records or copies thereof
25 relative to a particular transaction or transactions of the
26 insurer as designated by the office ~~department~~ in its request;
27 and

28 4. That, if at any time the office ~~department~~ finds
29 that the conditions justifying the maintenance of such
30 offices, records, and assets outside this state no longer
31 exist, or that the insurer has willfully and knowingly

1 violated any of the conditions stated in subparagraphs 2. and
2 3., the office ~~department~~ may order the return of such
3 offices, records, and assets to this state within such
4 reasonable time, not less than 6 months, as may be specified
5 in the order; and that for failure to comply with such order,
6 as thereafter modified or extended, if any, the office
7 ~~department~~ shall suspend or revoke the insurer's certificate
8 of authority.

9 Section 1273. Subsection (1) of section 628.341,
10 Florida Statutes, is amended to read:

11 628.341 Nonassessable policies; mutual insurers.--

12 (1) While possessing surplus funds in amount not less
13 than the paid-in capital stock required of a domestic stock
14 insurer transacting like kinds of insurance, a domestic mutual
15 insurer may, upon receipt of the order of the office
16 ~~department~~ so authorizing, extinguish the contingent liability
17 of its members as to all its policies in force and may omit
18 provisions imposing contingent liability in all its policies
19 currently issued so long as such surplus funds meet such
20 requirement as to amount.

21 Section 1274. Section 628.351, Florida Statutes, is
22 amended to read:

23 628.351 Nonassessable policies; revocation of
24 authority of mutual insurer.--The office ~~department~~ shall
25 revoke the authority of a domestic mutual insurer to issue
26 policies without contingent liability if at any time the
27 insurer's assets are less than the sum of its liabilities and
28 the surplus required for such authority, or if the insurer, by
29 resolution of its board of directors approved by a majority of
30 its members, requests that the authority be revoked. During
31 the absence of such authority, the insurer shall not issue any

1 policy without providing therein for the contingent liability
2 of the policyholder, nor renew any policy which is renewable
3 at the option of the insurer without endorsing the same to
4 provide for such contingent liability. Such renewal or
5 endorsement shall bear conspicuously on its face the provision
6 for contingent liability of the policyholder.

7 Section 1275. Section 628.371, Florida Statutes, is
8 amended to read:

9 628.371 Dividends to stockholders.--

10 (1) A domestic stock insurer shall not pay any
11 dividend or distribute cash or other property to stockholders
12 except out of that part of its available and accumulated
13 surplus funds which is derived from realized net operating
14 profits on its business and net realized capital gains.

15 (2) Dividend payments or distributions to
16 stockholders, without prior written approval of the office
17 ~~department~~, shall not exceed the larger of:

18 (a) The lesser of 10 percent of surplus or net gain
19 from operations (life and health companies) or net income
20 (property and casualty companies), not including realized
21 capital gains, plus a 2-year carryforward for property and
22 casualty companies;

23 (b) Ten percent of surplus, with dividends payable
24 constrained to unassigned funds minus 25 percent of unrealized
25 capital gains;

26 (c) The lesser of 10 percent of surplus or net
27 investment income (net gain before capital gains for life and
28 health companies) plus a 3-year carryforward (2-year
29 carryforward for life and health companies) with dividends
30 payable constrained to unassigned funds minus 25 percent of
31 unrealized capital gains.

1 (3) In lieu of the provisions in subsection (2), an
2 insurer may pay a dividend or make a distribution without the
3 prior written approval of the office ~~department~~ when:

4 (a) The dividend is equal to or less than the greater
5 of:

6 1. Ten percent of the insurer's surplus as to
7 policyholders derived from realized net operating profits on
8 its business and net realized capital gains; or

9 2. The insurer's entire net operating profits and
10 realized net capital gains derived during the immediately
11 preceding calendar year; and

12 (b) The insurer will have surplus as to policyholders
13 equal to or exceeding 115 percent of the minimum required
14 statutory surplus as to policyholders after the dividend or
15 distribution is made; and

16 (c) The insurer has filed notice with the office
17 ~~department~~ at least 10 business days prior to the dividend
18 payment or distribution, or such shorter period of time as
19 approved by the office ~~department~~ on a case-by-case basis.
20 Such notice shall not create a right in the office ~~department~~
21 to approve or disapprove a dividend otherwise properly payable
22 hereunder; and

23 (d) The notice includes a certification by an officer
24 of the insurer attesting that after payment of the dividend or
25 distribution the insurer will have at least 115 percent of
26 required statutory surplus as to policyholders.

27 (4) The office ~~department~~ shall not approve a dividend
28 or distribution in excess of the maximum amount allowed in
29 subsection (1) unless, considering the following factors, it
30 determines that the distribution or dividend would not
31 jeopardize the financial condition of the insurer:

1 (a) The liquidity, quality, and diversification of the
2 insurer's assets and the effect on its ability to meet its
3 obligations.

4 (b) Reduction of investment portfolio and investment
5 income.

6 (c) Effects on the written premium to surplus ratios
7 as required by the Florida Insurance Code.

8 (d) Industrywide financial conditions.

9 (e) Prior dividend distributions of the insurer.

10 (f) Whether the dividend is only a "pass-through"
11 dividend from a subsidiary of the insurer.

12 Section 1276. Subsection (3) of section 628.391,
13 Florida Statutes, is amended to read:

14 628.391 Illegal dividends; penalty.--

15 (3) The office ~~department~~ may revoke or suspend the
16 certificate of authority of an insurer which has declared or
17 paid such an illegal dividend.

18 Section 1277. Subsections (3) and (4) of section
19 628.401, Florida Statutes, are amended to read:

20 628.401 Borrowed surplus.--

21 (3) Any such loan to a domestic stock or mutual
22 insurer shall be subject to the approval of the office
23 ~~department~~ for the issue and the rate of interest to be paid.
24 The insurer shall, in advance of the loan, file with the
25 office ~~department~~ a statement of the purpose of the loan and a
26 copy of the proposed loan agreement. The office ~~department~~
27 shall disapprove any proposed loan or agreement if it finds
28 that the loan is unnecessary or excessive for the purpose
29 intended; that the terms of the loan agreement are not fair
30 and equitable to the parties and to other similar lenders, if
31

1 any, to the insurer; or that the information so filed by the
2 insurer is inadequate.

3 (4) Any such loan to a domestic stock or mutual
4 insurer, or a substantial portion thereof, shall be repaid by
5 the insurer when no longer reasonably necessary for the
6 purpose originally intended. No repayment of such a loan
7 shall be made by a domestic stock or mutual insurer unless
8 approved in advance by the office ~~department~~.

9 Section 1278. Subsections (1) and (4) of section
10 628.411, Florida Statutes, are amended to read:

11 628.411 Impairment of capital or assets.--

12 (1) If a domestic stock insurer's capital, as
13 represented by the aggregate par value of its outstanding
14 capital stock, becomes impaired, or if the assets of a mutual
15 insurer are less than the sum of its liabilities and the
16 minimum amount of surplus required to be maintained by it, the
17 office ~~department~~ shall at once determine the amount of
18 deficiency and serve notice upon the insurer to make good the
19 deficiency within 90 days after service of such notice.

20 (4) If the deficiency is not made good and proof
21 thereof filed with the office ~~department~~ within such 90-day
22 period, the insurer shall be deemed insolvent and the office
23 ~~department~~ shall institute delinquency proceedings against it
24 under chapter 631; except that if such deficiency exists
25 because of increased loss reserves required by the office
26 ~~department~~, or because of disallowance by the office
27 ~~department~~ of certain assets or reduction of the value at
28 which carried in the insurer's accounts, the office ~~department~~
29 may, in its discretion and upon application and good cause
30 shown, and if it finds that the establishment or maintenance
31 of such inadequate reserves or overvalued assets was not

1 willful on the part of the insurer, extend for not more than
2 an additional 60 days the period within which such deficiency
3 may be so made good and such proof thereof so filed.

4 Section 1279. Subsection (1) of section 628.421,
5 Florida Statutes, is amended to read:

6 628.421 Assessment of stockholders or members.--

7 (1) Any insurer receiving the notice of the office
8 ~~department~~ mentioned in s. 628.411(1):

9 (a) If a stock insurer, by resolution of its board of
10 directors and subject to any limitations upon assessment
11 contained in its certificate of incorporation, may assess its
12 stockholders for amounts necessary to cure the deficiency and
13 provide the insurer with a reasonable amount of surplus in
14 addition. If any stockholder fails to pay a lawful assessment
15 after notice given to him or her in person or by advertisement
16 in such time and manner as approved by the office ~~department~~,
17 the insurer may require the return of the original certificate
18 of stock held by the stockholder and, in cancellation and in
19 lieu thereof, issue a new certificate for such number of
20 shares as the stockholder may then be entitled to, upon the
21 basis of the stockholder's proportionate interest in the
22 amount of the insurer's capital stock as determined by the
23 office ~~department~~ to be remaining at the time of determination
24 of the amount of impairment under s. 628.411, after deducting
25 from such proportionate interest the amount of such unpaid
26 assessment. The insurer may pay for or issue fractional
27 shares under this subsection.

28 (b) If a mutual insurer, shall levy such an assessment
29 upon members as is provided for under s. 628.321.

30 Section 1280. Subsections (1) and (2) of section
31 628.431, Florida Statutes, are amended to read:

1 628.431 Mutualization of stock insurers.--

2 (1) A stock insurer other than a title insurer may
3 become a mutual insurer under such plan and procedure as may
4 be approved by the office ~~department~~.

5 (2) The office ~~department~~ shall not approve any such
6 plan, procedure, or mutualization unless:

7 (a) It is equitable to stockholders and policyholders;

8 (b) It is subject to approval by the holders of not
9 less than three-fourths of the insurer's outstanding capital
10 stock having voting rights and by not less than two-thirds of
11 the insurer's policyholders who vote on such plan in person,
12 by proxy, or by mail pursuant to such notice and procedure as
13 may be approved by the office ~~department~~;

14 (c) If a life insurer, the right to vote thereon is
15 limited to holders of policies other than term or group
16 policies, and whose policies have been in force for more than
17 1 year;

18 (d) Mutualization will result in retirement of shares
19 of the insurer's capital stock at a price not in excess of the
20 fair market value thereof as determined by competent
21 disinterested appraisers;

22 (e) The plan provides for the purchase of the shares
23 of any nonconsenting stockholder in the same manner and
24 subject to the same applicable conditions as provided by s.
25 607.247, as to rights of nonconsenting stockholders, with
26 respect to consolidation or merger of private corporations;

27 (f) The plan provides for definite conditions to be
28 fulfilled by a designated early date upon which such
29 mutualization will be deemed effective; and

30 (g) The mutualization leaves the insurer with surplus
31 funds reasonably adequate for the security of its

1 policyholders and to enable it to continue successfully in
2 business in the states in which it is then authorized to
3 transact insurance, and for the kinds of insurance included in
4 its certificates of authority in such states.

5 Section 1281. Section 628.441, Florida Statutes, is
6 amended to read:

7 628.441 Converting mutual insurer.--

8 (1) A mutual insurer may become a stock insurer under
9 such plan and procedure as may be approved by the office
10 ~~department~~.

11 (2) The office ~~department~~ shall not approve any such
12 plan or procedure unless:

13 (a) It is equitable to the insurer's members;

14 (b) It is subject to approval by vote of not less than
15 three-fourths of the insurer's current members voting thereon
16 in person, by proxy, or by mail at a meeting of members called
17 for the purpose pursuant to such reasonable notice and
18 procedure as may be approved by the office ~~department~~; if a
19 life insurer, the right to vote may be limited to members who
20 hold policies other than term or group policies, and whose
21 policies have been in force for not less than 1 year;

22 (c) The corporate equity of each policyholder in the
23 insurer, other than as to unearned premiums, nonforfeiture
24 rights, and benefit claims under his or her policy, is
25 determinable under a fair formula approved by the office
26 ~~department~~, which equity shall be based upon not less than the
27 insurer's entire surplus, after deducting contributed or
28 borrowed surplus funds, plus a reasonable present equity in
29 its reserves and in all nonadmitted assets;

30 (d) The policyholders entitled to participate in the
31 purchase of stock or distribution of assets shall include all

1 current policyholders and all existing persons who had been
2 policyholders of the insurer within 3 years prior to the date
3 such plan was submitted to the office ~~department~~;

4 (e) The plan gives to each policyholder of the insurer
5 as specified in paragraph (d) a preemptive right to acquire
6 his or her proportionate part of all of the proposed capital
7 stock of the insurer, within a designated reasonable period,
8 and to apply upon the purchase thereof the amount of his or
9 her equity in the insurer as determined under paragraph (c);

10 (f) Shares are so offered to policyholders at a price
11 not greater than to be thereafter offered to others;

12 (g) The plan provides for payment of cash to each
13 policyholder not electing to apply his or her equity in the
14 insurer toward the purchase price of stock to which he or she
15 is preemptively entitled. The amount so paid shall be not less
16 than 50 percent of the amount of the policyholder's equity not
17 so used for the purchase of stock. Such cash payment together
18 with stock so purchased, if any, shall constitute full payment
19 and discharge of the policyholder's corporate equity in such
20 mutual insurer; and

21 (h) The plan, when completed, would provide for the
22 converted insurer paid-in capital stock in an amount not less
23 than the minimum paid-in capital required of a domestic stock
24 insurer transacting like kinds of insurance, together with
25 surplus funds in amounts not less than one-half of such
26 required capital.

27 Section 1282. Subsection (2) of section 628.451,
28 Florida Statutes, is amended to read:

29 628.451 Merger or share exchange of stock insurers and
30 other entities.--

31

1 (2) No such merger or share exchange shall be
2 effectuated unless in advance thereof the plan and agreement
3 therefor have been filed with the office ~~department~~ and
4 approved by it. The office ~~department~~ shall give such approval
5 provided it finds such plan or agreement:

6 (a) Is in compliance with law;

7 (b) Is fair to the stockholders of or other holders of
8 interests in any insurer or self-insurer involved; and

9 (c) Would not substantially reduce the security of and
10 service to be rendered to policyholders of the domestic
11 insurer in this state or elsewhere.

12 Section 1283. Section 628.461, Florida Statutes, is
13 amended to read:

14 628.461 Acquisition of controlling stock.--

15 (1) No person shall, individually or in conjunction
16 with any affiliated person of such person, acquire directly or
17 indirectly, conclude a tender offer or exchange offer for,
18 enter into any agreement to exchange securities for, or
19 otherwise finally acquire 5 percent or more of, the
20 outstanding voting securities of a domestic stock insurer or
21 of a controlling company, unless:

22 (a) The person or affiliated person has filed with the
23 office ~~department~~ and sent to the insurer and controlling
24 company a statement as specified in subsection (3) no later
25 than 5 days after any form of tender offer or exchange offer
26 is proposed, or no later than 5 days after the acquisition of
27 the securities if no tender offer or exchange offer is
28 involved; and

29 (b) The office ~~department~~ has approved the tender or
30 exchange offer, or acquisition if no tender offer or exchange
31 offer is involved, and approval is in effect.

1
2 In lieu of a filing as required under this subsection, a party
3 acquiring less than 10 percent of the outstanding voting
4 securities of an insurer may file a disclaimer of affiliation
5 and control. The disclaimer shall fully disclose all material
6 relationships and basis for affiliation between the person and
7 the insurer as well as the basis for disclaiming the
8 affiliation and control. After a disclaimer has been filed,
9 the insurer shall be relieved of any duty to register or
10 report under this section which may arise out of the insurer's
11 relationship with the person unless and until the office
12 ~~department~~ disallows the disclaimer. The office ~~department~~
13 shall disallow a disclaimer only after furnishing all parties
14 in interest with notice and opportunity to be heard and after
15 making specific findings of fact to support the disallowance.
16 A filing as required under this subsection must be made as to
17 any acquisition that equals or exceeds 10 percent of the
18 outstanding voting securities.

19 (2) This section does not apply to any acquisition of
20 voting securities of a domestic stock insurer or of a
21 controlling company by any person who, on July 1, 1976, is the
22 owner of a majority of such voting securities or who, on or
23 after July 1, 1976, becomes the owner of a majority of such
24 voting securities with the approval of the office ~~department~~
25 pursuant to this section.

26 (3) The statement to be filed with the office
27 ~~department~~ and furnished to the insurer and controlling
28 company shall contain the following information and any
29 additional information as the office deems ~~department may deem~~
30 necessary to determine the character, experience, ability, and
31 other qualifications of the person or affiliated person of

1 such person for the protection of the policyholders and
2 shareholders of the insurer and the public:

3 (a) The identity of, and the background information
4 specified in subsection (4) on, each natural person by whom,
5 or on whose behalf, the acquisition is to be made; and, if the
6 acquisition is to be made by, or on behalf of, a corporation,
7 association, or trust, as to the corporation, association, or
8 trust and as to any person who controls either directly or
9 indirectly the corporation, association, or trust, the
10 identity of, and the background information specified in
11 subsection (4) on, each director, officer, trustee, or other
12 natural person performing duties similar to those of a
13 director, officer, or trustee for the corporation,
14 association, or trust;

15 (b) The source and amount of the funds or other
16 consideration used, or to be used, in making the acquisition;

17 (c) Any plans or proposals which such persons may have
18 made to liquidate such insurer, to sell any of its assets or
19 merge or consolidate it with any person, or to make any other
20 major change in its business or corporate structure or
21 management; and any plans or proposals which such persons may
22 have made to liquidate any controlling company of such
23 insurer, to sell any of its assets or merge or consolidate it
24 with any person, or to make any other major change in its
25 business or corporate structure or management;

26 (d) The number of shares or other securities which the
27 person or affiliated person of such person proposes to
28 acquire, the terms of the proposed acquisition, and the manner
29 in which the securities are to be acquired; and

30 (e) Information as to any contract, arrangement, or
31 understanding with any party with respect to any of the

1 securities of the insurer or controlling company, including,
2 but not limited to, information relating to the transfer of
3 any of the securities, option arrangements, puts or calls, or
4 the giving or withholding of proxies, which information names
5 the party with whom the contract, arrangement, or
6 understanding has been entered into and gives the details
7 thereof.

8 (4)(a) The information as to the background and
9 identity of each person, which information is required to be
10 furnished pursuant to paragraph (3)(a), shall include:

11 1. The person's occupations, positions of employment,
12 and offices held during the past 10 years.

13 2. The principal business and address of any business,
14 corporation, or other organization in which each such office
15 of the person was held or in which each such occupation or
16 position of employment was carried on.

17 3. Whether the person was, at any time during such
18 10-year period, convicted of any crime other than a traffic
19 violation.

20 4. Whether the person has been, during such 10-year
21 period, the subject of any proceeding for the revocation of
22 any license and, if so, the nature of the proceeding and the
23 disposition of the proceeding.

24 5. Whether, during the 10-year period, the person has
25 been the subject of any proceeding under the federal
26 Bankruptcy Act or whether, during the 10-year period, any
27 corporation, partnership, firm, trust, or association in which
28 the person was a director, officer, trustee, partner, or other
29 official has been subject to any such proceeding, either
30 during the time in which the person was a director, officer,
31

1 trustee, partner, or other official or within 12 months
2 thereafter.

3 6. Whether, during the 10-year period, the person has
4 been enjoined, either temporarily or permanently, by a court
5 of competent jurisdiction from violating any federal or state
6 law regulating the business of insurance, securities, or
7 banking, or from carrying out any particular practice or
8 practices in the course of the business of insurance,
9 securities, or banking, together with details as to any such
10 event.

11 (b) Any corporation, association, or trust filing the
12 statement required by this section shall give all required
13 information that is within the knowledge of the directors,
14 officers, or trustees (or others performing functions similar
15 to those of a director, officer, or trustee) of the
16 corporation, association, or trust making the filing and of
17 any person controlling either directly or indirectly such
18 corporation, association, or trust. A copy of the statement
19 and any amendments to the statement shall be sent by
20 registered mail to the insurer at its principal office within
21 the state and to any controlling company at its principal
22 office. If any material change occurs in the facts set forth
23 in the statement filed with the office ~~department~~ and sent to
24 such insurer or controlling company pursuant to this section,
25 an amendment setting forth such changes shall be filed
26 immediately with the office ~~department~~ and sent immediately to
27 such insurer and controlling company.

28 (5)(a) The acquisition of voting securities shall be
29 deemed approved unless the office ~~department~~ disapproves the
30 proposed acquisition within 90 days after the statement
31 required by subsection (1) has been filed. The office

1 ~~department~~ may on its own initiate, or if requested to do so
2 in writing by a substantially affected party shall conduct, a
3 proceeding to consider the appropriateness of the proposed
4 filing. The 90-day time period shall be tolled during the
5 pendency of the proceeding. Any written request for a
6 proceeding must be filed with the office ~~department~~ within 10
7 days of the date notice of the filing is given. During the
8 pendency of the proceeding or review period by the office
9 ~~department~~, any person or affiliated person complying with the
10 filing requirements of this section may proceed and take all
11 steps necessary to conclude the acquisition so long as the
12 acquisition becoming final is conditioned upon obtaining
13 office ~~departmental~~ approval. The office ~~department~~ shall,
14 however, at any time that it finds an immediate danger to the
15 public health, safety, and welfare of the domestic
16 policyholders exists, immediately order, pursuant to s.
17 120.569(2)(n), the proposed acquisition temporarily
18 disapproved and any further steps to conclude the acquisition
19 ceased.

20 (b) During the pendency of the office's ~~department's~~
21 review of any acquisition subject to the provisions of this
22 section, the acquiring person shall not make any material
23 change in the operation of the insurer or controlling company
24 unless the office ~~department~~ has specifically approved the
25 change nor shall the acquiring person make any material change
26 in the management of the insurer unless advance written notice
27 of the change in management is furnished to the office
28 ~~department~~. A material change in the operation of the insurer
29 is a transaction which disposes of or obligates 5 percent or
30 more of the capital and surplus of the insurer. A material
31 change in the management of the insurer is any change in

1 management involving officers or directors of the insurer or
2 any person of the insurer or controlling company having
3 authority to dispose of or obligate 5 percent or more of the
4 insurer's capital or surplus. The office ~~department~~ shall
5 approve a material change in operation if it finds the
6 applicable provisions of subsection (7) have been met. The
7 office ~~department~~ may disapprove a material change in
8 management if it finds that the applicable provisions of
9 subsection (7) have not been met and in such case the insurer
10 shall promptly change management as acceptable to the office
11 ~~department~~.

12 (c) If a request for a proceeding is filed, the
13 proceeding shall be conducted within 60 days after the date
14 the written request for a proceeding is received by the office
15 ~~department~~. A recommended order shall be issued within 20 days
16 of the date of the close of the proceedings. A final order
17 shall be issued within 20 days of the date of the recommended
18 order or, if exceptions to the recommended order are filed,
19 within 20 days of the date the exceptions are filed.

20 (6) The office ~~department~~ may disapprove any
21 acquisition subject to the provisions of this section by any
22 person or any affiliated person of such person who:

23 (a) Willfully violates this section;

24 (b) In violation of an order of the office ~~department~~
25 issued pursuant to subsection (10), fails to divest himself or
26 herself of any stock obtained in violation of this section, or
27 fails to divest himself or herself of any direct or indirect
28 control of such stock, within 25 days after such order; or

29 (c) In violation of an order issued by the office
30 ~~department~~ pursuant to subsection (10), acquires additional
31 stock of the domestic insurance company or controlling

1 company, or direct or indirect control of such stock, without
2 complying with this section.

3 (7) The person or persons filing the statement
4 required by subsection (1) shall have the burden of proof. The
5 office ~~department~~ shall approve any such acquisition if it
6 finds, on the basis of the record made during any proceeding
7 or on the basis of the filed statement if no proceeding is
8 conducted, that:

9 (a) Upon completion of the acquisition, the domestic
10 stock insurer will be able to satisfy the requirements for the
11 issuance of a license to write the line or lines of insurance
12 for which it is presently licensed;

13 (b) The financial condition of the acquiring person or
14 persons will not jeopardize the financial stability of the
15 insurer or prejudice the interests of its policyholders or the
16 public;

17 (c) Any plan or proposal which the acquiring person
18 has, or acquiring persons have, made:

19 1. To liquidate the insurer, sell its assets, or merge
20 or consolidate it with any person, or to make any other major
21 change in its business or corporate structure or management;
22 or

23 2. To liquidate any controlling company, sell its
24 assets, or merge or consolidate it with any person, or to make
25 any major change in its business or corporate structure or
26 management which would have an effect upon the insurer

27
28 is fair and free of prejudice to the policyholders of the
29 domestic stock insurer or to the public;

30 (d) The competence, experience, and integrity of those
31 persons who will control directly or indirectly the operation

1 of the domestic stock insurer indicate that the acquisition is
2 in the best interest of the policyholders of the insurer and
3 in the public interest;

4 (e) The natural persons for whom background
5 information is required to be furnished pursuant to this
6 section have such backgrounds as to indicate that it is in the
7 best interests of the policyholders of the domestic stock
8 insurer, and in the public interest, to permit such persons to
9 exercise control over such domestic stock insurer;

10 (f) The officers and directors to be employed after
11 the acquisition have sufficient insurance experience and
12 ability to assure reasonable promise of successful operation;

13 (g) The management of the insurer after the
14 acquisition will be competent and trustworthy and will possess
15 sufficient managerial experience so as to make the proposed
16 operation of the insurer not hazardous to the insurance-buying
17 public;

18 (h) The management of the insurer after the
19 acquisition will not include any person who has directly or
20 indirectly through ownership, control, reinsurance
21 transactions, or other insurance or business relations
22 unlawfully manipulated the assets, accounts, finances, or
23 books of any insurer or otherwise acted in bad faith with
24 respect thereto;

25 (i) The acquisition is not likely to be hazardous or
26 prejudicial to the insurer's policyholders or the public; and

27 (j) The effect of the acquisition of control would not
28 substantially lessen competition in insurance in this state or
29 would not tend to create a monopoly therein.

30 (8) No vote by the stockholder of record, or by any
31 other person, of any security acquired in contravention of the

1 provisions of this section is valid. Any acquisition of any
2 security contrary to the provisions of this section is void.
3 Upon the petition of the domestic stock insurer or controlling
4 company, the circuit court for the county in which the
5 principal office of such domestic stock insurer is located
6 may, without limiting the generality of its authority, order
7 the issuance or entry of an injunction or other order to
8 enforce the provisions of this section. There shall be a
9 private right of action in favor of the domestic stock insurer
10 or controlling company to enforce the provisions of this
11 section. No demand upon the office ~~department~~ that it perform
12 its functions shall be required as a prerequisite to any suit
13 by the domestic stock insurer or controlling company against
14 any other person, and in no case shall the office ~~department~~
15 be deemed a necessary party to any action by such domestic
16 stock insurer or controlling company to enforce the provisions
17 of this section. Any person who makes or proposes an
18 acquisition requiring the filing of a statement pursuant to
19 this section, or who files such a statement, shall be deemed
20 to have thereby designated the Chief Financial Officer
21 ~~Insurance Commissioner and Treasurer~~, or his or her assistant
22 or deputy or another person in charge of his or her office, as
23 such person's agent for service of process under this section,
24 and shall thereby be deemed to have submitted himself or
25 herself to the administrative jurisdiction of the office
26 ~~department~~ and to the jurisdiction of the circuit court.

27 (9) Any approval by the office ~~department~~ under this
28 section does not constitute a recommendation by the office
29 ~~department~~ for an acquisition, tender offer, or exchange
30 offer. It is unlawful for a person to represent that the
31 office's ~~department's~~ approval constitutes a recommendation. A

1 person who violates the provisions of this subsection is
2 guilty of a felony of the third degree, punishable as provided
3 in s. 775.082, s. 775.083, or s. 775.084. The
4 statute-of-limitations period for the prosecution of an
5 offense committed under this subsection is 5 years.

6 (10) Upon notification to the office ~~department~~ by the
7 domestic stock insurer or a controlling company that any
8 person or any affiliated person of such person has acquired 5
9 percent or more of the outstanding voting securities of the
10 domestic stock insurer or controlling company without
11 complying with the provisions of this section, the office
12 ~~department~~ shall order that the person and any affiliated
13 person of such person cease acquisition of any further
14 securities of the domestic stock insurer or controlling
15 company; however, the person or any affiliated person of such
16 person may request a proceeding, which proceeding shall be
17 convened within 7 days after the rendering of the order for
18 the sole purpose of determining whether the person,
19 individually or in connection with any affiliated person of
20 such person, has acquired 5 percent or more of the outstanding
21 voting securities of a domestic stock insurer or controlling
22 company. Upon the failure of the person or affiliated person
23 to request a hearing within 7 days, or upon a determination at
24 a hearing convened pursuant to this subsection that the person
25 or affiliated person has acquired voting securities of a
26 domestic stock insurer or controlling company in violation of
27 this section, the office ~~department~~ may order the person and
28 affiliated person to divest themselves of any voting
29 securities so acquired.

30
31

1 (11)(a) The office ~~department~~ shall, if necessary to
2 protect the public interest, suspend or revoke the certificate
3 of authority of any insurer or controlling company:

4 1. The control of which is acquired in violation of
5 this section;

6 2. That is controlled, directly or indirectly, by any
7 person or any affiliated person of such person who, in
8 violation of this section, has obtained control of a domestic
9 stock insurer or controlling company; or

10 3. That is controlled, directly or indirectly, by any
11 person who, directly or indirectly, controls any other person
12 who, in violation of this section, acquires control of a
13 domestic stock insurer or controlling company.

14 (b) If any insurer is subject to suspension or
15 revocation pursuant to paragraph (a), the insurer shall be
16 deemed to be in such condition, or to be using or to have been
17 subject to such methods or practices in the conduct of its
18 business, as to render its further transaction of insurance
19 presently or prospectively hazardous to its policyholders,
20 creditors, or stockholders or to the public.

21 (12)(a) For the purpose of this section, the term
22 "affiliated person" of another person means:

23 1. The spouse of such other person;

24 2. The parents of such other person and their lineal
25 descendants and the parents of such other person's spouse and
26 their lineal descendants;

27 3. Any person who directly or indirectly owns or
28 controls, or holds with power to vote, 5 percent or more of
29 the outstanding voting securities of such other person;

30
31

1 4. Any person 5 percent or more of the outstanding
2 voting securities of which are directly or indirectly owned or
3 controlled, or held with power to vote, by such other person;

4 5. Any person or group of persons who directly or
5 indirectly control, are controlled by, or are under common
6 control with such other person;

7 6. Any officer, director, partner, copartner, or
8 employee of such other person;

9 7. If such other person is an investment company, any
10 investment adviser of such company or any member of an
11 advisory board of such company;

12 8. If such other person is an unincorporated
13 investment company not having a board of directors, the
14 depositor of such company; or

15 9. Any person who has entered into an agreement,
16 written or unwritten, to act in concert with such other person
17 in acquiring or limiting the disposition of securities of a
18 domestic stock insurer or controlling company.

19 (b) For the purposes of this section, the term
20 "controlling company" means any corporation, trust, or
21 association owning, directly or indirectly, 25 percent or more
22 of the voting securities of one or more domestic stock
23 insurance companies.

24 (13) The commission may ~~department is authorized to~~
25 adopt, amend, or repeal rules that are necessary to implement
26 the provisions of this section, pursuant to chapter 120.

27 Section 1284. Section 628.4615, Florida Statutes, is
28 amended to read:

29 628.4615 Specialty insurers; acquisition of
30 controlling stock, ownership interest, assets, or control;
31 merger or consolidation.--

1 (1) For the purposes of this section, the term
2 "specialty insurer" means any person holding a license or
3 certificate of authority as:

4 (a) A motor vehicle service agreement company
5 authorized to issue motor vehicle service agreements as those
6 terms are defined in s. 634.011(7) and (8)~~s. 634.011(8) and~~
7 ~~(9)~~;

8 (b) A home warranty association authorized to issue
9 "home warranties" as those terms are defined in s. 634.301(3)
10 and (4)~~s. 634.301(4) and (5)~~;

11 (c) A service warranty association authorized to issue
12 "service warranties" as those terms are defined in s.
13 634.401(13) and (14)~~s. 634.401(14) and (15)~~;

14 (d) A prepaid limited health service organization
15 authorized to issue prepaid limited health service contracts,
16 as those terms are defined in chapter 636 ~~An optometric~~
17 ~~service plan corporation authorized to issue optometric~~
18 ~~service plan contracts as those terms are defined in s.~~
19 ~~637.001(2) and (3)~~;

20 ~~(e) A pharmaceutical service plan corporation~~
21 ~~authorized to issue pharmaceutical service plan contracts as~~
22 ~~those terms are defined in s. 637.1701(2) and (3)~~;

23 ~~(f) A dental service plan corporation licensed to~~
24 ~~issue contracts for dental services pursuant to a dental~~
25 ~~service plan as that term is defined in s. 637.401(1)~~;

26 ~~(g) An ambulance service association authorized to~~
27 ~~issue ambulance service contracts as those terms are defined~~
28 ~~in s. 638.021(1) and (2)~~;

29 ~~(e)(h)~~ An authorized health maintenance organization
30 operating pursuant to s. 641.21;

31

1 ~~(f)(i)~~ An authorized prepaid health clinic operating
2 pursuant to s. 641.405;

3 ~~(g)(j)~~ A legal expense insurance corporation
4 authorized to engage in a legal expense insurance business
5 pursuant to s. 642.021;

6 ~~(h)(k)~~ A provider which is licensed to operate a
7 facility which undertakes to provide continuing care as those
8 terms are defined in s. 651.011(2), ~~(4)~~, (5), and (6), ~~and~~
9 ~~(7)~~;

10 ~~(i)(l)~~ A multiple-employer welfare arrangement
11 operating pursuant to ss. 624.436-624.446;

12 ~~(j)(m)~~ A premium finance company authorized to finance
13 insurance premiums pursuant to s. 627.828; or

14 ~~(k)(n)~~ A corporation authorized to accept donor
15 annuity agreements pursuant to s. 627.481.

16 (2) No person shall, individually or in conjunction
17 with any affiliated person of such person, directly or
18 indirectly, conclude a tender offer or exchange offer for,
19 enter into any agreement to exchange securities for, or
20 otherwise finally acquire, 10 percent or more of the
21 outstanding voting securities of a specialty insurer which is
22 a stock corporation or of a controlling company of a specialty
23 insurer which is a stock corporation; or conclude an
24 acquisition of, or otherwise finally acquire, 10 percent or
25 more of the ownership interest of a specialty insurer which is
26 not a stock corporation or of a controlling company of a
27 specialty insurer which is not a stock corporation, unless:

28 (a) The person or affiliated person has filed with the
29 office ~~department~~ and sent by registered mail to the principal
30 office of the specialty insurer and controlling company an
31 application, signed under oath and prepared on forms

1 prescribed by the commission ~~department~~, that contains the
2 information specified in subsection (4) no later than 5 days
3 after any form of tender offer or exchange offer is proposed,
4 or no later than 5 days after the acquisition of the
5 securities or ownership interest if no tender offer or
6 exchange offer is involved.

7 (b) The office ~~department~~ has approved the tender
8 offer or exchange offer, or acquisition if no tender offer or
9 exchange offer is involved.

10 (3) This section does not apply to any acquisition of
11 voting securities or ownership interest of a specialty insurer
12 or of a controlling company by any person who, on July 9,
13 1986, is the owner of a majority of such voting securities or
14 ownership interest or who, on or after July 9, 1986, becomes
15 the owner of a majority of such voting securities or ownership
16 interest with the approval of the office ~~department~~ pursuant
17 to this section.

18 (4) The application to be filed with the office
19 ~~department~~ and furnished to the specialty insurer and
20 controlling company shall contain the following information
21 and any additional information as the office deems ~~department~~
22 ~~may deem~~ necessary to determine the character, experience,
23 ability, and other qualifications of the person or affiliated
24 person of such person for the protection of the insureds of
25 the insurer and of the public:

26 (a)1. The identity of, and the background information
27 specified in subsection (5) on, each natural person by whom,
28 or on whose behalf, the acquisition is to be made; and,

29 2. If the acquisition is to be made by, or on behalf
30 of, a person other than a natural person and as to any person
31 who controls, either directly or indirectly, such other

1 person, the identity of, and the background information
2 specified in subsection (5) on:

3 a. Each director, officer, or trustee, if a
4 corporation, or

5 b. Each partner, owner, manager, or joint venturer, or
6 other person performing duties similar to those of persons in
7 the aforementioned positions, if not a corporation,
8
9 for the person.

10 (b) The source and amount of the funds or other
11 consideration used, or to be used, in making the acquisition.

12 (c) Any plans or proposals which such persons may have
13 made to liquidate the specialty insurer, to sell any of its
14 assets or merge or consolidate it with any person, or to make
15 any other major change in its business or corporate structure
16 or management; and any plans or proposals which such persons
17 may have made to liquidate any controlling company of the
18 specialty insurer, to sell any of its assets or merge or
19 consolidate it with any person, or to make any other major
20 change in its business or corporate structure or management.

21 (d) The nature and the extent of the controlling
22 interest which the person or affiliated person of such person
23 proposes to acquire, the terms of the proposed acquisition,
24 and the manner in which the controlling interest is to be
25 acquired of a specialty insurer or controlling company which
26 is not a stock corporation.

27 (e) The number of shares or other securities which the
28 person or affiliated person of such person proposes to
29 acquire, the terms of the proposed acquisition, and the manner
30 in which the securities are to be acquired.

31

1 (f) Information as to any contract, arrangement, or
2 understanding with any party with respect to any of the
3 securities of the specialty insurer or controlling company,
4 including, but not limited to, information relating to the
5 transfer of any of the securities, option arrangements, puts
6 or calls, or the giving or withholding of proxies, which
7 information names the party with whom the contract,
8 arrangement, or understanding has been entered into and gives
9 the details thereof.

10 (5)(a) The information as to the background and
11 identity of each natural person, which information is required
12 to be furnished pursuant to paragraph (4)(a), shall include:

13 1. The natural person's occupations, positions of
14 employment, and offices held during the past 10 years.

15 2. The principal business and address of any business,
16 corporation, or organization in which each such office of the
17 natural person was held, or in which each such occupation or
18 position of employment was carried on.

19 3. Whether the natural person was, at any time during
20 such 10-year period, convicted of any crime other than a
21 traffic violation.

22 4. Whether the natural person has been, during such
23 10-year period, the subject of any proceeding for the
24 revocation of any license and, if so, the nature of the
25 proceeding and the disposition of the proceeding.

26 5. Whether, during the 10-year period, the natural
27 person has been the subject of any proceeding under the
28 federal Bankruptcy Act; or whether, during the 10-year period,
29 any person or other business or organization in which the
30 natural person was a director, officer, trustee, partner,
31 owner, manager, or other official has been subject to any such

1 proceeding, either during the time in which the natural person
2 was a director, officer, or trustee, if a corporation, or a
3 partner, owner, manager, joint venturer, or other official, if
4 not a corporation, or within 12 months thereafter.

5 6. Whether, during the 10-year period, the natural
6 person has been enjoined, either temporarily or permanently,
7 by a court of competent jurisdiction from violating any
8 federal or state law regulating the business of insurance,
9 securities, or banking, or from carrying out any particular
10 practice or practices in the course of the business of
11 insurance, securities, or banking, together with details as to
12 any such event.

13 7. Fingerprints of each person referred to in
14 subsection (4).

15 (b) Any person filing the statement required by this
16 section shall give all required information that is within the
17 knowledge of:

18 1. The directors, officers, or trustees, if a
19 corporation, or

20 2. The partners, owners, managers, or joint venturers,
21 or others performing functions similar to those of a director,
22 officer, or trustee, if not a corporation,

23
24 of the person making the filing and of any person controlling
25 either directly or indirectly such person. If any material
26 change occurs in the facts set forth in the application filed
27 with the office ~~department~~ pursuant to this section, an
28 amendment setting forth such changes shall be filed
29 immediately with the office ~~department~~, and a copy of the
30 amendment shall be sent by registered mail to the principal
31

1 office of the specialty insurer and to the principal office of
2 the controlling company.

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

23 (b) During the pendency of the office's ~~department's~~
24 review of any acquisition subject to the provisions of this
25 section, the acquiring person shall not make any material
26 change in the operation of the specialty insurer or
27 controlling company unless the office ~~department~~ has
28 specifically approved the change nor shall the acquiring
29 person make any material change in the management of the
30 specialty insurer unless advance written notice of the change
31 in management is furnished to the office ~~department~~. A

1 material change in the operation of the specialty insurer is a
2 transaction which disposes of or obligates 5 percent or more
3 of the capital and surplus of the specialty insurer. A
4 material change in the management of the specialty insurer is
5 any change in management involving officers or directors of
6 the specialty insurer or any person of the specialty insurer
7 or controlling company having authority to dispose of or
8 obligate 5 percent or more of the specialty insurer's capital
9 or surplus. The office ~~department~~ shall approve a material
10 change in operations if it finds the applicable provisions of
11 subsection (8) have been met. The office ~~department~~ may
12 disapprove a material change in management if it finds that
13 the applicable provisions of subsection (8) have not been met
14 and in such case the specialty insurer shall promptly change
15 management as acceptable to the office ~~department~~.

16 (c) If a request for a proceeding is filed, the
17 proceeding shall be conducted within 60 days after the date
18 the written request for a proceeding is received by the office
19 ~~department~~. A recommended order shall be issued within 20 days
20 of the date of the close of the proceedings. A final order
21 shall be issued within 20 days of the date of the recommended
22 order or, if exceptions to the recommended order are filed,
23 within 20 days of the date the exceptions are filed.

24 (7) The office ~~department~~ may disapprove any
25 acquisition subject to the provisions of this section by any
26 person or any affiliated person of such person who:

27 (a) Willfully violates this section;

28 (b) In violation of an order of the office ~~department~~
29 issued pursuant to subsection (11), fails to divest himself or
30 herself of any stock or ownership interest obtained in
31 violation of this section or fails to divest himself or

1 herself of any direct or indirect control of such stock or
2 ownership interest, within 25 days after such order; or

3 (c) In violation of an order issued by the office
4 ~~department~~ pursuant to subsection (11), acquires an additional
5 stock or ownership interest in a specialty insurer or
6 controlling company or direct or indirect control of such
7 stock or ownership interest, without complying with this
8 section.

9 (8) The person or persons filing the application
10 required by subsection (2) shall have the burden of proof. The
11 office ~~department~~ shall approve any such acquisition if it
12 finds, on the basis of the record made during any proceeding
13 or on the basis of the filed application if no proceeding is
14 conducted, that:

15 (a) Upon completion of the acquisition, the specialty
16 insurer will be able to satisfy the requirements for the
17 issuance of a license or certificate to write the line of
18 insurance for which it is presently licensed or certificated.

19 (b) The financial condition of the acquiring person or
20 persons will not jeopardize the financial stability of the
21 specialty insurer or prejudice the interests of its insureds
22 or the public.

23 (c) Any plan or proposal which the acquiring person
24 has, or acquiring persons have, made:

25 1. To liquidate the specialty insurer, sell its
26 assets, or merge or consolidate it with any person, or to make
27 any other major change in its business or corporate structure
28 or management, or

29 2. To liquidate any controlling company, sell its
30 assets, or merge or consolidate it with any person, or to make
31 any major change in its business or corporate structure or

1 management which would have an effect upon the specialty
2 insurer,

3
4 is fair and free of prejudice to the insureds of the specialty
5 insurer or to the public.

6 (d) The competence, experience, and integrity of those
7 persons who will control directly or indirectly the operation
8 of the specialty insurer indicate that the acquisition is in
9 the best interest of the insureds of the insurer and in the
10 public interest.

11 (e) The natural persons for whom background
12 information is required to be furnished pursuant to this
13 section have such backgrounds as to indicate that it is in the
14 best interests of the insureds of the specialty insurer and in
15 the public interest to permit such persons to exercise control
16 over the specialty insurer.

17 (f) The directors and officers, if such specialty
18 insurer or controlling company is a stock corporation, or the
19 trustees, partners, owners, managers, or joint venturers or
20 other persons performing duties similar to those of persons in
21 the aforementioned positions, if such specialty insurer or
22 controlling company is not a stock corporation, to be employed
23 after the acquisition have sufficient insurance experience and
24 ability to assure reasonable promise of successful operation.

25 (g) The management of the specialty insurer after the
26 acquisition will be competent and trustworthy, and will
27 possess sufficient managerial experience so as to make the
28 proposed operation of the specialty insurer not hazardous to
29 the insurance-buying public.

30 (h) The management of the specialty insurer after the
31 acquisition shall not include any person who has directly or

1 indirectly through ownership, control, reinsurance
2 transactions, or other insurance or business relations
3 unlawfully manipulated the assets, accounts, finances, or
4 books of any insurer or otherwise acted in bad faith with
5 respect thereto.

6 (i) The acquisition is not likely to be hazardous or
7 prejudicial to the insureds of the insurer or to the public.

8 (j) The effect of the acquisition would not
9 substantially lessen competition in the line of insurance for
10 which the specialty insurer is licensed or certified in this
11 state or would not tend to create a monopoly therein.

12 (9) No vote by the stockholder of record, or by any
13 other person, of any security acquired in contravention of the
14 provisions of this section is valid. Any acquisition contrary
15 to the provisions of this section is void. Upon the petition
16 of the specialty insurer or the controlling company, the
17 circuit court for the county in which the principal office of
18 the specialty insurer is located may, without limiting the
19 generality of its authority, order the issuance or entry of an
20 injunction or other order to enforce the provisions of this
21 section. There shall be a private right of action in favor of
22 the specialty insurer or controlling company to enforce the
23 provisions of this section. No demand upon the office
24 ~~department~~ that it perform its functions shall be required as
25 a prerequisite to any suit by the specialty insurer or
26 controlling company against any other person, and in no case
27 shall the office ~~department~~ be deemed a necessary party to any
28 action by the specialty insurer or controlling company to
29 enforce the provisions of this section. Any person who makes
30 or proposes an acquisition requiring the filing of an
31 application pursuant to this section, or who files such an

1 application, shall be deemed to have thereby designated the
2 Chief Financial Officer ~~Insurance Commissioner and Treasurer~~,
3 or his or her assistant or deputy or another person in charge
4 of his or her office, as such person's agent for service of
5 process under this section and shall thereby be deemed to have
6 submitted himself or herself to the administrative
7 jurisdiction of the office ~~department~~ and to the jurisdiction
8 of the circuit court.

9 (10) Any approval by the office ~~department~~ under this
10 section does not constitute a recommendation by the office
11 ~~department~~ of the tender offer or exchange offer, or
12 acquisition, if no tender offer or exchange offer is involved.
13 It is unlawful for a person to represent that the office's
14 ~~department's~~ approval constitutes a recommendation. A person
15 who violates the provisions of this subsection commits a
16 felony of the third degree, punishable as provided in s.
17 775.082, s. 775.083, or s. 775.084. The statute-of-limitations
18 period for the prosecution of an offense committed under this
19 subsection is 5 years.

20 (11) If the office ~~department~~ determines that any
21 person or any affiliated person of such person has acquired 10
22 percent or more of the outstanding voting securities of a
23 specialty insurer or controlling company which is a stock
24 corporation, or 10 percent or more of the ownership interest
25 of a specialty insurer or controlling company which is not a
26 stock corporation, without complying with the provisions of
27 this section, the office ~~department~~ may order that the person
28 and any affiliated person of such person cease acquisition of
29 the specialty insurer or controlling company and, if
30 appropriate, divest itself of any stock or ownership interest
31 acquired in violation of this section.

1 (12)(a) The office ~~department~~ shall, if necessary to
2 protect the public interest, suspend or revoke the certificate
3 of authority of any specialty insurer or controlling company
4 acquired in violation of this section.

5 (b) If any specialty insurer is subject to suspension
6 or revocation pursuant to paragraph (a), the specialty insurer
7 shall be deemed to be in such condition, or to be using or to
8 have been subject to such methods or practices in the conduct
9 of its business, as to render its further transaction of
10 insurance presently or prospectively hazardous to its
11 insureds, creditors, or stockholders or to the public.

12 (13)(a) For the purpose of this section, the term
13 "acquisition" includes:

14 1. A tender offer or exchange offer for securities,
15 assets, or other ownership interest;

16 2. An agreement to exchange securities for other
17 securities, assets, or other ownership interest;

18 3. A merger of a person or affiliated person into a
19 specialty insurer or a merger of any person with a specialty
20 insurer;

21 4. A consolidation; or

22 5. Any other form of change of control
23

24 whereby any person or affiliated person acquires or attempts
25 to acquire, directly or indirectly, 10 percent or more of the
26 ownership interest or assets of a specialty insurer or of a
27 controlling company. However, in the case of a health
28 maintenance organization organized as a for-profit
29 corporation, the provisions of s. 628.451 shall govern with
30 respect to any merger or consolidation, and, in the case of a
31 health maintenance organization organized as a not-for-profit

1 corporation, the provisions of s. 628.471 shall govern with
2 respect to any merger or consolidation.

3 (b) For the purpose of this section, the term
4 "affiliated person" of another person includes:

5 1. The spouse of such other natural person;

6 2. The parents of such other natural person and their
7 lineal descendants and the parents of such other natural
8 person's spouse and their lineal descendants;

9 3. Any person who directly or indirectly owns or
10 controls, or holds with power to vote, 10 percent or more of
11 the outstanding voting securities of such other person;

12 4. Any person who directly or indirectly owns 10
13 percent or more of the outstanding voting securities which are
14 directly or indirectly owned or controlled, or held with power
15 to vote, by such other person;

16 5. Any person or group of persons who directly or
17 indirectly control, are controlled by, or are under common
18 control with such other person;

19 6. Any director, officer, trustee, partner, owner,
20 manager, joint venturer, or employee, or other person
21 performing duties similar to those of persons in the
22 aforementioned positions, of such other person;

23 7. If such other person is an investment company, any
24 investment adviser of such company or any member of an
25 advisory board of such company;

26 8. If such other person is an unincorporated
27 investment company not having a board of directors, the
28 depositor of such company; or

29 9. Any person who has entered into an agreement,
30 written or unwritten, to act in concert with such other person
31 in acquiring, or limiting the disposition of, securities of a

1 specialty insurer or controlling company which is a stock
2 corporation or in acquiring, or limiting the disposition of,
3 an ownership interest of a specialty insurer or controlling
4 company which is not a stock corporation.

5 (c) For the purposes of this section, the term
6 "controlling company" means any corporation, trust, or
7 association owning, directly or indirectly, 25 percent or more
8 of the voting securities of one or more specialty insurance
9 companies which are stock corporations, or 25 percent or more
10 of the ownership interest of one or more specialty insurance
11 companies which are not stock corporations.

12 (d) For the purpose of this section, the term "natural
13 person" means an individual.

14 (e) For the purpose of this section, the term "person"
15 includes a natural person, corporation, association, trust,
16 general partnership, limited partnership, joint venture, firm,
17 proprietorship, or any other entity which may hold a license
18 or certificate as a specialty insurer.

19 (14) The commission may ~~department is authorized to~~
20 adopt, amend, or repeal rules that are necessary to implement
21 the provisions of this section, pursuant to chapter 120.

22 Section 1285. Subsections (3) and (4) of section
23 628.471, Florida Statutes, are amended to read:

24 628.471 Mergers; mutual insurers.--

25 (3) The plan and agreement for merger shall be
26 submitted to and approved by at least two-thirds of the
27 members of each mutual insurer voting thereon at meetings
28 called for the purpose pursuant to such reasonable notice and
29 procedure as has been approved by the office ~~department~~. If a
30 life insurer, the right to vote may be limited to members
31

1 whose policies are other than term and group policies and have
2 been in effect for more than 1 year.

3 (4) No such merger shall be effectuated unless in
4 advance thereof the plan and agreement therefor have been
5 filed with the office ~~department~~ and approved by it. The
6 office ~~department~~ shall give such approval unless it finds
7 such plan or agreement:

8 (a) Is inequitable to the policyholders of any
9 domestic insurer involved; or

10 (b) Would substantially reduce the security of and
11 service to be rendered to policyholders of the domestic
12 insurer in this state and elsewhere.

13 Section 1286. Section 628.481, Florida Statutes, is
14 amended to read:

15 628.481 Bulk reinsurance; stock insurers.--

16 (1) A domestic stock insurer may reinsure all or
17 substantially all of its insurance in force or a major class
18 thereof, with another insurer by an agreement of bulk
19 reinsurance; but no such agreement shall become effective
20 unless filed with the office ~~department~~ and approved by it in
21 writing.

22 (2) The office ~~department~~ shall approve such agreement
23 unless it finds that it is inequitable to the stockholders of
24 the domestic insurer or it would substantially reduce the
25 protection or service to its policyholders.

26 Section 1287. Section 628.491, Florida Statutes, is
27 amended to read:

28 628.491 Mergers and consolidations; mutual insurers;
29 agreement of bulk reinsurance.--

30 (1) A domestic mutual insurer may reinsure all or
31 substantially all its business in force, or all or

1 substantially all of a major class thereof, with another
2 insurer, stock or mutual, by an agreement of bulk reinsurance
3 after compliance with this section. No such agreement shall
4 become effective unless filed with the office ~~department~~ and
5 approved by it.

6 (2) The office ~~department~~ shall approve such agreement
7 if it finds it to be fair and equitable to each domestic
8 insurer involved, and that such reinsurance if effectuated
9 would not substantially reduce the protection or service to
10 its policyholders.

11 (3) The plan and agreement for such reinsurance must
12 be approved by vote of not less than two-thirds of each
13 domestic mutual insurer's members voting thereon at meetings
14 of members called for the purpose, pursuant to such reasonable
15 notice and procedure as the office ~~department~~ may approve. If
16 a life insurer, the right to vote may be limited to members
17 whose policies are other than term or group policies and have
18 been in effect for more than 1 year.

19 (4) If for reinsurance of a mutual insurer in a stock
20 insurer, the agreement must provide for payment in cash to
21 each member of the insurer entitled thereto, as upon
22 conversion of such insurer pursuant to s. 628.441, of his or
23 her equity in the business reinsured as determined under a
24 fair formula approved by the office ~~department~~, which equity
25 shall be based upon such member's equity in the reserves,
26 assets (whether or not admitted assets), and surplus, if any,
27 of the mutual insurer to be taken over by the stock insurer.

28 Section 1288. Section 628.501, Florida Statutes, is
29 amended to read:

30 628.501 Mutual member's share of assets on
31 liquidation.--

1 (1) Upon any liquidation of a domestic mutual insurer,
2 its assets remaining after discharge of its indebtedness,
3 policy obligations, repayment of contributed or borrowed
4 surplus, if any, and expenses of administration, shall be
5 distributed to existing persons who were its members at any
6 time within 5 years next preceding the date such liquidation
7 was authorized or ordered, or date of last termination of the
8 insurer's certificate of authority, whichever date is the
9 earlier; except, that if the office ~~department~~ has reason to
10 believe that those in charge of the management of the insurer
11 have caused or encouraged the reduction of the number of
12 members of the insurer in anticipation of liquidation and for
13 the purpose of reducing thereby the number of persons who may
14 be entitled to share in distribution of the insurer's assets,
15 it may enlarge the 5 years' qualification period above
16 provided for by such additional period as it may deem to be
17 reasonable.

18 (2) The distributive share of each such member shall
19 be in the proportion that the aggregate premiums earned by the
20 insurer on the policies of the member during the combined
21 periods of his or her membership bear to the aggregate of all
22 premiums so earned on the policies of all such members. The
23 insurer may, and if a life insurer shall, make a reasonable
24 classification of its policies so held by such members, and a
25 formula based upon such classification, for determining the
26 equitable distributive share of each such member. Such
27 classification and formula shall be subject to the approval of
28 the office ~~department~~.

29 Section 1289. Subsections (1), (2), and (4) of section
30 628.511, Florida Statutes, are amended to read:

31 628.511 Book entry accounting system.--

1 (1) The purpose of this section is to authorize
2 domestic insurers to utilize modern systems for holding and
3 transferring securities without physical delivery of
4 securities certificates, subject to appropriate rules of the
5 commission ~~department~~.

6 (2) The following terms are defined for use in this
7 section:

8 (a) "Securities" means instruments as defined in s.
9 678.1021 ~~s. 678.102(1)~~.

10 (b) "Clearing corporation" means a clearing
11 corporation as defined in s. 678.1021 ~~s. 678.102(3)~~.

12 (c) "Direct participant" means a national bank, state
13 bank or trust company which maintains an account in its name
14 in a clearing corporation and through which an insurance
15 company participates in a clearing corporation.

16 (d) "Federal Reserve book-entry system" means the
17 computerized systems sponsored by the United States Department
18 of the Treasury and agencies and instrumentalities of the
19 United States for holding and transferring securities of the
20 United States Government and such agencies and
21 instrumentalities, respectively, in Federal Reserve banks
22 through banks which are members of the Federal Reserve System
23 or which otherwise have access to such computerized systems.

24 (e) "Member bank" means a national bank, state bank or
25 trust company which is a member of the Federal Reserve System
26 and through which an insurer participates in the Federal
27 Reserve book-entry system.

28 (4) The commission may adopt ~~department is authorized~~
29 ~~to promulgate~~ rules governing the deposit by insurers of
30 securities with clearing corporations and in the Federal
31 Reserve book-entry system.

1 Section 1290. Section 628.520, Florida Statutes, is
2 amended to read:

3 628.520 Change of domicile of a foreign insurer.--Any
4 insurer which is organized under the laws of any other state
5 for the purpose of writing insurance may become a domestic
6 insurer by complying with all of the requirements of law
7 relative to the organization and licensing of a domestic
8 insurer of the same type and by designating its principal
9 place of business at a place in this state upon approval by
10 the office ~~department~~. Such domestic insurer shall be entitled
11 to like certificates and licenses to transact business in this
12 state and shall be subject to the authority and jurisdiction
13 of this state.

14 Section 1291. Section 628.525, Florida Statutes, is
15 amended to read:

16 628.525 Change of domicile of a domestic insurer.--Any
17 domestic insurer may, upon the approval of the office
18 ~~department~~, transfer its domicile to any other state in which
19 it is admitted to transact the business of insurance; upon
20 such a transfer it shall cease to be a domestic insurer and
21 shall be admitted to this state, if qualified, as a foreign
22 insurer. The office ~~department~~ shall approve any such
23 proposed transfer unless it shall determine that such transfer
24 is not in the interest of the policyholders of this state.

25 Section 1292. Section 628.530, Florida Statutes, is
26 amended to read:

27 628.530 Effects of redomestication.--The certificate
28 of authority, agents appointments and licenses, rates, and
29 other items which the office or ~~department~~ allows, in its
30 discretion, which are in existence at the time any insurer
31 licensed to transact the business of insurance in this state

1 transfers its corporate domicile to this or any other state by
2 merger, consolidation, merger pursuant to s. 607.1107(5), or
3 any other lawful method shall continue in full force and
4 effect upon such transfer if such insurer remains duly
5 qualified to transact the business of insurance in this state.
6 All outstanding policies of any transferring insurer shall
7 remain in full force and effect and need not be endorsed as to
8 the new name of the company or its new location unless so
9 ordered by the office ~~department~~. Every transferring insurer
10 shall file new policy forms with the office ~~department~~ on or
11 before the effective date of the transfer, but may use
12 existing policy forms with appropriate endorsements if allowed
13 by, and under such conditions as are approved by, the office
14 ~~department~~. However, every such transferring insurer shall
15 notify the office ~~department~~ of the details of the proposed
16 transfer and shall file promptly any resulting amendments to
17 corporate documents filed or required to be filed with the
18 office ~~department~~.

19 Section 1293. Section 628.535, Florida Statutes, is
20 amended to read:

21 628.535 Authority to adopt ~~promulgate~~ rules.--The
22 commission may ~~department has authority to~~ adopt rules
23 pursuant to ss. 120.536(1) and 120.54 to implement the
24 provisions of this chapter.

25 Section 1294. Subsections (1) and (9) of section
26 628.6013, Florida Statutes, are amended to read:

27 628.6013 Converted self-insurance fund; trade
28 association; board of directors.--

29 (1) Any self-insurance fund regulated under the
30 insurance code other than a commercial self-insurance fund
31 may, with the approval of a majority of the members of the

1 fund and after written notice to the sponsoring association
2 and approved by the office ~~department~~, elect to convert to an
3 assessable mutual insurer in accordance with part I.

4 (9) A management company may be authorized by the
5 office ~~department~~ to manage and operate an assessable mutual
6 insurer only if its owners, partners, stockholders, officers,
7 or directors, and other persons who directly or indirectly
8 exercise or have the ability to exercise effective control of
9 the management company, possess the competency and business
10 experience to manage and operate an assessable mutual insurer.

11 Section 1295. Subsection (2) of section 628.6014,
12 Florida Statutes, is amended to read:

13 628.6014 Annual reports.--

14 (2) For financial statements filed on or after January
15 1, 1998, future investment income may only be reported as an
16 admitted asset by an assessable mutual which reported future
17 investment income in financial statements filed with the
18 former Department of Insurance prior to December 31, 1996.

19 Section 1296. Subsections (1) and (4) of section
20 628.6017, Florida Statutes, are amended to read:

21 628.6017 Converting assessable mutual insurer.--

22 (1) An assessable mutual insurer may become a stock
23 insurer by filing an application which complies with s.
24 628.051 and by submitting a plan of conversion which is
25 approved by the office ~~department~~. The office ~~department~~ shall
26 not approve any such plan unless the plan:

27 (a) Is equitable to the insurer's members.

28 (b) Is subject to approval by vote of not less than
29 two-thirds of the insurer's current members voting thereon in
30 person, by proxy, or by mail at a meeting of members called
31 for the purpose pursuant to such reasonable notice and

1 procedure as may be approved by the office ~~department~~. In no
2 event shall the failure to vote constitute a vote for
3 approval.

4 (c) Provides for the determination of the membership
5 interests of each policyholder in the insurer, taking into
6 account the relative corporate equity of the policyholder,
7 other than as to unearned premiums and benefit claims under
8 the policy, under a fair formula approved by the office
9 ~~department~~.

10 (d) Provides for the payment of consideration to each
11 policyholder in return for his or her membership interests in
12 the assessable mutual insurer.

13 (e) Provides for the payment of consideration to be
14 given in exchange for the policyholders' membership interests
15 in cash, securities of the reorganized insurer, securities of
16 another company, surplus notes or other evidence of borrowed
17 surplus, additional insurance, premium credits, additional
18 benefits, increased dividends, cancellation of future
19 assessment obligations, or other consideration or any
20 combination of any such forms of consideration.

21 (f) Provides that persons who had been policyholders
22 of the insurer within 3 years prior to the date such plan was
23 submitted to the office ~~department~~ shall participate in the
24 distribution of consideration to policyholders.

25
26 When the plan of reorganization becomes effective, the
27 assessable mutual insurer shall become a stock insurer and the
28 stock insurer shall be deemed to be a continuation of the
29 corporate existence of the assessable mutual insurer. The
30 provisions of s. 628.441 do not apply to the conversion of an
31 assessable mutual insurer into a stock insurer. The provisions

1 of s. 628.441 shall not apply to the conversion of an
2 assessable mutual insurer to a stock insurer.

3 (4) An assessable mutual insurer becoming a stock
4 insurer or a nonassessable mutual insurer shall not be subject
5 to s. 627.215 or s. 627.351(5) for 5 years following
6 authorization of the conversion by the office ~~department~~.
7 However, the converted stock insurer or nonassessable mutual
8 insurer shall file all necessary data required by s. 627.215.
9 Such amounts otherwise subject to s. 627.215(10) shall be
10 maintained as surplus as to policyholders and not be available
11 for dividends for a period of 5 years.

12 Section 1297. Subsection (2) of section 628.705,
13 Florida Statutes, is amended to read:

14 628.705 Prohibition of stock transfers.--

15 (2) Voting shares of the capital stock of a subsidiary
16 insurance company or the intermediate holding company may not
17 be acquired by any affiliated member of the holding company
18 system except where the affiliated member of the mutual
19 holding company system is the majority shareholder. A number
20 of shares equal to 5 percent of the outstanding voting shares
21 of the capital stock of one corporate member of the Mutual
22 Insurance Holding Company System selected by the mutual
23 insurance holding company may be issued or sold to directors
24 and officers as part of a plan of compensation, and such
25 shares shall not be considered part of the majority shares to
26 be owned by the mutual insurance company under subsection (1).
27 A number of shares equal to an additional 5 percent of the
28 outstanding voting shares of the capital stock of one
29 corporate member of the Mutual Insurance Holding Company
30 System selected by the mutual insurance holding company may be
31 issued or sold to employees, which may not include any officer

1 or director, as part of an employee stock dividend or benefit
2 plan, and such shares shall not be considered part of the
3 majority shares to be owned by the mutual insurance company
4 under subsection (1). Prior to issuance of shares in excess
5 of the authorized 5 percent to either officers and directors
6 or employees, pursuant to this section, a fairness opinion
7 shall be rendered by an independent authority acceptable to
8 the office ~~department~~ to assure that the long term interests
9 of the shareholders and policyholders are adequately
10 protected. The office ~~department~~ shall approve or disapprove
11 the transaction within 30 days after receipt of the fairness
12 opinion. Nothing in this section prohibits any officer or
13 director from purchasing shares of stock at market value which
14 are not part of a plan of compensation, in accordance with the
15 requirements of s. 628.461, and, if such stock is not
16 regularly traded on a national stock exchange, the officer or
17 director purchasing the shares of stock is responsible for
18 establishing its market value.

19 Section 1298. Subsection (2) of section 628.707,
20 Florida Statutes, is amended to read:

21 628.707 Applicability of general corporation
22 statutes.--The applicable statutes of this state relating to
23 the powers and procedures of domestic private corporations
24 formed for profit shall apply to domestic mutual insurance
25 holding companies, except:

26 (2) The articles of incorporation of the mutual
27 insurance holding company, and any amendment to such articles
28 or restatement of such articles shall be subject to the
29 approval of the office ~~department~~ for compliance with the
30 provisions of this act prior to filing with the Department of
31

1 State, and shall contain the name of the mutual insurance
2 holding company, which shall include the word "Mutual."

3 Section 1299. Subsections (3), (4), and (5) of section
4 628.711, Florida Statutes, are amended to read:

5 628.711 Plan of reorganization.--

6 (3) Following the adoption of a plan of
7 reorganization, and prior to the meeting of the mutual
8 insurance company members to approve the plan, the mutual
9 insurance company shall submit to the office ~~department~~ the
10 following:

11 (a) The plan of reorganization, as adopted.

12 (b) The form of notice to be sent to the mutual
13 insurance company members, informing them of their right to
14 vote on the plan of reorganization.

15 (c) The form of proxy statement to be sent to the
16 mutual insurance company members, informing them of their
17 right to vote by proxy on the plan of reorganization, and
18 describing the plan.

19 (d) The form of proxy to be sent to the mutual
20 insurance company members to solicit their vote on the plan of
21 reorganization.

22 (e) Proposed articles of incorporation, merger, or
23 consolidation, restatements of or amendments to articles of
24 incorporation or bylaws, and plans of merger or consolidation,
25 with respect to each entity to be organized, reorganized, or
26 otherwise subject to such action under the plan of
27 reorganization.

28 (f) A proposed business plan for the 3 years following
29 the date of the reorganization.

30 (g) An audited financial statement prepared on a
31 statutory basis consistent with the Florida Insurance Code,

1 including an actuarial opinion for the most recent calendar
2 year ended, or a copy thereof, if the statement was previously
3 filed with the office ~~department~~.

4 (4) The office ~~department~~ may hold a public hearing to
5 allow public comment on the plan of reorganization. Any
6 hearing must be held within 30 days after receipt by the
7 office ~~department~~ of a completed plan of reorganization. The
8 office ~~department~~ may not approve a plan of reorganization
9 unless it finds that it is fair and equitable to the members
10 of the mutual insurance company. Ninety days after filing, the
11 plan of reorganization shall be deemed approved unless it has
12 previously been approved or disapproved by the office
13 ~~department~~. The office ~~department~~ shall inform the mutual
14 insurer of the specific reasons for the disapproval of any
15 plan of reorganization.

16 (5)(a) A plan of reorganization adopted by the board
17 of directors of the applicant may be:

18 1. Amended by the board of directors of the applicant
19 in response to the comments or recommendations of the office
20 ~~department~~, or any other state or federal agency or
21 governmental entity, before any solicitation of proxies from
22 members of the mutual insurance company to vote on the plan of
23 reorganization, or at any time with the consent of the office
24 ~~department~~, except that any material amendment after the
25 members' approval shall require the members' approval; or

26 2. Terminated by the board of directors of the
27 applicant at any time before members of the mutual insurance
28 company vote on the plan of reorganization and, otherwise, at
29 any time with the consent of the office ~~department~~.

30 (b) The plan of reorganization is approved upon the
31 affirmative vote of at least a majority of the votes cast by

1 members of the mutual insurance company, notwithstanding
2 quorum or voting action requirements otherwise applicable to
3 the mutual insurance company to the contrary.

4 (c) Within 30 days after members have approved the
5 plan of reorganization, the applicant must file with the
6 office ~~department~~ the minutes of the meeting at which the plan
7 of reorganization was approved.

8 Section 1300. Section 628.713, Florida Statutes, is
9 amended to read:

10 628.713 Dividends.--A mutual insurance holding company
11 shall not be authorized to pay dividends or make distributions
12 to mutual insurance holding company members except as may be
13 expressly approved by the office ~~department~~. Neither the
14 adoption nor the implementation of a plan of reorganization
15 shall be deemed to give rise to any obligation by or on behalf
16 of a mutual insurance company to make any distribution or
17 payment to any member or policyholder, or to any other person,
18 fund, or entity of any nature whatsoever, in connection with
19 the ownership, control, benefits, policies, purpose, or nature
20 of the mutual insurance company or otherwise, including, but
21 not limited to, requirements imposed by the conversion and
22 bulk reinsurance provisions of ss. 628.441 and 628.491.

23 Section 1301. Section 628.715, Florida Statutes, is
24 amended to read:

25 628.715 Merger and acquisitions.--Subject to
26 applicable requirements of this chapter, a mutual insurance
27 holding company may:

28 (1)(a) Merge or consolidate with, or acquire the
29 assets of, a mutual insurance holding company licensed
30 pursuant to this act or any similar entity organization
31 pursuant to laws of any other state;

1 (b) Either alone or together with one or more
2 intermediate stock holding companies, or other subsidiaries,
3 directly or indirectly acquire the stock of a stock insurance
4 company or a mutual insurance company that reorganizes under
5 this act or the law of its state of organization;

6 (c) Together with one or more of its stock insurance
7 company subsidiaries, acquire the assets of a stock insurance
8 company or a mutual insurance company;

9 (d) Acquire a stock insurance company through the
10 merger of such stock insurance subsidiary with a stock
11 insurance company or interim stock insurance company
12 subsidiary of the mutual insurance holding company;

13 (e) Acquire the stock or assets of any other person to
14 the same extent as would be permitted for any not-for-profit
15 corporation under chapter 617 or, if the mutual insurance
16 holding company writes insurance, a mutual insurance company;

17 (f) Jointly, with a domestic or foreign mutual
18 insurance company which redomesticates pursuant to s. 628.520,
19 file an application with the office ~~department~~, pursuant to
20 the provisions of this part, to merge the domestic or foreign
21 mutual insurance company policyholder's membership interests
22 into the mutual insurance holding company. The reorganizing
23 mutual insurance company may merge with the mutual insurance
24 holding company's stock subsidiary or continue its corporate
25 existence as a domestic stock insurance company subsidiary.
26 The members of the foreign mutual insurance company may
27 approve in a contemporaneous vote both the redomestication
28 plan and the agreement for merger and reorganization; or

29 (g) Merge or consolidate with, or acquire the assets
30 of, a domestic or foreign reciprocal insurance company, a
31 group self-insurance fund, or any other similar entity.

1 (2) A reorganization pursuant to this section is
2 subject to the applicable procedures prescribed by the laws of
3 this state applying to corporations formed for profit, except
4 as otherwise provided in this subsection.

5 (a) The plan and agreement for merger shall be
6 submitted to and approved by a majority of the members,
7 policyholders, or subscribers of each domestic mutual
8 insurance holding company, mutual insurance company, stock
9 insurance company, or domestic or foreign reciprocal insurance
10 company, involved in the merger who vote either in person or
11 by proxy thereon at meetings called for the purposes pursuant
12 to such reasonable notice and procedure as has been approved
13 by the office ~~department~~.

14 (b) No such merger shall be effectuated unless in
15 advance thereof, the plan and agreement therefor have been
16 filed with the office ~~department~~ and approved by it after a
17 public hearing, which shall be held within 90 days after
18 receipt by the office ~~department~~ of such plan and agreement.
19 The office ~~department~~ may retain outside consultants to
20 evaluate the merger. The domestic mutual insurance holding
21 company shall pay reasonable costs associated with retaining
22 such consultants. Such payments shall be made directly to the
23 consultant. The office ~~department~~ shall give such approval
24 unless it finds such plan or agreement:

25 1. Is inequitable to the policyholders of any domestic
26 insurer involved in the merger or the members of any domestic
27 mutual insurance holding company involved in the merger; or

28 2. Would substantially reduce the security of and
29 service to be rendered to policyholders of a domestic insurer
30 in this state.

31

1 (c) All of the initial shares of the capital stock of
2 the reorganized subsidiary insurance company shall be issued
3 either to the mutual insurance holding company, or to an
4 intermediate holding company which is wholly owned by the
5 mutual insurance holding company. The membership interests of
6 the policyholders of the reorganized insurance company shall
7 become membership interests in the mutual insurance holding
8 company. Policyholders of the reorganized insurance company
9 shall be members of the mutual insurance holding company in
10 accordance with the articles of incorporation and bylaws of
11 the mutual insurance holding company. The mutual insurance
12 holding company shall at all times own a majority of the
13 voting shares of the capital stock of the reorganized
14 subsidiary insurance company.

15 (d) For property and casualty insurers, the rights of
16 the members of the merging entities under s. 628.729, for a
17 period of 3 years after the merger, shall be the proportionate
18 share of the total surplus of the merging entities as
19 determined by the percentage of the surplus contributed by
20 each of the merging entities to the total surplus of the
21 surviving entity on the date of the merger.

22 Section 1302. Section 628.717, Florida Statutes, is
23 amended to read:

24 628.717 Filing of articles of incorporation.--

25 (1) No mutual insurance holding company shall be
26 formed unless its articles of incorporation are approved by
27 the office ~~department~~ prior to filing the same with and
28 approval by the Department of State as provided by law.

29 (2) The office ~~department~~ shall promptly examine the
30 articles of incorporation; and, if it finds that the articles
31 of incorporation comply with law, the office ~~department~~ shall

1 endorse its approval upon each of the originals, place one on
2 file in its office, and return the remaining sets to the
3 incorporators. The incorporators shall promptly file such
4 endorsed articles of incorporation with the Department of
5 State. The articles of incorporation shall be effective when
6 filed with and approved by the Department of State.

7 Section 1303. Subsection (2) of section 628.719,
8 Florida Statutes, is amended to read:

9 628.719 Amendment of articles of incorporation.--

10 (2)(a) Upon adoption of an amendment, the mutual
11 insurance holding company shall make under its corporate seal
12 a certificate thereof, setting forth the amendment and the
13 date and manner of the adoption thereof, which certificate
14 shall be executed by the mutual insurance holding company's
15 president or vice president and secretary or assistant
16 secretary and acknowledged before an officer authorized to
17 take acknowledgments. The mutual insurance holding company
18 shall deliver the originals of the certificate to the office
19 ~~department~~.

20 (b) The office ~~department~~ shall promptly examine the
21 certificate of amendment, and, if the office ~~department~~ finds
22 that the certificate and the amendment comply with law, the
23 office ~~department~~ shall endorse its approval upon each of the
24 originals, place one on file in its office, and return the
25 remaining sets to the mutual insurance holding company. The
26 mutual insurance holding company shall promptly file such
27 endorsed certificates of amendment with the Department of
28 State. The amendment shall be effective when filed with and
29 approved by the Department of State.

30 Section 1304. Subsection (3) of section 628.721,
31 Florida Statutes, is amended to read:

1 628.721 Bylaws.--

2 (3) The mutual insurance holding company shall file
3 within 30 days with the office ~~department~~ a copy, certified by
4 the mutual insurance holding company's secretary, of its
5 bylaws and of every modification thereof or addition thereto.
6 The office ~~department~~ shall promptly disapprove any bylaw
7 provision deemed by it to be unlawful, unreasonable,
8 inadequate, unfair, or detrimental to the proper interests or
9 protection of the mutual insurance holding company's members
10 or any class thereof. The insurer shall not, after receiving
11 written notice of such disapproval and during the existence
12 thereof, effectuate any bylaw provision disapproved.

13 Section 1305. Section 628.725, Florida Statutes, is
14 amended to read:

15 628.725 Notice of change of director or officer.--A
16 mutual insurance holding company shall give the office
17 ~~department~~ written notice of any change of personnel among the
18 directors or principal officers of the mutual insurance
19 holding company within 45 days after such change. The written
20 notice shall include all information necessary to allow the
21 office ~~department~~ to determine that the mutual insurance
22 holding company's subsidiary stock insurers will be in
23 compliance with s. 624.404(3) and, at a minimum, shall contain
24 information similar to the information required by s.
25 628.051(2)(b), (c), and (d) for directors of insurance
26 companies.

27 Section 1306. Subsection (1) of section 628.729,
28 Florida Statutes, is amended to read:

29 628.729 Member's share of assets on voluntary
30 dissolution.--

31

1 (1) Upon any voluntary dissolution of a domestic
2 mutual insurance holding company, its assets remaining after
3 discharge of its indebtedness, if any, and expenses of
4 administration, shall be distributed to existing persons who
5 were its members at any time within the 3-year period
6 preceding the date such liquidation was authorized or ordered,
7 or date of last termination of the insurer's certificate of
8 authority, whichever date is earlier; except, if the office
9 ~~department~~ has reason to believe that those in charge of the
10 management of the mutual insurance holding company have caused
11 or encouraged the reduction of the number of members of the
12 insurer in anticipation of liquidation and for the purpose of
13 reducing thereby the number of persons who may be entitled to
14 share in distribution of the insurer's assets, the office
15 ~~department~~ may enlarge the 3-year qualification period by such
16 additional time as the office ~~department~~ may deem to be
17 reasonable.

18 Section 1307. Section 628.730, Florida Statutes, is
19 amended to read:

20 628.730 Merger with intermediate holding company.--

21 (1) A mutual insurance holding company may, pursuant
22 to a plan and agreement of merger approved by the office
23 ~~department~~, in accordance with s. 628.715(2)(b), merge into
24 its intermediate holding company. The surviving intermediate
25 holding company shall assume all of the assets and liabilities
26 of the mutual insurance holding company, and all of the stock
27 of the intermediate holding company owned by the mutual
28 insurance holding company immediately prior to the merger
29 shall be distributed to existing persons who were members of
30 the mutual insurance holding company at any time within the
31 3-year period preceding the date of such merger.

1 (2) The distributive share of each such member shall
2 be determined by a formula based upon such reasonable
3 classifications of members as the office department may
4 approve.

5 (3) For purposes of creating a public market for the
6 shares of the intermediate holding company, the mutual
7 insurance holding company may, immediately prior to the
8 merger, sell or cause the intermediate holding company to sell
9 to the public up to 25 percent of its capital stock
10 representing no more than 25 percent of the voting stock of
11 the intermediate holding company.

12 (4) The office department shall hold a public hearing
13 to allow public comment on the plan and agreement of merger.
14 The hearing must be held within 90 days after receipt of the
15 office department of the proposed plan and agreement of
16 merger.

17 (5) The plan and agreement of merger shall be
18 submitted to the members of the mutual holding company for
19 their approval and shall take effect only if approved by a
20 majority of the members of the mutual insurance holding
21 company who vote either in person or by proxy on such merger
22 at a meeting called for the purpose of voting on such merger,
23 pursuant to reasonable notice and procedures as approved by
24 the office department.

25 Section 1308. Section 628.733, Florida Statutes, is
26 amended to read:

27 628.733 Converting mutual insurance holding company.--

28 (1) A mutual insurance holding company may become a
29 stock holding company under such plan and procedure as may be
30 approved by the office department.

31

1 (2) The office ~~department~~ shall not approve any such
2 plan and procedure unless:

3 (a) The plan and procedure is subject to approval by
4 vote of not less than a majority of the company's current
5 members voting thereon in person, by proxy, or by mail at a
6 meeting of members called for the purpose pursuant to such
7 reasonable notice and procedure as may be approved by the
8 office ~~department~~.

9 (b) The corporate equity of each member is
10 determinable under a fair formula approved by the office
11 ~~department~~, which equity shall be based upon not more than the
12 company's net assets.

13 (c) The persons entitled to participate in the
14 distribution of stock shall include all current members and
15 all existing persons who had been members within 3 years prior
16 to the date such plan was submitted to the office ~~department~~.

17 (d) The plan calls for the distribution to each person
18 as specified in paragraph (c) of capital stock or other
19 property of the stock holding company, using each person's
20 equity as determined under paragraph (b).

21 (e) The plan gives to each member as specified in
22 paragraph (c) a preemptive right to acquire his or her
23 proportionate part of all of the proposed capital stock of the
24 new stock holding company, within a designated reasonable
25 period, and to apply upon the purchase thereof the amount of
26 his equity as determined under paragraph (b).

27 (f) Shares are so offered to policyholders at a price
28 not greater than to be thereafter offered to others.

29 (g) The plan provides for payment of cash to each
30 member not electing to apply his or her equity towards the
31 purchase price of stock to which he or she is preemptively

1 entitled. The amount so paid shall be not less than 50 percent
2 of the amount of his or her equity not so used for the
3 purchase of stock. Such cash payment together with stock so
4 purchased, if any, shall constitute full payment and discharge
5 of the member's corporate equity in such mutual insurance
6 holding company.

7 Section 1309. Section 628.801, Florida Statutes, is
8 amended to read:

9 628.801 Insurance holding companies; registration;
10 regulation.--Every insurer which is authorized to do business
11 in this state and which is a member of an insurance holding
12 company shall register with the office ~~department~~ and be
13 subject to regulation with respect to its relationship to such
14 holding company as provided by rule or statute. The commission
15 ~~department~~ shall adopt rules establishing the information and
16 form required for registration and the manner in which
17 registered insurers and their affiliates shall be regulated.
18 The rules shall apply to domestic insurers, foreign insurers,
19 and commercially domiciled insurers, except a foreign insurer
20 domiciled in states that are accredited by the National
21 Association of Insurance Commissioners by December 31, 1995.
22 Except to the extent of any conflict with this code, the rules
23 must include all requirements and standards of ss. 4 and 5 of
24 the Insurance Holding Company System Regulatory Act and the
25 Insurance Holding Company System Model Regulation of the
26 National Association of Insurance Commissioners, as the
27 Regulatory Act and the Model Regulation existed on January 1,
28 1997, and may include a prohibition on oral contracts between
29 affiliated entities. Upon request, the office ~~department~~ may
30 waive filing requirements under this section for a domestic
31 insurer that is the subsidiary of an insurer that is in full

1 compliance with the insurance holding company registration
2 laws of its state of domicile, which state is accredited by
3 the National Association of Insurance Commissioners.

4 Section 1310. Subsection (1) of section 628.802,
5 Florida Statutes, is amended to read:

6 628.802 Injunction.--

7 (1) Whenever it appears to the office ~~department~~ that
8 any insurer or any director, officer, or employee thereof, or
9 appears to the department that any agent thereof has committed
10 or is about to commit a violation of this part or of any rule
11 or order issued by the commission, office, or department
12 pursuant to this part, the office or department may apply to
13 the circuit court in and for Leon County for an order
14 enjoining the insurer, director, officer, employee, or agent
15 from violating or continuing to violate this part or the rule
16 or order and for other equitable relief as the nature of the
17 case and the interest of the insurer's policyholders,
18 creditors, and shareholders or the public may require.

19 Section 1311. Section 628.803, Florida Statutes, is
20 amended to read:

21 628.803 Sanctions.--

22 (1) Any company failing, without just cause, to file
23 any registration statement or certificate of exemption
24 required to be filed pursuant to commission ~~department~~ rules
25 relating to this part shall, in addition to other penalties
26 prescribed under the Florida Insurance Code, be subject to pay
27 a penalty of \$100 for each day's delay, not to exceed a total
28 of \$10,000.

29 (2) Every director or officer of an insurance holding
30 company system who knowingly violates or participates in, or
31 who knowingly directs any of the officers or agents of the

1 company to engage in transactions or make investments which
2 have not been properly filed or approved or which violate
3 commission ~~department~~ rules relating to this part, shall pay,
4 in their individual capacity, a civil forfeiture of not more
5 than \$5,000 per violation. In determining the amount of the
6 civil forfeiture, the office ~~department~~ shall take into
7 account the appropriateness of the forfeiture with respect to
8 the gravity of the violation, and the history of previous
9 violations.

10 (3) Whenever it appears to the office ~~department~~ that
11 any insurer subject to this part or any director, officer,
12 employee, or agent thereof has engaged in any transaction or
13 entered into a contract which violates commission ~~department~~
14 rules relating to this part, the office ~~department~~ may order
15 the insurer to cease and desist immediately any further
16 activity under that transaction or contract. The office
17 ~~department~~ may also order the insurer to void any such
18 transaction or contract and restore the status quo if this
19 action is in the best interest of the policyholders,
20 creditors, or public.

21 (4) Any officer, director, or employee of an insurance
22 holding company system who willfully and knowingly subscribes
23 to, or makes or causes to be made, any false statements, false
24 reports, or false filings with the intent to deceive the
25 office ~~department~~ in the performance of its duties under this
26 part is guilty of a felony of the third degree, punishable as
27 provided in s. 775.082, s. 775.083, or s. 775.084.

28 Section 1312. Subsections (1) and (3) of section
29 628.905, Florida Statutes, are amended to read:

30 628.905 Licensing; authority.--

31

1 (1) Any captive insurer, when permitted by its charter
2 or articles of incorporation, may apply to the office
3 ~~department~~ for a license to provide commercial property,
4 commercial casualty, and commercial marine insurance coverage
5 other than workers' compensation and employer's liability
6 insurance coverage, except that an industrial insured captive
7 insurer may apply for a license to provide workers'
8 compensation and employer's liability insurance as set forth
9 in subsection (6).

10 (3) In addition to information otherwise required by
11 this code, each applicant captive insurer shall file with the
12 office ~~department~~ evidence of the adequacy of the loss
13 prevention program of its insureds.

14 Section 1313. Subsection (2) of section 628.911,
15 Florida Statutes, is amended to read:

16 628.911 Reports and statements.--

17 (2) A captive insurer shall, within 60 days after the
18 end of its fiscal year and as often as the office ~~department~~
19 may deem necessary, submit to the office ~~department~~ a report
20 of its financial condition verified by oath of two of its
21 executive officers. The commission ~~department~~ may adopt
22 ~~promulgate~~ by rule the form in which captive insurers shall
23 report.

24 Section 1314. Subsections (1), (2), and (3) of section
25 628.913, Florida Statutes, are amended to read:

26 628.913 Reinsurance.--

27 (1)(a) A ceding captive insurer may reinsure all or
28 any part of any particular risk or class of risks with:

29 1. An assuming insurer authorized by the office
30 ~~department~~ to transact such line of insurance or reinsurance
31 in this state. Subject to the other requirements of this code,

1 credit may be taken for reinsurance with an authorized
2 insurer.

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

12 3. An assuming underwriting member of an insurance
13 exchange domiciled in any other state or jurisdiction in the
14 United States provided the insurance exchange presents to the
15 office ~~department~~ for its approval, and maintains,
16 satisfactory evidence that such assuming underwriting member
17 maintains the standards and meets the financial requirements
18 applicable to an authorized insurer. Subject to the other
19 provisions of this code, credit may be taken for reinsurance
20 with members approved under this subsection by the office
21 ~~department~~.

22 4. A group of individual unincorporated alien insurers
23 which maintains funds in an amount not less than \$50 million
24 held in trust for United States policyholders and
25 beneficiaries in a bank or trust company that is subject to
26 supervision by any state of the United States or that is a
27 member of the Federal Reserve System and which group satisfies
28 the office ~~department~~ by annually filing evidence that it can
29 meet its obligations under its reinsurance agreements. Subject
30 to the other provisions of this code, credit may be taken for
31

1 reinsurance with groups approved under this subsection by the
2 office ~~department~~.

3 (b) Credit in accounting and financial statements on
4 account of reinsurance ceded to an unauthorized or unapproved
5 reinsurer may be allowed only:

6 1. When it is demonstrated by the ceding captive
7 insurer to the satisfaction of the office ~~department~~ that such
8 reinsurer maintains the standards and meets the financial
9 requirements applicable to an authorized insurer;

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

22 3. To the extent that the amount of a clean and
23 irrevocable letter of credit, issued for a term of not less
24 than 1 year and in conformity with the requirements set forth
25 in this subparagraph, equals or exceeds the liability of an
26 unauthorized or unapproved reinsurer for unearned premiums,
27 outstanding losses, and an adequate reserve for incurred but
28 not reported losses under a specific reinsurance agreement.
29 The requirements are that such a clean and irrevocable letter
30 of credit be issued under arrangements satisfactory to the
31 office ~~department~~ as constituting security to the ceding

1 captive insurer substantially equal to that of a deposit under
2 subparagraph 2. and that the letter be issued by a banking
3 institution which is a member of the Federal Reserve System
4 and which has financial standing satisfactory to the office
5 ~~commissioner~~.

6 (2) The office ~~department~~ shall disallow any credit
7 which it finds would be contrary to the proper interests of
8 the policyholders or stockholders of a ceding captive insurer.

9 (3) No credit may be allowed for reinsurance in an
10 unauthorized or unapproved assuming insurer unless such
11 insurer designates the Chief Financial Officer ~~commissioner~~ or
12 a person resident in the United States as agent for service of
13 process in any action arising out of, or in connection with,
14 such reinsurance.

15 Section 1315. Section 628.917, Florida Statutes, is
16 amended to read:

17 628.917 Insolvency and liquidation.--In the event that
18 a captive insurer is insolvent as defined in chapter 631, the
19 office ~~department~~ shall liquidate the captive insurer pursuant
20 to the provisions of part I of chapter 631; except that the
21 office ~~department~~ shall make no attempt to rehabilitate such
22 insurer.

23 Section 1316. Section 629.081, Florida Statutes, is
24 amended to read:

25 629.081 Organization of reciprocal insurer.--

26 (1) Twenty-five or more persons domiciled in this
27 state may organize a domestic reciprocal insurer and make
28 application to the office ~~department~~ for a certificate of
29 authority to transact insurance.

30 (2) The proposed attorney shall fulfill the
31 requirements of and shall execute and file with the office

1 ~~department~~, when applying for a certificate of authority, a
2 declaration setting forth:

3 (a) The name of the insurer;

4 (b) The location of the insurer's principal office,
5 which shall be the same as that of the attorney and shall be
6 maintained within this state;

7 (c) The kinds of insurance proposed to be transacted;

8 (d) The names and addresses of the original
9 subscribers;

10 (e) The designation and appointment of the proposed
11 attorney and a copy of the power of attorney;

12 (f) The names and addresses of the officers and
13 directors of the attorney, if a corporation, or of its
14 members, if other than a corporation;

15 (g) The powers of the subscribers' advisory committee,
16 and the names and terms of office of the members thereof;

17 (h) That all moneys paid to the reciprocal shall,
18 after deducting therefrom any sum payable to the attorney, be
19 held in the name of the insurer and for the purposes specified
20 in the subscribers' agreement;

21 (i) A copy of the subscribers' agreement;

22 (j) A statement that each of the original subscribers
23 has in good faith applied for insurance of a kind proposed to
24 be transacted, and that the insurer has received from each
25 such subscriber the full premium or premium deposit required
26 for the policy applied for, for a term of not less than 6
27 months at an adequate rate theretofore filed with and approved
28 by the office ~~department~~;

29 (k) A statement of the financial condition of the
30 insurer, a schedule of its assets, and a statement that the
31 surplus as required by s. 629.071 is on hand; and

1 (1) A copy of each policy, endorsement, and
2 application form it then proposes to issue or use.

3
4 Such declaration shall be acknowledged by the attorney before
5 an officer authorized to take acknowledgments.

6 Section 1317. Subsection (4) of section 629.101,
7 Florida Statutes, is amended to read:

8 629.101 Power of attorney.--

9 (4) The terms of any power of attorney or agreement
10 collateral thereto shall be reasonable and equitable, and no
11 such power or agreement shall be used or be effective in this
12 state unless filed with the office ~~department~~.

13 Section 1318. Subsection (1) and (3) of section
14 629.121, Florida Statutes, are amended to read:

15 629.121 Attorney's bond.--

16 (1) Concurrently with the filing of the declaration
17 provided for in s. 629.081, the attorney of a domestic
18 reciprocal insurer shall file with the office ~~department~~ a
19 bond in favor of this state for the benefit of all persons
20 damaged as a result of breach by the attorney of the
21 conditions of his or her bond as set forth in subsection (2).
22 The bond shall be executed by the attorney and by an
23 authorized corporate surety and shall be subject to the
24 approval of the office ~~department~~.

25 (3) The bond shall provide that it is not subject to
26 cancellation unless 30 days' advance notice in writing of
27 cancellation is given both the attorney and the office
28 ~~department~~.

29 Section 1319. Section 629.131, Florida Statutes, is
30 amended to read:

31

1 629.131 Deposit in lieu of bond.--In lieu of the bond
2 required under s. 629.121, the attorney may maintain on
3 deposit with ~~through~~ the ~~office of the~~ department a like
4 amount in value of securities qualified for deposit under s.
5 625.52 and subject to the same conditions as the bond.

6 Section 1320. Section 629.161, Florida Statutes, is
7 amended to read:

8 629.161 Contributions to insurer.--The attorney or
9 other parties may advance to a domestic reciprocal insurer
10 upon reasonable terms such funds as it may require from time
11 to time in its operations. Sums so advanced shall not be
12 treated as a liability of the insurer and, except upon
13 liquidation of the insurer, shall not be withdrawn or repaid
14 except out of the insurer's realized earned surplus in excess
15 of its minimum required surplus. No such withdrawal or
16 repayment shall be made without the advance approval of the
17 office ~~department~~. This section does not apply as to bank
18 loans or to loans made upon security.

19 Section 1321. Subsection (2) of section 629.171,
20 Florida Statutes, is amended to read:

21 629.171 Annual statement.--

22 (2) The statement shall be supplemented by such
23 information as may be required by the office ~~department~~
24 relative to the affairs and transactions of the attorney
25 insofar as they relate to the reciprocal insurer.

26 Section 1322. Section 629.181, Florida Statutes, is
27 amended to read:

28 629.181 Financial condition; method of
29 determining.--In determining the financial condition of a
30 reciprocal insurer, the office ~~department~~ shall apply the
31 following rules:

1 (1) The surplus deposits of subscribers shall be
2 allowed as assets, except that any premium deposits delinquent
3 for 90 days shall first be charged against such surplus
4 deposit.

5 (2) An assessment levied upon subscribers, but not
6 collected, shall not be allowed as an asset.

7 (3) The contingent liability of subscribers shall not
8 be allowed as an asset.

9 Section 1323. Subsection (1) of section 629.231,
10 Florida Statutes, is amended to read:

11 629.231 Assessments.--

12 (1) Assessments may from time to time be levied upon
13 subscribers of a domestic reciprocal insurer liable therefor
14 under the terms of their policies by the attorney upon
15 approval in advance by the subscribers' advisory committee and
16 the office department, or by the department as receiver in
17 ~~liquidation~~ of the insurer.

18 Section 1324. Section 629.241, Florida Statutes, is
19 amended to read:

20 629.241 Time limit for assessments.--Every subscriber
21 of a domestic reciprocal insurer having contingent liability
22 shall be liable for, and shall pay his or her share of, any
23 assessment, as computed and limited in accordance with this
24 chapter, if:

25 (1) While his or her policy is in force or within 4
26 years after its termination, the subscriber is notified by
27 either the attorney or the office department of its intentions
28 to levy such assessment; or

29 (2) An order to show cause why a receiver,
30 conservator, rehabilitator, or liquidator of the insurer
31

1 should not be appointed is issued while the subscriber's
2 policy is in force or within 4 years after its termination.

3 Section 1325. Section 629.261, Florida Statutes, is
4 amended to read:

5 629.261 Nonassessable policies.--

6 (1) If a reciprocal insurer has a surplus as to
7 policyholders required of a domestic stock insurer authorized
8 to transact like kinds of insurance, upon application of the
9 attorney and as approved by the subscribers' advisory
10 committee the office ~~department~~ shall issue its certificate
11 authorizing the insurer to extinguish the contingent liability
12 of subscribers under its policies then in force in this state
13 and to omit provisions imposing contingent liability in all
14 policies delivered or issued for delivery in this state for so
15 long as all such surplus remains unimpaired.

16 (2) Upon impairment of such surplus, the office
17 ~~department~~ shall forthwith revoke the certificate. Such
18 revocation shall not render subject to contingent liability
19 any policy then in force and for the remainder of the period
20 for which the premium has theretofore been paid; but, after
21 such revocation, no policy shall be issued or renewed without
22 providing for contingent assessment liability of the
23 subscriber.

24 (3) The office ~~department~~ shall not authorize a
25 domestic reciprocal insurer so to extinguish the contingent
26 liability of any of its subscribers or in any of its policies
27 to be issued, unless it qualifies to and does extinguish such
28 liability of all its subscribers and in all such policies for
29 all kinds of insurance transacted by it; except that, if
30 required by the laws of another state in which the insurer is
31 transacting insurance as an authorized insurer, the insurer

1 may issue policies providing for the contingent liability of
2 such of its subscribers as may acquire such policies in such
3 state, and need not extinguish the contingent liability
4 applicable to policies theretofore in force in such state.

5 Section 1326. Section 629.281, Florida Statutes, is
6 amended to read:

7 629.281 Subscribers' share in assets.--Upon the
8 liquidation of a domestic reciprocal insurer, its assets
9 remaining after discharge of its indebtedness and policy
10 obligations, the return of any contributions of the attorney
11 or other persons to its surplus made as provided in s.
12 629.161, and the return of any unused premium, savings, or
13 credits then standing on subscribers' accounts shall be
14 distributed to its subscribers who were such within the 12
15 months prior to the last termination of its certificate of
16 authority, according to such reasonable formula as the office
17 approves ~~department may approve~~.

18 Section 1327. Subsections (1) and (3) of section
19 629.291, Florida Statutes, are amended to read:

20 629.291 Merger or conversion.--

21 (1) A domestic reciprocal insurer, upon affirmative
22 vote of not less than two-thirds of its subscribers who vote
23 on such merger pursuant to due notice and the approval of the
24 office ~~department~~ of the terms therefor, may merge with
25 another reciprocal insurer or be converted to a stock or
26 mutual insurer.

27 (3) The office ~~department~~ shall not approve any plan
28 for such merger or conversion which is inequitable to
29 subscribers or which, if for conversion to a stock insurer,
30 does not give each subscriber preferential right to acquire
31 stock of the proposed insurer proportionate to his or her

1 interest in the reciprocal insurer, as determined in
2 accordance with s. 629.281, and a reasonable length of time
3 within which to exercise such right.

4 Section 1328. Subsections (2) and (3) of section
5 629.301, Florida Statutes, are amended to read:

6 629.301 Impaired reciprocal insurers.--

7 (2) If the attorney fails to make up such deficiency
8 or to make the assessment within 30 days after the office
9 ~~department~~ orders him or her to do so, or if the deficiency is
10 not fully made up within 60 days after the date the assessment
11 was made, the insurer shall be deemed insolvent and shall be
12 proceeded against as authorized by this code.

13 (3) If liquidation of such an insurer is ordered, an
14 assessment shall be levied upon the subscribers for such an
15 amount, subject to limits as provided by this chapter, as the
16 office department determines to be necessary to discharge all
17 liabilities of the insurer, exclusive of any funds contributed
18 by the attorney or other persons, but including the reasonable
19 cost of the liquidation.

20 Section 1329. Section 629.401, Florida Statutes, is
21 amended to read:

22 629.401 Insurance exchange.--

23 (1) There may be created one or more insurance
24 exchanges, with one or more offices each, subject to such
25 rules as are adopted ~~may be promulgated~~ by the commission
26 ~~commissioner~~. For the purposes of this section, the term
27 "exchange" applies to any such insurance exchange proposed or
28 created under this section. The purposes of the exchange are:

29 (a) To provide a facility for the underwriting of:

30 1. Reinsurance of all kinds of insurance.

31

1 2. Direct insurance of all kinds on risks located
2 entirely outside the United States.

3 3. Surplus lines insurance for risks located in this
4 state eligible for export under s. 626.916 or s. 626.917 and
5 placed through a licensed Florida surplus lines agent subject
6 to compliance with the provisions of ss. 626.921, 626.922,
7 626.923, 626.924, 626.929, 626.9295, 626.930, and 626.931.
8 With respect to compliance with s. 626.924, the required
9 legend may refer to any coverage provided for by a security
10 fund established under paragraph (3)(d).

11 4. Surplus lines insurance in any other state subject
12 to the applicable surplus lines laws of such other state for
13 risks located entirely outside of this state.

14 (b) To manage the facility authorized by this section,
15 in accordance with rules adopted ~~promulgated~~ by the commission
16 ~~commissioner~~.

17 (c) In no event shall the exchange be considered to be
18 an underwriter or broker with respect to any contract of
19 insurance or reinsurance written by a member of the exchange,
20 and the exchange shall not incur any liability therefor.

21 (2) The operation of this subsection shall become
22 effective with respect to any exchange only after a
23 determination by the office ~~Insurance Commissioner and~~
24 ~~Treasurer~~ that the exchange may operate in an economic and
25 beneficial manner. A committee shall be appointed to write the
26 constitution and bylaws of the proposed exchange, to make such
27 other recommendations as may be necessary to assure maximum
28 coordination of the operations of the exchange with existing
29 insurance industry operations, and to assure maximum economic
30 benefits to the state from the operations of the exchange. The
31 committee shall consist of 13 members, 6 to be appointed by

1 the Chief Financial Officer ~~Insurance Commissioner and~~
2 ~~Treasurer~~, 2 each to be appointed by the Speaker of the House
3 of Representatives and the President of the Senate, 1 each to
4 be appointed by the minority leader of the House of
5 Representatives and the minority leader of the Senate, and 1
6 to be the Chief Financial Officer ~~Insurance Commissioner and~~
7 ~~Treasurer~~ or his or her designated representative. The chair
8 shall be elected by a majority of the committee. The committee
9 shall transmit such proposed constitution and bylaws and such
10 other recommendations to the office ~~Insurance Commissioner and~~
11 ~~Treasurer~~ and to the Legislature no later than 5 days prior to
12 the adjournment of a regular annual legislative session or no
13 later than 5 days prior to the commencement of any special or
14 organizational legislative session. Subject to the disapproval
15 of the constitution and bylaws by either house of the
16 Legislature by resolution before the end of such legislative
17 session, the exchange shall have full authority to function
18 pursuant to its constitution and bylaws 60 days after the end
19 of the session. The initial board of governors of the exchange
20 shall consist of 14 members, 3 appointed by the Chief
21 Financial Officer ~~Insurance Commissioner and Treasurer~~, 3 by
22 the Speaker of the House of Representatives, 3 by the
23 President of the Senate, 1 by the minority leader of the House
24 of Representatives, 1 by the minority leader of the Senate,
25 and 3 by the Governor, to serve until the first election
26 pursuant to the constitution or bylaws.

27 (3) The constitution and bylaws of the exchange shall
28 provide for, but shall not be limited to:

29 (a) The selection of 13 governors, at least 7 of whom
30 shall be appointed by and serve at the pleasure of the Chief
31 Financial Officer ~~Insurance Commissioner~~. Five of the

1 governors appointed by the Chief Financial Officer ~~Insurance~~
2 ~~Commissioner~~ shall not be members of the exchange. One of the
3 remaining two governors appointed by the Chief Financial
4 Officer ~~Insurance Commissioner~~ shall be a broker member, and
5 one shall be a representative of an underwriting member. The
6 remainder of the governors shall be elected by the membership
7 of the exchange in accordance with the constitution and
8 bylaws, except that at least five governors shall be elected
9 by the underwriting members of the exchange.

10 (b) The location of the principal offices of the
11 exchange and the principal offices of its members to be within
12 this state for the purpose of the transaction of the type of
13 business described in subsection (1). A principal office shall
14 be one where officers and qualified personnel who are engaged
15 in the administration, underwriting, claims, policyholders'
16 service, marketing, accounting, recordkeeping, and all
17 supportive services shall be located.

18 (c) The submission by members and all applicants for
19 membership on the exchange of such financial information as
20 may be required by the office commissioner.

21 (d)1. The establishment by the exchange of a security
22 fund in such form and amount as approved by the office
23 commissioner.

24 2. With respect to contracts of insurance written or
25 renewed on or after July 2, 1987:

26 a. The security fund shall pay that amount of each
27 covered claim which is determined to be payable in accordance
28 with the constitution and bylaws and is in excess of \$100 and
29 less than \$300,000, except that the fund shall not be
30 obligated to a policyholder or claimant in an amount in excess
31

1 of the obligation of the insolvent underwriting member under
2 the policy from which the claim arises.

3 b. The security fund shall have no obligation and
4 shall make no payment of any obligation arising under any such
5 contract or with respect to any contract of reinsurance
6 written or renewed on or after July 2, 1987, to the extent the
7 payment or payments exceed, either individually or in the
8 aggregate, 10 percent of the insolvent underwriting member's
9 surplus as to policyholders as reflected on the most recent
10 sworn annual statement of the insolvent underwriting member
11 filed with the office ~~department~~ prior to issuance of such
12 contract.

13 c. For the purposes of this subparagraph, each
14 reinsurance treaty and each contract of insurance inuring to
15 the benefit of multiple parties shall constitute only one
16 contract, and covered claims include unpaid claims, including
17 claims of unearned premiums, which arise out of and are within
18 the coverage and are not in excess of the applicable limits of
19 an insurance policy issued by an insolvent underwriting member
20 through the facilities of the exchange.

21 (e) The voting power of members who are underwriting
22 syndicates.

23 (f) The voting power and other rights granted under
24 the provisions of the not-for-profit corporation law, chapter
25 617, to participate in the conduct and management of the
26 affairs of the exchange, by brokers, agents, and
27 intermediaries transacting business on the exchange, each of
28 whom shall be considered "members" only under the provisions
29 of such law.

30 (g) The rights and duties of exchange members, which
31 may include, but shall not be limited to, the manner and form

1 of conducting business, financial stability, dues, membership
2 fees, mandatory arbitration, and all other matters necessary
3 or appropriate to conduct any business permitted herein.

4

5 Any amendments to the constitution and bylaws shall be subject
6 to the approval of the office ~~commissioner~~.

7 (4) Any insurance exchange formed under the provisions
8 of this section shall not be subject to any state or local
9 taxes or fees measured by income, premiums, or gross receipts;
10 except that for purposes of taxation under s. 624.509, direct
11 premiums written, procured, or received by a member or members
12 through the exchange on risks located in this state shall be
13 construed to be written, procured, or received by the
14 exchange, and the premium tax due on said premium shall be
15 reported and paid by the exchange.

16 (5) The exchange shall reimburse the office ~~department~~
17 for any expenses incurred by the office ~~department~~ relating to
18 the regulation of the exchange and its members.

19 (6)(a)1. The provisions of ss. 625.012 and 625.031
20 shall be applicable to the underwriting members of an exchange
21 in the same manner as those sections apply to domestic
22 insurers authorized to do business in this state.

23 2. The provisions of ss. 625.302-625.338 shall be
24 applicable to the underwriting members of an exchange in the
25 same manner as those sections apply to domestic insurers
26 authorized to transact business in this state.

27 (b) In addition to the insurance laws specified in
28 paragraph (a), the office ~~department~~ shall regulate the
29 exchange pursuant to the following powers, rights, and duties:

30 1. General examination powers.--The office ~~department~~
31 shall examine the affairs, transactions, accounts, records,

1 and assets of any security fund, exchange, members, and
2 associate brokers as often as it deems advisable. The
3 examination may be conducted by the accredited examiners of
4 the office ~~department~~ at the offices of the entity or person
5 being examined. The office ~~department~~ shall examine in like
6 manner each prospective member or associate broker applying
7 for membership in an exchange.

8 2. Office ~~Departmental~~ approval and applications of
9 underwriting members.--No underwriting member shall commence
10 operation without the approval of the office ~~department~~.

11 Before commencing operation, an underwriting member shall
12 provide a written application containing:

13 a. Name, type, and purpose of the underwriting member.

14 b. Name, residence address, business background, and
15 qualifications of each person associated or to be associated
16 in the formation or financing of the underwriting member.

17 c. Full disclosure of the terms of all understandings
18 and agreements existing or proposed among persons so
19 associated relative to the underwriting member, or the
20 formation or financing thereof, accompanied by a copy of each
21 such agreement or understanding.

22 d. Full disclosure of the terms of all understandings
23 and agreements existing or proposed for management or
24 exclusive agency contracts.

25 3. Investigation of underwriting member
26 applications.--In connection with any proposal to establish an
27 underwriting member, the office ~~department~~ shall make an
28 investigation of:

29 a. The character, reputation, financial standing, and
30 motives of the organizers, incorporators, or subscribers
31 organizing the proposed underwriting member.

1 b. The character, financial responsibility, insurance
2 experience, and business qualifications of its proposed
3 officers.

4 c. The character, financial responsibility, business
5 experience, and standing of the proposed stockholders and
6 directors, or owners.

7 4. Notice of management changes.--An underwriting
8 member shall promptly give the office ~~department~~ written
9 notice of any change among the directors or principal officers
10 of the underwriting member within 30 days after such change.
11 The office ~~department~~ shall investigate the new directors or
12 principal officers of the underwriting member. The office's
13 ~~department's~~ investigation shall include an investigation of
14 the character, financial responsibility, insurance experience,
15 and business qualifications of any new directors or principal
16 officers. As a result of the investigation, the office
17 ~~department~~ may require the underwriting member to replace any
18 new directors or principal officers.

19 5. Alternate financial statement.--In lieu of any
20 financial examination, the office ~~department~~ may accept an
21 audited financial statement.

22 6. Correction and reconstruction of records.--If the
23 office ~~department~~ finds any accounts or records to be
24 inadequate, or inadequately kept or posted, it may employ
25 experts to reconstruct, rewrite, post, or balance them at the
26 expense of the person or entity being examined if such person
27 or entity has failed to maintain, complete, or correct such
28 records or accounts after the office ~~department~~ has given him
29 or her or it notice and reasonable opportunity to do so.

30 7. Obstruction of examinations.--Any person or entity
31 who or which willfully obstructs the office ~~department~~ or its

1 examiner in an examination is guilty of a misdemeanor of the
2 second degree, punishable as provided in s. 775.082 or s.
3 775.083.

4 8. Filing of annual statement.--Each underwriting
5 member shall file with the office ~~department~~ a full and true
6 statement of its financial condition, transactions, and
7 affairs. The statement shall be filed on or before March 1 of
8 each year, or within such extension of time as the office
9 ~~department~~ for good cause grants, and shall be for the
10 preceding calendar year. The statement shall contain
11 information generally included in insurer financial statements
12 prepared in accordance with generally accepted insurance
13 accounting principles and practices and in a form generally
14 utilized by insurers for financial statements, sworn to by at
15 least two executive officers of the underwriting member. The
16 form of the financial statements shall be the approved form of
17 the National Association of Insurance Commissioners or its
18 successor organization. The commission ~~department~~ may by rule
19 require each insurer to submit any part of the information
20 contained in the financial statement in a computer-readable
21 form compatible with the office's ~~department's~~ electronic data
22 processing system. In addition to information furnished in
23 connection with its annual statement, an underwriting member
24 must furnish to the office ~~department~~ as soon as reasonably
25 possible such information about its transactions or affairs as
26 the office ~~department~~ requests in writing. All information
27 furnished pursuant to the office's ~~department's~~ request must
28 be verified by the oath of two executive officers of the
29 underwriting member.

30 9. Record maintenance.--Each underwriting member shall
31 have and maintain its principal place of business in this

1 state and shall keep therein complete records of its assets,
2 transactions, and affairs in accordance with such methods and
3 systems as are customary for or suitable to the kind or kinds
4 of insurance transacted.

5 10. Examination of agents.--If the department has
6 reason to believe that any agent, as defined in s. 626.015 or
7 s. 626.914, has violated or is violating any provision of the
8 insurance law, or upon receipt of a written complaint signed
9 by any interested person indicating that any such violation
10 may exist, the department shall conduct such examination as it
11 deems necessary of the accounts, records, documents, and
12 transactions pertaining to or affecting the insurance affairs
13 of such agent.

14 11. Written reports of office ~~department~~.--The office
15 ~~department~~ or its examiner shall make a full and true written
16 report of any examination. The report shall contain only
17 information obtained from examination of the records,
18 accounts, files, and documents of or relative to the person or
19 entity examined or from testimony of individuals under oath,
20 together with relevant conclusions and recommendations of the
21 examiner based thereon. The office ~~department~~ shall furnish a
22 copy of the report to the person or entity examined not less
23 than 30 days prior to filing the report in its office. If such
24 person or entity so requests in writing within such 30-day
25 period, the office ~~department~~ shall grant a hearing with
26 respect to the report and shall not file the report until
27 after the hearing and after such modifications have been made
28 therein as the office ~~department~~ deems proper.

29 12. Admissibility of reports.--The report of an
30 examination when filed shall be admissible in evidence in any
31 action or proceeding brought by the office ~~department~~ against

1 the person or entity examined, or against his or her or its
2 officers, employees, or agents. The office ~~department~~ or its
3 examiners may at any time testify and offer other proper
4 evidence as to information secured or matters discovered
5 during the course of an examination, whether or not a written
6 report of the examination has been either made, furnished, or
7 filed in the office ~~department~~.

8 13. Publication of reports.--After an examination
9 report has been filed, the office ~~department~~ may publish the
10 results of any such examination in one or more newspapers
11 published in this state whenever it deems it to be in the
12 public interest.

13 14. Consideration of examination reports by entity
14 examined.--After the examination report of an underwriting
15 member has been filed, an affidavit shall be filed with the
16 office ~~department~~, not more than 30 days after the report has
17 been filed, on a form furnished by the office ~~department~~ and
18 signed by the person or a representative of any entity
19 examined, stating that the report has been read and that the
20 recommendations made in the report will be considered within a
21 reasonable time.

22 15. Examination costs.--Each person or entity examined
23 by the office ~~department~~ shall pay to the office ~~department~~
24 the expenses incurred in such examination.

25 16. Exchange costs.--An exchange shall reimburse the
26 office ~~department~~ for any expenses incurred by it relating to
27 the regulation of the exchange and its members, except as
28 specified in subparagraph 15.

29 17. Powers of examiners.--Any examiner appointed by
30 the office ~~department~~, as to the subject of any examination,
31 investigation, or hearing being conducted by him or her, may

1 administer oaths, examine and cross-examine witnesses, and
2 receive oral and documentary evidence, and shall have the
3 power to subpoena witnesses, compel their attendance and
4 testimony, and require by subpoena the production of books,
5 papers, records, files, correspondence, documents, or other
6 evidence which the examiner deems relevant to the inquiry. If
7 any person refuses to comply with any such subpoena or to
8 testify as to any matter concerning which he or she may be
9 lawfully interrogated, the Circuit Court of Leon County or the
10 circuit court of the county wherein such examination,
11 investigation, or hearing is being conducted, or of the county
12 wherein such person resides, on the office's ~~department's~~
13 application may issue an order requiring such person to comply
14 with the subpoena and to testify; and any failure to obey such
15 an order of the court may be punished by the court as a
16 contempt thereof. Subpoenas shall be served, and proof of such
17 service made, in the same manner as if issued by a circuit
18 court. Witness fees and mileage, if claimed, shall be allowed
19 the same as for testimony in a circuit court.

20 18. False testimony.--Any person willfully testifying
21 falsely under oath as to any matter material to any
22 examination, investigation, or hearing shall upon conviction
23 thereof be guilty of perjury and shall be punished
24 accordingly.

25 19. Self-incrimination.--

26 a. If any person asks to be excused from attending or
27 testifying or from producing any books, papers, records,
28 contracts, documents, or other evidence in connection with any
29 examination, hearing, or investigation being conducted by the
30 office ~~department~~ or its examiner, on the ground that the
31 testimony or evidence required of the person may tend to

1 incriminate him or her or subject him or her to a penalty or
2 forfeiture, and the person notwithstanding is directed to give
3 such testimony or produce such evidence, he or she shall, if
4 so directed by the office ~~department~~ and the Department of
5 Legal Affairs, nonetheless comply with such direction; but the
6 person shall not thereafter be prosecuted or subjected to any
7 penalty or forfeiture for or on account of any transaction,
8 matter, or thing concerning which he or she may have so
9 testified or produced evidence, and no testimony so given or
10 evidence so produced shall be received against him or her upon
11 any criminal action, investigation, or proceeding; except that
12 no such person so testifying shall be exempt from prosecution
13 or punishment for any perjury committed by him or her in such
14 testimony, and the testimony or evidence so given or produced
15 shall be admissible against him or her upon any criminal
16 action, investigation, or proceeding concerning such perjury,
17 nor shall he or she be exempt from the refusal, suspension, or
18 revocation of any license, permission, or authority conferred,
19 or to be conferred, pursuant to the insurance law.

20 b. Any such individual may execute, acknowledge, and
21 file with ~~in~~ the office ~~of the department~~ a statement
22 expressly waiving such immunity or privilege in respect to any
23 transaction, matter, or thing specified in such statement, and
24 thereupon the testimony of such individual or such evidence in
25 relation to such transaction, matter, or thing may be received
26 or produced before any judge or justice, court, tribunal,
27 grand jury, or otherwise; and if such testimony or evidence is
28 so received or produced, such individual shall not be entitled
29 to any immunity or privileges on account of any testimony so
30 given or evidence so produced.

31

1 20. Penalty for failure to testify.--Any person who
2 refuses or fails, without lawful cause, to testify relative to
3 the affairs of any member, associate broker, or other person
4 when subpoenaed and requested by the office ~~department~~ to so
5 testify, as provided in subparagraph 17., shall, in addition
6 to the penalty provided in subparagraph 17., be guilty of a
7 misdemeanor of the second degree, punishable as provided in s.
8 775.082 or s. 775.083.

9 21. Name selection.--No underwriting member shall be
10 formed or authorized to transact insurance in this state under
11 a name which is the same as that of any authorized insurer or
12 is so nearly similar thereto as to cause or tend to cause
13 confusion or under a name which would tend to mislead as to
14 the type of organization of the insurer. Before incorporating
15 under or using any name, the underwriting syndicate or
16 proposed underwriting syndicate shall submit its name or
17 proposed name to the office ~~department~~ for the approval of the
18 office ~~department~~.

19 22. Capitalization.--An underwriting member approved
20 on or after July 2, 1987, shall provide an initial paid-in
21 capital and surplus of \$3 million and thereafter shall
22 maintain a minimum policyholder surplus of \$2 million in order
23 to be permitted to write insurance. Underwriting members
24 approved prior to July 2, 1987, shall maintain a minimum
25 policyholder surplus of \$1 million. After June 29, 1988,
26 underwriting members approved prior to July 2, 1987, must
27 maintain a minimum policyholder surplus of \$1.5 million to
28 write insurance. After June 29, 1989, underwriting members
29 approved prior to July 2, 1987, must maintain a minimum
30 policyholder surplus of \$1.75 million to write insurance.
31 After December 30, 1989, all underwriting members, regardless

1 of the date they were approved, must maintain a minimum
2 policyholder surplus of \$2 million to write insurance. Except
3 for that portion of the paid-in capital and surplus which
4 shall be maintained in a security fund of an exchange, the
5 paid-in capital and surplus shall be invested by an
6 underwriting member in a manner consistent with ss.
7 625.301-625.340. The portion of the paid-in capital and
8 surplus in any security fund of an exchange shall be invested
9 in a manner limited to investments for life insurance
10 companies under the Florida insurance laws.

11 23. Limitations on coverage written.--

12 a. Limit of risk.--No underwriting member shall expose
13 itself to any loss on any one risk in an amount exceeding 10
14 percent of its surplus to policyholders. Any risk or portion
15 of any risk which shall have been reinsured in an assuming
16 reinsurer authorized or approved to do such business in this
17 state shall be deducted in determining the limitation of risk
18 prescribed in this section.

19 b. Restrictions on premiums written.--If the office
20 ~~department~~ has reason to believe that the underwriting
21 member's ratio of actual or projected annual gross written
22 premiums to policyholder surplus exceeds 8 to 1 or the
23 underwriting member's ratio of actual or projected annual net
24 premiums to policyholder surplus exceeds 4 to 1, the office
25 ~~department~~ may establish maximum gross or net annual premiums
26 to be written by the underwriting member consistent with
27 maintaining the ratios specified in this sub-subparagraph.

28 (I) Projected annual net or gross premiums shall be
29 based on the actual writings to date for the underwriting
30 member's current calendar year, its writings for the previous
31

1 calendar year, or both. Ratios shall be computed on an
2 annualized basis.

3 (II) For purposes of this sub-subparagraph, the term
4 "gross written premiums" means direct premiums written and
5 reinsurance assumed.

6 c. Surplus as to policyholders.--For the purpose of
7 determining the limitation on coverage written, surplus as to
8 policyholders shall be deemed to include any voluntary
9 reserves, or any part thereof, which are not required by or
10 pursuant to law and shall be determined from the last sworn
11 statement of such underwriting member with the office
12 ~~department~~, or by the last report or examination filed by the
13 office ~~department~~, whichever is more recent at the time of
14 assumption of such risk.

15 24. Unearned premium reserves.--All unearned premium
16 reserves for business written on the exchange shall be
17 calculated on a monthly or more frequent basis or on such
18 other basis as determined by the office ~~department~~; except
19 that all premiums on any marine or transportation insurance
20 trip risk shall be deemed unearned until the trip is
21 terminated.

22 25. Loss reserves.--All underwriting members of an
23 exchange shall maintain loss reserves, including a reserve for
24 incurred but not reported claims. The reserves shall be
25 subject to review by the office ~~department~~, and, if loss
26 experience shows that an underwriting member's loss reserves
27 are inadequate, the office ~~department~~ shall require the
28 underwriting member to maintain loss reserves in such
29 additional amount as is needed to make them adequate.

30 26. Distribution of profits.--An underwriting member
31 shall not distribute any profits in the form of cash or other

1 assets to owners except out of that part of its available and
2 accumulated surplus funds which is derived from realized net
3 operating profits on its business and realized capital gains.
4 In any one year such payments to owners shall not exceed 30
5 percent of such surplus as of December 31 of the immediately
6 preceding year, unless otherwise approved by the office
7 ~~department~~. No distribution of profits shall be made that
8 would render an underwriting member either impaired or
9 insolvent.

10 27. Stock dividends.--A stock dividend may be paid by
11 an underwriting member out of any available surplus funds in
12 excess of the aggregate amount of surplus advanced to the
13 underwriting member under subparagraph 29.

14 28. Dividends from earned surplus.--A dividend
15 otherwise lawful may be payable out of an underwriting
16 member's earned surplus even though the total surplus of the
17 underwriting member is then less than the aggregate of its
18 past contributed surplus resulting from issuance of its
19 capital stock at a price in excess of the par value thereof.

20 29. Borrowing of money by underwriting members.--

21 a. An underwriting member may borrow money to defray
22 the expenses of its organization, provide it with surplus
23 funds, or for any purpose of its business, upon a written
24 agreement that such money is required to be repaid only out of
25 the underwriting member's surplus in excess of that stipulated
26 in such agreement. The agreement may provide for interest not
27 exceeding 15 percent simple interest per annum. The interest
28 shall or shall not constitute a liability of the underwriting
29 member as to its funds other than such excess of surplus, as
30 stipulated in the agreement. No commission or promotion
31 expense shall be paid in connection with any such loan. The

1 use of any surplus note and any repayments thereof shall be
2 subject to the approval of the office ~~department~~.

3 b. Money so borrowed, together with any interest
4 thereon if so stipulated in the agreement, shall not form a
5 part of the underwriting member's legal liabilities except as
6 to its surplus in excess of the amount thereof stipulated in
7 the agreement, nor be the basis of any setoff; but until
8 repayment, financial statements filed or published by an
9 underwriting member shall show as a footnote thereto the
10 amount thereof then unpaid, together with any interest thereon
11 accrued but unpaid.

12 30. Liquidation, rehabilitation, and
13 restrictions.--The office ~~department~~, upon a showing that a
14 member or associate broker of an exchange has met one or more
15 of the grounds contained in part I of chapter 631, may
16 restrict sales by type of risk, policy or contract limits,
17 premium levels, or policy or contract provisions; increase
18 surplus or capital requirements of underwriting members; issue
19 cease and desist orders; suspend or restrict a member's or
20 associate broker's right to transact business; place an
21 underwriting member under conservatorship or rehabilitation;
22 or seek an order of liquidation as authorized by part I of
23 chapter 631.

24 31. Prohibited conduct.--The following acts by a
25 member, associate broker, or affiliated person shall
26 constitute prohibited conduct:

27 a. Fraud.

28 b. Fraudulent or dishonest acts committed by a member
29 or associate broker prior to admission to an exchange, if the
30 facts and circumstances were not disclosed to the office

31

- 1 ~~department~~ upon application to become a member or associate
2 broker.
- 3 c. Conduct detrimental to the welfare of an exchange.
- 4 d. Unethical or improper practices or conduct,
5 inconsistent with just and equitable principles of trade as
6 set forth in, but not limited to, ss. 626.951-626.9641 and
7 626.973.
- 8 e. Failure to use due diligence to ascertain the
9 insurance needs of a client or a principal.
- 10 f. Misstatements made under oath or upon an
11 application for membership on an exchange.
- 12 g. Failure to testify or produce documents when
13 requested by the office ~~department~~.
- 14 h. Willful violation of any law of this state.
- 15 i. Failure of an officer or principal to testify under
16 oath concerning a member, associate broker, or other person's
17 affairs as they relate to the operation of an exchange.
- 18 j. Violation of the constitution and bylaws of the
19 exchange.
- 20 32. Penalties for participating in prohibited
21 conduct.--
- 22 a. The office ~~department~~ may order the suspension of
23 further transaction of business on the exchange of any member
24 or associate broker found to have engaged in prohibited
25 conduct. In addition, any member or associate broker found to
26 have engaged in prohibited conduct may be subject to
27 reprimand, censure, and/or a fine not exceeding \$25,000
28 imposed by the office ~~department~~.
- 29 b. Any member which has an affiliated person who is
30 found to have engaged in prohibited conduct shall be subject
31 to involuntary withdrawal or in addition thereto may be

1 subject to suspension, reprimand, censure, and/or a fine not
2 exceeding \$25,000.

3 33. Reduction of penalties.--Any suspension,
4 reprimand, censure, or fine may be remitted or reduced by the
5 office ~~department~~ on such terms and conditions as are deemed
6 fair and equitable.

7 34. Other offenses.--Any member or associate broker
8 that is suspended shall be deprived, during the period of
9 suspension, of all rights and privileges of a member or of an
10 associate broker and may be proceeded against by the office
11 ~~department~~ for any offense committed either before or after
12 the date of suspension.

13 35. Reinstatement.--Any member or associate broker
14 that is suspended may be reinstated at any time on such terms
15 and conditions as the office ~~department~~ may specify.

16 36. Remittance of fines.--Fines imposed under this
17 section shall be remitted to the office ~~department~~ and shall
18 be paid into the Insurance ~~Commissioner's~~ Regulatory Trust
19 Fund.

20 37. Failure to pay fines.--When a member or associate
21 broker has failed to pay a fine for 15 days after it becomes
22 payable, such member or associate broker shall be suspended,
23 unless the office ~~department~~ has granted an extension of time
24 to pay such fine.

25 38. Changes in ownership or assets.--In the event of a
26 major change in the ownership or a major change in the assets
27 of an underwriting member, the underwriting member shall
28 report such change in writing to the office ~~department~~ within
29 30 days of the effective date thereof. The report shall set
30 forth the details of the change. Any change in ownership or
31

1 assets of more than 5 percent shall be considered a major
2 change.

3 39. Retaliation.--

4 a. When by or pursuant to the laws of any other state
5 or foreign country any taxes, licenses, or other fees, in the
6 aggregate, and any fines, penalties, deposit requirements, or
7 other material obligations, prohibitions, or restrictions are
8 or would be imposed upon an exchange or upon the agents or
9 representatives of such exchange which are in excess of such
10 taxes, licenses, and other fees, in the aggregate, or which
11 are in excess of such fines, penalties, deposit requirements,
12 or other obligations, prohibitions, or restrictions directly
13 imposed upon similar exchanges or upon the agents or
14 representatives of such exchanges of such other state or
15 country under the statutes of this state, so long as such laws
16 of such other state or country continue in force or are so
17 applied, the same taxes, licenses, and other fees, in the
18 aggregate, or fines, penalties, deposit requirements, or other
19 material obligations, prohibitions, or restrictions of
20 whatever kind shall be imposed by the office ~~department~~ upon
21 the exchanges, or upon the agents or representatives of such
22 exchanges, of such other state or country doing business or
23 seeking to do business in this state.

24 b. Any tax, license, or other obligation imposed by
25 any city, county, or other political subdivision or agency of
26 a state, jurisdiction, or foreign country on an exchange, or
27 on the agents or representatives on an exchange, shall be
28 deemed to be imposed by such state, jurisdiction, or foreign
29 country within the meaning of sub-subparagraph a.

30 40. Agents.--

31

1 a. Agents as defined in ss. 626.015 and 626.914 who
2 are broker members or associate broker members of an exchange
3 shall be allowed only to place on an exchange the same kind or
4 kinds of business that the agent is licensed to place pursuant
5 to Florida law. Direct Florida business as defined in s.
6 626.916 or s. 626.917 shall be written through a broker member
7 who is a surplus lines agent as defined in s. 626.914. The
8 activities of each broker member or associate broker with
9 regard to an exchange shall be subject to all applicable
10 provisions of the insurance laws of this state, and all such
11 activities shall constitute transactions under his or her
12 license as an insurance agent for purposes of the Florida
13 insurance law.

14 b. Premium payments and other requirements.--If an
15 underwriting member has assumed the risk as to a surplus lines
16 coverage and if the premium therefor has been received by the
17 surplus lines agent who placed such insurance, then in all
18 questions thereafter arising under the coverage as between the
19 underwriting member and the insured, the underwriting member
20 shall be deemed to have received the premium due to it for
21 such coverage; and the underwriting member shall be liable to
22 the insured as to losses covered by such insurance, and for
23 unearned premiums which may become payable to the insured upon
24 cancellation of such insurance, whether or not in fact the
25 surplus lines agent is indebted to the underwriting member
26 with respect to such insurance or for any other cause.

27 41. Improperly issued contracts, riders, and
28 endorsements.--

29 a. Any insurance policy, rider, or endorsement issued
30 by an underwriting member and otherwise valid which contains
31 any condition or provision not in compliance with the

1 requirements of this section shall not be thereby rendered
2 invalid, except as provided in s. 627.415, but shall be
3 construed and applied in accordance with such conditions and
4 provisions as would have applied had such policy, rider, or
5 endorsement been in full compliance with this section. In the
6 event an underwriting member issues or delivers any policy for
7 an amount which exceeds any limitations otherwise provided in
8 this section, the underwriting member shall be liable to the
9 insured or his or her beneficiary for the full amount stated
10 in the policy in addition to any other penalties that may be
11 imposed.

12 b. Any insurance contract delivered or issued for
13 delivery in this state governing a subject or subjects of
14 insurance resident, located, or to be performed in this state
15 which, pursuant to the provisions of this section, the
16 underwriting member may not lawfully insure under such a
17 contract shall be cancelable at any time by the underwriting
18 member, any provision of the contract to the contrary
19 notwithstanding; and the underwriting member shall promptly
20 cancel the contract in accordance with the request of the
21 office ~~department~~ therefor. No such illegality or
22 cancellation shall be deemed to relieve the underwriting
23 syndicate of any liability incurred by it under the contract
24 while in force or to prohibit the underwriting syndicate from
25 retaining the pro rata earned premium thereon. This provision
26 does not relieve the underwriting syndicate from any penalty
27 otherwise incurred by the underwriting syndicate.

28 42. Satisfaction of judgments.--

29 a. Every judgment or decree for the recovery of money
30 heretofore or hereafter entered in any court of competent
31 jurisdiction against any underwriting member shall be fully

1 satisfied within 60 days from and after the entry thereof or,
2 in the case of an appeal from such judgment or decree, within
3 60 days from and after the affirmance of the judgment or
4 decree by the appellate court.

5 b. If the judgment or decree is not satisfied as
6 required under sub-subparagraph a., and proof of such failure
7 to satisfy is made by filing with the office ~~department~~ a
8 certified transcript of the docket of the judgment or the
9 decree together with a certificate by the clerk of the court
10 wherein the judgment or decree remains unsatisfied, in whole
11 or in part, after the time provided in sub-subparagraph a.,
12 the office ~~department~~ shall forthwith prohibit the
13 underwriting member from transacting business. The office
14 ~~department~~ shall not permit such underwriting member to write
15 any new business until the judgment or decree is wholly paid
16 and satisfied and proof thereof is filed with the office
17 ~~department~~ under the official certificate of the clerk of the
18 court wherein the judgment was recovered, showing that the
19 judgment or decree is satisfied of record, and until the
20 expenses and fees incurred in the case are also paid by the
21 underwriting syndicate.

22 43. Tender and exchange offers.--No person shall
23 conclude a tender offer or an exchange offer or otherwise
24 acquire 5 percent or more of the outstanding voting securities
25 of an underwriting member or controlling company or purchase 5
26 percent or more of the ownership of an underwriting member or
27 controlling company unless such person has filed with, and
28 obtained the approval of, the office ~~department~~ and sent to
29 such underwriting member a statement setting forth:

30 a. The identity of, and background information on,
31 each person by whom, or on whose behalf, the acquisition is to

1 be made; and, if the acquisition is to be made by or on behalf
2 of a corporation, association, or trust, the identity of and
3 background information on each director, officer, trustee, or
4 other natural person performing duties similar to those of a
5 director, officer, or trustee for the corporation,
6 association, or trust.

7 b. The source and amount of the funds or other
8 consideration used, or to be used, in making the acquisition.

9 c. Any plans or proposals which such person may have
10 to liquidate such member, to sell its assets, or to merge or
11 consolidate it.

12 d. The percentage of ownership which such person
13 proposes to acquire and the terms of the offer or exchange, as
14 the case may be.

15 e. Information as to any contracts, arrangements, or
16 understandings with any party with respect to any securities
17 of such member or controlling company, including, but not
18 limited to, information relating to the transfer of any
19 securities, option arrangements, or puts or calls or the
20 giving or withholding of proxies, naming the party with whom
21 such contract, arrangements, or understandings have been
22 entered and giving the details thereof.

23 f. The office ~~department~~ may disapprove any
24 acquisition subject to the provisions of this subparagraph by
25 any person or any affiliated person of such person who:

26 (I) Willfully violates this subparagraph;

27 (II) In violation of an order of the office ~~department~~
28 issued pursuant to sub-subparagraph j., fails to divest
29 himself or herself of any stock obtained in violation of this
30 subparagraph, or fails to divest himself or herself of any

31

1 direct or indirect control of such stock, within 25 days after
2 such order; or

3 (III) In violation of an order issued by the office
4 ~~department~~ pursuant to sub-subparagraph j., acquires
5 additional stock of the underwriting member or controlling
6 company, or direct or indirect control of such stock, without
7 complying with this subparagraph.

8 g. The person or persons filing the statement required
9 by this subparagraph have the burden of proof. The office
10 ~~department~~ shall approve any such acquisition if it finds, on
11 the basis of the record made during any proceeding or on the
12 basis of the filed statement if no proceeding is conducted,
13 that:

14 (I) Upon completion of the acquisition, the
15 underwriting member will be able to satisfy the requirements
16 for the approval to write the line or lines of insurance for
17 which it is presently approved;

18 (II) The financial condition of the acquiring person
19 or persons will not jeopardize the financial stability of the
20 underwriting member or prejudice the interests of its
21 policyholders or the public;

22 (III) Any plan or proposal which the acquiring person
23 has, or acquiring persons have, made:

24 (A) To liquidate the insurer, sell its assets, or
25 merge or consolidate it with any person, or to make any other
26 major change in its business or corporate structure or
27 management; or

28 (B) To liquidate any controlling company, sell its
29 assets, or merge or consolidate it with any person, or to make
30 any major change in its business or corporate structure or

31

1 management which would have an effect upon the underwriting
2 member

3
4 is fair and free of prejudice to the policyholders of the
5 underwriting member or to the public;

6 (IV) The competence, experience, and integrity of
7 those persons who will control directly or indirectly the
8 operation of the underwriting member indicate that the
9 acquisition is in the best interest of the policyholders of
10 the underwriting member and in the public interest;

11 (V) The natural persons for whom background
12 information is required to be furnished pursuant to this
13 subparagraph have such backgrounds as to indicate that it is
14 in the best interests of the policyholders of the underwriting
15 member, and in the public interest, to permit such persons to
16 exercise control over such underwriting member;

17 (VI) The officers and directors to be employed after
18 the acquisition have sufficient insurance experience and
19 ability to assure reasonable promise of successful operation;

20 (VII) The management of the underwriting member after
21 the acquisition will be competent and trustworthy and will
22 possess sufficient managerial experience so as to make the
23 proposed operation of the underwriting member not hazardous to
24 the insurance-buying public;

25 (VIII) The management of the underwriting member after
26 the acquisition will not include any person who has directly
27 or indirectly through ownership, control, reinsurance
28 transactions, or other insurance or business relations
29 unlawfully manipulated the assets, accounts, finances, or
30 books of any insurer or underwriting member or otherwise acted
31 in bad faith with respect thereto;

1 (IX) The acquisition is not likely to be hazardous or
2 prejudicial to the underwriting member's policyholders or the
3 public; and

4 (X) The effect of the acquisition of control would not
5 substantially lessen competition in insurance in this state or
6 would not tend to create a monopoly therein.

7 h. No vote by the stockholder of record, or by any
8 other person, of any security acquired in contravention of the
9 provisions of this subparagraph is valid. Any acquisition of
10 any security contrary to the provisions of this subparagraph
11 is void. Upon the petition of the underwriting member or
12 controlling company, the circuit court for the county in which
13 the principal office of such underwriting member is located
14 may, without limiting the generality of its authority, order
15 the issuance or entry of an injunction or other order to
16 enforce the provisions of this subparagraph. There shall be a
17 private right of action in favor of the underwriting member or
18 controlling company to enforce the provisions of this
19 subparagraph. No demand upon the office ~~department~~ that it
20 perform its functions shall be required as a prerequisite to
21 any suit by the underwriting member or controlling company
22 against any other person, and in no case shall the office
23 ~~department~~ be deemed a necessary party to any action by such
24 underwriting member or controlling company to enforce the
25 provisions of this subparagraph. Any person who makes or
26 proposes an acquisition requiring the filing of a statement
27 pursuant to this subparagraph, or who files such a statement,
28 shall be deemed to have thereby designated the Chief Financial
29 Officer ~~Insurance Commissioner, or his or her assistant or~~
30 ~~deputy or another person in charge of his or her office,~~ as
31 such person's agent for service of process under this

1 subparagraph and shall thereby be deemed to have submitted
2 himself or herself to the administrative jurisdiction of the
3 office ~~department~~ and to the jurisdiction of the circuit
4 court.

5 i. Any approval by the office ~~department~~ under this
6 subparagraph does not constitute a recommendation by the
7 office ~~department~~ for an acquisition, tender offer, or
8 exchange offer. It is unlawful for a person to represent that
9 the office's ~~department's~~ approval constitutes a
10 recommendation. A person who violates the provisions of this
11 sub-subparagraph is guilty of a felony of the third degree,
12 punishable as provided in s. 775.082, s. 775.083, or s.
13 775.084. The statute-of-limitations period for the
14 prosecution of an offense committed under this
15 sub-subparagraph is 5 years.

16 j. Upon notification to the office ~~department~~ by the
17 underwriting member or a controlling company that any person
18 or any affiliated person of such person has acquired 5 percent
19 or more of the outstanding voting securities of the
20 underwriting member or controlling company without complying
21 with the provisions of this subparagraph, the office
22 ~~department~~ shall order that the person and any affiliated
23 person of such person cease acquisition of any further
24 securities of the underwriting member or controlling company;
25 however, the person or any affiliated person of such person
26 may request a proceeding, which proceeding shall be convened
27 within 7 days after the rendering of the order for the sole
28 purpose of determining whether the person, individually or in
29 connection with any affiliated person of such person, has
30 acquired 5 percent or more of the outstanding voting
31 securities of an underwriting member or controlling company.

1 Upon the failure of the person or affiliated person to request
2 a hearing within 7 days, or upon a determination at a hearing
3 convened pursuant to this sub-subparagraph that the person or
4 affiliated person has acquired voting securities of an
5 underwriting member or controlling company in violation of
6 this subparagraph, the office ~~department~~ may order the person
7 and affiliated person to divest themselves of any voting
8 securities so acquired.

9 k.(I) The office ~~department~~ shall, if necessary to
10 protect the public interest, suspend or revoke the certificate
11 of authority of any underwriting member or controlling
12 company:

13 (A) The control of which is acquired in violation of
14 this subparagraph;

15 (B) That is controlled, directly or indirectly, by any
16 person or any affiliated person of such person who, in
17 violation of this subparagraph, has obtained control of an
18 underwriting member or controlling company; or

19 (C) That is controlled, directly or indirectly, by any
20 person who, directly or indirectly, controls any other person
21 who, in violation of this subparagraph, acquires control of an
22 underwriting member or controlling company.

23 (II) If any underwriting member is subject to
24 suspension or revocation pursuant to sub-sub-subparagraph (I),
25 the underwriting member shall be deemed to be in such
26 condition, or to be using or to have been subject to such
27 methods or practices in the conduct of its business, as to
28 render its further transaction of insurance presently or
29 prospectively hazardous to its policyholders, creditors, or
30 stockholders or to the public.

31

1 1.(I) For the purpose of this sub-sub-subparagraph,
2 the term "affiliated person" of another person means:

3 (A) The spouse of such other person;

4 (B) The parents of such other person and their lineal
5 descendants and the parents of such other person's spouse and
6 their lineal descendants;

7 (C) Any person who directly or indirectly owns or
8 controls, or holds with power to vote, 5 percent or more of
9 the outstanding voting securities of such other person;

10 (D) Any person 5 percent or more of the outstanding
11 voting securities of which are directly or indirectly owned or
12 controlled, or held with power to vote, by such other person;

13 (E) Any person or group of persons who directly or
14 indirectly control, are controlled by, or are under common
15 control with such other person; or any officer, director,
16 partner, copartner, or employee of such other person;

17 (F) If such other person is an investment company, any
18 investment adviser of such company or any member of an
19 advisory board of such company;

20 (G) If such other person is an unincorporated
21 investment company not having a board of directors, the
22 depositor of such company; or

23 (H) Any person who has entered into an agreement,
24 written or unwritten, to act in concert with such other person
25 in acquiring or limiting the disposition of securities of an
26 underwriting member or controlling company.

27 (II) For the purposes of this section, the term
28 "controlling company" means any corporation, trust, or
29 association owning, directly or indirectly, 25 percent or more
30 of the voting securities of one or more underwriting members.

31

1 m. The commission may ~~department is authorized to~~
2 adopt, amend, or repeal rules that are necessary to implement
3 the provisions of this subparagraph, pursuant to chapter 120.

4 44. Background information.--The information as to the
5 background and identity of each person about whom information
6 is required to be furnished pursuant to sub-subparagraph 43.a.
7 shall include, but shall not be limited to:

8 a. Such person's occupations, positions of employment,
9 and offices held during the past 10 years.

10 b. The principal business and address of any business,
11 corporation, or other organization in which each such office
12 was held or in which such occupation or position of employment
13 was carried on.

14 c. Whether, at any time during such 10-year period,
15 such person was convicted of any crime other than a traffic
16 violation.

17 d. Whether, during such 10-year period, such person
18 has been the subject of any proceeding for the revocation of
19 any license and, if so, the nature of such proceeding and the
20 disposition thereof.

21 e. Whether, during such 10-year period, such person
22 has been the subject of any proceeding under the federal
23 Bankruptcy Act or whether, during such 10-year period, any
24 corporation, partnership, firm, trust, or association in which
25 such person was a director, officer, trustee, partner, or
26 other official has been subject to any such proceeding, either
27 during the time in which such person was a director, officer,
28 trustee, partner, or other official, or within 12 months
29 thereafter.

30 f. Whether, during such 10-year period, such person
31 has been enjoined, either temporarily or permanently, by a

1 court of competent jurisdiction from violating any federal or
2 state law regulating the business of insurance, securities, or
3 banking, or from carrying out any particular practice or
4 practices in the course of the business of insurance,
5 securities, or banking, together with details of any such
6 event.

7 45. Security fund.--All underwriting members shall be
8 members of the security fund of any exchange.

9 46. Underwriting member defined.--Whenever the term
10 "underwriting member" is used in this subsection, it shall be
11 construed to mean "underwriting syndicate."

12 47. Offsets.--Any action, requirement, or constraint
13 imposed by the office ~~department~~ shall reduce or offset
14 similar actions, requirements, or constraints of any exchange.

15 48. Restriction on member ownership.--

16 a. Investments existing prior to July 2, 1987.--The
17 investment in any member by brokers, agents, and
18 intermediaries transacting business on the exchange, and the
19 investment in any such broker, agent, or intermediary by any
20 member, directly or indirectly, shall in each case be limited
21 in the aggregate to less than 20 percent of the total
22 investment in such member, broker, agent, or intermediary, as
23 the case may be. After December 31, 1987, the aggregate
24 percent of the total investment in such member by any broker,
25 agent, or intermediary and the aggregate percent of the total
26 investment in any such broker, agent, or intermediary by any
27 member, directly or indirectly, shall not exceed 15 percent.
28 After June 30, 1988, such aggregate percent shall not exceed
29 10 percent and after December 31, 1988, such aggregate percent
30 shall not exceed 5 percent.

31

1 b. Investments arising on or after July 2, 1987.--The
2 investment in any underwriting member by brokers, agents, or
3 intermediaries transacting business on the exchange, and the
4 investment in any such broker, agent, or intermediary by any
5 underwriting member, directly or indirectly, shall in each
6 case be limited in the aggregate to less than 5 percent of the
7 total investment in such underwriting member, broker, agent,
8 or intermediary.

9 49. "Underwriting manager" defined.--"Underwriting
10 manager" as used in this subparagraph includes any person,
11 partnership, corporation, or organization providing any of the
12 following services to underwriting members of the exchange:

13 a. Office management and allied services, including
14 correspondence and secretarial services.

15 b. Accounting services, including bookkeeping and
16 financial report preparation.

17 c. Investment and banking consultations and services.

18 d. Underwriting functions and services including the
19 acceptance, rejection, placement, and marketing of risk.

20 50. Prohibition of underwriting manager
21 investment.--Any direct or indirect investment in any
22 underwriting manager by a broker member or any affiliated
23 person of a broker member or any direct or indirect investment
24 in a broker member by an underwriting manager or any
25 affiliated person of an underwriting manager is prohibited.
26 "Affiliated person" for purposes of this subparagraph is
27 defined in subparagraph 43.

28 51. An underwriting member may not accept reinsurance
29 on an assumed basis from an affiliate or a controlling
30 company, nor may a broker member or management company place
31 reinsurance from an affiliate or controlling company of theirs

1 with an underwriting member. "Affiliate and controlling
2 company" for purposes of this subparagraph is defined in
3 subparagraph 43.

4 52. Premium defined.--"Premium" is the consideration
5 for insurance, by whatever name called. Any "assessment" or
6 any "membership," "policy," "survey," "inspection," "service"
7 fee or charge or similar fee or charge in consideration for an
8 insurance contract is deemed part of the premium.

9 53. Rules.--The commission ~~department~~ shall adopt
10 ~~promulgate~~ rules necessary for or as an aid to the
11 effectuation of any provision of this section.

12 (7) The performance of the contractual obligations of
13 the exchange or its members entered into pursuant to
14 subsection (1) shall not be covered by any of the Florida
15 state security or guaranty funds.

16 Section 1330. Section 629.520, Florida Statutes, is
17 amended to read:

18 629.520 Authority of a limited reciprocal
19 insurer.--The authority of any limited reciprocal insurer to
20 accept new business or renewals shall not continue beyond
21 October 1, 1992; however, such limited reciprocal insurer
22 shall continue to service its obligations previously incurred
23 or with the approval of the office ~~department~~, arrange for the
24 transfer of these obligations to an authorized insurer. All
25 power of the office ~~department~~ with respect to limited
26 reciprocal insurers shall continue undiminished. This section
27 does not affect any other power of the office ~~department~~ or
28 any other function of the office ~~department~~.

29 Section 1331. Subsection (1) of section 630.021,
30 Florida Statutes, is amended to read:

31 630.021 Required deposit of assets.--

1 (1) An alien insurer may use Florida as a state of
2 entry to transact insurance in the United States by making and
3 maintaining in this state a deposit of assets in trust with a
4 solvent bank or trust company or savings and loan association
5 approved by the office ~~department~~.

6 Section 1332. Section 630.031, Florida Statutes, is
7 amended to read:

8 630.031 Existing trusts.--All trusts of trusteeed
9 assets heretofore created and now existing shall be continued
10 under the instruments creating them, unless inconsistent with
11 the provisions of this chapter. No amendment of the deed of
12 trust under which such assets are so held shall be effective
13 unless approved by the office ~~department~~ in accordance with
14 the provisions of this chapter.

15 Section 1333. Section 630.051, Florida Statutes, is
16 amended to read:

17 630.051 Trust agreement; approval; amendment.--

18 (1) The deposit referred to in s. 630.021 shall be
19 made under a written trust agreement between the insurer and
20 the trustee, consistent with the provisions of this chapter;
21 and the agreement and any amendments thereto shall be
22 authenticated in such form and manner as the office ~~department~~
23 may designate or approve.

24 (2) The agreement shall not be effective until filed
25 with and approved in writing by the office ~~department~~. If the
26 office ~~department~~ finds that the trust agreement is sufficient
27 in form and in conformity with law, that the trustee or
28 trustees are eligible as such, and that the trust agreement is
29 adequate to protect the interests of the beneficiaries of the
30 trust, it shall give its written approval thereof. If the
31 office ~~department~~ finds that any of the above-mentioned

1 requisites do not exist, it shall refuse to approve the trust
2 agreement.

3 (3) If after a trust agreement has become effective
4 the office ~~department~~ finds that the requisites for approval
5 of the agreement no longer exist, it may withdraw its
6 approval.

7 (4) A trust agreement may be amended, but no amendment
8 shall be effective unless the agreement as so amended is found
9 by the office ~~department~~ to be consistent with the provisions
10 of this chapter and the amendment is approved by it.

11 Section 1334. Subsection (2) of section 630.071,
12 Florida Statutes, is amended to read:

13 630.071 Requirements and contents of trust
14 agreement.--Trusted assets of an alien insurer held in this
15 state under this chapter shall be subject to, and the trust
16 agreement shall make provisions consistent with, the following
17 conditions:

18 (2) Substitution of a new trustee or trustees in case
19 of a vacancy by death, resignation or otherwise may be made,
20 subject to the office's ~~department's~~ approval.

21 Section 1335. Section 630.081, Florida Statutes, is
22 amended to read:

23 630.081 Withdrawal of assets, in general.--

24 (1) The trust agreement shall provide, in substance,
25 that no withdrawals of trusted assets shall be made by the
26 insurer or permitted by the trustee or trustees without the
27 written authorization or approval of the office ~~department~~ in
28 advance thereof, except as follows:

29 (a) Any or all income, earnings, dividends, or
30 interest accumulations of the trusted assets may be paid over
31

1 to the United States manager of the insurer upon request of
2 the insurer or the manager.

3 (b) For substitution, coincidentally with such
4 withdrawal, of other securities or assets of value at least
5 equal in amount to those being withdrawn, if such substituted
6 securities or assets are likewise such as are eligible for
7 investment of the funds of domestic insurers under part II of
8 chapter 625; and if such withdrawal is requested in writing by
9 the insurer's United States manager pursuant to general or
10 specific written authority previously given or delegated by
11 the insurer's board of directors or other similar governing
12 body, and a copy of such authority has been filed with the
13 trustee or trustees.

14 (c) For the purpose of making deposits required by law
15 in any state in which the insurer is or thereafter becomes an
16 authorized insurer, for the protection of the insurer's
17 policyholders or policyholders and creditors in such state or
18 in the United States, if such withdrawal does not reduce the
19 insurer's deposit in this state to an amount less than the
20 minimum deposit required under s. 624.412. The trustee or
21 trustees shall transfer any assets so withdrawn, and in the
22 amount so required to be deposited in the other state,
23 directly to the depository required to receive such deposit in
24 such other state, as certified in writing by the public
25 official having supervision of insurance in the other state.

26 (d) For the purpose of transferring the trusted
27 assets to an official liquidator, conservator, or
28 rehabilitator pursuant to the order of a court of competent
29 jurisdiction.

30 (2) The office ~~department~~ shall so authorize or
31 approve withdrawal of only such assets as are in excess of the

1 amount of assets required to be so held in trust under s.
2 630.021, or as may otherwise be consistent with the provisions
3 of this chapter.

4 (3) If at any time the insurer becomes insolvent, or
5 if its assets held in the United States are less in amount
6 than as required under s. 624.412(1), upon determination
7 thereof the office ~~department~~ shall in writing order the
8 trustee to suspend the right of the insurer or any other
9 person to withdraw assets as otherwise authorized under
10 paragraphs (1)(a), (b), and (c); and the trustee shall comply
11 with such order until the further order of the office
12 ~~department~~.

13 (4) In the case of withdrawal of trusted assets
14 deposited in another state in which the insurer is authorized
15 to do business, it shall be sufficient if the trust agreement
16 requires similar written approval of the insurance supervisory
17 official of such state in lieu of any required approval of the
18 office ~~department~~. In all such cases, the insurer shall notify
19 the office ~~department~~ in writing of the nature and extent of
20 such withdrawal.

21 Section 1336. Section 630.091, Florida Statutes, is
22 amended to read:

23 630.091 Statement of trustee.--

24 (1) The trustee or trustees of trusted assets shall
25 from time to time file with the office ~~department~~ statements,
26 in such form as it may designate and request in writing,
27 certifying the character of such assets and the amounts
28 thereof.

29 (2) If the trustee or trustees fail to file any such
30 statement after request therefor and expiration of a
31

1 reasonable time thereafter, the office ~~department~~ may suspend
2 or revoke the certificate of authority of the insurer.

3 Section 1337. Section 630.101, Florida Statutes, is
4 amended to read:

5 630.101 Examination of assets.--The office ~~department~~
6 may from time to time examine trusteed assets of any insurer
7 in accordance with the same conditions and procedures
8 governing the examination of insurers in general under part II
9 of chapter 624.

10 Section 1338. Section 630.131, Florida Statutes, is
11 amended to read:

12 630.131 Domestication procedure.--

13 (1) Upon compliance with ss. 630.131-630.161, any
14 alien insurer authorized to do business in this state which
15 owns beneficially, directly or indirectly, all of the
16 outstanding capital stock of a domestic insurer may, with the
17 prior written approval of the office ~~department~~ and subject to
18 the final approval of the office ~~department~~, domesticate its
19 United States branch, if entered through this state, by
20 entering into an agreement in writing with the domestic
21 insurer providing for the acquisition by the domestic insurer
22 of all the liabilities of the United States branch for no
23 consideration other than the assumption of such liabilities;
24 except that the agreement may further provide for additional
25 consideration payable by the issuance by the acquiring
26 domestic insurer of shares of its capital stock.

27 (2) Such shares of capital stock of the acquiring
28 domestic insurer, or voting trust certificates representing
29 such shares, as are held among the trusteed assets of the
30 United States branch of the alien insurer or are held in a
31 trust created by the alien insurer and of which the alien

1 insurer is a beneficiary shall be deemed to be shares held
2 beneficially, but indirectly, by an alien insurer.

3 (3) The acquisition of assets and assumption of
4 liabilities of the United States branch by the domestic
5 insurer shall be effected by the filing with the office
6 ~~department~~ of an instrument of transfer and assumption in form
7 satisfactory to the office ~~department~~ and executed by the
8 alien insurer and the domestic insurer.

9 (4) A domestic insurer may either be authorized to
10 transact insurance in this state prior to entering into such
11 domestication agreement or may, if the office ~~department~~ so
12 approves, be authorized effective with the consummation of the
13 domestication agreement in accordance with the provisions of
14 s. 630.161.

15 Section 1339. Section 630.151, Florida Statutes, is
16 amended to read:

17 630.151 Office ~~Departmental~~ approval of domestication
18 agreement.--An executed counterpart of the domestication
19 agreement, together with certified copies of the corporate
20 proceedings of the domestic insurer and the alien insurer,
21 approving, adopting, and authorizing the execution of the
22 domestication agreement, shall be submitted to the office
23 ~~department~~ for its approval. The office ~~department~~ shall
24 thereupon consider the agreement; and, if it finds that the
25 same is in accordance with the provisions hereof and that the
26 interests of policyholders and creditors of the United States
27 branch of the alien insurer are not materially adversely
28 affected, it may approve the domestication agreement and
29 authorize the consummation thereof in compliance with the
30 provisions of s. 630.161.

31

1 Section 1340. Section 630.161, Florida Statutes, is
2 amended to read:

3 630.161 Consummation of domestication; transfer of
4 assets and deposits.--

5 (1) Upon the filing with the office ~~department~~ of a
6 certified copy of the instrument of transfer and assumption
7 pursuant to which a domestic insurer succeeds to the business
8 and assets of the United States branch of an alien insurer and
9 assumes all its liabilities as provided by ss.
10 630.131-630.161, the domestication of the United States branch
11 shall be deemed to be effective; and thereupon all the rights,
12 franchises, and interests of the United States branch in and
13 to every species of property, real, personal, and mixed, and
14 things in action thereunto belonging shall be deemed as
15 transferred to and vested in the domestic insurer, and
16 simultaneously therewith the domestic insurer shall be deemed
17 to have assumed all of the liabilities of the United States
18 branch.

19 (2) All deposits of the United States branch held by
20 the department, or state officers or other state regulatory
21 agencies pursuant to requirements of state laws, shall be
22 deemed to be held as security that the domestic insurer will
23 fully perform its assumption as direct liabilities of all the
24 liabilities to policyholders or policyholders and creditors
25 within the United States of the United States branch; and such
26 deposits shall be deemed to be assets of the domestic insurer
27 and shall be reported as such in the annual financial
28 statements and other reports which the domestic insurer may be
29 required to file. Upon the ultimate release by any such state
30 officer or agency of any such deposits, the securities and
31 cash constituting such released deposit shall be delivered and

1 paid over to the domestic insurer as the lawful successor in
2 interest to the United States branch.

3 (3) Contemporaneously with the consummation of the
4 domestication of the United States branch, notwithstanding any
5 provision of the statutes to the contrary, the department
6 shall transfer to the insurer the securities deposited by the
7 United States branch in compliance with the provisions of this
8 law, and the department shall consent that the trustee of the
9 trustee assets deposited by the United States branch in
10 compliance with the provisions of this law shall withdraw from
11 the trustee assets and transfer and deliver over to the
12 domestic insurer all assets held by such trustee.

13 Section 1341. Subsection (5) is added to section
14 631.021, Florida Statutes, to read:

15 631.021 Jurisdiction of delinquency proceeding; venue
16 change of venue; exclusiveness of remedy; appeal.--

17 (5) No service of process against the department in
18 its capacity as receiver shall be effective unless served upon
19 a person designated by the receiver and filed with the circuit
20 court having jurisdiction over the delinquency proceeding. The
21 designated person shall refuse to accept service if acceptance
22 would violate a stay against legal proceedings involving an
23 insurer that is the subject of delinquency proceedings or
24 would violate any orders of the circuit court governing a
25 delinquency proceeding. The person denied service may petition
26 the circuit court having jurisdiction over the delinquency
27 proceeding for relief from the receiver's refusal to accept
28 service. This subsection shall be strictly construed and any
29 purported service on the receiver or the department that is
30 not in accordance with this subsection shall be null and void.

31

1 Section 1342. Section 631.025, Florida Statutes, is
2 amended to read:

3 631.025 Persons subject to this part.--Delinquency
4 proceedings authorized by this part may be initiated against
5 any insurer, as defined in s. 631.011(15), if the statutory
6 grounds are present as to that insurer, and the court may
7 exercise jurisdiction over any person required to cooperate
8 with the department and office pursuant to s. 631.391 and over
9 all persons made subject to the court's jurisdiction by other
10 provisions of law. Such persons include, but are not limited
11 to:

12 (1) A person transacting, or that has transacted,
13 insurance business in or from this state and against whom
14 claims arising from that business may exist now or in the
15 future.

16 (2) A person purporting to transact an insurance
17 business in this state and any person who acts as an insurer,
18 transacts insurance, or otherwise engages in insurance
19 activities in or from this state, with or without a
20 certificate of authority or proper authority from the
21 department or office, against whom claims arising from that
22 business may exist now or in the future.

23 (3) An insurer with policyholders resident in this
24 state.

25 (4) All other persons organized or in the process of
26 organizing with the intent to transact an insurance business
27 in this state.

28 Section 1343. Section 631.031, Florida Statutes, is
29 amended to read:

30 631.031 Initiation and commencement of delinquency
31 proceeding.--

1 (1) Upon a determination by the office that one or
2 more grounds for the initiation of delinquency proceedings
3 exist pursuant to this chapter and that delinquency
4 proceedings must be initiated, the Director of the Office of
5 Insurance Regulation shall notify the department of such
6 determination and shall provide the department with all
7 necessary documentation and evidence. The department shall
8 then initiate such delinquency proceedings.

9 (2) The department may commence any such proceeding by
10 application to the court for an order directing the insurer to
11 show cause why the department should not have the relief
12 prayed for. On the return of such order to show cause, and
13 after a full hearing, the court shall either deny the
14 application or grant the application, together with such other
15 relief as the nature of the case and the interests of the
16 policyholders, creditors, stockholders, members, subscribers,
17 or public may require. The department may also commence any
18 such proceeding by application to the court by petition for
19 the entry of a consent order of conservation, rehabilitation,
20 or liquidation.

21 Section 1344. Section 631.051, Florida Statutes, is
22 amended to read:

23 631.051 Grounds for rehabilitation; domestic
24 insurers.--The department may petition for an order directing
25 it to rehabilitate a domestic insurer or an alien insurer
26 domiciled in this state on any one or more of the following
27 grounds, that the insurer:

28 (1) Is impaired or insolvent;

29 (2) Has failed to comply with an order of the office
30 ~~department~~ to make good an impairment of capital or surplus or
31 both;

1 (3) Is found by the office ~~department~~ to be in such
2 condition or is using or has been subject to such methods or
3 practices in the conduct of its business, as to render its
4 further transaction of insurance presently or prospectively
5 hazardous to its policyholders, creditors, stockholders, or
6 the public;

7 (4) Has failed, or its parent corporation, subsidiary,
8 or affiliated person controlled by either the insurer or the
9 parent corporation has failed, to submit its books, documents,
10 accounts, records, and affairs pertaining to the insurer to
11 the reasonable inspection or examination of the office
12 ~~department~~ or its authorized representative; or any individual
13 exercising any executive authority in the affairs of the
14 insurer, or parent corporation, or subsidiary, or affiliated
15 person has refused to be examined under oath by the office
16 ~~department~~ or its authorized representative, whether within
17 this state or otherwise, concerning the pertinent affairs of
18 the insurer, or parent corporation or subsidiary or affiliated
19 person; or if examined under oath refuses to divulge pertinent
20 information reasonably known to her or him; or officers,
21 directors, agents, employees, or other representatives of the
22 insurer or parent corporation, subsidiary, or affiliated
23 person have failed to comply promptly with the reasonable
24 requests of the office ~~department~~ or its authorized
25 representative for the purposes of, and during the conduct of,
26 any such examination;

27 (5) Has concealed or removed records or assets or
28 otherwise violated s. 628.271 or s. 628.281;

29 (6) Through its board of directors or governing body
30 is deadlocked in the management of the insurer's affairs and
31 that the members of a mutual, reciprocal, or any other type of

1 organization or stockholders are unable to break the deadlock
2 and that irreparable injury to the insurer, its creditors, its
3 policyholders, its members or subscribers, or the public is
4 threatened by reason thereof;

5 (7) Has transferred or attempted to transfer
6 substantially its entire property or business, or has entered
7 into any transaction the effect of which is to merge
8 substantially its entire property or business into that of any
9 other insurer or entity without having first obtained the
10 written approval of the office ~~department~~ under the provisions
11 of s. 628.451, s. 628.461, or s. 628.4615, as the case may be;

12 (8) Has willfully violated its charter or certificate
13 of incorporation or any law of this state;

14 (9) Is in such a position that control of it, whether
15 by stock ownership or otherwise, and whether direct or
16 indirect, is in one or more persons found by the office
17 ~~department~~ after notice and hearing to be dishonest or
18 untrustworthy; or that the insurer has failed, upon order of
19 the office ~~department~~ and expiration of such reasonable time
20 for such removal as the office ~~department~~ shall specify in the
21 order, to remove any person who in fact has executive
22 authority, directly or indirectly, in the insurer, whether as
23 an officer, director, manager, agent, employee, or otherwise,
24 and if such person has been found by the office ~~department~~
25 after notice and hearing, to be incompetent, dishonest,
26 untrustworthy, or so lacking in insurance company managerial
27 experience as to be hazardous to the insurance-buying public;

28 (10) Has been or is the subject of an application for
29 the appointment of a receiver, trustee, custodian, or
30 sequestrator of the insurer or its property otherwise than
31

1 pursuant to the provisions of this code, but only if such an
2 appointment has been made or is imminent;

3 (11) Has consented to such an order through a majority
4 of its directors, stockholders, members, or subscribers;

5 (12) Has failed to pay a final judgment rendered
6 against it in this state upon any insurance contract issued or
7 assumed by it, within 60 days after the judgment became final,
8 within 60 days after the time for taking an appeal has
9 expired, or within 30 days after dismissal of an appeal before
10 final determination, whichever date is the later;

11 (13) Has been the victim of embezzlement, wrongful
12 sequestration, conversion, diversion, or encumbering of its
13 assets; forgery or fraud affecting it; or other illegal
14 conduct in, by, or with respect to it, which if established
15 would threaten its solvency; or that the office ~~department~~ has
16 reasonable cause to so believe any of the foregoing has
17 occurred or may occur;

18 (14) Is engaging in a systematic practice of reaching
19 settlements with and obtaining releases from policyholders or
20 third-party claimants and then unreasonably delaying payment
21 of, or failing to pay, the agreed-upon settlements; or

22 (15) Within the previous 12 months has systematically
23 attempted to compromise with creditors on the ground that it
24 is financially unable to pay its claims in full.

25 Section 1345. Section 631.081, Florida Statutes, is
26 amended to read:

27 631.081 Grounds for conservation; alien insurers.--The
28 department may apply to the court for an order appointing it
29 as receiver or ancillary receiver, and directing it to
30 conserve the assets within this state, of any alien insurer
31 upon any of the following grounds:

1 (1) Upon any of the grounds specified in s. 631.051 or
2 s. 631.061;

3 (2) Upon the ground that the insurer has failed to
4 comply, within the time designated by the office ~~department~~,
5 with an order made by it to make good an impairment of its
6 trusted funds; or

7 (3) Upon the ground that the property of the insurer
8 has been sequestered in its domiciliary sovereignty or
9 elsewhere.

10 Section 1346. Subsection (1) of section 631.152,
11 Florida Statutes, is amended to read:

12 631.152 Conduct of delinquency proceeding; foreign
13 insurers.--

14 (1) Whenever under this chapter an ancillary receiver
15 is to be appointed in a delinquency proceeding for an insurer
16 not domiciled in this state, the court shall appoint the
17 department as ancillary receiver. The department shall file a
18 petition requesting the appointment on the grounds set forth
19 in s. 631.091:

20 (a) If it finds that there are sufficient assets of
21 the insurer located in this state to justify the appointment
22 of an ancillary receiver, or

23 (b) If 10 or more persons resident in this state
24 having claims against such insurer file a petition with the
25 department or office requesting the appointment of such
26 ancillary receiver.

27 Section 1347. Section 631.221, Florida Statutes, is
28 amended to read:

29 631.221 Deposit of moneys collected.--The moneys
30 collected by the department in a proceeding under this chapter
31 shall be deposited in a qualified public depository as defined

1 in s. 280.02, which depository with regards to such funds
2 shall conform to and be bound by all the provisions of chapter
3 280, or invested with the Chief Financial Officer ~~State~~
4 ~~Treasurer~~ pursuant to chapter 18. For the purpose of
5 accounting for the assets and transactions of the estate, the
6 receiver shall use such accounting books, records, and systems
7 as the court directs after it hears and considers the
8 recommendations of the receiver.

9 Section 1348. Section 631.231, Florida Statutes, is
10 amended to read:

11 631.231 Exemption from fees.--The department or office
12 shall not be required to pay any fee to any public officer in
13 this state for filing, recording, issuing a transcript or
14 certificate, or authenticating any paper or instrument
15 pertaining to the exercise by the department or office of any
16 of the powers or duties conferred upon it under this chapter,
17 whether or not such paper or instrument be executed by the
18 department or office or their ~~its~~ employees or attorneys of
19 record and whether or not it is connected with the
20 commencement of any action or proceeding by or against the
21 department or office, or with the subsequent conduct of such
22 action or proceeding.

23 Section 1349. Section 631.391, Florida Statutes, is
24 amended to read:

25 631.391 Cooperation of officers and employees.--

26 (1) Any officer, director, manager, trustee, agent,
27 adjuster, employee, or independent contractor of any insurer
28 or affiliate and any other person who possesses any executive
29 authority over, or who exercises any control over, any segment
30 of the affairs of the insurer or affiliate shall fully
31 cooperate with the department and office in any proceeding

1 under this chapter or any investigation preliminary or
2 incidental to the proceeding. An order of rehabilitation or
3 liquidation which results in the discharge or suspension of
4 any of the persons listed above does not operate to release
5 such person from the duty to cooperate with the department and
6 office as set out herein. To "cooperate" includes, but is not
7 limited to, the following:

8 (a) To reply promptly in writing to any inquiry from
9 the department or office requesting such a reply;

10 (b) Promptly to make available and deliver to the
11 department or office any books, accounts, documents, other
12 records, information, data processing software, or property of
13 or pertaining to the insurer and in her or his possession,
14 custody, or control; or

15 (c) Promptly to provide access to all data processing
16 records in hard copy and in electronic form and to data
17 processing facilities and services.

18 (2) No person shall obstruct or interfere with the
19 department or office in the conduct of any delinquency
20 proceeding or any investigation preliminary or incidental
21 thereto.

22 (3) This section does not prohibit any person from
23 seeking legal relief from a court when aggrieved by the
24 petition for liquidation or other delinquency proceeding or by
25 other orders.

26 (4) Any person referred to in subsection (1) who fails
27 to cooperate with the department or office, or any other
28 person who obstructs or interferes with the department or
29 office, in the conduct of any delinquency proceeding or any
30 investigation preliminary or incidental thereto, is guilty of
31

1 a misdemeanor of the first degree, punishable as provided in
2 s. 775.082 or by fine of not more than \$10,000.

3 (5) Refusal by any person referred to in subsection
4 (1) to provide records upon the request of the department or
5 office is grounds for revocation of any insurance-related
6 license, including, but not limited to, agent and third-party
7 administrator licenses.

8 Section 1350. Section 631.392, Florida Statutes, is
9 amended to read:

10 631.392 Immunity.--There shall be no liability on the
11 part of, and no cause of action of any nature shall arise
12 against, the Chief Financial Officer, Insurance Commissioner
13 ~~or the department, the office, or any of their~~ its employees
14 or agents for any action taken by them in the performance of
15 their powers and duties under this chapter.

16 Section 1351. Section 631.398, Florida Statutes, is
17 amended to read:

18 631.398 Prevention of insolvencies.--To aid in the
19 detection and prevention of insurer insolvencies or
20 impairments:

21 (1) Any member insurer; agent, employee, or member of
22 the board of directors; or representative of any insurance
23 guaranty association may make reports and recommendations to
24 the department or office upon any matter germane to the
25 solvency, liquidation, rehabilitation, or conservation of any
26 member insurer or germane to the solvency of any company
27 seeking to do an insurance business in this state. Such
28 reports and recommendations are confidential and exempt from
29 the provisions of s. 119.07(1) until the termination of a
30 delinquency proceeding.

31 (2) The office ~~department~~ shall:

1 (a) Report to the board of directors of the
2 appropriate insurance guaranty association when it has
3 reasonable cause to believe from any examination, whether
4 completed or in process, of any member insurer that such
5 insurer may be an impaired or insolvent insurer.

6 (b) Seek the advice and recommendations of the board
7 of directors of the appropriate insurance guaranty association
8 concerning any matter affecting the duties and
9 responsibilities of the office ~~department~~ in relation to the
10 financial condition of member companies and companies seeking
11 admission to transact insurance business in this state.

12 (3) The department shall, no later than the conclusion
13 of any domestic insurer insolvency proceeding, prepare a
14 summary report containing such information as is in its
15 possession relating to the history and causes of such
16 insolvency, including a statement of the business practices of
17 such insurer which led to such insolvency.

18 Section 1352. Section 631.54, Florida Statutes, is
19 amended to read:

20 631.54 Definitions.--As used in this part:

21 (1) "Account" means any one of the three accounts
22 created by s. 631.55.

23 (2) "Association" means the Florida Insurance Guaranty
24 Association, Incorporated.

25 (3) "Covered claim" means an unpaid claim, including
26 one of unearned premiums, which arises out of, and is within
27 the coverage, and not in excess of, the applicable limits of
28 an insurance policy to which this part applies, issued by an
29 insurer, if such insurer becomes an insolvent insurer after
30 October 1, 1970, and the claimant or insured is a resident of
31 this state at the time of the insured event or the property

1 from which the claim arises is permanently located in this
2 state. "Covered claim" shall not include any amount due any
3 reinsurer, insurer, insurance pool, or underwriting
4 association, as subrogation, contribution, indemnification, or
5 otherwise. Member insurers shall have no right of subrogation
6 against the insured of any insolvent member.

7 ~~(4) "Department" means the Department of Insurance.~~

8 (4)~~(5)~~ "Expenses in handling claims" means allocated
9 and unallocated expenses, including, but not limited to,
10 general administrative expenses and those expenses which
11 relate to the investigation, adjustment, defense, or
12 settlement of specific claims under, or arising out of, a
13 specific policy.

14 (5)~~(6)~~ "Insolvent insurer" means a member insurer
15 authorized to transact insurance in this state, either at the
16 time the policy was issued or when the insured event occurred,
17 and against which an order of liquidation with a finding of
18 insolvency has been entered by a court of competent
19 jurisdiction if such order has become final by the exhaustion
20 of appellate review.

21 (6)~~(7)~~ "Member insurer" means any person who writes
22 any kind of insurance to which this part applies under s.
23 631.52, including the exchange of reciprocal or interinsurance
24 contracts, and is licensed to transact insurance in this
25 state.

26 (7)~~(8)~~ "Net direct written premiums" means direct
27 gross premiums written in this state on insurance policies to
28 which this part applies, less return premiums thereon and
29 dividends paid or credited to policyholders on such direct
30 business. "Net direct written premiums" does not include
31 premiums on contracts between insurers or reinsurers.

1 ~~(8)(9)~~ "Person" means individuals, children, firms,
2 associations, joint ventures, partnerships, estates, trusts,
3 business trusts, syndicates, fiduciaries, corporations, and
4 all other groups or combinations.

5 Section 1353. Subsection (1) of section 631.55,
6 Florida Statutes, is amended to read:

7 631.55 Creation of the association.--

8 (1) There is created a nonprofit corporation to be
9 known as the "Florida Insurance Guaranty Association,
10 Incorporated." All insurers defined as member insurers in s.
11 631.54(6)~~s. 631.54(7)~~ shall be members of the association as
12 a condition of their authority to transact insurance in this
13 state, and, further, as a condition of such authority, an
14 insurer shall agree to reimburse the association for all claim
15 payments the association makes on said insurer's behalf if
16 such insurer is subsequently rehabilitated. The association
17 shall perform its functions under a plan of operation
18 established and approved under s. 631.58 and shall exercise
19 its powers through a board of directors established under s.
20 631.56. The corporation shall have all those powers granted
21 or permitted nonprofit corporations, as provided in chapter
22 617.

23 Section 1354. Subsection (1) of section 631.56,
24 Florida Statutes, is amended to read:

25 631.56 Board of directors.--

26 (1) The board of directors of the association shall
27 consist of not less than five or more than nine persons
28 serving terms as established in the plan of operation. The
29 department shall approve and appoint to the board persons
30 recommended by the member insurers. In the event the
31 department finds that any recommended person does not meet the

1 qualifications for service on the board, the department shall
2 request the member insurers to recommend another person. Each
3 member shall serve for a 4-year term and may be reappointed.
4 Vacancies on the board shall be filled for the remaining
5 period of the term in the same manner as initial appointments.
6 ~~If no members are selected by November 30, 1970, the~~
7 ~~department may appoint the initial members of the board of~~
8 ~~directors.~~

9 Section 1355. Subsections (1) and (3) of section
10 631.57, Florida Statutes, are amended to read:

11 631.57 Powers and duties of the association.--

12 (1) The association shall:

13 (a)1. Be obligated to the extent of the covered claims
14 existing:

15 a. Prior to adjudication of insolvency and arising
16 within 30 days after the determination of insolvency;

17 b. Before the policy expiration date if less than 30
18 days after the determination; or

19 c. Before the insured replaces the policy or causes
20 its cancellation, if she or he does so within 30 days of the
21 determination.

22 2. The obligation under subparagraph 1. shall include
23 only that amount of each covered claim which is in excess of
24 \$100 and is less than \$300,000, except with respect to
25 policies covering condominium associations or homeowners'
26 associations, which associations have a responsibility to
27 provide insurance coverage on residential units within the
28 association, the obligation shall include that amount of each
29 covered property insurance claim which is less than \$100,000
30 multiplied by the number of condominium units or other
31 residential units; however, as to homeowners' associations,

1 this subparagraph applies only to claims for damage or loss to
2 residential units and structures attached to residential
3 units.

4 3. In no event shall the association be obligated to a
5 policyholder or claimant in an amount in excess of the
6 obligation of the insolvent insurer under the policy from
7 which the claim arises.

8
9 ~~The foregoing notwithstanding, the association shall have no~~
10 ~~obligation to pay covered claims to be paid from the proceeds~~
11 ~~of bonds issued under s. 166.111(2). However, the association~~
12 ~~shall cause assessments to be made under paragraph (3)(e) for~~
13 ~~such covered claims, and such assessments shall be assigned~~
14 ~~and pledged under paragraph (3)(e) to or on behalf of the~~
15 ~~issuer of such bonds for the benefit of the holders of such~~
16 ~~bonds. The association shall administer any such covered~~
17 ~~claims and present valid covered claims for payment in~~
18 ~~accordance with the provisions of the assistance program in~~
19 ~~connection with which such bonds have been issued.~~

20 (b) Be deemed the insurer to the extent of its
21 obligation on the covered claims, and, to such extent, shall
22 have all rights, duties, defenses, and obligations of the
23 insolvent insurer as if the insurer had not become insolvent.
24 In no event shall the association be liable for any penalties
25 or interest.

26 (3)(a) To the extent necessary to secure the funds for
27 the respective accounts for the payment of covered claims and
28 also to pay the reasonable costs to administer the same, the
29 office department, upon certification of the board of
30 directors, shall levy assessments in the proportion that each
31 insurer's net direct written premiums in this state in the

1 classes protected by the account bears to the total of said
2 net direct written premiums received in this state by all such
3 insurers for the preceding calendar year for the kinds of
4 insurance included within such account. Assessments shall be
5 remitted to and administered by the board of directors in the
6 manner specified by the approved plan. Each insurer so
7 assessed shall have at least 30 days' written notice as to the
8 date the assessment is due and payable. Every assessment
9 shall be made as a uniform percentage applicable to the net
10 direct written premiums of each insurer in the kinds of
11 insurance included within the account in which the assessment
12 is made. The assessments levied against any insurer shall not
13 exceed in any one year more than 2 percent of that insurer's
14 net direct written premiums in this state for the kinds of
15 insurance included within such account during the calendar
16 year next preceding the date of such assessments.

17 (b) If sufficient funds from such assessments,
18 together with funds previously raised, are not available in
19 any one year in the respective account to make all the
20 payments or reimbursements then owing to insurers, the funds
21 available shall be prorated and the unpaid portion shall be
22 paid as soon thereafter as funds become available.

23 (c) Assessments shall be included as an appropriate
24 factor in the making of rates.

25 (d) No state funds of any kind shall be allocated or
26 paid to said association or any of its accounts.

27 ~~(e)1.a. In addition to assessments otherwise~~
28 ~~authorized in paragraph (a), as a temporary measure related to~~
29 ~~insolvencies caused by Hurricane Andrew, and to the extent~~
30 ~~necessary to secure the funds for the account specified in s.~~
31 ~~631.55(2)(c), or to retire indebtedness, including, without~~

1 ~~limitation, the principal, redemption premium, if any, and~~
2 ~~interest on, and related costs of issuance of, bonds issued~~
3 ~~under s. 166.111(2), and the funding of any reserves and other~~
4 ~~payments required under the bond resolution or trust indenture~~
5 ~~pursuant to which such bonds have been issued, the department,~~
6 ~~upon certification of the board of directors, shall levy~~
7 ~~assessments upon insurers holding a certificate of authority~~
8 ~~as follows:~~

9 ~~(I) Except as provided in sub-sub-subparagraph (II),~~
10 ~~the assessments payable under this paragraph by any insurer~~
11 ~~shall not exceed in any 1 year more than 2 percent of that~~
12 ~~insurer's direct written premiums, net of refunds, in this~~
13 ~~state during the preceding calendar year for the kinds of~~
14 ~~insurance within the account specified in s. 631.55(2)(c).~~

15 ~~(II) If the amount levied under sub-sub-subparagraph~~
16 ~~(I) is less than 2 percent of the insurer's direct written~~
17 ~~premiums, net of refunds, in this state during calendar year~~
18 ~~1991 for the kinds of insurance within the account specified~~
19 ~~in s. 631.55(2)(c), in addition to and separate from such~~
20 ~~assessment, the assessment shall also include the difference~~
21 ~~between the amount calculated based on calendar year 1991 and~~
22 ~~the amount determined under sub-sub-subparagraph (I). If this~~
23 ~~sub-sub-subparagraph is held invalid, the invalidity shall not~~
24 ~~affect other provisions of this section, and to this end the~~
25 ~~provisions of this section are declared severable.~~

26 ~~(III) In addition to any other insurers subject to~~
27 ~~this subparagraph, this subparagraph also applies to any~~
28 ~~insurer that held a certificate of authority on August 24,~~
29 ~~1992. If this sub-sub-subparagraph is held invalid, the~~
30 ~~invalidity shall not affect other provisions of this section,~~

31

1 ~~and to this end the provisions of this section are declared~~
2 ~~severable.~~

3 ~~b. Any assessments authorized under this paragraph~~
4 ~~shall be levied by the department upon insurers referred to in~~
5 ~~sub-subparagraph a., upon certification as to the need~~
6 ~~therefor by the board of directors, in 1992 and in each year~~
7 ~~that bonds issued under s. 166.111(2) are outstanding, in such~~
8 ~~amounts up to such 2 percent limit as required in order to~~
9 ~~provide for the full and timely payment of the principal of,~~
10 ~~redemption premium, if any, and interest on, and related costs~~
11 ~~of, issuance of bonds issued under s. 166.111(2). The~~
12 ~~assessments provided for in this paragraph are hereby assigned~~
13 ~~and pledged to a municipality issuing bonds under s.~~
14 ~~166.111(2)(b), for the benefit of the holders of such bonds,~~
15 ~~in order to enable such municipality to provide for the~~
16 ~~payment of the principal of, redemption premium, if any, and~~
17 ~~interest on such bonds, the cost of issuance of such bonds,~~
18 ~~and the funding of any reserves and other payments required~~
19 ~~under the bond resolution or trust indenture pursuant to which~~
20 ~~such bonds have been issued, without the necessity of any~~
21 ~~further action by the association, the department, or any~~
22 ~~other party. To the extent that bonds are issued under s.~~
23 ~~166.111(2), the proceeds of assessments levied under this~~
24 ~~paragraph shall be remitted directly to and administered by~~
25 ~~the trustee appointed for such bonds.~~

26 ~~c. Assessments under this paragraph shall be payable~~
27 ~~in 12 monthly installments with the first installment being~~
28 ~~due and payable at the end of the month after an assessment is~~
29 ~~levied, and subsequent installments being due not later than~~
30 ~~the end of each succeeding month.~~

31

1 ~~d. The association shall issue a monthly report on the~~
2 ~~status of the use of the bond proceeds as related to~~
3 ~~insolvencies caused by Hurricane Andrew. The report must~~
4 ~~contain the number of claims paid and the amount of claims~~
5 ~~paid. The association shall also include an analysis of the~~
6 ~~revenue generated from the additional assessment levied under~~
7 ~~this subsection. The report must be sent to the Legislature~~
8 ~~and the Insurance Commissioner monthly.~~

9 ~~2. In order to assure that insurers paying assessments~~
10 ~~levied under this paragraph continue to charge rates that are~~
11 ~~neither inadequate nor excessive, within 90 days after being~~
12 ~~notified of such assessments, each insurer that is to be~~
13 ~~assessed pursuant to this paragraph shall make a rate filing~~
14 ~~for coverage included within the account specified in s.~~
15 ~~631.55(2)(c) and for which rates are required to be filed~~
16 ~~under s. 627.062. If the filing reflects a rate change that,~~
17 ~~as a percentage, is equal to the difference between the rate~~
18 ~~of such assessment and the rate of the previous year's~~
19 ~~assessment under this paragraph, the filing shall consist of a~~
20 ~~certification so stating and shall be deemed approved when~~
21 ~~made, subject to the department's continuing authority to~~
22 ~~require actuarial justification as to the adequacy of any rate~~
23 ~~at any time. Any rate change of a different percentage shall~~
24 ~~be subject to the standards and procedures of s. 627.062.~~

25 Section 1356. Section 631.59, Florida Statutes, is
26 amended to read:

27 631.59 Duties and powers of department and office of
28 insurance.--

29 (1) The department shall+

30
31

1 ~~(a)~~ notify the association of the existence of an
2 insolvent insurer not later than 3 days after it receives
3 notice of the determination of the insolvency. ~~†~~ and

4 ~~(b)~~ ~~Upon request of the board of directors, provide~~
5 ~~the association with a statement of the net direct written~~
6 ~~premiums of each member insurer.~~

7 (2) The department may†

8 ~~(a)~~ require that the association notify the insureds
9 of the insolvent insurer and any other interested parties of
10 the determination of insolvency and of their rights under this
11 part. Such notification shall be by mail at their last known
12 addresses, when available, but if sufficient information for
13 notification by mail is not available, notice by publication
14 in a newspaper of general circulation shall be sufficient.

15 (3) The office shall, upon request of the board of
16 directors, provide the association with a statement of the net
17 direct written premiums of each member insurer.

18 (4)~~(b)~~ The office may:

19 (a) Suspend or revoke the certificate of authority to
20 transact insurance in this state of any member insurer which
21 fails to pay an assessment when due or fails to comply with
22 the plan of operation. As an alternative, the office
23 ~~department~~ may levy a fine on any member insurer which fails
24 to pay an assessment when due. Such fine may not exceed 5
25 percent of the unpaid assessment per month, except that no
26 fine shall be less than \$100 per month.

27 (b)~~(c)~~ Revoke the designation of any servicing
28 facility if it finds claims are being handled
29 unsatisfactorily.

30 Section 1357. Section 631.62, Florida Statutes, is
31 amended to read:

1 631.62 Prevention of insolvencies.--To aid in the
2 detection and prevention of insurer insolvencies:

3 (1) It shall be the duty of the board of directors,
4 upon majority vote, to notify the office ~~department~~ of any
5 information indicating any member insurer may be insolvent or
6 in a financial condition hazardous to the policyholders or the
7 public.

8 (2) The board of directors may, upon majority vote,
9 request that the office ~~department~~ order an examination of any
10 member insurer which the board in good faith believes may be
11 in a financial condition hazardous to the policyholders or the
12 public. Within 30 days of the receipt of such request, the
13 office ~~department~~ shall begin such examination. The
14 examination may be conducted as a National Association of
15 Insurance Commissioners examination or may be conducted by
16 such persons as the office ~~department~~ designates. The cost of
17 such examination shall be paid by the association and the
18 examination report shall be treated as are other examination
19 reports pursuant to s. 624.319. In no event shall such
20 examination report be released to the board of directors prior
21 to its release to the public. The office ~~department~~ shall
22 notify the board of directors when the examination is
23 completed. The request for an examination shall be kept on
24 file by the office ~~department~~; such request is confidential
25 and exempt from the provisions of s. 119.07(1) until the
26 examination report is released to the public.

27 (3) The board of directors may, upon majority vote,
28 make reports and recommendations to the department or office
29 upon any matter germane to the solvency, liquidation,
30 rehabilitation, or conservation of any member insurer. Such
31 reports and recommendations are confidential and exempt from

1 the provisions of s. 119.07(1) until the termination of a
2 delinquency proceeding.

3 (4) The board of directors may, upon majority vote,
4 make recommendations to the office ~~department~~ for the
5 detection and prevention of insurer insolvencies.

6 Section 1358. Section 631.66, Florida Statutes, is
7 amended to read:

8 631.66 Immunity.--There shall be no liability on the
9 part of, and no cause of action of any nature shall arise
10 against, any member insurer, the association or its agents or
11 employees, the board of directors, the Chief Financial
12 Officer, or the department or office or their ~~its~~
13 representatives for any action taken by them in the
14 performance of their powers and duties under this part. Such
15 immunity shall extend to the participation in any organization
16 of one or more other state associations of similar purposes
17 and to any such organization and its agents or employees.

18 Section 1359. Section 631.714, Florida Statutes, is
19 amended to read:

20 631.714 Definitions.--As used in this part, the term:

21 (1) "Account" means any of the three accounts created
22 in s. 631.715.

23 (2) "Association" means the Florida Life and Health
24 Insurance Guaranty Association created in s. 631.715.

25 (3) "Contractual obligation" means any obligation
26 under covered policies.

27 (4) "Covered policy" means any policy or contract set
28 out in s. 631.713 and reduced to written, printed, or other
29 tangible form.

30 ~~(5) "Department" means the Department of Insurance.~~

31

1 (5)~~(6)~~ "Impaired insurer" means a member insurer
2 deemed by the department to be potentially unable to fulfill
3 its contractual obligations and not an insolvent insurer.

4 (6)~~(7)~~ "Insolvent insurer" means a member insurer
5 authorized to transact insurance in this state, either at the
6 time the policy was issued or when the insured event occurred,
7 and against which an order of liquidation with a finding of
8 insolvency has been entered by a court of competent
9 jurisdiction, if such order has become final by the exhaustion
10 of appellate review.

11 (7)~~(8)~~ "Member insurer" means any person licensed to
12 transact in this state any kind of insurance as set out in s.
13 631.713.

14 (8)~~(9)~~ "Premium" means any direct gross insurance
15 premium and any annuity consideration written on covered
16 policies, less return premium and consideration thereon and
17 dividends paid or credited to policyholders on such direct
18 business. "Premium" does not include premium and
19 consideration on contracts between insurers and reinsurers.

20 (9)~~(10)~~ "Person" means any individual, corporation,
21 partnership, association, or voluntary organization.

22 (10)~~(11)~~ "Resident" means any person who resides in
23 this state at the time a member insurer is determined to be an
24 impaired or insolvent insurer and to whom contractual
25 obligations are owed by such impaired or insolvent member
26 insurer.

27 Section 1360. Subsections (2) and (3) of section
28 631.72, Florida Statutes, are amended to read:

29 631.72 Premium or income tax credits for assessments
30 paid.--

31

1 (2) If a member insurer ceases doing business in this
2 state and surrenders to the office ~~department~~ its certificate
3 of authority to transact insurance in this state, all
4 uncredited assessments may be credited as provided in this
5 section against either its premium or corporate income tax
6 liabilities imposed pursuant to ss. 624.509 and 220.11 for the
7 year it ceases doing business.

8 (3) Any sums acquired by refund pursuant to s.
9 631.718(6) from the association which have theretofore been
10 written off by contributing insurers and offset against
11 premium or corporate income taxes as provided in subsection
12 (1) and which are not needed for purposes of this part shall
13 be paid by the insurer to the Department of Revenue for
14 deposit with the Chief Financial Officer ~~Treasurer~~ to the
15 credit of the General Revenue Fund.

16 Section 1361. Section 631.722, Florida Statutes, is
17 amended to read:

18 631.722 Powers and duties of department and office.--

19 (1) The office ~~department~~ shall:

20 (a) Upon request of the board of directors, provide
21 the association with a statement of the premiums in each of
22 the appropriate states for each member insurer.

23 (b) When an impairment is declared and the amount of
24 the impairment is determined, serve a demand upon the impaired
25 insurer to make good the impairment within a reasonable time.
26 Notice to the impaired insurer shall constitute notice to its
27 shareholders, if any. The failure of the insurer to promptly
28 comply with such demand shall not excuse the association from
29 the performance of its powers and duties under this part.

30 ~~(2)(c)~~ The department shall, in any liquidation or
31 rehabilitation proceeding involving a domestic insurer, be

1 appointed as the liquidator or rehabilitator. If a foreign or
2 alien member insurer is subject to a liquidation proceeding in
3 its domiciliary jurisdiction or state of entry, the department
4 shall be appointed conservator.

5 (3)~~(2)~~ The office ~~department~~ may suspend or revoke,
6 after notice and hearing, the certificate of authority to
7 transact insurance in this state of any member insurer that
8 fails to pay an assessment when due or fails to comply with
9 the approved plan of operation of the association. As an
10 alternative, the office ~~department~~ may levy a forfeiture on
11 any member insurer that fails to pay an assessment when due.
12 Such forfeiture shall not exceed 5 percent of the unpaid
13 assessment per month, but no forfeiture shall be less than
14 \$100 per month.

15 (4)~~(3)~~ Any action of the board of directors or of the
16 association may be appealed to the office ~~department~~ by any
17 member insurer if such appeal is taken within 30 days of the
18 action being appealed. If a member company is appealing an
19 assessment, the amount assessed shall be paid to the
20 association and available to meet association obligations
21 during the pendency of the appeal. If the appeal on the
22 assessment is upheld, the amount paid in error or excess shall
23 be returned to the member company. Any final action or order
24 of the office ~~department~~ shall be subject to judicial review
25 in a court of competent jurisdiction.

26 (5)~~(4)~~ The liquidator, rehabilitator, or conservator
27 of any impaired insurer may notify all interested persons of
28 the effect of this part.

29 Section 1362. Section 631.723, Florida Statutes, is
30 amended to read:

31

1 631.723 Prevention of insolvencies.--To aid in the
2 detection and prevention of insurer insolvencies or
3 impairments:

4 (1) The board of directors may, upon majority vote,
5 make reports and recommendations to the department or office
6 upon any matter germane to the solvency, liquidation,
7 rehabilitation, or conservation of any member insurer or
8 germane to the solvency of any company seeking to do an
9 insurance business in this state. Such reports and
10 recommendations are confidential and exempt from the
11 provisions of s. 119.07(1) until the termination of a
12 delinquency proceeding.

13 (2) It is the duty of the board of directors, upon a
14 majority vote, to notify the office ~~department~~ of any
15 information indicating that any member insurer may be an
16 impaired or insolvent insurer.

17 (3) The board of directors may, upon majority vote,
18 request that the office ~~department~~ order an examination of any
19 member insurer which the board in good faith believes may be
20 an impaired or insolvent insurer. Within 30 days of the
21 receipt of such a request, the office ~~department~~ shall begin
22 such an examination. The examination may be conducted as a
23 National Association of Insurance Commissioners examination or
24 may be conducted by such persons as the office ~~Insurance~~
25 ~~Commissioner~~ designates. The cost of such examination shall
26 be paid by the association, and the examination report shall
27 be treated in a manner similar to other examination reports
28 pursuant to s. 624.319. In no event may such examination
29 report be released to the board of directors before its
30 release to the public, but this does not preclude the office
31 ~~department~~ from complying with s. 631.398(2). The office

1 ~~department~~ shall notify the board of directors when the
2 examination is completed. The request for an examination
3 shall be kept on file by the office ~~department~~; such request
4 is confidential and exempt from the provisions of s. 119.07(1)
5 until the examination report is released to the public.

6 (4) The board of directors may, upon majority vote,
7 make recommendations to the office ~~department~~ for the
8 detection and prevention of insurer insolvencies.

9 Section 1363. Section 631.727, Florida Statutes, is
10 amended to read:

11 631.727 Immunity.--There shall be no liability on the
12 part of, and no cause of action of any nature shall arise
13 against, any member insurer or its agents or employees, the
14 association or its agents or employees, members of the board
15 of directors, the Chief Financial Officer, or the department
16 or office or their ~~its~~ representatives for any action taken by
17 them in the performance of their powers and duties under this
18 part. Such immunity shall extend to the participation in any
19 organization of one or more other state associations of
20 similar purposes and to any such organization and its agents
21 or employees.

22 Section 1364. Section 631.813, Florida Statutes, is
23 amended to read:

24 631.813 Application of part.--This part shall apply to
25 HMO contractual obligations to residents of Florida by HMOs
26 possessing a valid certificate of authority issued ~~by the~~
27 ~~Florida Department of Insurance~~ as provided by part I of
28 chapter 641. The provisions of this part shall not apply to
29 persons participating in medical assistance programs under the
30 Medicaid program.

31

1 Section 1365. Section 631.814, Florida Statutes, is
2 amended to read:

3 631.814 Definitions.--As used in this part, the term:

4 (1) "Plan" means the Florida Health Maintenance
5 Organization Consumer Assistance Plan created by this part.

6 (2) "Board" means the board of directors of the plan.

7 (3) "Contractual obligations" means any obligation
8 under covered health care policies.

9 (4) "Covered policy" means any policy or contract
10 issued by an HMO for health care services.

11 (5) "Date of insolvency" means the effective date of
12 an order of liquidation entered by a court of competent
13 jurisdiction.

14 ~~(6) "Department" means the Florida Department of~~
15 ~~insurance.~~

16 (6)~~(7)~~ "Health care services" means comprehensive
17 health care services as defined in s. 641.19.

18 (7)~~(8)~~ "HMO" means a health maintenance organization
19 possessing a valid certificate of authority issued by the
20 office ~~department~~ pursuant to part I of chapter 641.

21 (8)~~(9)~~ "Insolvent HMO" means an HMO against which an
22 order of rehabilitation or liquidation has been entered by a
23 court of competent jurisdiction, with the department appointed
24 as receiver, even if such order has not become final by the
25 exhaustion of appellate reviews.

26 (9)~~(10)~~ "Person" means any individual, corporation,
27 partnership, association, or voluntary organization.

28 (10)~~(11)~~ "Subscriber" means any resident of this state
29 who is enrolled for benefits provided by an HMO and who makes
30 premium payments or for whom premium payments are made.

31

1 Section 1366. Paragraph (b) of subsection (1) of
2 section 631.818, Florida Statutes, is amended to read:

3 631.818 Powers and duties of the plan.--

4 (1) In the event that an HMO is insolvent, the plan
5 shall:

6 (b) Cover all services that would have been covered by
7 the subscribers' contracts with the insolvent HMO during any
8 period from the date of insolvency until the effective date of
9 the replacement coverage with another HMO or other entity that
10 provides health care services or reimbursement or with a
11 product determined by the plan and approved by the office
12 ~~department~~.

13 Section 1367. Subsection (1) and paragraph (d) of
14 subsection (4) of section 631.820, Florida Statutes, are
15 amended to read:

16 631.820 Plan of operation.--

17 (1) The plan shall submit to the office ~~department~~ a
18 proposed plan of operation and any amendments thereto
19 necessary or suitable to assure the fair, reasonable, and
20 equitable administration of the plan. The proposed plan of
21 operation and any amendments thereto shall become effective
22 upon approval in writing by the office ~~department~~.

23 (4)

24 (d) A delegation under this subsection shall take
25 effect only with the approval of both the board of directors
26 and the office ~~department~~ and may be made only to an
27 administrator which extends protection not substantially less
28 favorable and effective than that provided by this part.

29 Section 1368. Section 631.821, Florida Statutes, is
30 amended to read:

31 631.821 Powers and duties of the department.--

1 (1) The office ~~department~~ may suspend or revoke, after
2 notice and hearing, the certificate of authority of a member
3 HMO that fails to pay an assessment when due, fails to comply
4 with the approved plan of operation of the plan, or fails
5 either to timely comply with or to timely appeal pursuant to
6 subsection (2) its appointment ~~under s. 631.818(2)~~.

7 (2) Any action of the board of directors of the plan
8 may be appealed to the office ~~department~~ by any member HMO if
9 such appeal is taken within 21 days of the action being
10 appealed; however, the HMO must comply with such action
11 pending exhaustion of appeal under s. 631.818(2). Any appeal
12 shall be promptly determined by the office ~~department~~, and
13 final action or order of the office ~~department~~ shall be
14 subject to judicial review in a court of competent
15 jurisdiction.

16 (3) The department may⁺

17 ~~(a)~~ require that the plan notify the subscriber of the
18 insolvent HMO and any other interested parties of the
19 determination of insolvency and of their rights under this
20 part. Such notification shall be by mail at their last known
21 addresses, when available, but if sufficient information for
22 notification by mail is not available, notice by publication
23 in a newspaper of general circulation shall be sufficient.

24 ~~(4)(b)~~ The office may revoke the designation of any
25 servicing facility or administrator if it finds claims are
26 being handled unsatisfactorily.

27 Section 1369. Section 631.823, Florida Statutes, is
28 amended to read:

29 631.823 Examination of the plan; annual report.--The
30 plan shall be subject to examination and regulation by the
31 office ~~department~~. The board of directors shall submit to the

1 office and the department, not later than May 1 of each year,
2 a financial report for the preceding calendar year in a form
3 approved by the commission ~~department~~ and a report of its
4 activities during the preceding calendar year.

5 Section 1370. Section 631.825, Florida Statutes, is
6 amended to read:

7 631.825 Immunity.--There shall be no liability on the
8 part of, and no cause of action of any nature shall arise
9 against, any member HMO or its agents or employees, the plan
10 or its agents or employees, members of the board of directors,
11 the Chief Financial Officer, or the department or office or
12 their ~~its~~ representatives for any action taken by them in the
13 performance of their powers and duties under this part.

14 Section 1371. Section 631.904, Florida Statutes, is
15 amended to read:

16 631.904 Definitions.--As used in this part, the term:

17 (1) "Corporation" means the Florida Workers'
18 Compensation Insurance Guaranty Association, Incorporated.

19 (2) "Covered claim" means an unpaid claim, including a
20 claim for return of unearned premiums, which arises out of, is
21 within the coverage of, and is not in excess of the applicable
22 limits of, an insurance policy to which this part applies,
23 which policy was issued by an insurer and which claim is made
24 on behalf of a claimant or insured who was a resident of this
25 state at the time of the injury. The term "covered claim" does
26 not include any amount sought as a return of premium under any
27 retrospective rating plan; any amount due any reinsurer,
28 insurer, insurance pool, or underwriting association, as
29 subrogation recoveries or otherwise; or any return of premium
30 resulting from a policy that was not in force on the date of
31 the final order of liquidation. Member insurers have no right

1 of subrogation against the insured of any insolvent insurer.
2 This provision shall be applied retroactively to cover claims
3 of an insolvent self-insurance fund resulting from accidents
4 or losses incurred prior to January 1, 1994, regardless of the
5 date the ~~Department of Insurance filed a~~ petition in circuit
6 court was filed alleging insolvency and the date the court
7 entered an order appointing a receiver.

8 ~~(3) "Department" means the Department of Insurance.~~

9 (3)~~(4)~~ "Insolvency" means that condition in which all
10 of the assets of the insurer, if made immediately available,
11 would not be sufficient to discharge all of its liabilities or
12 that condition in which the insurer is unable to pay its debts
13 as they become due in the usual course of business. When the
14 context of any provision of this part so indicates, insolvency
15 also includes impairment of surplus or impairment of capital.

16 (4)~~(5)~~ "Insolvent insurer" means an insurer that was
17 authorized to transact insurance in this state, either at the
18 time the policy was issued or when the insured event occurred,
19 and against which an order of liquidation with a finding of
20 insolvency has been entered by a court of competent
21 jurisdiction if such order has become final by the exhaustion
22 of appellate review.

23 (5)~~(6)~~ "Insurer" means an insurance carrier or
24 self-insurance fund authorized to insure under chapter 440.
25 For purposes of this act, "insurer" does not include a
26 qualified local government self-insurance fund, as defined in
27 s. 624.4622, or an individual self-insurer as defined in s.
28 440.385.

29 (6)~~(7)~~ "Self-insurance fund" means a group
30 self-insurance fund authorized under s. 624.4621, a commercial
31 self-insurance fund writing workers' compensation insurance

1 authorized under s. 624.462, or an assessable mutual insurer
2 authorized under s. 628.6011. For purposes of this act,
3 "self-insurance fund" does not include a qualified local
4 government self-insurance fund, as defined in s. 624.4622, or
5 an individual self-insurer as defined in s. 440.385.

6 Section 1372. Subsection (1) of section 631.911,
7 Florida Statutes, is amended to read:

8 631.911 Creation of the Florida Workers' Compensation
9 Insurance Guaranty Association, Incorporated; merger; effect
10 of merger.--

11 (1)(a) The Florida Self-Insurance Fund Guaranty
12 Association established in former part V of chapter 631 and
13 the workers' compensation insurance account, which includes
14 excess workers' compensation insurance, established in former
15 s. 631.55(2)(a) shall be merged, ~~effective October 1, 1997, or~~
16 ~~as provided in paragraph (b),~~ in accordance with the plan of
17 operation adopted by the interim board of directors. The
18 successor nonprofit corporation shall be known as the "Florida
19 Workers' Compensation Insurance Guaranty Association,
20 Incorporated."

21 ~~(b) The merger may be effected prior to October 1,~~
22 ~~1997, if:~~

23 ~~1. The interim board of directors of the Workers'~~
24 ~~Compensation Insurance Guaranty Association provides the~~
25 ~~Department of Insurance with written notice of its intent to~~
26 ~~effectuate the merger as of a date certain and its functional~~
27 ~~readiness to initiate operations, such notice setting forth~~
28 ~~the plan or summary thereof for effecting the merger; and,~~

29 ~~2. The department, upon review of the plan or summary~~
30 ~~thereof, determines the Workers' Compensation Insurance~~

31

1 ~~Guaranty Association is functionally ready to initiate~~
2 ~~operations and so certifies to the interim board of directors.~~

3 ~~(c) Prior to the effective date of the merger, the~~
4 ~~Florida Self-Insurance Fund Guaranty Association shall be the~~
5 ~~entity responsible for the claims of insolvent self-insurance~~
6 ~~funds resulting from accidents or losses incurred prior to~~
7 ~~January 1, 1994, regardless of the date the Department of~~
8 ~~Insurance filed a petition in circuit court alleging~~
9 ~~insolvency and the date the court entered an order appointing~~
10 ~~a receiver.~~

11 (b)(d) Upon the effective date of the merger:

12 1. The Florida Self-Insurance Fund Guaranty
13 Association and the workers' compensation insurance account
14 within the Florida Insurance Guaranty Association cease to
15 exist and are succeeded by the Florida Workers' Compensation
16 Insurance Guaranty Association.

17 2. Title to all assets of any description, all real
18 estate and other property, or any interest therein, owned by
19 each party to the merger is vested in the successor
20 corporation without reversion or impairment.

21 3. The successor corporation shall be responsible and
22 liable for all the liabilities and obligations of each party
23 to the merger.

24 4. Any claim existing or action or proceeding pending
25 by or against any party to the merger may be continued as if
26 the merger did not occur or the successor corporation may be
27 substituted in the proceeding for the corporation or account
28 which ceased existence.

29 5. Neither the rights of creditors nor any liens upon
30 the property of any party to the merger shall be impaired by
31 such merger.

1 6. Outstanding assessments levied by the Florida
2 Self-Insurance Guaranty Association or the Florida Insurance
3 Guaranty Association on behalf of the workers' compensation
4 insurance account remain in full force and effect and shall be
5 paid when due.

6 Section 1373. Subsections (1) and (3) of section
7 631.912, Florida Statutes, are amended to read:

8 631.912 Board of directors.--

9 (1) The board of directors of the corporation shall
10 consist of 11 persons, 1 of whom is the insurance consumer
11 advocate appointed under s. 627.0613 or designee and 1 of whom
12 is designated by the Chief Financial Officer ~~Insurance~~
13 ~~Commissioner~~. The department shall appoint to the board 6
14 persons selected by private carriers from among the 20
15 workers' compensation insurers with the largest amount of net
16 direct written premium as determined by the department, and 3
17 persons selected by the self-insurance funds. At least two of
18 the private carriers shall be foreign carriers authorized to
19 do business in this state. The board shall elect a chairperson
20 from among its members. The Chief Financial Officer
21 ~~commissioner~~ may remove any board member for cause. Each board
22 member shall serve for a 4-year term and may be reappointed,
23 ~~except that four members of the initial board shall have~~
24 ~~2-year terms so as to stagger the periods of service.~~ A
25 vacancy on the board shall be filled for the remaining period
26 of the term in the same manner by which the original
27 appointment was made.

28 ~~(3) Effective upon this act becoming a law, the~~
29 ~~persons on the board of directors created pursuant to s.~~
30 ~~627.311(4)(a) who evidence a willingness to serve in writing,~~
31 ~~shall serve as an interim board of directors of the~~

1 ~~corporation until the initial board of directors has been~~
2 ~~appointed for the corporation in accordance with the~~
3 ~~provisions of subsection (1). The interim board of directors~~
4 ~~shall serve for a period not to exceed 6 months. The initial~~
5 ~~meeting shall be called by the commissioner within 30 days~~
6 ~~after this act becomes a law. The interim board of directors~~
7 ~~shall establish a process for the selection of persons to~~
8 ~~serve on the board of the Florida Workers' Compensation~~
9 ~~Insurance Guaranty Association in accordance with the terms of~~
10 ~~subsection (1). The board of directors shall adopt an interim~~
11 ~~plan of operation to effect the merger in s. 631.911 and avoid~~
12 ~~any interruption of benefit payments to injured workers. When~~
13 ~~necessary and upon approval of the chairs of their respective~~
14 ~~board of directors, the Florida Self-Insurance Fund Guaranty~~
15 ~~Association and the Florida Insurance Guaranty Association~~
16 ~~shall provide staff support to the interim board of directors.~~
17 ~~The board shall submit the interim plan to the commissioner,~~
18 ~~who shall approve or disapprove the plan within 30 days after~~
19 ~~receipt.~~

20 Section 1374. Section 631.917, Florida Statutes, is
21 amended to read:

22 631.917 Prevention of insolvencies.--To aid in the
23 detection and prevention of insolvencies or impairments:

24 (1)(a) The board may make reasonable and lawful
25 investigation into the practices of any third-party
26 administrator or service company for a self-insurance fund
27 declared insolvent by the court.

28 (b) If the results of an investigation reasonably lead
29 to a finding that certain actions taken or not taken by those
30 handling, processing, or preparing covered claims for payment
31 or other benefit pursuant to any workers' compensation

1 insurance policy contributed to the insolvency of an insurer,
2 such information may, in the discretion of the board, be
3 provided to the department or office in an expedited manner.

4 (2) The board of directors may make reports and
5 recommendations to the department or office upon any matter
6 germane to the solvency, liquidation, rehabilitation, or
7 conservation of any member insurer or germane to the solvency
8 of any insurer seeking to do insurance business in this state.

9 (3) The board of directors, in its discretion, may
10 notify the office ~~department~~ of any information indicating
11 that any member insurer may be an impaired or insolvent
12 insurer.

13 (4) The board of directors, in its discretion, may
14 request that the office ~~department~~ order an examination of any
15 member insurer which the board in good faith believes may be
16 an impaired or insolvent insurer. Within 30 days after
17 receipt of such a request, the office ~~department~~ shall begin
18 such an examination. The examination may be conducted as a
19 National Association of Insurance Commissioners examination or
20 may be conducted by such persons as the office ~~Insurance~~
21 ~~Commissioner~~ designates. The cost of such examination shall
22 be paid by the corporation, and the examination report shall
23 be treated in a manner similar to other examination reports
24 pursuant to s. 624.319. In no event may such examination
25 report be released to the board of directors before its
26 release to the public, but this requirement does not preclude
27 the office ~~department~~ from complying with s. 631.398(2). The
28 office ~~department~~ shall notify the board of directors when the
29 examination is completed. The request for an examination
30 shall be kept on file by the office ~~department~~.

31

1 (5) The board is authorized to assist and aid the
2 department or office, in any manner consistent with existing
3 laws and this chapter, in the department's or office's
4 investigation or referral for prosecution of those whose
5 action or inaction may have contributed to the impairment or
6 insolvency of the insurer.

7 (6) The board may make recommendations to the office
8 ~~department~~ for the detection and prevention of insurer
9 insolvencies.

10 Section 1375. Section 631.918, Florida Statutes, is
11 amended to read:

12 631.918 Immunity.--There is no liability on the part
13 of, and a cause of action may not arise against, the
14 corporation, its agents or employees, or members of its board
15 of directors, the Chief Financial Officer, or the department
16 or office or their ~~its~~ agents or employees, for any action
17 taken by them in the performance of their powers and duties
18 under this section, unless such action is found to be a
19 violation of antitrust laws, was in bad faith, or was
20 undertaken with malicious purpose or in a manner exhibiting
21 wanton and willful disregard of human rights, safety, or
22 property.

23 Section 1376. Section 631.931, Florida Statutes, is
24 amended to read:

25 631.931 Reports and recommendations by board; public
26 records exemption.--Reports and recommendations made by the
27 Board of Directors of the Florida Workers' Compensation
28 Insurance Guaranty Association ~~to the Department of Insurance~~
29 under s. 631.917 upon any matter germane to the solvency,
30 liquidation, rehabilitation, or conservation of any member
31 insurer are confidential and exempt from the provisions of s.

1 119.07(1) and s. 24(a), Art. I of the State Constitution until
2 the termination of a delinquency proceeding.

3 Section 1377. Subsections (2), (3), (4), and (5) of
4 section 632.611, Florida Statutes, are amended to read:

5 632.611 Organization.--A domestic society organized on
6 or after June 24, 1986, shall be formed as follows:

7 (2) Such articles of incorporation; duly certified
8 copies of the society's bylaws and rules; copies of all
9 proposed forms of certificates, applications therefor, and
10 circulars to be issued by the society; and a bond, conditioned
11 upon the return to the applicants of the advanced payments if
12 the organization is not completed within 1 year, shall be
13 filed with the office ~~department~~, which may require such
14 further information as it deems necessary. The bond with
15 sureties approved by the office ~~department~~ shall be in such
16 amount, not less than \$300,000 nor more than \$1.5 million, as
17 required by the office ~~department~~. All documents filed are to
18 be in the English language. If the purposes of the society
19 conform to the requirements of this chapter and all provisions
20 of the law have been complied with, the office ~~department~~
21 shall so certify, retain, and file the articles of
22 incorporation and shall furnish the incorporators a
23 preliminary certificate authorizing the society to solicit
24 members as hereinafter provided.

25 (3) No preliminary certificate granted under the
26 provisions of this section shall be valid after 1 year from
27 its date or after such further period, not exceeding 1 year,
28 as may be authorized by the office ~~department~~ upon cause
29 shown. The articles of incorporation and all other proceedings
30 thereunder shall become null and void in 1 year from the date
31 of the preliminary certificate, or at the expiration of the

1 extended period, unless the society shall have completed its
2 organization and received a certificate of authority to do
3 business as hereinafter provided.

4 (4) Upon receipt of a preliminary certificate of
5 authority from the office ~~department~~, the society may solicit
6 members for the purpose of completing its organization, shall
7 collect from each applicant the amount of not less than one
8 regular monthly premium in accordance with its table of rates,
9 and shall issue to each such applicant a receipt for the
10 amount so collected. No society shall incur any liability
11 other than for the return of such advance premium, nor issue
12 any certificate, nor pay, allow, or offer or promise to pay or
13 allow, any benefit, to any person until:

14 (a) Actual bona fide applications for benefits have
15 been secured on not less than 500 applicants, and any
16 necessary evidence of insurability has been furnished to and
17 approved by the society;

18 (b) At least 10 subordinate lodges have been
19 established into which the 500 applicants have been admitted;

20 (c) There has been submitted to the office ~~department~~,
21 under oath of the president or secretary, or corresponding
22 officer of the society, a list of such applicants, giving
23 their names, addresses, date each was admitted, name and
24 number of the subordinate lodge of which each applicant is a
25 member, amount of benefits to be granted and the premiums
26 therefor; and

27 (d) It shall have been shown to the office ~~department~~,
28 by sworn statement of the treasurer or corresponding officer
29 of such society, that at least 500 applicants have each paid
30 in cash at least one regular monthly premium as herein
31 provided, which premiums in the aggregate shall amount to at

1 least \$150,000. Such advance premiums shall be held in trust
2 during the period of organization and if the society has not
3 qualified for a certificate of authority within 1 year, as
4 herein provided, such premiums shall be returned to said
5 applicants.

6 (5) The office ~~department~~ may make such examination
7 and require such further information as it deems advisable.
8 Upon presentation of satisfactory evidence that the society
9 has complied with all the provisions of law, the office
10 ~~department~~ shall issue to the society a certificate of
11 authority to that effect and to the effect that the society is
12 authorized to transact business pursuant to the provisions of
13 this chapter. The certificate of authority shall be prima
14 facie evidence of the existence of the society at the date of
15 such certificate. The office ~~department~~ shall cause a record
16 of such certificate of authority to be made. A certified copy
17 of such record may be given in evidence with like effect as
18 the original certificate of authority.

19 Section 1378. Subsections (2), (3), and (4) of section
20 632.612, Florida Statutes, are amended to read:

21 632.612 Amendments to laws.--

22 (2) No amendment to the laws of any domestic society
23 shall take effect unless approved by the office ~~department~~,
24 which shall approve such amendment if it finds that the
25 amendment has been duly adopted and is not inconsistent with
26 any requirement of the laws of this state or with the
27 character, objects, and purposes of the society. Unless the
28 office ~~department~~ shall disapprove any such amendment within
29 90 days after the filing of same, the amendment shall be
30 considered approved. The approval or disapproval of the
31 office ~~department~~ shall be in writing and mailed to the

1 secretary or corresponding officer of the society at its
2 principal office. In case the office ~~department~~ disapproves
3 the amendment, the reasons therefor shall be stated in the
4 written notice.

5 (3) Within 90 days from the approval thereof by the
6 office ~~department~~, all such amendments or a synopsis thereof
7 shall be furnished to all members of the society either by
8 mail or by publication in full in the official publication of
9 the society. The affidavit of any officer of the society or of
10 anyone authorized by it to mail any amendments or a synopsis
11 thereof, stating facts which show that same have been duly
12 addressed and mailed, shall be prima facie evidence that such
13 amendments or a synopsis thereof have been furnished the
14 addressee.

15 (4) Every foreign or alien society authorized to do
16 business in this state shall file with the office ~~department~~ a
17 duly certified copy of all amendments of, or additions to, its
18 laws within 90 days after the enactment of same.

19 Section 1379. Section 632.614, Florida Statutes, is
20 amended to read:

21 632.614 Reinsurance.--

22 (1) A domestic society may, by a reinsurance
23 agreement, cede any individual risk or risks in whole or in
24 part to an insurer, other than another fraternal benefit
25 society, having the power to make such reinsurance and
26 authorized to do business in this state, or if not so
27 authorized, to an insurer which is approved by the office
28 ~~department~~. However, no domestic society may reinsure 75
29 percent or more of its insurance in force without the written
30 permission of the office ~~department~~. The domestic society may
31 take credit for the reserves on such ceded risks to the extent

1 reinsured, but no credit shall be allowed as an admitted asset
2 or as a deduction from liability, to a ceding society for
3 reinsurance made, ceded, renewed, or otherwise becoming
4 effective after the effective date of this act, unless the
5 reinsurance is payable by the assuming insurer on the basis of
6 the liability of the ceding society under the contract or
7 contracts reinsured without diminution because of the
8 insolvency of the ceding society.

9 (2) Notwithstanding the limitation in subsection (1),
10 a society may reinsure the risks of another society in a
11 consolidation or merger approved by the office ~~department~~
12 under s. 632.615.

13 Section 1380. Subsections (1) and (2) of section
14 632.615, Florida Statutes, are amended to read:

15 632.615 Consolidations and mergers.--

16 (1) A domestic society may not consolidate or merge
17 with any other insurer other than another society. It may
18 consolidate or merge with another society by complying with
19 the provisions of this section. It shall file with the office
20 ~~department~~:

21 (a) A certified copy of the written contract
22 containing in full the terms and conditions of the
23 consolidation or merger;

24 (b) A sworn statement by the president and secretary
25 or corresponding officers of each society showing the
26 financial condition thereof on a date fixed by the office
27 ~~department~~ but not earlier than December 31 next preceding the
28 date of the contract;

29 (c) A certificate of such officers, duly verified by
30 their respective oaths, that the consolidation or merger has
31 been approved by a two-thirds vote of the supreme governing

1 body of each society, such vote being conducted at a regular
2 or special meeting of each such body, or, if the society's
3 laws so permit, by mail; and

4 (d) Evidence that at least 60 days prior to the action
5 of the supreme governing body of each society, the text of the
6 contract has been furnished to all members of each society
7 either by mail or by publication in full in the official
8 publication of each society.

9 (2) If the office ~~department~~ finds that the contract
10 is in conformity with the provisions of this section, that the
11 financial statements are correct, and that the consolidation
12 or merger is just and equitable to the members of each
13 society, the office ~~department~~ shall approve the contract and
14 issue a certificate to such effect. Upon such approval, the
15 contract shall be in full force and effect unless any society
16 which is a party to the contract is incorporated under the
17 laws of any other state or territory. In such event the
18 consolidation or merger shall not become effective unless and
19 until it has been approved as provided by the laws of such
20 state or territory and a certificate of such approval filed
21 with the office ~~department~~ or, if the laws of such state or
22 territory contain no such provision, then the consolidation or
23 merger shall not become effective unless and until it has been
24 approved by the insurance supervisory official of such state
25 or territory and a certificate of such approval filed with the
26 office ~~department~~.

27 Section 1381. Section 632.616, Florida Statutes, is
28 amended to read:

29 632.616 Conversion of fraternal benefit society into
30 mutual life insurance company.--Any domestic fraternal benefit
31 society may be converted and licensed as a mutual life

1 insurance company by compliance with all the requirements of
2 chapter 628. A plan of conversion shall be prepared in
3 writing by the board of directors setting forth in full the
4 terms and conditions of conversion. The affirmative vote of
5 two-thirds of all members of the supreme governing body at a
6 regular or special meeting shall be necessary for the approval
7 of such plan. No such conversion shall take effect unless and
8 until approved by the office ~~department~~, which may give such
9 approval if it finds that the proposed change is in conformity
10 with the requirements of law and not prejudicial to the
11 certificateholders of the society.

12 Section 1382. Subsection (6) of section 632.621,
13 Florida Statutes, is amended to read:

14 632.621 The benefit contract.--

15 (6) No certificate shall be delivered or issued for
16 delivery in this state unless a copy of the form has been
17 filed with the office ~~department~~ in the manner provided for
18 like policies issued by life insurers in this state. Every
19 life, accident, health, or disability insurance certificate
20 and every annuity certificate issued on or after one year from
21 June 24, 1986, shall meet the standard contract provision
22 requirements not inconsistent with this chapter for like
23 policies issued by life insurers in this state, except that a
24 society may provide for a grace period for payment of premiums
25 of 1 full month in its certificates. The certificate shall
26 also contain a provision stating the amount of premiums which
27 are payable under the certificate and a provision reciting or
28 setting forth the substance of any sections of the society's
29 laws or rules in force at the time of issuance of the
30 certificate which, if violated, will result in the termination
31 or reduction of benefits payable under the certificate. If

1 the laws of the society provide for expulsion or suspension of
2 a member, the certificate shall also contain a provision that
3 any member so expelled or suspended, except for nonpayment of
4 a premium or within the contestable period for material
5 misrepresentation in the application for membership or
6 insurance, shall have the privilege of maintaining the
7 certificate in force by continuing payment of the required
8 premium.

9 Section 1383. Subsection (2) of section 632.622,
10 Florida Statutes, is amended to read:

11 632.622 Nonforfeiture benefits, cash surrender values,
12 certificate loans, and other options.--

13 (2) For certificates issued on or after October 1,
14 1982, reserves shall be computed utilizing the appropriate
15 mortality tables approved by the office ~~department~~ for
16 policies containing life insurance benefits made applicable to
17 life insurers under s. 625.121.

18 Section 1384. Subsection (3) of section 632.627,
19 Florida Statutes, is amended to read:

20 632.627 Valuation.--

21 (3) The office ~~department~~ may, in its discretion,
22 accept other standards for valuation if it finds that the
23 reserves produced thereby will not be less in the aggregate
24 than reserves computed in accordance with the minimum
25 valuation standard herein prescribed. The office ~~department~~
26 may, in its discretion, vary the standards of mortality
27 applicable to all benefit contracts on substandard lives or
28 other extra hazardous lives by any society authorized to do
29 business in this state.

30 Section 1385. Section 632.628, Florida Statutes, is
31 amended to read:

1 632.628 Reports.--

2 (1) Reports shall be filed in accordance with the
3 provisions of this section. Every society transacting
4 business in this state shall annually, on or before March 1,
5 unless for cause shown such time has been extended by the
6 office ~~department~~, file with the office ~~department~~ a true
7 statement of its financial condition, transactions, and
8 affairs for the preceding calendar year and pay a fee for
9 filing same, as provided in s. 624.501(4). The statement
10 shall be in general form and context as approved by the
11 National Association of Insurance Commissioners for fraternal
12 benefits societies and as supplemented by additional
13 information required by the office ~~department~~.

14 (2) As part of the annual statement herein required,
15 each society shall, on or before March 1, file with the office
16 ~~department~~ a valuation of its certificates in force on
17 December 31 last preceding, provided the office ~~department~~
18 may, in its discretion for cause shown, extend the time for
19 filing such valuation for not more than 2 calendar months.
20 Such valuation shall be done in accordance with the standards
21 specified in s. 632.627. Such valuation and underlying data
22 shall be certified by a qualified actuary or, at the expense
23 of the society, verified by the actuary of the insurance
24 regulatory agency ~~department of insurance~~ of the state of
25 domicile of the society.

26 (3) A society neglecting to file the annual statement
27 in the form and within the time provided by this section shall
28 be subject to an administrative fine in an amount up to \$100
29 for each day during which such neglect continues, and, upon
30 notice by the office ~~department~~ to that effect, its authority

31

1 to do business in this state shall cease while such default
2 continues.

3 (4) The office ~~department~~ shall deposit all fees
4 received under this section to the credit of the Insurance
5 ~~Commissioner's~~ Regulatory Trust Fund.

6 Section 1386. Section 632.629, Florida Statutes, is
7 amended to read:

8 632.629 Annual license.--

9 (1) A fraternal benefit society may not transact
10 business in this state unless authorized therefor under a
11 subsisting license issued to the society by the office
12 ~~department~~.

13 (2) A license issued or renewed under this chapter
14 shall continue in force as long as the society is entitled
15 thereto under this chapter and until suspended or revoked by
16 the office ~~department~~ or terminated at the request of the
17 society, provided:

18 (a) The society pays, prior to June 1, the annual
19 license tax provided for in s. 624.501(3); and

20 (b) The office ~~department~~ is satisfied that the
21 society has met the applicable requirements of the Florida
22 Insurance Code.

23 (3) If the license is not continued by the society,
24 the license shall expire at midnight on May 31 following
25 failure of the society to continue it. The office ~~department~~
26 shall promptly notify the society of the impending expiration
27 of its license.

28 (4) The office ~~department~~ may reinstate a license
29 which the society has inadvertently permitted to expire, after
30 the society has fully cured all its failures which resulted in
31 the expiration and upon payment by the society of the fee for

1 reinstatement in the amount provided in s. 624.501(1)(b).

2 Otherwise, the society shall be granted another license only
3 after filing application therefor and meeting all other
4 requirements for an original license in this state.

5 (5) A duly certified copy or duplicate of such license
6 shall be prima facie evidence that the licensee is a fraternal
7 benefit society within the meaning of this chapter.

8 Section 1387. Section 632.631, Florida Statutes, is
9 amended to read:

10 632.631 Examination of societies; no adverse
11 publications.--

12 (1) The office ~~department~~, or any person it may
13 appoint, may examine any domestic, foreign, or alien society
14 transacting or applying for admission to transact business in
15 this state in the same manner as authorized for examination of
16 domestic, foreign, or alien insurers. Requirements of notice
17 and an opportunity to respond before findings are made public
18 as provided in the laws regulating insurers shall also be
19 applicable to the examination of societies.

20 (2) The expense of each examination and of each
21 valuation, including compensation and actual expense of
22 examiners, shall be paid by the society examined or whose
23 certificates are valued, upon statements furnished by the
24 office ~~department~~.

25 Section 1388. Section 632.632, Florida Statutes, is
26 amended to read:

27 632.632 Foreign or alien society; admission.--No
28 foreign or alien society shall transact business in this state
29 without a license issued by the office ~~department~~. Any such
30 society desiring admission to this state shall have the
31 qualifications required of domestic societies organized under

1 this chapter. Any such society may be licensed to transact
2 business in this state upon filing with the office ~~department~~:

3 (1) A duly certified copy of its articles of
4 incorporation;

5 (2) A copy of its bylaws, certified by its secretary
6 or corresponding officer;

7 (3) A power of attorney to the office ~~department~~;

8 (4) A copy of its most recent annual statement
9 certified under oath by its president and secretary or
10 corresponding officers in a form prescribed by the commission
11 ~~department~~;

12 (5) A copy of an examination report conducted within
13 the most recent 3-year period by the supervising insurance
14 official of its home state or other state, territory,
15 province, or country, satisfactory to the office ~~department~~;

16 (6) Certification from the proper official of its home
17 state, territory, province, or country that the society is
18 legally incorporated and licensed to transact business
19 therein;

20 (7) Copies of its certificate forms; and

21 (8) Such other information as the office ~~department~~
22 may deem necessary;

23

24 and upon a showing satisfactory to the office ~~department~~ that
25 its assets are invested in accordance with the provisions of
26 this chapter.

27 Section 1389. Section 632.633, Florida Statutes, is
28 amended to read:

29 632.633 Additional grounds for suspension, revocation,
30 or denial of certificate of authority; receivership;
31 insolvency.--

1 (1) In addition to the grounds set forth in s.
2 624.418, the office ~~department~~ may, in its discretion,
3 suspend, revoke, or deny the certificate of authority of a
4 society, if it finds that the society:

5 (a) Has exceeded its powers;

6 (b) Has failed to comply with any provision of this
7 chapter;

8 (c) Is not fulfilling its contracts in good faith;

9 (d) Has a membership of less than 400 after an
10 existence of 1 year or more; or

11 (e) Is conducting business fraudulently or in a manner
12 hazardous to its members, creditors, the public, or the
13 business.

14 (2) In addition to the grounds set forth in s.
15 626.9571, whenever the office ~~department~~ has reason to believe
16 that any society is operating in violation of this chapter or
17 of any provision of the Florida Insurance Code applicable to
18 societies, the provisions of ss. 626.9571, 626.9581, 626.9591,
19 and 626.9601 shall apply.

20 (3) Any rehabilitation, liquidation, conservation, or
21 dissolution of a society shall be conducted under the
22 supervision of the department. The department and office
23 shall have all the powers with respect to such rehabilitation,
24 liquidation, conservation, or dissolution that are granted to
25 the department and office under the laws governing the
26 rehabilitation, liquidation, conservation, or dissolution of
27 life insurance companies.

28 Section 1390. Subsection (5) of section 632.637,
29 Florida Statutes, is amended to read:

30 632.637 Exemption of certain societies.--

31

1 (5) The office ~~department~~ may require from any society
2 or association, by examination or otherwise, such information
3 as will enable the office ~~department~~ to determine whether such
4 society or association is exempt from the provisions of this
5 chapter.

6 Section 1391. Subsection (1) of section 633.01,
7 Florida Statutes, is amended to read:

8 633.01 State Fire Marshal; powers and duties; rules.--

9 (1) The Chief Financial Officer is ~~head of the~~
10 ~~Department of Insurance~~ shall be designated as "State Fire
11 Marshal." The State Fire Marshal has authority to adopt rules
12 pursuant to ss. 120.536(1) and 120.54 to implement the
13 provisions of this chapter conferring powers or duties upon
14 the department. Rules shall be in substantial conformity with
15 generally accepted standards of firesafety; shall take into
16 consideration the direct supervision of children in
17 nonresidential child care facilities; and shall balance and
18 temper the need of the State Fire Marshal to protect all
19 Floridians from fire hazards with the social and economic
20 inconveniences that may be caused or created by the rules. The
21 department shall adopt the Florida Fire Prevention Code and
22 the Life Safety Code.

23 Section 1392. Subsection (1) of section 633.022,
24 Florida Statutes, is amended to read:

25 633.022 Uniform firesafety standards.--The Legislature
26 hereby determines that to protect the public health, safety,
27 and welfare it is necessary to provide for firesafety
28 standards governing the construction and utilization of
29 certain buildings and structures. The Legislature further
30 determines that certain buildings or structures, due to their
31 specialized use or to the special characteristics of the

1 person utilizing or occupying these buildings or structures,
2 should be subject to firesafety standards reflecting these
3 special needs as may be appropriate.

4 (1) The department ~~of insurance~~ shall establish
5 uniform firesafety standards that apply to:

6 (a) All new, existing, and proposed state-owned and
7 state-leased buildings.

8 (b) All new, existing, and proposed hospitals, nursing
9 homes, assisted living facilities, adult family-care homes,
10 correctional facilities, public schools, transient public
11 lodging establishments, public food service establishments,
12 elevators, migrant labor camps, mobile home parks, lodging
13 parks, recreational vehicle parks, recreational camps,
14 residential and nonresidential child care facilities,
15 facilities for the developmentally disabled, motion picture
16 and television special effects productions, and self-service
17 gasoline stations, of which standards the State Fire Marshal
18 is the final administrative interpreting authority.

19
20 In the event there is a dispute between the owners of the
21 buildings specified in paragraph (b) and a local authority
22 requiring a more stringent uniform firesafety standard for
23 sprinkler systems, the State Fire Marshal shall be the final
24 administrative interpreting authority and the State Fire
25 Marshal's interpretation regarding the uniform firesafety
26 standards shall be considered final agency action.

27 Section 1393. Subsection (4) of section 633.025,
28 Florida Statutes, is amended to read:

29 633.025 Minimum firesafety standards.--

30 (4) Such codes shall be minimum codes and a
31 municipality, county, or special district with firesafety

1 responsibilities may adopt more stringent firesafety
2 standards, subject to the requirements of this subsection.
3 Such county, municipality, or special district may establish
4 alternative requirements to those requirements which are
5 required under the minimum firesafety standards on a
6 case-by-case basis, in order to meet special situations
7 arising from historic, geographic, or unusual conditions, if
8 the alternative requirements result in a level of protection
9 to life, safety, or property equal to or greater than the
10 applicable minimum firesafety standards. For the purpose of
11 this subsection, the term "historic" means that the building
12 or structure is listed on the National Register of Historic
13 Places of the United States Department of the Interior.

14 (a) The local governing body shall determine,
15 following a public hearing which has been advertised in a
16 newspaper of general circulation at least 10 days before the
17 hearing, if there is a need to strengthen the requirements of
18 the minimum firesafety code adopted by such governing body.
19 The determination must be based upon a review of local
20 conditions by the local governing body, which review
21 demonstrates that local conditions justify more stringent
22 requirements than those specified in the minimum firesafety
23 code for the protection of life and property or justify
24 requirements that meet special situations arising from
25 historic, geographic, or unusual conditions.

26 (b) Such additional requirements shall not be
27 discriminatory as to materials, products, or construction
28 techniques of demonstrated capabilities.

29 (c) Paragraphs (a) and (b) apply solely to the local
30 enforcing agency's adoption of requirements more stringent
31 than those specified in the Florida Fire Prevention Code and

1 the Life Safety Code that have the effect of amending building
2 construction standards. Upon request, the enforcing agency
3 shall provide a person making application for a building
4 permit, or any state agency or board with construction-related
5 regulation responsibilities, a listing of all such
6 requirements and codes.

7 (d) A local government which adopts amendments to the
8 minimum firesafety code must provide a procedure by which the
9 validity of such amendments may be challenged by any
10 substantially affected party to test the amendment's
11 compliance with the provisions of this section.

12 1. Unless the local government agrees to stay
13 enforcement of the amendment, or other good cause is shown,
14 the challenging party shall be entitled to a hearing on the
15 challenge within 45 days.

16 2. For purposes of such challenge, the burden of proof
17 shall be on the challenging party, but the amendment shall not
18 be presumed to be valid or invalid.

19
20 This subsection gives local government the authority to
21 establish firesafety codes that exceed the minimum firesafety
22 codes and standards adopted by the State Fire Marshal. The
23 Legislature intends that local government give proper public
24 notice and hold public hearings before adopting more stringent
25 firesafety codes and standards. A substantially affected
26 person may appeal, to the department ~~of Insurance~~, the local
27 government's resolution of the challenge, and the department
28 shall determine if the amendment complies with this section.
29 Actions of the department are subject to judicial review
30 pursuant to s. 120.68. The department shall consider reports
31

1 of the Florida Building Commission, pursuant to part VII of
2 chapter 553, when evaluating building code enforcement.

3 Section 1394. Paragraph (a) of subsection (1) of
4 section 633.052, Florida Statutes, is amended to read:

5 633.052 Ordinances relating to firesafety;
6 definitions; penalties.--

7 (1) As used in this section:

8 (a) A "firesafety inspector" is an individual
9 certified by the Division of State Fire Marshal ~~of the~~
10 ~~Department of Insurance~~, officially assigned the duties of
11 conducting firesafety inspections of buildings and facilities
12 on a recurring or regular basis, investigating civil
13 infractions relating to firesafety, and issuing citations
14 pursuant to this section on behalf of the state or any county,
15 municipality, or special district with firesafety
16 responsibilities.

17 Section 1395. Subsection (7) of section 633.061,
18 Florida Statutes, is amended to read:

19 633.061 Fire suppression equipment; license to install
20 or maintain.--

21 (7) The fees collected for any such licenses and
22 permits and the filing fees for license and permit examination
23 are hereby appropriated for the use of the State Fire Marshal
24 in the administration of this chapter and shall be deposited
25 in the Insurance ~~Commissioner's~~ Regulatory Trust Fund.

26 Section 1396. Subsections (4) and (7) of section
27 633.081, Florida Statutes, are amended to read:

28 633.081 Inspection of buildings and equipment; orders;
29 firesafety inspection training requirements; certification;
30 disciplinary action.--The State Fire Marshal and her or his
31 agents shall, at any reasonable hour, when the department has

1 reasonable cause to believe that a violation of this chapter
2 or s. 509.215, or a rule promulgated thereunder, or a minimum
3 firesafety code adopted by a local authority, may exist,
4 inspect any and all buildings and structures which are subject
5 to the requirements of this chapter or s. 509.215 and rules
6 promulgated thereunder. The authority to inspect shall extend
7 to all equipment, vehicles, and chemicals which are located
8 within the premises of any such building or structure.

9 (4) A firefighter certified pursuant to s. 633.35 may
10 conduct firesafety inspections, under the supervision of a
11 certified firesafety inspector, while on duty as a member of a
12 fire department company conducting inservice firesafety
13 inspections without being certified as a firesafety inspector,
14 if such firefighter has satisfactorily completed an inservice
15 fire department company inspector training program of at least
16 24 hours' duration as provided by rule of the department ~~of~~
17 insurance.

18 (7) The department ~~of insurance~~ shall provide by rule
19 for the certification of firesafety inspectors.

20 Section 1397. Section 633.111, Florida Statutes, is
21 amended to read:

22 633.111 State Fire Marshal to keep records of fires;
23 reports of agents.--The State Fire Marshal shall keep in her
24 or his office a record of all fires occurring in this state
25 upon which she or he had caused an investigation to be made
26 and all facts concerning the same. These records, obtained or
27 prepared by the State Fire Marshal pursuant to her or his
28 investigation, include documents, papers, letters, maps,
29 diagrams, tapes, photographs, films, sound recordings, and
30 evidence. These records are confidential and exempt from the
31 provisions of s. 119.07(1) until the investigation is

1 completed or ceases to be active. For purposes of this
2 section, an investigation is considered "active" while such
3 investigation is being conducted by the department with a
4 reasonable, good faith belief that it may lead to the filing
5 of administrative, civil, or criminal proceedings. An
6 investigation does not cease to be active if the department is
7 proceeding with reasonable dispatch, and there is a good faith
8 belief that action may be initiated by the department or other
9 administrative or law enforcement agency. Further, these
10 documents, papers, letters, maps, diagrams, tapes,
11 photographs, films, sound recordings, and evidence relative to
12 the subject of an investigation shall not be subject to
13 subpoena until the investigation is completed or ceases to be
14 active, unless the State Fire Marshal consents. These records
15 shall be made daily from the reports furnished the State Fire
16 Marshal by her or his agents or others. Whenever the State
17 Fire Marshal releases an investigative report, any person
18 requesting a copy of the report shall pay in advance, and the
19 State Fire Marshal shall collect in advance, notwithstanding
20 the provisions of s. 624.501(19)(a) and (b), a fee of \$10 for
21 the copy of the report, which fee shall be deposited into the
22 Insurance ~~Commissioner's~~ Regulatory Trust Fund. The State Fire
23 Marshal may release the report without charge to any state
24 attorney or to any law enforcement agency or fire department
25 assisting in the investigation.

26 Section 1398. Subsection (1) of section 633.161,
27 Florida Statutes, is amended to read:

28 633.161 Violations; orders to cease and desist,
29 correct hazardous conditions, preclude occupancy, or vacate;
30 enforcement; penalties.--

31

1 (1) If it is determined by the department ~~of Insurance~~
2 that a violation specified in this subsection exists, the
3 State Fire Marshal or her or his deputy may issue and deliver
4 to the person committing the violation an order to cease and
5 desist from such violation, to correct any hazardous
6 condition, to preclude occupancy of the affected building or
7 structure, or to vacate the premises of the affected building
8 or structure. Such violations are:

9 (a) Except as set forth in paragraph (b), a violation
10 of any provision of this chapter, of any rule adopted pursuant
11 thereto, of any applicable uniform firesafety standard adopted
12 pursuant to s. 633.022 which is not adequately addressed by
13 any alternative requirements adopted on a local level, or of
14 any minimum firesafety standard adopted pursuant to s.
15 394.879.

16 (b) A substantial violation of an applicable minimum
17 firesafety standard adopted pursuant to s. 633.025 which is
18 not reasonably addressed by any alternative requirement
19 imposed at the local level, or an unreasonable interpretation
20 of an applicable minimum firesafety standard, and which
21 violation or interpretation clearly constitutes a danger to
22 lifesafety.

23 (c) A building or structure which is in a dilapidated
24 condition and as a result thereof creates a danger to life,
25 safety, or property.

26 (d) A building or structure which contains explosive
27 matter or flammable liquids or gases constituting a danger to
28 life, safety, or property.

29 Section 1399. Subsection (5) of section 633.162,
30 Florida Statutes, is amended to read:

31

1 633.162 Fire suppression system contractors;
2 disciplinary action.--

3 (5) In addition, the department of ~~Insurance~~ shall not
4 issue a new license or permit if it finds that the
5 circumstance or circumstances for which the license or permit
6 was previously revoked or suspended still exist or are likely
7 to recur.

8 Section 1400. Section 633.30, Florida Statutes, is
9 amended to read:

10 633.30 Standards for firefighting; definitions.--As
11 used in this chapter, the term:

12 (1) "Firefighter" means any person initially employed
13 as a full-time professional firefighter by any employing
14 agency, as defined herein, whose primary responsibility is the
15 prevention and extinguishment of fires, the protection and
16 saving of life and property, and the enforcement of municipal,
17 county, and state fire prevention codes, as well as of any law
18 pertaining to the prevention and control of fires.

19 (2) "Employing agency" means any municipality or
20 county, the state, or any political subdivision of the state,
21 including authorities and special districts, employing
22 firefighters as defined in subsection (1).

23 (3) "Department" means the Department of Financial
24 Services ~~Insurance~~.

25 (4) "Council" means the Firefighters Employment,
26 Standards, and Training Council.

27 (5) "Division" means the Division of State Fire
28 Marshal of the Department of Financial Services ~~Insurance~~.

29 Section 1401. Subsection (1) of section 633.31,
30 Florida Statutes, is amended to read:

31

1 633.31 Firefighters Employment, Standards, and
2 Training Council.--

3 (1) There is created within the department ~~of~~
4 ~~insurance~~ a Firefighters Employment, Standards, and Training
5 Council of 13 members. Two members shall be fire chiefs
6 appointed by the Florida Fire Chiefs Association, two members
7 shall be firefighters who are not officers, appointed by the
8 Florida Professional Firefighters Association, two members
9 shall be firefighter officers who are not fire chiefs,
10 appointed by the State Fire Marshal, one member appointed by
11 the Florida League of Cities, one member appointed by the
12 Florida Association of Counties, one member appointed by the
13 Florida Association of Special Districts, one member appointed
14 by the Florida Fire Marshal's Association, and one member
15 appointed by the State Fire Marshal, and one member shall be a
16 director or instructor of a state-certified firefighting
17 training facility appointed by the State Fire Marshal. To be
18 eligible for appointment as a fire chief member, firefighter
19 officer member, firefighter member, or a director or
20 instructor of a state-certified firefighting facility, a
21 person shall have had at least 4 years' experience in the
22 firefighting profession. The remaining member, who shall be
23 appointed by the State Fire Marshal, shall not be a member or
24 representative of the firefighting profession or of any local
25 government. Members shall serve only as long as they continue
26 to meet the criteria under which they were appointed, or
27 unless a member has failed to appear at three consecutive and
28 properly noticed meetings unless excused by the chair.

29 Section 1402. Section 633.353, Florida Statutes, is
30 amended to read:

31

1 633.353 Falsification of qualifications.--Any person
2 who willfully and knowingly falsifies the qualifications of a
3 new employee to the Bureau of Fire Standards and Training of
4 the division ~~of State Fire Marshal of the Department of~~
5 ~~Insurance~~ is guilty of a misdemeanor of the second degree,
6 punishable as provided in s. 775.082 or s. 775.083.

7 Section 1403. Subsection (1) of section 633.382,
8 Florida Statutes, is amended to read:

9 633.382 Firefighters; supplemental compensation.--

10 (1) DEFINITIONS.--As used in this section, the term:

11 ~~(a) "Division" means the Division of State Fire~~
12 ~~Marshal of the Department of Insurance created and existing~~
13 ~~under the provisions of this chapter.~~

14 (a)~~(b)~~ "Employing agency" means any municipality or
15 any county, the state, or any political subdivision of the
16 state, including authorities and special districts employing
17 firefighters.

18 (b)~~(c)~~ "Firefighter" means any person who meets the
19 definition of the term "firefighter" in s. 633.30(1) who is
20 certified in compliance with s. 633.35 and who is employed
21 solely within the fire department of the employing agency or
22 is employed by the division.

23 Section 1404. Section 633.43, Florida Statutes, is
24 amended to read:

25 633.43 Florida State Fire College established.--There
26 is hereby established a state institution to be known as the
27 Florida State Fire College, to be located at or near Ocala,
28 Marion County. The institution shall be operated by the
29 Division of State Fire Marshal of the department ~~of Insurance~~.

30
31

1 Section 1405. Subsections (1), (2), (3), (7), (8),
2 (9), and (10) of section 633.445, Florida Statutes, are
3 amended to read:

4 633.445 State Fire Marshal Scholarship Grant
5 Program.--

6 (1) All payments, gifts, or grants received pursuant
7 to this section shall be deposited in the State Treasury to
8 the credit of the Insurance ~~Commissioner's~~ Regulatory Trust
9 Fund for the State Fire Marshal Scholarship Grant Program.
10 Such funds shall provide, from grants to the state from moneys
11 raised from public and private sources, scholarships for
12 qualified applicants to the Florida State Fire College as
13 created by s. 633.43.

14 (2) The Chief Financial Officer ~~Comptroller~~ shall
15 authorize expenditures from the Insurance ~~Commissioner's~~
16 Regulatory Trust Fund upon receipt of vouchers approved by the
17 division ~~State Fire Marshal~~. All moneys collected from public
18 and private sources pursuant to this section shall be
19 deposited into the trust fund. Any balance in the trust fund
20 at the end of any fiscal year shall remain therein and shall
21 be available for carrying out the purposes of the fund in the
22 ensuing year.

23 (3) All funds deposited into the Insurance
24 ~~Commissioner's~~ Regulatory Trust Fund shall be invested
25 pursuant to s. 17.61 ~~s. 18.125~~. Interest income accruing to
26 moneys so invested shall increase the total funds available
27 for the purposes for which the trust fund is created.

28 (7) The criteria and procedures for establishing
29 standards of eligibility shall be recommended by the council
30 to the department ~~of Insurance~~. The council shall recommend to
31 the department ~~of Insurance~~ a rating system upon which to base

1 the approval of scholarship grants. However, to be eligible to
2 receive a scholarship pursuant to this section, an applicant
3 must:

4 (a) Be a full-time employee or volunteer of a local
5 municipal, county, regional or district firefighter unit;

6 (b) Have graduated from high school, have earned an
7 equivalency diploma issued by the Department of Education
8 pursuant to s. 1003.435, or have earned an equivalency diploma
9 issued by the United States Armed Forces Institute;

10 (c) Be accepted for full-time enrollment, with the
11 intent to maintain such enrollment at the Florida State Fire
12 College;

13 (d) Have the firefighter unit by whom the applicant is
14 employed or for which the applicant is a volunteer, recommend
15 her or him and certify that, because of financial need, the
16 scholarship is necessary for her or him to attend the State
17 Fire College; and

18 (e) Agree that she or he intends to return to duty
19 with the firefighter unit by whom she or he was recommended,
20 or, by agreement with such unit, that she or he will remain in
21 some capacity relating to the firefighting profession for a
22 period of at least 1 year.

23 (8) The department ~~of insurance~~ may adopt rules to
24 implement this section, including rules detailing the
25 eligibility standards and an approval rating system which are
26 based on financial need, need for additional certified
27 firefighters from the applicant's community, and the
28 applicant's employment record.

29 (9) After selection and approval of an applicant for a
30 grant by the council, payment in the applicant's name for
31 scholarship funds shall be transmitted from the Insurance

1 ~~Commissioner's~~ Regulatory Trust Fund by the Chief Financial
2 Officer Comptroller upon receipt of vouchers authorized by the
3 division State Fire Marshal. If a recipient terminates her or
4 his enrollment during the course of her or his curriculum at
5 the State Fire College, unless excused by the council and
6 allowed to resume training at a later time, any unused portion
7 of the scholarship funds shall be refunded to the trust fund.
8 A recipient who terminates her or his enrollment is not liable
9 for any portion of a scholarship.

10 (10) The council may accept payments, gifts, and
11 grants of money from any federal agency, private agency,
12 county, city, town, corporation, partnership, or individual
13 for deposit in the Insurance ~~Commissioner's~~ Regulatory Trust
14 Fund to implement this section and for authorized expenses
15 incurred by the council in performing its duties.

16 Section 1406. Subsection (1) of section 633.45,
17 Florida Statutes, is amended to read:

18 633.45 Division of State Fire Marshal; powers,
19 duties.--

20 (1) The division ~~of State Fire Marshal of the~~
21 ~~Department of Insurance~~ shall:

22 (a) Establish uniform minimum standards for the
23 employment and training of firefighters.

24 (b) Establish minimum curriculum requirements for
25 schools operated by or for any employing agency for the
26 specific purpose of training firefighter recruits or
27 firefighters.

28 (c) Approve institutions, instructors, and facilities
29 for school operation by or for any employing agency for the
30 specific purpose of training firefighters and firefighter
31 recruits.

1 (d) Specify, by rule, standards for the approval,
2 denial of approval, probation, and revocation of approval of
3 institutions, instructors, and facilities for training
4 firefighters and firefighter recruits; including a rule that
5 an instructor must complete 40 hours of continuing education
6 every 3 years in order to maintain the approval of the
7 department.

8 (e) Issue certificates of competency to persons who,
9 by reason of experience and completion of basic inservice
10 training, advanced education, or specialized training, are
11 especially qualified for particular aspects or classes of
12 firefighter duties.

13 (f) Establish minimum training qualifications for
14 persons serving as firesafety coordinators for their
15 respective departments of state government and certify all
16 persons who satisfy such qualifications.

17 (g) Establish a uniform lesson plan to be followed by
18 firesafety instructors in the training of state employees in
19 firesafety and emergency evacuation procedures.

20 (h) Have complete jurisdiction over, and complete
21 management and control of, the Florida State Fire College and
22 be invested with full power and authority to make all rules
23 and regulations necessary for the governance of said
24 institution.

25 (i) Appoint a superintendent of the Florida State Fire
26 College and such other instructors, experimental helpers, and
27 laborers as may be necessary and remove the same as in its
28 judgment and discretion may be best, fix their compensation,
29 and provide for their payment.

30
31

1 (j) Have full management, possession, and control of
2 the lands, buildings, structures, and property belonging to
3 the Florida State Fire College.

4 (k) Provide for the courses of study and curriculum of
5 the Florida State Fire College.

6 (l) Make rules and regulations for the admission of
7 trainees to the Florida State Fire College.

8 (m) Visit and inspect the Florida State Fire College
9 and every department thereof and provide for the proper
10 keeping of accounts and records thereof.

11 (n) Make and prepare all necessary budgets of
12 expenditures for the enlargement, proper furnishing,
13 maintenance, support, and conduct of the Florida State Fire
14 College.

15 (o) Select and purchase all property, furniture,
16 fixtures, and paraphernalia necessary for the Florida State
17 Fire College.

18 (p) Build, construct, change, enlarge, repair, and
19 maintain any and all buildings or structures of the Florida
20 State Fire College that may at any time be necessary for said
21 institution and purchase and acquire all lands and property
22 necessary for same, of every nature and description
23 whatsoever.

24 (q) Care for and maintain the Florida State Fire
25 College and do and perform every other matter or thing
26 requisite to the proper management, maintenance, support, and
27 control of said institution, necessary or requisite to carry
28 out fully the purpose of this act and for raising it to, and
29 maintaining it at, the proper efficiency and standard as
30 required in and by the provisions of ss. 633.43-633.49.

31

1 Section 1407. Section 633.46, Florida Statutes, is
2 amended to read:

3 633.46 Fees.--The division may fix and collect
4 admission fees and other fees which it deems necessary to be
5 charged for training given. All fees so collected shall be
6 deposited in the Insurance ~~Commissioner's~~ Regulatory Trust
7 Fund.

8 Section 1408. Section 633.461, Florida Statutes, is
9 amended to read:

10 633.461 Use of Insurance ~~Commissioner's~~ Regulatory
11 Trust Fund.--The funds received from the Insurance
12 ~~Commissioner's~~ Regulatory Trust Fund shall be used by the
13 staff of the Florida State Fire College to provide all
14 necessary services, training, equipment, and supplies to carry
15 out the college's responsibilities, including, but not limited
16 to, the State Fire Marshal Scholarship Grant Program and the
17 procurement of training films, videotapes, audiovisual
18 equipment, and other useful information on fire, firefighting,
19 and fire prevention, including public fire service information
20 packages.

21 Section 1409. Section 633.47, Florida Statutes, is
22 amended to read:

23 633.47 Procedure for making expenditures.--No moneys
24 shall be spent for and on behalf of the Florida State Fire
25 College except upon a written voucher drawn by the division,
26 stating the nature of the expenditures and the person to whom
27 the same shall be made payable, which voucher shall be
28 submitted to the Chief Financial Officer ~~Comptroller~~ and
29 audited for approval by her or him; upon such approval, the
30 Chief Financial Officer ~~Comptroller~~ shall draw a warrant ~~upon~~
31

1 ~~the Treasurer~~ for the payment thereof, filing the original
2 voucher in her or his office.

3 Section 1410. Section 633.50, Florida Statutes, is
4 amended to read:

5 633.50 Division powers and duties; Florida State Fire
6 College.--

7 (1) The division ~~of State Fire Marshal of the~~
8 ~~Department of Insurance~~, in performing its duties related to
9 the Florida State Fire College, specified in ss.
10 633.43-633.49, shall:

11 (a) Enter into agreements with public or private
12 school districts, community colleges, junior colleges, or
13 universities to carry out its duties and responsibilities.

14 (b) Review and approve budget requests for the fire
15 college educational program.

16 (c) Prepare the legislative budget request for the
17 Florida State Fire College education program. The
18 superintendent is responsible for all expenditures pursuant to
19 appropriations.

20 (d) Implement procedures to obtain appropriate
21 entitlement funds from federal and state grants to supplement
22 the annual legislative appropriation. Such funds must be used
23 expressly for the fire college educational programs.

24 (e) Develop a staffing and funding formula for the
25 Florida State Fire College. The formula shall include
26 differential funding levels for various types of programs,
27 shall be based on the number of full-time equivalent students
28 and information obtained from scheduled attendance counts
29 taken the first day of each program, and shall provide the
30 basis for the legislative budget request. As used in this
31 section, a full-time equivalent student is equal to a minimum

1 of 900 hours in a technical certificate program and 400 hours
2 in a degree-seeking program. The funding formula shall be as
3 prescribed pursuant to s. 1011.62, shall include procedures to
4 document daily attendance, and shall require that attendance
5 records be retained for audit purposes.

6 (2) Funds generated by the formula per full-time
7 equivalent student may not exceed the level of state funding
8 per full-time equivalent student generated through the Florida
9 Education Finance Program or the State Community College
10 Program Fund for students enrolled in comparable education
11 programs provided by public school districts and community
12 colleges. Funds appropriated for education and operational
13 costs shall be deposited in the Insurance ~~Commissioner's~~
14 Regulatory Trust Fund to be used solely for purposes specified
15 in s. 633.461 and may not be transferred to any other budget
16 entity for purposes other than education.

17 Section 1411. Subsection (2) of section 633.524,
18 Florida Statutes, is amended to read:

19 633.524 Certificate fees; use and deposit of collected
20 funds.--

21 (2) All moneys collected by the State Fire Marshal
22 pursuant to this chapter are hereby appropriated for the use
23 of the State Fire Marshal in the administration of this
24 chapter and shall be deposited in the Insurance ~~Commissioner's~~
25 Regulatory Trust Fund.

26 Section 1412. Section 633.802, Florida Statutes, is
27 amended to read:

28 633.802 Definitions.--Unless the context clearly
29 requires otherwise, the following definitions shall apply to
30 ss. 633.801-633.821:

31 ~~(1) "Department" means the Department of Insurance.~~

1 ~~(2)~~ "Division" means the Division of State Fire
2 Marshal of the department.

3 (1)~~(3)~~ "Firefighter employee" means any person engaged
4 in any employment, public or private, as a firefighter under
5 any appointment or contract of hire or apprenticeship, express
6 or implied, oral or written, whether lawfully or unlawfully
7 employed, responding to or assisting with fire or medical
8 emergencies, whether or not the firefighter is on duty, except
9 those appointed under s. 590.02(1)(d).

10 (2)~~(4)~~ "Firefighter employer" means the state and all
11 political subdivisions of this state, all public and
12 quasi-public corporations in this state, and every person
13 carrying on any employment for this state, political
14 subdivisions of this state, and public and quasi-public
15 corporations in this state which employs firefighters, except
16 those appointed under s. 590.02(1)(d).

17 (3)~~(5)~~ "Firefighter employment" or "employment" means
18 any service performed by a firefighter employee for the
19 firefighter employer.

20 (4)~~(6)~~ "Firefighter place of employment" or "place of
21 employment" means the physical location at which the
22 firefighter is employed.

23 Section 1413. Section 633.811, Florida Statutes, is
24 amended to read:

25 633.811 Firefighter employer penalties.--If any
26 firefighter employer violates or fails or refuses to comply
27 with ss. 633.801-633.821, or with any rule adopted by the
28 division under such sections in accordance with chapter 120
29 for the prevention of injuries, accidents, or occupational
30 diseases or with any lawful order of the division in
31 connection with ss. 633.801-633.821, or fails or refuses to

1 furnish or adopt any safety device, safeguard, or other means
2 of protection prescribed by division rule under ss.
3 633.801-633.821 for the prevention of accidents or
4 occupational diseases, the division may assess against the
5 firefighter employer a civil penalty of not less than \$100 nor
6 more than \$5,000 for each day the violation, omission,
7 failure, or refusal continues after the firefighter employer
8 has been given written notice of such violation, omission,
9 failure, or refusal. The total penalty for each violation
10 shall not exceed \$50,000. The division shall adopt rules
11 requiring penalties commensurate with the frequency or
12 severity of safety violations. A hearing shall be held in the
13 county in which the violation, omission, failure, or refusal
14 is alleged to have occurred, unless otherwise agreed to by the
15 firefighter employer and authorized by the division. All
16 penalties assessed and collected under this section shall be
17 deposited in the Insurance ~~Commissioner's~~ Regulatory Trust
18 Fund.

19 Section 1414. Section 633.814, Florida Statutes, is
20 amended to read:

21 633.814 Expenses of administration.--The amounts that
22 are needed to administer ss. 633.801-633.821 shall be
23 disbursed from the Insurance ~~Commissioner's~~ Regulatory Trust
24 Fund.

25 Section 1415. Section 634.011, Florida Statutes, is
26 amended to read:

27 634.011 Definitions.--As used in this part, the term:

28 (1) "Acquisition cost" means all costs specifically
29 associated with acquiring new business, including, but not
30 limited to, underwriting costs, commissions, contingent fees,
31 and cost of sales material.

1 (2) "Additive product" means any fuel supplement, oil
2 supplement, or any other supplement product added to a motor
3 vehicle for the purpose of increasing or enhancing the
4 performance or improving the longevity of such motor vehicle.

5 (3) "Affiliate" means any entity which exercises
6 control over or is controlled by the motor vehicle service
7 agreement company or insurer, directly or indirectly, through:

8 (a) Equity ownership of voting securities;

9 (b) Common managerial control; or

10 (c) Collusive participation by the management of the
11 motor vehicle service agreement company or insurer and
12 affiliate in the management of the motor vehicle service
13 agreement company or insurer or the affiliate.

14 ~~(4) "Department" means the Department of Insurance.~~

15 (4)~~(5)~~ "Gross premium written" means the total amount
16 of premiums paid by the agreement holder, inclusive of
17 commissions, for those agreements which are in force.

18 (5)~~(6)~~ "Insurer" means any property or casualty
19 insurer duly authorized to transact such business in this
20 state.

21 (6)~~(7)~~ "Motor vehicle" means:

22 (a) A self-propelled device operated solely or
23 primarily upon roadways to transport people or property, or
24 the component part of such a self-propelled device, except
25 such term does not include any self-propelled vehicle, or
26 component part of such vehicle, which:

27 1. Has a gross vehicle weight rating of 10,000 pounds
28 or more, and is not a recreational vehicle as defined by s.
29 320.01(1)(b);

30 2. Is designed to transport more than 10 passengers,
31 including the driver; or

1 3. Is used in the transportation of materials found to
2 be hazardous for the purposes of the Hazardous Materials
3 Transportation Act, as amended, 49 U.S.C. ss. 1801 et seq.; or

4 (b) A self-propelled device operated solely or
5 primarily upon water for noncommercial, personal use, the
6 engine of such a vehicle, or a trailer or other device used to
7 transport such vehicle or device.

8 (7)~~(8)~~ "Motor vehicle service agreement" or "service
9 agreement" means any contract or agreement indemnifying the
10 service agreement holder for the motor vehicle listed on the
11 service agreement and arising out of the ownership, operation,
12 and use of the motor vehicle against loss caused by failure of
13 any mechanical or other component part, or any mechanical or
14 other component part that does not function as it was
15 originally intended; however, nothing in this part shall
16 prohibit or affect the giving, free of charge, of the usual
17 performance guarantees by manufacturers or dealers in
18 connection with the sale of motor vehicles. Transactions
19 exempt under s. 624.125 are expressly excluded from this
20 definition and are exempt from the provisions of this part.
21 The term "motor vehicle service agreement" includes any
22 contract or agreement that provides:

23 (a) For the coverage or protection defined in this
24 subsection and which is issued or provided in conjunction with
25 an additive product applied to the motor vehicle that is the
26 subject of such contract or agreement; or

27 (b) For payment of vehicle protection expenses.

28 1.a. "Vehicle protection expenses" means expenses
29 incurred by the service agreement holder for loss or damage to
30 a covered vehicle, including, but not limited to, applicable
31 deductibles under a motor vehicle insurance policy; temporary

1 vehicle rental expenses; expenses for a replacement vehicle
2 that is at least the same year, make, and model of the stolen
3 motor vehicle; sales taxes or registration fees for a
4 replacement vehicle that is at least the same year, make, and
5 model of the stolen vehicle; or other incidental expenses
6 specified in the agreement.

7 b. "Vehicle protection product" means a product or
8 system installed or applied to a motor vehicle or designed to
9 prevent the theft of the motor vehicle or assist in the
10 recovery of the stolen motor vehicle.

11 2. Vehicle protection expenses shall be payable in the
12 event of loss or damage to the vehicle as a result of the
13 failure of the vehicle protection product to prevent the theft
14 of the motor vehicle or to assist in the recovery of the
15 stolen motor vehicle. Vehicle protection expenses covered
16 under the agreement shall be clearly stated in the service
17 agreement form.

18 3. Motor vehicle service agreements providing for the
19 payment of vehicle protection expenses shall:

20 a. Reimburse a service agreement holder for the
21 following expenses, at a minimum: deductibles applicable to
22 comprehensive coverage under the service agreement holder's
23 motor vehicle insurance policy; temporary vehicle rental
24 expenses; sales taxes and registration fees on a replacement
25 vehicle that is at least the same year, make, and model of the
26 stolen motor vehicle; and the difference between the benefits
27 paid to the service agreement holder for the stolen vehicle
28 under the service agreement holder's comprehensive coverage
29 and the actual cost of a replacement vehicle that is at least
30 the same year, make, and model of the stolen motor vehicle; or
31

1 b. Pay a preestablished flat amount to the service
2 agreement holder.

3
4 Payments shall not duplicate any benefits or expenses paid to
5 the service agreement holder by the insurer providing
6 comprehensive coverage under a motor vehicle insurance policy
7 covering the stolen motor vehicle.

8 (8)~~(9)~~ "Motor vehicle service agreement company" or
9 "service agreement company" means any corporation, sole
10 proprietorship, or partnership (other than an authorized
11 insurer) issuing motor vehicle service agreements.

12 (9)~~(10)~~ "Net assets" means the amount by which the
13 total statutory assets exceed total liability, except that
14 assets pledged to secure debts not reflected on the books of
15 the service agreement company shall not be included in net
16 assets.

17 (10)~~(11)~~ "Person" shall have the same meaning as
18 defined in s. 624.04.

19 (11)~~(12)~~ "Premium" means the total amount paid by the
20 agreement holder. No "assessment" or any "membership fee,"
21 "policy fee," "survey fee," "inspection fee," "service fee,"
22 "finance fee," or similar fee shall be charged by the service
23 agreement company.

24 (12)~~(13)~~ "Rate" means the unit charge by which the
25 measure of exposure in a service agreement is multiplied to
26 determine the premium.

27 (13)~~(14)~~ "Salesperson" means any dealership,
28 corporation, partnership, or sole proprietorship employed or
29 otherwise retained by an insurer or motor vehicle service
30 agreement company for the purpose of selling or issuing motor
31

1 vehicle service agreements or for the purpose of soliciting or
2 retaining other salespersons.

3 (14)~~(15)~~ "Unearned premium" means that portion of the
4 gross written premium which has not been earned on a straight
5 pro rata basis.

6 (15)~~(16)~~ "Unearned premium reserve" means unencumbered
7 assets equal to 50 percent of the unearned premium.

8 (16)~~(17)~~ "Unearned gross written premium" means that
9 portion of the gross written premium which has not been
10 amortized or earned on a pro rata basis.

11 Section 1416. Section 634.021, Florida Statutes, is
12 amended to read:

13 634.021 Powers of department, commission, and office;
14 rules.--The office ~~department~~ shall administer this act and
15 the commission may ~~to that end it has authority to~~ adopt rules
16 pursuant to ss. 120.536(1) and 120.54 to implement the
17 provisions of this act related to motor vehicle agreement
18 companies and motor vehicle service agreements. The department
19 shall administer this act and may adopt rules pursuant to ss.
20 120.536(1) and 120.54 to implement provisions of this act
21 related to sales representatives.

22 Section 1417. Section 634.031, Florida Statutes, is
23 amended to read:

24 634.031 License required.--

25 (1) A person may not transact, administer, or market,
26 attempt to transact, administer, or market, or in any manner
27 hold itself out as transacting, administering, or marketing
28 the service agreement business, on behalf of herself or
29 himself or itself, in this state or from this state unless it
30 is authorized to do so under a subsisting license issued to it
31 by the office ~~department~~. The company shall pay to the office

1 ~~department~~ an annual nonrefundable license fee for the
2 license.

3 (2) No person shall, from offices or by personnel or
4 facilities in this state, solicit applications or otherwise
5 transact service agreement sales in another state or country
6 unless it holds a subsisting license issued to it by the
7 office ~~department~~ authorizing it to transact the same kind or
8 kinds of service agreement business in this state.

9 (3) No person shall transact, administer, or market
10 service agreements unless it holds a subsisting license issued
11 by the office ~~department~~ authorizing it to transact the same
12 kind or kinds of service agreement business in this state.

13 (4) The office ~~department~~ may, pursuant to s. 120.569,
14 in its discretion and without advance notice or hearing issue
15 an immediate final order to cease and desist to any person or
16 entity which violates this section. The Legislature finds that
17 a violation of this section constitutes an imminent and
18 immediate threat to the public health, safety, and welfare of
19 the residents of this state.

20 Section 1418. Section 634.041, Florida Statutes, is
21 amended to read:

22 634.041 Qualifications for license.--To qualify for
23 and hold a license to issue service agreements in this state,
24 a service agreement company must be in compliance with this
25 part, with applicable rules of the commission ~~department~~, with
26 related sections of the Florida Insurance Code, and with its
27 charter powers and must comply with the following:

28 (1) Any service agreement company applying for a
29 license must be a solvent corporation formed under the laws of
30 this state or of another state or district of the United
31 States and must meet minimum requirements under this section.

1 (2) The service agreement company must furnish the
2 office ~~department~~ with evidence satisfactory to the office
3 ~~department~~ that the management of the company is competent and
4 trustworthy and can successfully and lawfully manage its
5 affairs.

6 (3) The service agreement company must make the
7 deposit required under s. 634.052.

8 (4) A service agreement company may not be licensed to
9 transact service agreement business in this state unless it
10 maintains the required reserves and the required ratio of
11 liquid assets to the required reserves.

12 (5) A service agreement company may not be licensed to
13 transact service agreement business in this state if, during
14 the 3 years immediately preceding its application for a
15 license, it has violated any requirement of this part or a
16 rule adopted thereunder.

17 (6) In order to obtain or maintain a license, a
18 service agreement company must have and maintain minimum net
19 assets of \$500,000. However, a service agreement company that
20 maintains a gross written premium of less than \$750,000 at all
21 times, that has been licensed in Florida for more than 5
22 years, and that has never had an administrative complaint
23 filed by the office ~~department~~ against its operations under
24 this part may reach this net asset requirement in equal
25 increments over a 5-year period beginning on October 1, 1991.

26 (7) All assets used to maintain the minimum net asset
27 requirement must be maintained in the United States.

28 (8)(a) A service agreement company must establish and
29 maintain an unearned premium reserve in accordance with the
30 following:

31

1 1. It must consist of unencumbered assets equal to a
2 minimum of 50 percent of the unearned gross written premium on
3 each service agreement and must amortize this reserve pro rata
4 over the duration of the service agreement. Such assets must
5 be held in the form of cash or invested in securities for
6 investment under ss. 625.301-625.340.

7 2. In addition to the net asset requirements set forth
8 in subsection (6), a company utilizing the 50-percent reserve
9 must not allow its ratio of gross written premium in force to
10 net assets to exceed 10 to 1. For companies that have
11 utilized both contractual liability insurance and the
12 50-percent reserve, this ratio must be calculated based only
13 on that portion of gross written premium in force which is
14 covered by the 50-percent reserve.

15 3. A company that uses an unearned premium reserve
16 must deposit with the department securities of the type
17 eligible for deposit by insurers under s. 625.52 equal to 15
18 percent of the unearned premium reserve. This reserve deposit
19 may be included as an asset for calculating the requirement of
20 subparagraph 1. A request for release of the reserve deposit
21 may be made quarterly only after the office ~~department~~ has
22 approved the company's current quarterly or annual financial
23 statement and a statement sworn to by two officers of the
24 company, verifying that the release will not reduce the
25 reserve deposit to less than 15 percent of the unearned
26 premium reserve.

27 (b) A service agreement company does not have to
28 establish and maintain an unearned premium reserve if it
29 purchases and maintains contractual liability insurance in
30 accordance with the following:
31

1 1. The insurance covers 100 percent of its claim
2 exposure and is obtained from an insurer approved by the
3 office department which holds a certificate of authority to do
4 business within this state.

5 2. If the service agreement company does not meet its
6 contractual obligations, the contractual liability insurance
7 policy binds its issuer to pay or cause to be paid to the
8 service agreement holder all legitimate claims and
9 cancellation refunds for all service agreements issued by the
10 service agreement company while the policy was in effect.
11 This requirement also applies to those service agreements for
12 which no premium has been remitted to the insurer.

13 3. If the issuer of the contractual liability policy
14 is fulfilling the service agreements covered by the
15 contractual liability policy and the service agreement holder
16 cancels the service agreement, the issuer must make a full
17 refund of unearned premium to the consumer, subject to the
18 cancellation fee provisions of s. 634.121(5). The sales
19 representative and agent must refund to the contractual
20 liability policy issuer their unearned pro rata commission.

21 4. The policy may not be canceled, terminated, or
22 nonrenewed by the insurer or the service agreement company
23 unless a 90-day written notice thereof has been given to the
24 office department by the insurer before the date of the
25 cancellation, termination, or nonrenewal.

26 5. The service agreement company must provide the
27 office department with the claims statistics.

28
29 All funds or premiums remitted to an insurer by a motor
30 vehicle service agreement company under this part shall remain
31 in the care, custody, and control of the insurer and shall be

1 counted as an asset of the insurer; provided, however, this
2 requirement does not apply when the insurer and the motor
3 vehicle service agreement company are affiliated companies and
4 members of an insurance holding company system. If the motor
5 vehicle service agreement company chooses to comply with this
6 paragraph but also maintains a reserve to pay claims, such
7 reserve shall only be considered an asset of the covered motor
8 vehicle service agreement company and may not be
9 simultaneously counted as an asset of any other entity.

10 (9) In meeting the requirements of this part, a
11 service agreement company may not utilize both the 50-percent
12 reserve and contractual liability insurance simultaneously.
13 However, a company may have contractual liability coverage on
14 service agreements previously sold and sell new service
15 agreements covered by the 50-percent reserve, and the converse
16 of this is also allowed. A service agreement company must be
17 able to distinguish how each individual service agreement is
18 covered.

19 (10) In addition to information called for and
20 furnished with its annual statement, a service agreement
21 company must furnish to the office ~~department~~, as soon as
22 reasonably possible, any information as to its transactions or
23 affairs that the office ~~department~~ requests in writing. All
24 information furnished pursuant to the request of the office
25 ~~department~~ must be verified by the oath of two executive
26 officers of the service agreement company.

27 (11) A service agreement company offering service
28 agreements providing vehicle protection expenses may meet the
29 requirements for this part only by maintaining contractual
30 liability insurance in accordance with paragraph (8)(b), which
31 insurance must be issued by an insurance company not

1 affiliated with the service agreement company, unless the
2 insurance company had issued a contractual liability insurance
3 policy to a service agreement company on or before January 1,
4 2002. Service agreements providing vehicle protection
5 expenses may be sold only to a service agreement holder that
6 has in-force comprehensive motor vehicle insurance coverage
7 for the vehicle to be covered by the service agreement.

8 Section 1419. Section 634.044, Florida Statutes, is
9 amended to read:

10 634.044 Assets and liabilities.--

11 (1) ASSETS.--In any determination of the financial
12 condition of a service agreement company, there shall be
13 allowed as assets only those assets that are owned by the
14 service agreement company and which assets consist of:

15 (a) Cash in the possession of the service agreement
16 company, or in transit under its control, including the true
17 balance of any deposit in a solvent bank, savings and loan
18 association, or trust company which is domiciled in the United
19 States.

20 (b) Investments, securities, properties, and loans
21 acquired or held in accordance with this part, and in
22 connection therewith the following items:

23 1. Interest due or accrued on any bond or evidence of
24 indebtedness which is not in default and which is not valued
25 on a basis including accrued interest.

26 2. Declared and unpaid dividends on stock and shares,
27 unless the amount of the dividends has otherwise been allowed
28 as an asset.

29 3. Interest due or accrued upon a collateral loan
30 which is not in default in an amount not to exceed 1 year's
31 interest thereon.

1 4. Interest due or accrued on deposits or certificates
2 of deposit in solvent banks, savings and loan associations,
3 and trust companies domiciled in the United States, and
4 interest due or accrued on other assets, if such interest is
5 in the judgment of the office ~~department~~ a collectible asset.

6 5. Interest due or accrued on current mortgage loans,
7 in an amount not exceeding in any event the amount, if any, of
8 the excess of the value of the property less delinquent taxes
9 thereon over the unpaid principal; but in the property less
10 delinquent taxes thereon over the unpaid principal; but in no
11 event shall interest accrued for a period in excess of 90 days
12 be allowed as an asset.

13 6. Rent due or accrued on real property if such rent
14 is not in arrears for more than 3 months. However, in no
15 event shall rent accrued for a period in excess of 90 days be
16 allowed as an asset.

17 7. The unaccrued portion of taxes paid prior to the
18 due date on real property.

19 (c) Furniture, fixtures, furnishings, vehicles, and
20 equipment, if the original cost of each item is at least \$200,
21 which cost shall be amortized in full over a period not to
22 exceed 5 calendar years, unless otherwise approved by the
23 office ~~department~~.

24 (d) Part inventories maintained for the purpose of
25 servicing products warranted. Part inventories must be listed
26 at cost. Service agreement companies are required to maintain
27 records to support valuation of part inventories.

28 (e) The liquidation value of prepaid expenses.

29 (f) Other assets or receivables, not inconsistent with
30 the provisions of this section, deemed by the office

31

1 ~~department~~ to be available for the payment of losses and
2 claims, at values to be determined by the office ~~department~~.

3
4 The office ~~department~~, upon determining that a service
5 agreement company's asset has not been evaluated according to
6 applicable law or that it does not qualify as an asset, shall
7 require the service agreement company to properly reevaluate
8 the asset or replace the asset with an asset suitable to the
9 office ~~department~~ within 30 days of written notification by
10 the office ~~department~~ of this determination, if the removal of
11 the asset from the organization's assets would impair the
12 company's solvency.

13 (2) ASSETS NOT ALLOWED.--In addition to assets
14 impliedly excluded by the provisions of subsection (1), the
15 following assets expressly shall not be allowed as assets in
16 any determination of the financial condition of a service
17 agreement company:

18 (a) Goodwill, agreement holder lists, patents, trade
19 names, agreements not to compete, and other like intangible
20 assets.

21 (b) Any note or account receivable from or advances to
22 officers, directors, or controlling stockholders, whether
23 secured or not, and advances to employees, agents, or other
24 persons on personal security only.

25 (c) Stock of the service agreement company owned by it
26 directly or owned by it through any entity in which the
27 organization owns or controls, directly or indirectly, more
28 than 25 percent of the ownership interest.

29 (d) Leasehold improvements, stationery, and
30 literature, except that leasehold improvements made prior to
31

1 October 1, 1991, shall be allowed as an asset and shall be
2 amortized over the shortest of the following periods:

- 3 1. The life of the lease.
- 4 2. The useful life of the improvements.
- 5 3. The 3-year period following October 1, 1991.

6 (e) Furniture, fixtures, furnishings, vehicles, and
7 equipment, other than those items authorized under paragraph
8 (1)(c).

9 (f) Notes or other evidences of indebtedness which are
10 secured by mortgages or deeds of trust which are in default
11 and beyond the express period specified in the instrument for
12 curing the default.

13 (g) Bonds in default for more than 60 days.

14 (h) Deferred costs other than the liquidation value of
15 prepaid expenses except for those companies that reserve 100
16 percent of gross written premium.

17 (i) Any note, account receivable, advance, or other
18 evidence of indebtedness, or investment in:

- 19 1. The parent of the service agreement company;
- 20 2. Any entity directly or indirectly controlled by the
21 service agreement company parent;

22 3. An affiliate of the parent or the service agreement
23 company; however, receivables from the parent or affiliated
24 companies shall be considered an admitted asset of the company
25 when the office ~~department~~ is satisfied that the repayment of
26 receivables, loans, and advances from the parent or the
27 affiliated company are guaranteed by an organization in
28 accordance with s. 634.045; or

- 29 4. Officers, directors, shareholders, employees, or
30 salespersons of the service agreement company; however,

31

1 premium receivables under 45 days old may be considered an
2 admitted asset.

3
4 The office ~~department~~ may, however, allow all or a portion of
5 such asset, at values to be determined by the office
6 ~~department~~, if deemed by the office ~~department~~ to be available
7 for the payment of losses and claims.

8 (3) LIABILITIES.--In any determination of the
9 financial condition of a service agreement company,
10 liabilities to be charged against its assets shall include,
11 but not be limited to:

12 (a) The amount, in conformity with generally accepted
13 accounting principles, necessary to pay all of its unpaid
14 losses and claims incurred for or on behalf of an agreement
15 holder, on or prior to the end of the reporting period,
16 whether reported or unreported.

17 (b) Taxes, expenses, and other obligations due or
18 accrued at the date of the statement.

19 (c) Reserve for unearned premiums.

20

21 The office ~~department~~, upon determining that the service
22 agreement company has failed to report liabilities that should
23 have been reported, shall require a correct report which
24 reflects the proper liabilities to be submitted by the service
25 agreement company to the office ~~department~~ within 10 working
26 days of receipt of written notification.

27 Section 1420. Subsections (2) and (4) of section
28 634.045, Florida Statutes, are amended to read:

29 634.045 Guarantee agreements.--In order to include
30 receivables from affiliated companies as assets under s.
31 634.041, the motor vehicle service agreement company shall

1 provide a written guarantee to assure repayment of all
2 receivables, loans, and advances from affiliated companies,
3 provided that the written guarantee is made by a guaranteeing
4 organization which:

5 (2) Submits a guarantee that is approved by the office
6 ~~department~~ as meeting the requirements of this part, provided
7 that the written guarantee contains a provision which requires
8 that the guarantee be irrevocable unless the guaranteeing
9 organization can demonstrate to the office ~~department~~ that the
10 cancellation of the guarantee will not result in the net
11 assets of the motor vehicle service agreement company falling
12 below its minimum net asset requirement and the office
13 ~~department~~ approves cancellation of the guarantee.

14 (4) Submits annually, within 3 months after the end of
15 its fiscal year, an audited financial statement certified by
16 an independent certified public accountant, prepared in
17 accordance with generally accepted accounting principles. The
18 office ~~department~~ may, as it deems necessary, require
19 quarterly financial statements from the guaranteeing
20 organization.

21 Section 1421. Section 634.052, Florida Statutes, is
22 amended to read:

23 634.052 Required deposit.--

24 (1) To assure the faithful performance of its
25 obligations to its members or subscribers, each motor vehicle
26 service agreement company shall, prior to issuance of its
27 license by the office ~~department~~, deposit with the department
28 securities of the type eligible for deposit by insurers under
29 s. 625.52 and having at all times a market value of not less
30 than \$200,000; however, service agreement companies
31 maintaining an unearned gross written premium of less than

1 \$750,000 shall have on deposit with the department \$100,000.
2 After 1 year from the date of initial licensure, a service
3 agreement company may file a request for the release of a
4 portion of the deposit and thereafter requests may be made
5 quarterly. A request may be granted only after the office
6 ~~department~~ has received and approved the company's current
7 quarterly or annual financial statement. However, at no time
8 shall the deposit be less than \$100,000.

9 (2) In addition to the deposits otherwise required
10 pursuant to this section, the office ~~department~~ may, after
11 notice and hearing, require any company for good cause shown
12 to deposit and maintain deposited in trust for the protection
13 of the contract holders and creditors of the company, for such
14 time as the office ~~department~~ deems necessary, securities
15 eligible for such deposit under s. 625.52 having a value of
16 not less than the amount which the office ~~department~~
17 determines is necessary, which amount shall be neither less
18 than \$100,000, nor more than \$500,000, depending on the
19 obligation of the company in this state.

20 (3) The state shall be responsible for the safekeeping
21 of all securities deposited with the department under this
22 act. Such securities shall not, on account of being in this
23 state, be subject to taxation, but shall be held exclusively
24 and solely to guarantee the faithful performance by the
25 company of its obligations to its members or subscribers.

26 (4) The depositing company shall, during its solvency,
27 have the right to exchange or substitute other securities of
28 like quality and value for securities so on deposit, to
29 receive the interest and other income accruing on such
30 securities, and to inspect the deposit at all reasonable
31 times.

1 (5) Such deposit shall be maintained unimpaired as
2 long as the company continues in business or from offices in
3 this state. Whenever the company ceases to do business in or
4 from offices in this state and furnishes to the office
5 ~~department~~ proof satisfactory to it that it has discharged or
6 otherwise adequately provided for all its obligations to its
7 members or subscribers in this state, the office and
8 department shall release the deposited securities to the
9 parties entitled thereto, on presentation of the receipts of
10 the department for such securities.

11 Section 1422. Section 634.053, Florida Statutes, is
12 amended to read:

13 634.053 Levy upon deposit limited.--A judgment
14 creditor or other claimant of a motor vehicle service
15 agreement company does not have the right to levy upon any of
16 the assets or securities held in this state as a deposit under
17 s. 634.052. However, to pay any unpaid obligation to this
18 state, the office ~~department~~ may levy upon any of the assets
19 of a motor vehicle service agreement company found to be
20 insolvent or found to be bankrupt by any court.

21 Section 1423. Subsections (1), (2), and (4) of section
22 634.061, Florida Statutes, are amended to read:

23 634.061 Application for and issuance of license.--

24 (1) A sworn application for a license as a motor
25 vehicle service agreement company shall be made to and filed
26 with the office ~~department~~ on forms as prescribed by the
27 commission and furnished by the office ~~it~~.

28 (2) In addition to information relative to its
29 qualifications as called for under s. 634.041, the application
30 shall show:

31 (a) The location of the applicant's home office.

1 (b) The name and residence address of each director,
2 officer, and 10-percent or greater stockholder of the
3 applicant.

4 (c) Other pertinent information as required by the
5 commission or office ~~department~~.

6 (4) Upon completion of the application for license,
7 the office ~~department~~ shall examine the same and make such
8 further investigation of the applicant as it deems advisable.
9 If it finds that the applicant is qualified therefor under
10 this part, it shall issue to the applicant a license as a
11 motor vehicle service agreement company. If the office
12 ~~department~~ does not so find, it shall refuse to issue the
13 license.

14 Section 1424. Subsections (1), (2), (3), and (5) of
15 section 634.081, Florida Statutes, are amended to read:

16 634.081 Suspension or revocation of license;
17 grounds.--

18 (1) The office ~~department~~ may, in its discretion,
19 suspend or revoke the license of any motor vehicle service
20 agreement company if it finds that the company has violated
21 any lawful order of the office ~~department~~ or any provision of
22 this part.

23 (2) The office ~~department~~ shall suspend or revoke the
24 license of a motor vehicle service agreement company if it
25 finds that the company:

26 (a) Is impaired or insolvent as defined in s. 631.011
27 or in unsound condition, or in a condition, or using methods
28 and practices in the conduct of its business, as to render its
29 further transaction of service agreements in this state
30 hazardous or injurious to its service agreement holders or to
31 the public.

1 (b) Has refused to be examined or to produce its
2 accounts, records, and files for examination, or if any of its
3 officers have refused to give information with respect to its
4 affairs or to perform any other legal obligation as to the
5 examination, when required by the office ~~department~~.

6 (c) Has failed to pay any fees, taxes, or other
7 assessments within 90 days after their due date.

8 (d) Has failed to pay any final judgment rendered
9 against it in this state within 90 days after the judgment
10 became final.

11 (e) With a frequency as to indicate its general
12 business practice in this state, has without just cause
13 refused to pay proper claims arising under its service
14 agreements, or without just cause compels service agreement
15 holders to accept less than the amount due them or to employ
16 attorneys or to bring suit against the service agreement
17 company to secure full payment or settlement of proper claims.

18 (f) Is affiliated with, or under the same general
19 management or interlocking directorate or ownership of,
20 another motor vehicle service agreement company or person who
21 transacts service agreements in or from this state without a
22 subsisting license.

23 (g) Fails to affirm or deny coverage of a claim upon
24 written request of the agreement holder within a reasonable
25 time after notification of the claim.

26 (h) Fails to promptly provide a reasonable explanation
27 in writing if requested by the agreement holder of the basis
28 in the service agreement in relation to the facts or
29 applicable law for denial of a claim or for the offer of a
30 compromise settlement.

31

1 (3) The office ~~department~~ may, in its discretion,
2 suspend the license of any motor vehicle service agreement
3 company as to which a proceeding for receivership,
4 conservatorship, or rehabilitation or other delinquency
5 proceeding has been commenced against it or its affiliate in
6 any state.

7 (5) The office ~~department~~ shall suspend or revoke the
8 license of a company if it finds that the ratio of gross
9 written premiums written to net assets exceeds 10 to 1 unless
10 the company has in excess of \$750,000 in net assets and is
11 utilizing contractual liability insurance which cedes 100
12 percent of the service agreement company's claims liabilities
13 to the contractual liability insurer or is utilizing
14 contractual liability insurance which reimburses the service
15 agreement company for 100 percent of its paid claims.

16 However, if a service agreement company has been licensed by
17 the office ~~department~~ in excess of 10 years, is in compliance
18 with all applicable provisions of this part, and has net
19 assets at all times in excess of \$3 million that comply with
20 the provisions of part II of chapter 625, such company may not
21 exceed a ratio of gross written premiums written to net assets
22 of 15 to 1.

23 Section 1425. Paragraph (b) of subsection (3) of
24 section 634.095, Florida Statutes, is amended to read:

25 634.095 Prohibited acts.--Any service agreement
26 company or salesperson that engages in one or more of the
27 following acts is, in addition to any applicable denial,
28 suspension, revocation, or refusal to renew or continue any
29 appointment or license, guilty of a misdemeanor of the second
30 degree, punishable as provided in s. 775.082 or s. 775.083:

31

1 (3) Issuing or causing to be issued any advertisement
2 which:

3 (b) In any respect is in violation of or does not
4 comply with this part, applicable provisions of the Florida
5 Insurance Code, or applicable rule of the commission
6 ~~department~~.

7 Section 1426. Section 634.101, Florida Statutes, is
8 amended to read:

9 634.101 Order, notice of suspension or revocation of
10 license; effect; publication.--

11 (1) Suspension or revocation of the license of a
12 company shall be by the order of the office ~~department~~ mailed
13 to the company by registered or certified mail. The office
14 ~~department~~ shall promptly also give notice of such suspension
15 or revocation to the salespersons of the company in this state
16 of record with ~~in the office of~~ the department. The company
17 shall not solicit or write any new service agreements in this
18 state during the period of any such suspension or revocation,
19 nor after such revocation renew any business previously
20 written.

21 (2) In its discretion, the office ~~department~~ may cause
22 notice of any such revocation to be published in one or more
23 newspapers of general circulation published in this state.

24 (3) When the license is surrendered or revoked, the
25 service agreement company shall proceed immediately, following
26 the effective date of the surrender or order of revocation, to
27 conclude its affairs transacted under this part. The service
28 agreement company shall not solicit, negotiate, advertise, or
29 effectuate new or renewal of service agreements. The office
30 ~~department~~ retains jurisdiction over the service agreement
31 company as it may find to be in the best interest of the

1 insured until all contracts have been fulfilled, canceled, or
2 expired.

3 Section 1427. Section 634.111, Florida Statutes, is
4 amended to read:

5 634.111 Duration of suspension; obligations of company
6 during suspension period; reinstatement.--

7 (1) The suspension of the license of a company shall
8 be for such period not to exceed 1 year as is fixed by the
9 office ~~department~~ in the order of suspension, unless the
10 office ~~department~~ shortens or rescinds such suspension or the
11 order upon which the suspension is based is modified,
12 rescinded, or reversed.

13 (2) During the period of suspension, the company shall
14 file its annual statement and quarterly reports, pay fees, pay
15 licenses, and pay taxes as required under this chapter as if
16 the license had continued in full force.

17 (3) Upon expiration of the suspension period, if
18 within such period the license has not otherwise terminated,
19 the license of the company shall be reinstated automatically
20 unless the office ~~department~~ finds that the causes of the
21 suspension have not been removed or that the company is
22 otherwise not in compliance with the requirements of this
23 chapter. The office ~~department~~ shall give the company notice
24 of any such finding not less than 30 days in advance of the
25 expiration of the suspension period. If not so automatically
26 reinstated, the license shall be deemed to have expired as of
27 the end of the suspension period or upon failure of the
28 company to continue the license during the suspension period,
29 whichever event first occurs.

30 (4) Upon reinstatement of the license of a company or
31 reinstatement of the certificate of authority of an insurer

1 following suspension, the authority of its salespersons in
2 this state to represent the company or insurer shall likewise
3 be reinstated. The office ~~department~~ shall promptly notify the
4 company or insurer and its salespersons of record in this
5 state of such reinstatement.

6 Section 1428. Subsections (1), (2), (3), and (7) of
7 section 634.121, Florida Statutes, are amended to read:

8 634.121 Filing of forms, required procedures,
9 provisions.--

10 (1) A service agreement form or related form may not
11 be issued or used in this state unless it has been filed with
12 and approved by the office ~~department~~. Upon application for a
13 license, the office ~~department~~ shall require the applicant to
14 submit for approval each brochure, pamphlet, circular, form
15 letter, advertisement, or other sales literature or
16 advertising communication addressed or intended for
17 distribution. The office ~~department~~ shall disapprove any
18 document which is untrue, deceptive, or misleading or which
19 contains misrepresentations or omissions of material facts.

20 (a) After an application has been approved, a licensee
21 is not required to submit brochures or advertisement to the
22 office ~~department~~ for approval; however, a licensee may not
23 have published, and a person may not publish, any brochure or
24 advertisement which is untrue, deceptive, or misleading or
25 which contains misrepresentations or omissions of material
26 fact.

27 (b) For purposes of this section, brochures and
28 advertising includes, but is not limited to, any report,
29 circular, public announcement, certificate, or other printed
30 matter or advertising material which is designed or used to
31

1 solicit or induce any persons to enter into any motor vehicle
2 service agreement.

3 (c) The office ~~department~~ shall disapprove any service
4 agreement form providing vehicle protection expenses which
5 does not clearly indicate the method for calculating the
6 benefit to be paid or provided to the service agreement
7 holder. All service agreement forms providing vehicle
8 protection expenses shall clearly indicate the term of the
9 service agreement, whether new or used cars are eligible for
10 the vehicle protection product, and that the service agreement
11 holder may not make any claim against the Florida Insurance
12 Guarantee Association for vehicle protection expenses. The
13 service agreement shall be provided to a service agreement
14 holder on a form that provides only vehicle protection
15 expenses. A service agreement form providing vehicle
16 protection expenses must state that the service agreement
17 holder must have in force at the time of loss comprehensive
18 motor vehicle insurance coverage as a condition precedent to
19 requesting payment of vehicle protection expenses.

20 (2) Every filing required under this section must be
21 made not less than 30 days in advance of issuance or use. At
22 the expiration of 30 days from the date of filing, a form so
23 filed becomes approved unless prior thereto it has been
24 affirmatively disapproved by written notice of the office
25 ~~department~~. The office ~~department~~ may extend by not more than
26 an additional 15 days the period within which it may
27 affirmatively approve or disapprove any form by giving notice
28 of extension before the expiration of the initial 30-day
29 period. At the expiration of any period as so extended and in
30 the absence of prior affirmative disapproval, the form becomes
31 approved.

1 (3) Before the sale of any service agreement, written
2 notice must be given to the prospective purchaser by the
3 service agreement company or its agent or salesperson, on an
4 office-approved ~~a department-approved~~ form, that purchase of
5 the service agreement is not required in order to purchase or
6 obtain financing for a motor vehicle.

7 (7) If a service agreement company violates any lawful
8 order of the office ~~department~~ or fails to meet its
9 contractual obligations under this part, upon notice from the
10 office ~~department~~, the sales representative or agent must
11 refund to the service agreement holder the unearned pro rata
12 commission, unless the sales representative or agent has made
13 other arrangements, satisfactory to the office ~~department~~,
14 with the service agreement holder.

15 Section 1429. Section 634.1213, Florida Statutes, is
16 amended to read:

17 634.1213 Grounds for disapproval.--The office
18 ~~department~~ may disapprove any service agreement form or
19 service agreement company sales brochures filed under s.
20 634.121, or withdraw any previous approval thereof, if the
21 form or brochure:

22 (1) Is in any respect in violation of or does not
23 comply with this part, any applicable provision of the Florida
24 Insurance Code, or any applicable rule of the commission
25 ~~department~~.

26 (2) Contains or incorporates by reference when such
27 incorporation is otherwise permissible, any inconsistent,
28 ambiguous, or misleading clauses, or exceptions and conditions
29 which deceptively affect the risk purported to be assumed in
30 the general coverage of the service agreement.

31

1 (3) Has any title, heading, or other indication of its
2 provisions which is misleading.

3 (4) Is printed or otherwise reproduced in such manner
4 as to render any material provision of the form substantially
5 illegible.

6 (5) Contains any provision which is unfair or
7 inequitable or which encourages misrepresentation.

8 (6) Contains any provision which makes it difficult to
9 determine the actual insurer or service agreement company
10 issuing the form.

11 (7) Contains any provision for reducing claim payments
12 due to depreciation of parts, except for marine engines.

13 Section 1430. Section 634.1216, Florida Statutes, is
14 amended to read:

15 634.1216 Rate filings.--Each insurer and each motor
16 vehicle service agreement company shall file with the office
17 ~~department~~ the rates, rating schedules, or rating manuals
18 used, including all modifications of rates and premiums, to be
19 paid by the service agreement holder. Every filing shall
20 state the proposed effective date thereon. The filing shall
21 be made not less than 30 days before its effective date.

22 Section 1431. Section 634.137, Florida Statutes, is
23 amended to read:

24 634.137 Financial and statistical reporting
25 requirements.--

26 (1) Each service agreement company shall submit to the
27 office ~~department~~ financial reports on forms prescribed by the
28 commission and furnished by the office ~~department~~ as follows:

29 (a) Reports for a period ending December 31 are due by
30 March 1.

31

- 1 (b) Reports for a period ending March 31 are due by
2 May 15.
- 3 (c) Reports for a period ending June 30 are due by
4 August 15.
- 5 (d) Reports for a period ending September 30 are due
6 by November 15.
- 7 (2) Any motor vehicle service agreement company
8 engaged in the business of issuing service agreements in this
9 state must transmit the following information, based on
10 Florida data, to the office ~~department~~ each year with the
11 annual report of the company:
- 12 (a) Net assets.
- 13 (b) Premiums written.
- 14 (c) Premiums earned.
- 15 (d) Unearned premium reserve.
- 16 (e) Percent of claim exposure for which contractual
17 liability insurance has been obtained.
- 18 (f) Incurred claims, not including claims incurred but
19 not reported.
- 20 (g) Claims incurred but not reported.
- 21 (h) Loss reserve for all claims except those incurred
22 but not reported.
- 23 (i) Reserves for claims incurred but not reported.
- 24 (j) Number and dollar amount of claims paid.
- 25 (k) Itemized acquisition costs.
- 26 (l) Net gain or loss from operations before income
27 taxes.
- 28 (m) Net investment income from all reserves.
- 29 (n) Net investment income from surplus.
- 30 (o) Ratio of claims paid to premium earned.
- 31

1 (p) Ratio of all claims incurred to premium earned
2 plus investment income from all reserves.

3 (q) Number of claims resisted.

4 (r) Any additional information that the commission
5 ~~department~~ requires in order to evaluate the financial
6 condition or trade practices of companies issuing service
7 agreements in this state.

8 (3) Any service agreement company that does not file
9 an annual statement in the form and within the time provided
10 by this section shall forfeit up to \$100 for each day during
11 which the default continues, and, upon notice by the office
12 ~~department~~, the authority of the company to do business in
13 this state shall cease while the default continues. The
14 office ~~department~~ shall deposit all sums collected under this
15 subsection in the Insurance ~~Commissioner's~~ Regulatory Trust
16 Fund.

17 (4) The office ~~department~~ shall provide a summary of
18 the information provided pursuant to subsection (2) in its
19 annual report.

20 (5) The commission ~~department~~ may by rule require each
21 motor vehicle service agreement company to submit to the
22 office ~~department~~, as the commission ~~department~~ may designate,
23 all or part of the information contained in the financial
24 reports required by this section in a computer-readable form
25 compatible with the electronic data processing system
26 specified by the office ~~department~~.

27 Section 1432. Section 634.141, Florida Statutes, is
28 amended to read:

29 634.141 Examination of companies.--Motor vehicle
30 service agreement companies licensed under this part shall be
31 subject to periodic examination by the office ~~department~~ in

1 the same manner and subject to the same terms and conditions
2 as applies to insurers under part II of chapter 624. The
3 commission department may by rule establish provisions whereby
4 a company may be exempted from examination.

5 Section 1433. Section 634.151, Florida Statutes, is
6 amended to read:

7 634.151 Service of process; appointment of
8 commissioner as process agent.--

9 (1) Each company applying for authority to transact
10 business in this state, whether domestic or foreign, shall
11 file with the office department its appointment of the Chief
12 Financial Officer ~~Insurance Commissioner and Treasurer~~ and her
13 or his successors in office, on a form as furnished by the
14 office department, as its attorney to receive service of all
15 legal process issued against it in any civil action or
16 proceeding in this state and agreeing that process so served
17 shall be valid and binding upon the company. The appointment
18 shall be irrevocable, shall bind the company and any successor
19 in interest as to the assets or liabilities of the company,
20 and shall remain in effect as long as there is outstanding in
21 this state any obligation or liability of the company
22 resulting from its service agreement transactions therein.

23 (2) At the time of such appointment of the Chief
24 Financial Officer ~~Insurance Commissioner and Treasurer~~ as its
25 process agent the company shall file with the department a
26 designation of the name and address of the person to whom
27 process against it served upon the Chief Financial Officer
28 ~~Insurance Commissioner and Treasurer~~ is to be forwarded. The
29 company may change the designation at any time by a new
30 filing.

31

1 Section 1434. Section 634.161, Florida Statutes, is
2 amended to read:

3 634.161 Service of process; method.--

4 (1) Service of process upon the Chief Financial
5 Officer ~~Insurance Commissioner and Treasurer~~ as process agent
6 of the company shall be made by serving copies in triplicate
7 of the process upon the Chief Financial Officer ~~Insurance~~
8 ~~Commissioner and Treasurer~~ or upon her or his assistant,
9 ~~deputy, or other person in charge of her or his office.~~ Upon
10 receiving such service, the Chief Financial Officer ~~Insurance~~
11 ~~Commissioner and Treasurer~~ shall file one copy with the
12 department, return one copy with her or his admission of
13 service, and promptly forward one copy of the process by
14 registered or certified mail to the person last designated by
15 the company to receive the same, as provided under s. 634.151.

16 (2) Process served upon the Chief Financial Officer
17 ~~Insurance Commissioner and Treasurer~~ and copy thereof
18 forwarded as in this section provided shall for all purposes
19 constitute valid and binding service thereof upon the company.

20 Section 1435. Subsections (2) and (10) of section
21 634.181, Florida Statutes, are amended to read:

22 634.181 Grounds for compulsory refusal, suspension, or
23 revocation of license or appointment of salespersons.--The
24 department shall deny, suspend, revoke, or refuse to renew or
25 continue the license or appointment of any such salesperson if
26 it finds that as to the salesperson any one or more of the
27 following applicable grounds exist:

28 (2) If the license or appointment is willfully used,
29 or to be used, to circumvent any of the requirements or
30 prohibitions of this part, any applicable provision of the

31

1 Florida Insurance Code, or rule of the department or
2 commission.

3 (10) Willful failure to comply with, or willful
4 violation of any proper order of the department or office, or
5 willful violation of any provision of this part, or of any
6 applicable provision of the insurance code, or applicable rule
7 of the department or commission.

8 Section 1436. Subsection (3) of section 634.191,
9 Florida Statutes, is amended to read:

10 634.191 Grounds for discretionary refusal, suspension,
11 or revocation of license or appointment of salespersons.--The
12 department may, in its discretion, deny, suspend, revoke, or
13 refuse to renew or continue the license or appointment of any
14 salesperson if it finds that as to the salesperson any one or
15 more of the following applicable grounds exist under
16 circumstances for which such denial, suspension, revocation,
17 or refusal is not mandatory under s. 634.181:

18 (3) Has violated any lawful order or rule of the
19 department or commission.

20 Section 1437. Section 634.211, Florida Statutes, is
21 amended to read:

22 634.211 Administrative fine in lieu of suspension or
23 revocation of license or appointment.--

24 (1) If the department or office finds that one or more
25 grounds exist for the suspension, revocation, or refusal to
26 renew or continue any license or appointment issued under this
27 part, the department or office may, in its discretion, in lieu
28 of such suspension, revocation, or refusal, on a first offense
29 and except where such suspension, revocation, or refusal is
30 mandatory, impose upon the licensee or appointee an
31 administrative penalty in an amount of up to \$500 per

1 violation, or if the department or office has found willful
2 misconduct or willful violation on the part of the licensee or
3 appointee, an administrative fine of up to \$1,000 per
4 violation. The administrative penalty may, in the department's
5 or office's discretion, be augmented in amount by an amount
6 equal to any commissions received by or accruing to the credit
7 of the licensee or appointee in connection with any
8 transaction as to which the grounds for suspension,
9 revocation, or refusal related.

10 (2) The department or office may allow the licensee or
11 appointee a reasonable period, not to exceed 30 days, within
12 which to pay to the department or office the amount of the
13 penalty so imposed. If the licensee or appointee fails to pay
14 the penalty in its entirety to the department or office ~~at its~~
15 ~~office at Tallahassee~~ within the period so allowed, the
16 license and appointment of the licensee or appointee shall
17 stand suspended, revoked, or renewal or continuation refused,
18 as the case may be, upon expiration of such period.

19 Section 1438. Section 634.221, Florida Statutes, is
20 amended to read:

21 634.221 Disposition of taxes and fees.--All license
22 taxes, taxes on premiums and assessments, registration fees,
23 and administrative fines and penalties collected under this
24 act from motor vehicle service agreement companies shall be
25 deposited to the credit of the Insurance ~~Commissioner's~~
26 Regulatory Trust Fund.

27 Section 1439. Section 634.231, Florida Statutes, is
28 amended to read:

29 634.231 Insurance business not authorized.--Nothing in
30 the Florida Insurance Code or in this part shall be deemed to
31 authorize any motor vehicle service agreement company to

1 transact any insurance business other than that of motor
2 vehicle service agreement as herein defined or otherwise to
3 engage in any other type of insurance unless the company is
4 authorized under a certificate of authority issued by the
5 office ~~department~~ under the provisions of the Florida
6 Insurance Code.

7 Section 1440. Section 634.242, Florida Statutes, is
8 amended to read:

9 634.242 Injunctive proceedings.--In addition to the
10 penalties and other enforcement provisions of this part, if
11 any person violates s. 634.031 or s. 634.171 or any rule
12 adopted pursuant thereto, the department or office may resort
13 to a proceeding for injunction in the circuit court of the
14 county where such person resides or has her or his or its
15 principal place of business, and therein apply for such
16 temporary and permanent orders as the department or office may
17 deem necessary to restrain such person from engaging in any
18 such activity, until such person has complied with such
19 provision or rule.

20 Section 1441. Section 634.253, Florida Statutes, is
21 amended to read:

22 634.253 Delinquency proceedings.--

23 (1) If any of the grounds for rehabilitation,
24 liquidation, conservation, reorganization, seizure, or summary
25 proceedings of an insurer as set forth in ss. 631.051,
26 631.061, and 631.071 exist as to a company, the office
27 ~~department~~ may petition for an appropriate court order or may
28 pursue such other relief as is afforded in part I of chapter
29 631.

30 (2) In the event an order of rehabilitation,
31 liquidation, conservation, reorganization, seizure, or summary

1 proceedings has been entered against a company, the department
2 and office shall be vested with all of the powers and duties
3 they have ~~it has~~ under the provisions of part I of chapter 631
4 in regard to delinquency proceedings of insurance companies.

5 Section 1442. Section 634.261, Florida Statutes, is
6 amended to read:

7 634.261 Voluntary compliance in lieu of suspension or
8 revocation.--The department or office may terminate an
9 investigation or an action upon acceptance of the written
10 assurance of a company or salesperson of voluntary compliance
11 with this part. An acceptance of assurance may be conditioned
12 on a commitment to reimburse agreement purchasers or to take
13 other appropriate corrective action. An assurance is not
14 evidence of a prior violation of this part. However, unless an
15 assurance has been rescinded by agreement of the parties or
16 voided by a court for good cause, the subsequent failure to
17 comply with the terms of an assurance is prima facie evidence
18 of a violation of this part. No such assurance shall act as a
19 limitation upon any action or remedy available to a person
20 aggrieved by a violation of this part.

21 Section 1443. Subsections (7) and (13) of section
22 634.282, Florida Statutes, are amended to read:

23 634.282 Unfair methods of competition and unfair or
24 deceptive acts or practices defined.--The following methods,
25 acts, or practices are defined as unfair methods of
26 competition and unfair or deceptive acts or practices:

27 (7) UNLAWFUL REBATES.--Except as otherwise expressly
28 provided by law, or in an applicable filing with the office
29 ~~department~~, knowingly:

30 (a) Permitting, or offering to make, or making, any
31 contract or agreement as to such contract other than as

1 plainly expressed in the motor vehicle service agreement
2 issued thereon;

3 (b) Paying, allowing, or giving, or offering to pay,
4 allow, or give, directly or indirectly, as inducement to such
5 motor vehicle service agreement, any unlawful rebate of
6 premiums payable on the agreement, any special favor or
7 advantage in the benefits thereon, or any valuable
8 consideration or inducement not specified in the agreement;

9 (c) Giving, selling, or purchasing, or offering to
10 give, sell, or purchase, as an inducement to such motor
11 vehicle service agreement or in connection therewith, any
12 stocks, bonds, or other securities of any insurance company,
13 service agreement company, or other corporation, association,
14 or partnership, or any dividends or profits accrued thereon,
15 or anything of value not specified in the motor vehicle
16 service agreement.

17 (13) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED
18 CHARGES FOR MOTOR VEHICLE SERVICE AGREEMENTS.--

19 (a) Knowingly collecting any sum as a premium or
20 charge for a motor vehicle service agreement, which is not
21 then provided, or is not in due course to be provided, subject
22 to acceptance of the risk by a service agreement company or an
23 insurer, by a motor vehicle service agreement issued by a
24 service agreement company or an insurer as permitted by this
25 part.

26 (b) Knowingly collecting as a premium or charge for a
27 motor vehicle service agreement any sum in excess of or less
28 than the premium or charge applicable to such motor vehicle
29 service agreement, in accordance with the applicable
30 classifications and rates as filed with the office ~~department~~,
31 and as specified in the motor vehicle service agreement.

1
2 No provision of this section shall be deemed to prohibit a
3 service agreement company or a licensed insurer from giving to
4 service agreement holders, prospective service agreement
5 holders, and others for the purpose of advertising, any
6 article of merchandise having a value of not more than \$25.

7 Section 1444. Section 634.283, Florida Statutes, is
8 amended to read:

9 634.283 Power of department and office to examine and
10 investigate.--The department and office may, within their
11 respective regulatory jurisdictions, examine and investigate
12 the affairs of every person involved in the business of motor
13 vehicle service agreements in this state in order to determine
14 whether such person has been or is engaged in any unfair
15 method of competition or in any unfair or deceptive act or
16 practice prohibited by s. 634.2815, and each shall have the
17 powers and duties specified in ss. 634.284-634.289 in
18 connection therewith.

19 Section 1445. Section 634.284, Florida Statutes, is
20 amended to read:

21 634.284 Prohibited practices; hearings; procedure;
22 service of process.--

23 (1) Whenever the department or office has reason to
24 believe that any person has engaged, or is engaging, in this
25 state in any unfair method of competition or any unfair or
26 deceptive act or practice as defined in s. 634.282, or is
27 engaging in the business of motor vehicle service agreements
28 without being properly licensed as required by this part, and
29 that a proceeding by the department or office in respect
30 thereto would be in the interest of the public, the department
31

1 or office shall conduct or cause to have conducted a hearing
2 in accordance with chapter 120.

3 (2) The department or office, a duly empowered hearing
4 officer, or an administrative law judge shall, during the
5 conduct of such hearing, have those powers enumerated in s.
6 120.569; however, the penalty for failure to comply with a
7 subpoena or with an order directing discovery is limited to a
8 fine not to exceed \$1,000 per violation.

9 (3) A statement of charges, notice, or order under
10 this part may be served by anyone duly authorized by the
11 department or office, either in the manner provided by law for
12 service of process in civil actions or by certifying and
13 mailing a copy thereof to the person affected by such
14 statement, notice, order, or other process at her or his
15 residence or principal office or place of business. The
16 verified return by the person so serving such statement,
17 notice, order, or other process, setting forth the manner of
18 the service, is proof of the same; and the return postcard
19 receipt for such statement, notice, order, or other process,
20 certified and mailed as provided in this subsection, is proof
21 of service of the same.

22 Section 1446. Section 634.285, Florida Statutes, is
23 amended to read:

24 634.285 Cease and desist and penalty orders.--After
25 the hearing provided for in s. 634.284, the department or
26 office shall enter a final order in accordance with s.
27 120.569. If it is determined that the person charged has
28 engaged in an unfair or deceptive act or practice or the
29 unlawful transaction of a service agreement business, the
30 department or office also shall issue an order requiring the
31 violator to cease and desist from engaging in such method of

1 competition, act, or practice or the unlawful transaction of
2 service agreement business. Further, the department or office
3 may, at its discretion, order any one or more of the following
4 penalties:

5 (1) The suspension or revocation of such person's
6 license, or eligibility for any license, if the person knew,
7 or reasonably should have known, that she or he was in
8 violation of this part.

9 (2) If it is determined that the person charged has
10 provided or offered to provide motor vehicle service
11 agreements without proper licensure, the imposition of an
12 administrative penalty not to exceed \$1,000 for each service
13 agreement contract offered or effectuated.

14 Section 1447. Section 634.286, Florida Statutes, is
15 amended to read:

16 634.286 Appeals from orders of the department or
17 office.--Any person subject to an order of the department or
18 office under s. 634.285 may obtain a review of such order by
19 filing an appeal therefrom in accordance with the provisions
20 and procedures for appeal from the orders of the department or
21 office in general under s. 120.68.

22 Section 1448. Section 634.287, Florida Statutes, is
23 amended to read:

24 634.287 Penalty for violation of cease and desist
25 order.--Any person who violates a cease and desist order of
26 the department or office under s. 634.285 while such order is
27 in effect, after notice and hearing as provided in s. 634.284,
28 is subject, at the discretion of the department or office, to
29 any one or more of the following penalties:

30 (1) A monetary penalty of not more than \$50,000 as to
31 all matters determined in such hearing.

1 (2) The suspension or revocation of such person's
2 license or eligibility to hold a license.

3 Section 1449. Section 634.288, Florida Statutes, is
4 amended to read:

5 634.288 Civil liability.--The provisions of this part
6 are cumulative to rights under the general civil and common
7 law, and no action of the department or office will abrogate
8 such rights to damages or other relief in any court.

9 Section 1450. Section 634.289, Florida Statutes, is
10 amended to read:

11 634.289 Rules.--The department or commission may adopt
12 rules, in accordance with chapter 120, to identify specific
13 methods of competition or acts or practices that are
14 prohibited by s. 634.282, but these rules shall not enlarge
15 upon or extend the provisions of that section.

16 Section 1451. Section 634.301, Florida Statutes, is
17 amended to read:

18 634.301 Definitions.--As used in this part, the term:

19 ~~(1) "Department" means the Department of Insurance.~~

20 (1)(2) "Gross written premiums" means the total amount
21 of premiums, paid for the entire period of the home warranty,
22 inclusive of commissions, for which the association is
23 obligated under home warranties issued.

24 (2)(3) "Home improvement" means major remodeling,
25 enclosure of a garage, addition of a room, addition of a pool,
26 and other like items that add value to the residential
27 property. The term does not include normal maintenance for
28 items such as painting, reroofing, and other like items
29 subject to normal wear and tear.

30 (3)(4) "Home warranty" or "warranty" means any
31 contract or agreement:

1 (a) Offered in connection with the sale of residential
2 property;

3 (b) Offered in connection with a loan of \$5,000 or
4 more which is secured by residential property that is the
5 subject of the warranty, but not in connection with the sale
6 of such property; or

7 (c) Offered in connection with a home improvement of
8 \$7,500 or more for residential property that is the subject of
9 the warranty, but not in connection with the sale of such
10 property;

11

12 whereby a person undertakes to indemnify the warranty holder
13 against the cost of repair or replacement, or actually
14 furnishes repair or replacement, of any structural component
15 or appliance of a home, necessitated by wear and tear or an
16 inherent defect of any such structural component or appliance
17 or necessitated by the failure of an inspection to detect the
18 likelihood of any such loss. However, this part does not
19 prohibit the giving of usual performance guarantees by either
20 the builder of a home or the manufacturer or seller of an
21 appliance, as long as no identifiable charge is made for such
22 guarantee. This part does not permit the provision of
23 indemnification against consequential damages arising from the
24 failure of any structural component or appliance of a home,
25 which practice constitutes the transaction of insurance
26 subject to all requirements of the insurance code. This part
27 does not apply to service contracts entered into between
28 consumers and nonprofit organizations or cooperatives the
29 members of which consist of condominium associations and
30 condominium owners and which perform repairs and maintenance
31 for appliances or maintenance of the residential property.

1 (4)~~(5)~~ "Home warranty association" means any
2 corporation or any other organization, other than an
3 authorized insurer, issuing home warranties.

4 (5)~~(6)~~ "Impaired" means having liabilities in excess
5 of assets.

6 (6)~~(7)~~ "Insolvent" means the inability of a
7 corporation to pay its debts as they become due in the usual
8 course of its business.

9 (7)~~(8)~~ "Insurance code" means the Florida Insurance
10 Code.

11 (8)~~(9)~~ "Insurer" means any property or casualty
12 insurer duly authorized to transact such business in this
13 state.

14 (9)~~(10)~~ "Listing period" means the period of time
15 residential property is listed for sale with a licensed real
16 estate broker, beginning on the date the residence is first
17 listed for sale and ending on either the date the sale of the
18 residence is closed, the date the residence is taken off the
19 market, or the date the listing contract with the real estate
20 broker expires.

21 (10)~~(11)~~ "Net assets" means the amount by which the
22 total statutory assets of an association exceed the total
23 liabilities of the association.

24 (11)~~(12)~~ "Person" includes an individual, company,
25 corporation, association, insurer, agent, and every other
26 legal entity.

27 (12)~~(13)~~ "Premium" means the total consideration
28 received, or to be received, by an insurer or home warranty
29 association for or related to the issuance and delivery of any
30 binder or warranty, including any charges designated as
31

1 assessments or fees for policies, surveys, inspections, or
2 service or any other charges.

3 (13)~~(14)~~ "Sales representative" means any person with
4 whom an insurer or home inspection or warranty association has
5 a contract and who is utilized by such insurer or association
6 for the purpose of selling or issuing home warranties. The
7 term includes all employees of an insurer or association
8 engaged directly in the sale or issuance of home warranties.

9 (14)~~(15)~~ "Structural component" means the roof,
10 plumbing system, electrical system, foundation, basement,
11 walls, ceilings, or floors of a home.

12 Section 1452. Section 634.302, Florida Statutes, is
13 amended to read:

14 634.302 Powers of department, commission, and office;
15 rules.--The office ~~department~~ shall administer this part, and
16 the commission may, ~~to that end, it has authority to~~ adopt
17 rules pursuant to ss. 120.536(1) and 120.54 to implement the
18 provisions of this part related to home warranty associations
19 and home warranties. The department shall administer this part
20 and may adopt rules pursuant to ss. 120.536(1) and 120.54 to
21 implement provisions of this part related to sales
22 representatives. Such rules by the commission or department
23 ~~may include rules that~~ identify specific methods of
24 competition or acts or practices that are prohibited by s.
25 634.336, but ~~the rules~~ shall not enlarge upon or extend the
26 provisions of that section.

27 Section 1453. Subsection (1) of section 634.303,
28 Florida Statutes, is amended to read:

29 634.303 License required.--

30 (1) No person in this state shall provide or offer to
31 provide home warranties unless authorized therefor under a

1 subsisting license issued by the office ~~department~~. The home
2 warranty association shall pay to the office ~~department~~ a
3 license tax of \$200 for such license for each license year, or
4 part thereof, the license is in force.

5 Section 1454. Section 634.304, Florida Statutes, is
6 amended to read:

7 634.304 Qualifications for license.--The office
8 ~~department~~ may not issue or renew a license to any home
9 warranty association unless the association:

10 (1) Is a solvent corporation formed under the laws of
11 this state or of another state, district, territory, or
12 possession of the United States.

13 (2) Furnishes the office ~~department~~ with evidence
14 satisfactory to it that the management of the association is
15 competent and trustworthy and can successfully manage the
16 affairs of the association in compliance with law.

17 (3) Proposes to use and uses in its business a name,
18 together with a trademark or emblem, if any, which is
19 distinctive and not so similar to the name or trademark of any
20 other association, corporation, or organization already doing
21 business in this state as will tend to mislead or confuse the
22 public.

23 (4) Meets the deposit requirements under s. 634.305.

24 (5) Is otherwise in compliance with this part.

25 Section 1455. Subsections (1), (2), and (6) of section
26 634.305, Florida Statutes, are amended to read:

27 634.305 Required deposit or bond.--

28 (1) To assure the faithful performance of its
29 obligations to its members or subscribers in the event of
30 insolvency, every home warranty association shall, before the
31 issuance of its license by the office ~~department~~, deposit with

1 the department securities of the type eligible for deposit by
2 insurers under s. 625.52, which securities shall have at all
3 times a market value of not less than \$100,000.

4 (2) In lieu of any deposit of securities required
5 under subsection (1), the association may:

6 (a) Deposit with the department securities of the type
7 eligible for deposit by insurers under s. 625.52, which
8 securities shall have at all times a market value of not less
9 than \$25,000; and

10 (b) File with the office ~~department~~ a surety bond in
11 the amount of \$75,000. The bond shall be one issued by an
12 authorized surety insurer, shall be for the same purpose as
13 the deposit in lieu of which it is filed, and shall be subject
14 to the approval of the office ~~department~~. The bond shall
15 guarantee that the home warranty association will faithfully
16 and truly perform all the conditions of any home warranty
17 contract. No such bond may be canceled or subject to
18 cancellation unless at least 60 days' advance notice thereof
19 in writing is filed with the office ~~department~~. In the event
20 that notice of termination of the bond is filed with the
21 office ~~department~~, the home warranty association insured
22 thereunder shall, within 30 days of the filing of notice of
23 termination, provide the office ~~department~~ with a replacement
24 bond meeting the requirements of this part or deposit
25 additional securities as required under subsection (1). The
26 cancellation of a bond will not relieve the obligation of the
27 issuer of the bond for claims arising out of contracts issued
28 before cancellation of the bond unless a replacement bond or
29 securities are filed pursuant to this section. In no event
30 may the liability of the issuer under the bond exceed the face
31 amount of the bond. If within 30 days of filing the notice of

1 termination no replacement bond or additional security is
2 provided, the office ~~department~~ shall suspend the license of
3 the association until the deposit requirements are satisfied.

4 (6) Such deposit or bond shall be maintained
5 unimpaired as long as the association continues in business in
6 this state. Whenever the association ceases to do business in
7 this state and furnishes the office ~~department~~ proof
8 satisfactory to the office ~~department~~ that it has discharged
9 or otherwise adequately provided for all its obligations to
10 its members or subscribers in this state, the office and
11 department shall release the deposited securities to the
12 parties entitled thereto, on presentation of the receipts of
13 the department for such securities, or shall release any bond
14 filed with it pursuant to this section.

15 Section 1456. Section 634.306, Florida Statutes, is
16 amended to read:

17 634.306 Application for and issuance of license.--

18 (1) An application for license as a home warranty
19 association must be made to and must be filed with the office
20 ~~department~~ on printed forms prescribed by the commission and
21 furnished by the office ~~it~~.

22 (2) In addition to information relative to its
23 qualifications as required under s. 634.304, the application
24 must show:

25 (a) The location of the applicant's home office.

26 (b) The name and residence address of each director or
27 officer of the applicant and the name and residence address of
28 each shareholder who owns or controls 10 percent or more
29 shares of the applicant.

30 (c) Such other pertinent information as is required by
31 the office or commission ~~department~~.

1 (3) The application must be accompanied by:

2 (a) A copy of the applicant's articles of
3 incorporation, certified by the public official having custody
4 of the original, and a copy of the applicant's bylaws,
5 certified by the applicant's secretary.

6 (b) A copy of the most recent financial statement of
7 the applicant, verified under oath of at least two of its
8 principal officers.

9 (c) A license fee in the amount of \$200, as required
10 under s. 634.303.

11 (4) Upon completion of the application for license,
12 the office ~~department~~ shall examine the application and make
13 any further investigation of the applicant as it deems
14 advisable. If it finds that the applicant is qualified
15 therefor, the office ~~department~~ shall issue to the applicant a
16 license as a home warranty association. If the office
17 ~~department~~ does not so find, it shall refuse to issue the
18 license and shall give the applicant written notice of such
19 refusal, setting forth the grounds therefor.

20 Section 1457. Section 634.307, Florida Statutes, is
21 amended to read:

22 634.307 License expiration; renewal.--Each license as
23 a home warranty association issued under this part shall
24 expire on June 1 next following the date of issuance. If the
25 association is then qualified therefor under the provisions of
26 this part, its license may be renewed annually, upon its
27 request and upon payment to the office ~~department~~ of the
28 license tax in the amount of \$200, in advance, for each such
29 license year.

30 Section 1458. Subsections (3) and (4) of section
31 634.3077, Florida Statutes, are amended to read:

1 634.3077 Financial requirements.--

2 (3) An association shall not be required to set up an
3 unearned premium reserve if it has purchased contractual
4 liability insurance which demonstrates to the satisfaction of
5 the office ~~department~~ that 100 percent of its claim exposure
6 is covered by such insurance. Such contractual liability
7 insurance shall be obtained from an insurer that holds a
8 certificate of authority to do business within the state or
9 from an insurer approved by the office ~~department~~ as
10 financially capable of meeting the obligations incurred
11 pursuant to the policy. For purposes of this subsection, the
12 contractual liability policy shall contain the following
13 provisions:

14 (a) In the event that the home warranty association is
15 unable to fulfill its obligation under its contracts issued in
16 this state for any reason, including insolvency, bankruptcy,
17 or dissolution, the contractual liability insurer will pay
18 losses and unearned premiums under such plans directly to
19 persons making claims under such contracts.

20 (b) The insurer issuing the policy shall assume full
21 responsibility for the administration of claims in the event
22 of the inability of the association to do so.

23 (c) The policy may not be canceled or not renewed by
24 either the insurer or the association unless 60 days' written
25 notice thereof has been given to the office ~~department~~ by the
26 insurer before the date of such cancellation or nonrenewal.

27 (4) An association that purchases contractual
28 liability insurance on the warranties that it issues shall
29 provide the office ~~department~~ with claim statistics required
30 to be filed by associations not purchasing such insurance.

31

1 Section 1459. Section 634.3078, Florida Statutes, is
2 amended to read:

3 634.3078 Assets and liabilities.--

4 (1) ASSETS.--In any determination of the financial
5 condition of a home warranty association, there shall be
6 allowed as assets only those assets that are owned by the home
7 warranty association company and which assets consist of:

8 (a) Cash in the possession of the home warranty
9 association, or in transit under its control, including the
10 true balance of any deposit in a solvent bank, savings and
11 loan association, or trust company that is domiciled in the
12 United States.

13 (b) Investments, securities, properties, and loans
14 acquired or held in accordance with this part and, in
15 connection therewith, the following items:

16 1. Interest due or accrued on any bond or evidence of
17 indebtedness which is not in default and which is not valued
18 on a basis including accrued interest.

19 2. Declared and unpaid dividends on stock and shares,
20 unless the amount of the dividends has otherwise been allowed
21 as an asset.

22 3. Interest due or accrued upon a collateral loan that
23 is not in default in an amount not to exceed 1 year's interest
24 thereon.

25 4. Interest due or accrued on deposits or certificates
26 of deposit in solvent banks, savings and loan associations,
27 and trust companies domiciled in the United States, and
28 interest due or accrued on other assets, if such interest is
29 in the judgment of the office ~~department~~ a collectible asset.

30 5. Interest due or accrued on current mortgage loans,
31 in an amount not exceeding the amount, if any, of the excess

1 of the value of the property less delinquent taxes thereon
2 over the unpaid principal; but interest accrued for a period
3 in excess of 90 days may not be allowed as an asset.

4 6. Rent due or accrued on real property if such rent
5 is not in arrears for more than 3 months. However, rent
6 accrued for a period in excess of 90 days may not be allowed
7 as an asset.

8 7. The unaccrued portion of taxes paid prior to the
9 due date on real property.

10 (c) Furniture, fixtures, furnishings, vehicles, and
11 equipment, if the original cost of each item is at least \$200,
12 which cost shall be amortized in full over a period not to
13 exceed 5 calendar years, unless otherwise approved by the
14 office department.

15 (d) Part inventories maintained for the purpose of
16 servicing products warranted. Part inventories must be listed
17 at cost. Home warranty associations companies are required to
18 maintain records to support valuation of part inventories.

19 (e) The liquidation value of prepaid expenses.

20 (f) Other assets or receivables, not inconsistent with
21 the provisions of this section, deemed by the office
22 ~~department~~ to be available for the payment of losses and
23 claims, at values to be determined by the office department.

24
25 The office department, upon determining that a home warranty
26 association's asset has not been evaluated according to
27 applicable law or that it does not qualify as an asset, shall
28 require the home warranty association to properly reevaluate
29 the asset or replace the asset with an asset suitable to the
30 office department within 30 days after written notification by
31 the office department of this determination, if the removal of

1 the asset from the organization's assets would impair the
2 company's solvency.

3 (2) ASSETS NOT ALLOWED.--In addition to assets
4 impliedly excluded by the provisions of subsection (1), the
5 following assets expressly shall not be allowed as assets in
6 any determination of the financial condition of a home
7 warranty association:

8 (a) Goodwill, agreement holder lists, patents, trade
9 names, agreements not to compete, and other like intangible
10 assets.

11 (b) Any note or account receivable from or advances to
12 officers, directors, or controlling stockholders, whether
13 secured or not, and advances to employees, agents, or other
14 persons on personal security only.

15 (c) Stock of the home warranty association owned by it
16 directly or owned by it through any entity in which the
17 organization owns or controls, directly or indirectly, more
18 than 25 percent of the ownership interest.

19 (d) Leasehold improvements, stationery, and
20 literature, except that leasehold improvements made prior to
21 October 1, 2001, shall be allowed as an asset and shall be
22 amortized over the shortest of the following periods:

- 23 1. The life of the lease.
- 24 2. The useful life of the improvements.
- 25 3. The 3-year period following October 1, 2001.

26 (e) Furniture, fixtures, furnishings, vehicles, and
27 equipment, other than those items authorized under paragraph
28 (1)(c).

29 (f) Notes or other evidences of indebtedness which are
30 secured by mortgages or deeds of trust which are in default

31

1 and beyond the express period specified in the instrument for
2 curing the default.

3 (g) Bonds in default for more than 60 days.

4 (h) Deferred costs other than the liquidation value of
5 prepaid expenses except for those companies that reserve 100
6 percent of gross written premium.

7 (i) Any note, account receivable, advance, or other
8 evidence of indebtedness, or investment in:

9 1. The parent of the home warranty association;

10 2. Any entity directly or indirectly controlled by the
11 home warranty association's parent;

12 3. An affiliate of the parent or the home warranty
13 association; or

14 4. Officers, directors, shareholders, employees, or
15 salespersons of the home warranty association; however,
16 premium receivables under 45 days old may be considered an
17 admitted asset.

18
19 The office ~~department~~ may, however, allow all or a portion of
20 such asset, at values to be determined by the office
21 ~~department~~, if deemed by the office ~~department~~ to be available
22 for the payment of losses and claims.

23 (3) LIABILITIES.--In any determination of the
24 financial condition of a home warranty association,
25 liabilities to be charged against its assets shall include,
26 but not be limited to:

27 (a) The amount, in conformity with generally accepted
28 accounting principles, necessary to pay all of its unpaid
29 losses and claims incurred for or on behalf of an agreement
30 holder, on or prior to the end of the reporting period,
31 whether reported or unreported.

1 (b) Taxes, expenses, and other obligations due or
2 accrued at the date of the statement.

3 (c) Reserve for unearned premiums.
4

5 The office department, upon determining that the home warranty
6 association has failed to report liabilities that should have
7 been reported, shall require a correct report which reflects
8 the proper liabilities to be submitted by the home warranty
9 association to the office department within 10 working days
10 after receipt of written notification.

11 Section 1460. Subsections (1), (2), and (3) of section
12 634.308, Florida Statutes, are amended to read:

13 634.308 Grounds for suspension or revocation of
14 license.--

15 (1) The license of any home warranty association may
16 be revoked or suspended, or the office department may refuse
17 to renew any such license, if it is determined that:

18 (a) The association has violated any lawful rule or
19 order of the commission or office department or any provision
20 of this part.

21 (b) The association has not maintained a funded,
22 unearned premium reserve account as required by s.
23 634.3077(1).

24 (c) The association has not maintained, at a minimum,
25 net assets as required by s. 634.3077(2).

26 (2) The license of any home warranty association shall
27 be suspended, revoked, or not renewed if it is determined that
28 such association:

29 (a) Is in unsound financial condition or is in such
30 condition or is using such methods and practices in the
31 conduct of its business as to render its further transaction

1 of warranties in this state hazardous or injurious to its
2 warranty holders or to the public.

3 (b) Has refused to be examined or to produce its
4 accounts, records, and files for examination, or if any of its
5 officers have refused to give information with respect to its
6 affairs or have refused to perform any other legal obligation
7 as to such examination, when required by the office
8 ~~department~~.

9 (c) Has failed to pay any final judgment rendered
10 against it in this state within 60 days after the judgment
11 became final.

12 (d) Has, without just cause, refused to pay proper
13 claims arising under its warranties or, without just cause,
14 has compelled warranty holders to accept less than the amount
15 due them or to employ attorneys, or to bring suit against the
16 association, to secure full payment or settlement of such
17 claims.

18 (e) Is affiliated with, and under the same general
19 management, interlocking directorate, or ownership as, another
20 home warranty association which transacts direct warranties in
21 this state without having a license therefor.

22 (f) Has issued warranty contracts which renewal
23 contracts provide that the cost of renewal exceeds the
24 then-current cost for new warranty contracts or impose a fee
25 for inspection of the premises.

26 (3) The office ~~department~~ may, pursuant to s. 120.60,
27 in its discretion and without advance notice or hearing
28 thereon, immediately suspend the license of any home warranty
29 association if it finds that one or more of the following
30 circumstances exist:

31 (a) The association is insolvent or impaired.

1 (b) The reserve account or net asset ratio requirement
2 of s. 634.3077 is not being maintained.

3 (c) A proceeding for receivership, conservatorship or
4 rehabilitation or any other delinquency proceeding regarding
5 the association has been commenced in any state.

6 (d) The financial condition or business practices of
7 the association otherwise pose an imminent threat to the
8 public health, safety, or welfare of the residents of this
9 state.

10 Section 1461. Section 634.310, Florida Statutes, is
11 amended to read:

12 634.310 Order, notice of suspension or revocation of
13 license; effect; publication.--

14 (1) A suspension or revocation of the license of a
15 home warranty association shall be effected by order mailed to
16 the association by registered or certified mail. The office
17 ~~department~~ also shall promptly give notice of such suspension
18 or revocation to the sales representatives of the association
19 in this state who are of record with ~~in the office of~~ the
20 department. The association may not solicit or write any new
21 warranties in this state during the period of any such
22 suspension or revocation.

23 (2) In its discretion, the office ~~department~~ may cause
24 notice of any such revocation or suspension to be published in
25 one or more newspapers of general circulation published in
26 this state.

27 Section 1462. Subsection (4) of section 634.311,
28 Florida Statutes, is amended to read:

29 634.311 Duration of suspension; obligations of
30 association during suspension period; reinstatement.--

31

1 (4) Upon reinstatement of the license of an
2 association, or reinstatement of the certificate of authority
3 of an insurer, following suspension, the authority of the
4 sales representatives of the association in this state to
5 represent the association or insurer shall likewise be
6 reinstated. The office ~~department~~ shall promptly notify the
7 association.

8 Section 1463. Section 634.3112, Florida Statutes, is
9 amended to read:

10 634.3112 Administrative fine in lieu of suspension or
11 revocation of license of association.--

12 (1) If it is found that one or more grounds exist for
13 the suspension, revocation, or refusal to renew the license of
14 any association issued under this part, the office ~~department~~
15 may, in lieu of such revocation or suspension, impose a fine
16 upon the association.

17 (2) With respect to any nonwillful violation, such
18 fine may not exceed \$500 per violation. In no event may such
19 fine exceed an aggregate amount of \$5,000 for all nonwillful
20 violations arising out of the same action. When an
21 association discovers a nonwillful violation, the association
22 shall correct the violation and, if restitution is due, make
23 restitution to all affected persons. Such restitution shall
24 include interest at 12 percent per year from either the date
25 of the violation or the date of inception of the affected
26 person's policy, at the option of the association.

27 (3) With respect to any knowing and willful violation
28 of a lawful order or rule of the office or commission
29 ~~department~~ or a provision of this part, the office ~~department~~
30 may impose a fine upon the association in an amount not to
31 exceed \$2,500 for each such violation. In no event may such

1 fine exceed an aggregate amount of \$25,000 for all knowing and
2 willful violations arising out of the same action. In
3 addition to such fines, an association shall make restitution
4 when due in accordance with the provisions of subsection (2).

5 (4) The failure of an association to make restitution
6 when due, as required under this section, constitutes a
7 willful violation of this code. However, if an insurer in
8 good faith is uncertain as to whether any restitution is due
9 or as to the amount of such restitution, it shall promptly
10 notify the office ~~department~~ of the circumstances, and the
11 failure to make restitution pending a determination thereof
12 will not constitute a violation of this part.

13 Section 1464. Subsections (1), (2), and (3) of section
14 634.312, Florida Statutes, are amended to read:

15 634.312 Filing, approval of forms.--

16 (1) No warranty form or related form shall be issued
17 or used in this state unless it has been filed with and
18 approved by the office ~~department~~. Also upon application for a
19 license, the office ~~department~~ shall require the applicant to
20 submit for approval each brochure, pamphlet, circular, form
21 letter, advertisement, or other sales literature or
22 advertising communication addressed or intended for
23 distribution. Approval of the application constitutes approval
24 of such documents, unless the applicant has consented
25 otherwise in writing. The office ~~department~~ shall disapprove
26 any document which is untrue, deceptive, or misleading or
27 which contains misrepresentations or omissions of material
28 facts.

29 (a) After an application has been approved, a licensee
30 is not required to submit brochures or advertisement to the
31 office ~~department~~ for approval; however, a licensee may not

1 have published, and a person may not publish, any brochure or
2 advertisement which is untrue, deceptive, or misleading or
3 which contains misrepresentations or omissions of material
4 fact.

5 (b) For purposes of this section, brochures and
6 advertising includes, but is not limited to, any report,
7 circular, public announcement, certificate, or other printed
8 matter or advertising material which is designed or used to
9 solicit or induce any persons to enter into any home warranty
10 agreement.

11 (2) Every such filing shall be made not less than 30
12 days in advance of issuance or use. At the expiration of 30
13 days from date of filing, a form so filed shall be deemed
14 approved unless prior thereto it has been affirmatively
15 approved or disapproved by written order of the office
16 ~~department~~.

17 (3) The office ~~department~~ shall not approve any such
18 form which allows for more than nine annual renewals or which
19 renewal contracts provide that the cost of renewal exceeds the
20 then-current cost for new warranty contracts or impose a fee
21 for inspection of the premises.

22 Section 1465. Section 634.3123, Florida Statutes, is
23 amended to read:

24 634.3123 Grounds for disapproval of forms.--The office
25 ~~department~~ shall disapprove any form filed under s. 634.312 or
26 withdraw any previous approval if the form:

27 (1) Is in violation of or does not comply with this
28 part.

29 (2) Contains or incorporates by reference, when such
30 incorporation is otherwise permissible, any inconsistent,
31 ambiguous, or misleading clauses or exceptions or conditions

1 which deceptively affect the risk purported to be assumed in
2 the general coverage of the contract.

3 (3) Has any title, heading, or other indication of its
4 provisions which is misleading.

5 (4) Is printed or otherwise reproduced in such a
6 manner as to render any material provision of the form
7 illegible.

8 (5) Provides that the cost of renewal exceeds the
9 then-current cost for new warranty contracts or impose a fee
10 for inspection of the premises.

11 Section 1466. Section 634.3126, Florida Statutes, is
12 amended to read:

13 634.3126 Rate filings.--Each insurer and home warranty
14 association shall file with the office ~~department~~ for
15 informational purposes the rate to be charged for each
16 warranty and the premium, including all modifications of rates
17 and premiums. Each filing shall state the proposed effective
18 date.

19 Section 1467. Section 634.313, Florida Statutes, is
20 amended to read:

21 634.313 Tax on premiums; annual statement; reports.--

22 (1) In addition to paying the license taxes provided
23 for in this part for home warranty associations and license
24 taxes provided in the insurance code as to insurers, each such
25 association and each such insurer must, annually on or before
26 March 1, file with the office ~~department~~ its annual statement,
27 in the form prescribed by the commission ~~department~~, showing
28 all premiums received by it in connection with the issuance of
29 warranties in this state during the preceding calendar year
30 and using accounting principles that will enable the office
31 ~~department~~ to ascertain whether the reserve required by s.

1 634.3077 has been maintained. Each annual statement must
2 contain a balance sheet listing all assets and liabilities; a
3 statement of operations and retained earnings; and a schedule
4 used to report all claims statistics. The annual statement
5 must be completed using generally accepted accounting
6 principles except as otherwise provided in this part.
7 Further, each association and each insurer must pay to the
8 Chief Financial Officer ~~Treasurer~~ a tax in an amount equal to
9 2 percent of the amount of such premiums so received.

10 (2) Premiums received by insurers and taxed under this
11 section are not subject to any premium tax provided for in the
12 insurance code.

13 (3) Any association or insurer neglecting to file the
14 annual statement in the form and within the time provided by
15 this section shall forfeit up to \$100 for each day during
16 which such neglect continues; and, upon notice by the office
17 ~~department~~ to that effect, its authority to do business in
18 this state shall cease while such default continues. The
19 office ~~department~~ shall deposit all sums collected by it under
20 this section to the credit of the Insurance ~~Commissioner's~~
21 Regulatory Trust Fund.

22 (4) In addition to an annual statement, the office
23 ~~department~~ may require of licensees, under oath and in the
24 form prescribed by it, such additional regular or special
25 reports as it may deem necessary to the proper supervision of
26 licensees under this part.

27 (5) The commission ~~department~~ may by rule require each
28 home warranty association to submit to the office ~~department~~,
29 as the commission ~~department~~ may designate, all or part of the
30 information contained in the financial reports required by
31 this section in a computer-readable form compatible with the

1 electronic data processing system specified by the office
2 ~~department~~.

3 Section 1468. Section 634.314, Florida Statutes, is
4 amended to read:

5 634.314 Examination of associations.--Home warranty
6 associations licensed under this part shall be subject to
7 periodic examinations by the office ~~department~~, in the same
8 manner and subject to the same terms and conditions as apply
9 to insurers under part II of chapter 624 of the insurance
10 code.

11 Section 1469. Subsection (10) of section 634.320,
12 Florida Statutes, is amended to read:

13 634.320 Grounds for compulsory refusal, suspension, or
14 revocation of license or appointment of sales
15 representatives.--The department shall deny, suspend, revoke,
16 or refuse to renew or continue the license or appointment of
17 any sales representative if it is found that any one or more
18 of the following grounds applicable to the sales
19 representative exist:

20 (10) Willful failure to comply with, or willful
21 violation of, any proper order or rule of the department or
22 commission or willful violation of any provision of this part.

23 Section 1470. Subsection (3) of section 634.321,
24 Florida Statutes, is amended to read:

25 634.321 Grounds for discretionary refusal, suspension,
26 or revocation of license or appointment of sales
27 representatives.--The department may, in its discretion, deny,
28 suspend, revoke, or refuse to renew or continue the license or
29 appointment of any sales representative if it is found that
30 any one or more of the following grounds applicable to the
31 sales representative exist under circumstances for which such

1 denial, suspension, revocation, or refusal is not mandatory
2 under s. 634.320:

3 (3) Violation of any lawful order or rule of the
4 department or commission.

5 Section 1471. Section 634.324, Florida Statutes, is
6 amended to read:

7 634.324 Disposition of taxes and fees.--All license
8 taxes, taxes on premiums, license and appointment fees, and
9 administrative fines and penalties collected under this part
10 from home warranty associations and sales representatives
11 shall be deposited to the credit of the Insurance
12 ~~Commissioner's~~ Regulatory Trust Fund.

13 Section 1472. Section 634.325, Florida Statutes, is
14 amended to read:

15 634.325 Insurance business not authorized.--Nothing in
16 the Florida Insurance Code or in this part shall be deemed to
17 authorize any home warranty association to transact any
18 insurance business other than that of home warranty as herein
19 defined or otherwise to engage in any other type of insurance
20 unless the association is authorized under a certificate of
21 authority issued by the office ~~department~~ under the provisions
22 of the Florida Insurance Code.

23 Section 1473. Section 634.327, Florida Statutes, is
24 amended to read:

25 634.327 Applicability to warranty on new home.--This
26 part shall not apply to any program offering a warranty on a
27 new home which is underwritten by an insurer licensed to do
28 business in the state when the insurance policy underwriting
29 such program has been filed with and approved by the office
30 ~~Department of Insurance~~ as required by law.

31

1 Section 1474. Subsection (4) of section 634.3284,
2 Florida Statutes, is amended to read:

3 634.3284 Civil remedy.--

4 (4) This section shall not be construed to authorize a
5 class action suit against a home warranty association or a
6 civil action against the department or office or their,~~its~~
7 employees, or the Chief Financial Officer Insurance
8 Commissioner.

9 Section 1475. Subsection (8) of section 634.336,
10 Florida Statutes, is amended to read:

11 634.336 Unfair methods of competition and unfair or
12 deceptive acts or practices defined.--The following methods,
13 acts, or practices are defined as unfair methods of
14 competition and unfair or deceptive acts or practices:

15 (8) COERCION OF DEBTORS.--When a home warranty is sold
16 as authorized by s. 634.301(3)(b)~~s. 634.301(4)(b)~~:

17 (a) Requiring, as a condition precedent or condition
18 subsequent to the lending of the money or the extension of the
19 credit or any renewal thereof, that the person to whom such
20 credit is extended purchase a home warranty; or

21 (b) Failing to provide the advice required by s.
22 634.344; or

23 (c) Failing to comply with the provisions of s.
24 634.345.

25 Section 1476. Section 634.337, Florida Statutes, is
26 amended to read:

27 634.337 Power of department and office to examine and
28 investigate.--The department and office have ~~has~~ the power,
29 within their respective regulatory jurisdictions, to examine
30 and investigate the affairs of every person involved in the
31 business of home warranty in this state in order to determine

1 whether such person has been or is engaged in any unfair
2 method of competition or in any unfair or deceptive act or
3 practice prohibited by s. 634.335, and each shall have the
4 powers and duties specified in ss. 634.338-634.342 in
5 connection therewith.

6 Section 1477. Section 634.338, Florida Statutes, is
7 amended to read:

8 634.338 Prohibited practices; hearings; procedure;
9 service of process.--

10 (1) Whenever the department or office has reason to
11 believe that any person has engaged, or is engaging, in this
12 state in any unfair method of competition or any unfair or
13 deceptive act or practice as defined in s. 634.336, or is
14 engaging in the business of home warranty without being
15 properly licensed as required by this part, and that a
16 proceeding by the department or office in respect thereto
17 would be in the interest of the public, the department or
18 office shall conduct or cause to have conducted a hearing in
19 accordance with chapter 120.

20 (2) The department or office, a duly empowered hearing
21 officer, or an administrative law judge shall, during the
22 conduct of such hearing, have those powers enumerated in s.
23 120.569; however, the penalty for failure to comply with a
24 subpoena or with an order directing discovery is limited to a
25 fine not to exceed \$1,000 per violation.

26 (3) A statement of charges, notice, or order under
27 this part may be served by anyone duly authorized by the
28 department or office, either in the manner provided by law for
29 service of process in civil actions or by certifying and
30 mailing a copy thereof to the person affected by such
31 statement, notice, order, or other process at her or his or

1 its residence or principal office or place of business. The
2 verified return by the person so serving such statement,
3 notice, order, or other process, setting forth the manner of
4 the service is proof of the same; and the return postcard
5 receipt for such statement, notice, order, or other process,
6 certified and mailed as provided in this subsection, is proof
7 of service of the same.

8 Section 1478. Section 634.339, Florida Statutes, is
9 amended to read:

10 634.339 Cease and desist and penalty orders.--After
11 the hearing provided for in s. 634.338, the department or
12 office shall enter a final order in accordance with s.
13 120.569. If it is determined that the person charged has
14 engaged in an unfair or deceptive act or practice or the
15 unlawful transaction of home warranty business, the department
16 or office also shall issue an order requiring the violator to
17 cease and desist from engaging in such method of competition,
18 act, or practice or the unlawful transaction of home warranty
19 business. Further, the department or office may, at its
20 discretion, order any one or more of the following penalties:

21 (1) The suspension or revocation of such person's
22 license, or eligibility for any license, if the person knew,
23 or reasonably should have known, that she or he was in
24 violation of this part.

25 (2) If it is determined that the person charged has
26 provided or offered to provide home warranties without proper
27 licensure, the imposition of an administrative penalty not to
28 exceed \$1,000 for each home warranty contract offered or
29 effectuated.

30 Section 1479. Section 634.34, Florida Statutes, is
31 amended to read:

1 634.34 Appeals from orders of the department or
2 office.--Any person subject to an order of the department or
3 office under s. 634.339 may obtain a review of such order by
4 filing an appeal therefrom in accordance with the provisions
5 and procedures for appeal from the orders of the department or
6 office in general under s. 120.68.

7 Section 1480. Section 634.341, Florida Statutes, is
8 amended to read:

9 634.341 Penalty for violation of cease and desist
10 order.--Any person who violates a cease and desist order of
11 the department or office under s. 634.339 while such order is
12 in effect, after notice and hearing as provided in s. 634.338,
13 is subject, at the discretion of the department or office, to
14 any one or more of the following penalties:

15 (1) A monetary penalty of not more than \$25,000 as to
16 all matters determined in such hearing.

17 (2) The suspension or revocation of such person's
18 license or eligibility to hold a license.

19 Section 1481. Section 634.342, Florida Statutes, is
20 amended to read:

21 634.342 Injunctive proceedings.--In addition to the
22 penalties and other enforcement provisions of this part, in
23 the event any person violates s. 634.303 or s. 634.318 or any
24 rule adopted or promulgated pursuant thereto, the department
25 or office is authorized to resort to a proceeding for
26 injunction in the circuit court of the county where such
27 person resides or has her or his principal place of business,
28 and therein apply for such temporary and permanent orders as
29 the department or office may deem necessary to restrain such
30 person from engaging in any such activities, until such person
31 has complied with such provision or rule.

1 Section 1482. Section 634.343, Florida Statutes, is
2 amended to read:

3 634.343 Civil liability.--The provisions of this part
4 are cumulative to rights under the general civil and common
5 law, and no action of the department or office will abrogate
6 such rights to damages or other relief in any court.

7 Section 1483. Section 634.344, Florida Statutes, is
8 amended to read:

9 634.344 Coercion of debtor prohibited.--

10 (1) When a home warranty is sold as authorized by s.
11 634.301(3)(b)~~s. 634.301(4)(b)~~, no person may require, as a
12 condition precedent or condition subsequent to the lending of
13 the money or the extension of the credit or any renewal
14 thereof, that the person to whom such money or credit is
15 extended purchase a home warranty.

16 (2) When a home warranty is purchased in connection
17 with the lending of money as authorized by s. 634.301(3)(b) ~~s.~~
18 ~~634.301(4)(b)~~, the insurer or home warranty association or the
19 sales representative of the insurer or home warranty
20 association shall advise the borrower or purchaser in writing
21 that Florida law prohibits the lender from requiring the
22 purchase of a home warranty as a condition precedent or
23 condition subsequent to the making of the loan.

24 Section 1484. Section 634.345, Florida Statutes, is
25 amended to read:

26 634.345 Buyer's right to cancel.--Every warranty sold
27 in connection with a loan as authorized by s. 634.301(3)(b) ~~s.~~
28 ~~634.301(4)(b)~~ shall contain a provision providing that the
29 purchaser or borrower may cancel the warranty within 10 days
30 of purchase without penalty and, upon such cancellation, the
31 insurer or home warranty association shall promptly refund the

1 premium paid. This provision may be included in the warranty
2 or by rider or endorsement thereto.

3 Section 1485. Section 634.348, Florida Statutes, is
4 amended to read:

5 634.348 Investigatory records.--All active examination
6 or investigatory records of the department or office made or
7 received pursuant to this part are confidential and exempt
8 from the provisions of s. 119.07(1) until such investigation
9 is completed or ceases to be active. For the purposes of this
10 section, an investigation is considered "active" while the
11 investigation is being conducted by the department or office
12 with a reasonable, good faith belief that it may lead to the
13 filing of administrative, civil, or criminal proceedings. An
14 investigation does not cease to be active if the department or
15 office is proceeding with reasonable dispatch, and there is
16 good faith belief that action may be initiated by the
17 department or office or other administrative or law
18 enforcement agency.

19 Section 1486. Section 634.401, Florida Statutes, is
20 amended to read:

21 634.401 Definitions.--As used in this part, the term:

22 (1) "Consumer product" means tangible property
23 primarily used for personal, family, or household purposes.

24 ~~(2) "Department" means the Department of Insurance.~~

25 (2)~~(3)~~ "Gross income" means the total amount of
26 revenue received in connection with business-related activity.

27 (3)~~(4)~~ "Gross written premiums" means the total amount
28 of premiums, paid or to be paid by the consumer for the entire
29 period of the service warranty inclusive of commissions, for
30 which the association is obligated under service warranties
31 issued.

1 (4)~~(5)~~ "Impaired" means having liabilities in excess
2 of assets.

3 (5)~~(6)~~ "Indemnify" means to undertake repair or
4 replacement of a consumer product, in return for the payment
5 of a segregated premium, when such consumer product suffers
6 operational failure.

7 (6)~~(7)~~ "Insolvent" means unable to pay debts as they
8 become due in the usual course of business.

9 (7)~~(8)~~ "Insurance code" means the Florida Insurance
10 Code as defined in s. 624.01.

11 (8)~~(9)~~ "Insurer" means any property or casualty
12 insurer duly authorized to transact such business in this
13 state.

14 (9)~~(10)~~ "Net assets" means total statutory assets in
15 excess of liabilities, except that assets pledged to secure
16 debts not reflected on the books of the service warranty
17 association shall not be included in net assets.

18 (10)~~(11)~~ "Person" includes an individual, company,
19 corporation, association, insurer, agent, and any other legal
20 entity.

21 (11)~~(12)~~ "Premium" means the total amount paid by the
22 consumer, including any charges designated as assessments or
23 fees for membership, policy, survey, inspection, finance,
24 service, or other charges by the association.

25 (12)~~(13)~~ "Sales representative" means any person,
26 retail store, corporation, partnership, or sole proprietorship
27 utilized by an insurer or service warranty association for the
28 purpose of selling or issuing service warranties. However, in
29 the case of service warranty associations selling service
30 warranties from one or more business locations, the person in
31

1 charge of each location may be considered the sales
2 representative.

3 (13)~~(14)~~ "Service warranty" means any warranty,
4 guaranty, extended warranty or extended guaranty, maintenance
5 service contract greater than 1 year in length or which does
6 not meet the exemption in paragraph (a), contract agreement,
7 or other written promise to indemnify against the cost of
8 repair or replacement of a consumer product in return for the
9 payment of a segregated charge by the consumer; however:

10 (a) Maintenance service contracts written for 1 year
11 or less which do not contain provisions for indemnification
12 and which do not provide a discount to the consumer for any
13 combination of parts and labor in excess of 20 percent during
14 the effective period of such contract, motor vehicle service
15 agreements, transactions exempt under s. 624.125, and home
16 warranties subject to regulation under parts I and II of this
17 chapter are excluded from this definition; and

18 (b) The term "service warranty" does not include
19 service contracts between consumers and condominium
20 associations.

21 (14)~~(15)~~ "Service warranty association" or
22 "association" means any person, other than an authorized
23 insurer, issuing service warranties.

24 (15)~~(16)~~ "Warrantor" means any person engaged in the
25 sale of service warranties and deriving not more than 50
26 percent of its gross income from the sale of service
27 warranties.

28 (16)~~(17)~~ "Warranty seller" means any person engaged in
29 the sale of service warranties and deriving more than 50
30 percent of its gross income from the sale of service
31 warranties.

1 ~~(17)(18)~~ "Manufacturer" means any entity or its
2 affiliate which:

3 (a) Derives a majority of its revenues from products
4 manufactured, built, assembled, constructed, or produced under
5 a product name wholly controlled by the applicant or an
6 affiliate thereof;

7 (b) Issues service warranties only for consumer
8 products manufactured, built, assembled, constructed, or
9 produced under a product name wholly controlled by the
10 applicant or an affiliate thereof;

11 (c) Is listed and traded on a recognized stock
12 exchange, is listed in NASDAQ (National Association of
13 Security Dealers Automated Quotation system) and publicly
14 traded in the over-the-counter securities markets, is required
15 to file either of Forms 10-K, 10-Q, or 20-G with the United
16 States Securities and Exchange Commission, or whose American
17 Depository Receipts are listed on a recognized stock exchange
18 and publicly traded;

19 (d) Maintains outstanding debt obligations, if any,
20 rated in the top four rating categories by a recognized rating
21 service;

22 (e) Has and maintains at all times, a minimum net
23 worth of at least \$10 million as evidenced by certified
24 financial statements prepared by an independent certified
25 public accountant in accordance with generally accepted
26 accounting principles; and

27 (f) Is authorized to do business in this state.

28 ~~(18)(19)~~ "Affiliate" means any entity which exercises
29 control over or is controlled by, the service warranty
30 association or insurer, directly or indirectly, through:

31 (a) Equity ownership of voting securities;

1 (b) Common managerial control; or

2 (c) Collusive participation by the management of the
3 service warranty association or insurer or the affiliate.

4 Section 1487. Section 634.402, Florida Statutes, is
5 amended to read:

6 634.402 Powers of department, commission, and office;
7 rules.--The office department shall administer this part, and
8 the commission may to that end it has authority to adopt rules
9 pursuant to ss. 120.536(1) and 120.54 to implement the
10 provisions of this part related to service warranty
11 associations and service warranties. The department shall
12 administer this part and may adopt rules pursuant to ss.
13 120.536(1) and 120.54 to implement provisions of this part
14 related to sales representatives. Such rules by the commission
15 or department may identify specific methods of competition or
16 acts or practices that are prohibited by s. 634.436, but shall
17 not enlarge upon or extend the provisions of that section.

18 Section 1488. Subsections (1) and (3) of section
19 634.403, Florida Statutes, are amended to read:

20 634.403 License required.--

21 (1) No person in this state shall provide or offer to
22 provide service warranties unless authorized therefor under a
23 subsisting license issued by the office department. The
24 service warranty association shall pay to the office
25 ~~department~~ a license fee of \$200 for such license for each
26 license year, or part thereof, the license is in force.

27 (3) The office department may, pursuant to s. 120.569,
28 in its discretion and without advance notice and hearing,
29 issue an immediate final order to cease and desist to any
30 person or entity which violates this section. The Legislature
31 finds that a violation of this section constitutes an imminent

1 and immediate threat to the public health, safety, and welfare
2 of the residents of this state.

3 Section 1489. section 634.404, Florida Statutes, is
4 amended to read:

5 634.404 Qualifications for license.--The office
6 ~~department~~ may not issue or allow a service warranty
7 association to maintain a license unless the association:

8 (1) Is a warrantor with minimum net assets of \$25,000
9 or a warranty seller with minimum net assets of \$300,000.

10 (2) Furnishes the office ~~department~~ with evidence
11 satisfactory to it that the management of the association is
12 competent and trustworthy and can successfully manage the
13 affairs of the association in compliance with law.

14 (3) Proposes to use and uses in its business a name,
15 together with a trademark or emblem, if any, which is
16 distinctive and not so similar to the name or trademark of any
17 other person already doing business in this state as will tend
18 to mislead or confuse the public.

19 (4) Makes the deposit or files the bond required under
20 s. 634.405.

21 (5) Is formed under the laws of this state or another
22 state, district, territory, or possession of the United
23 States, if the association is other than a natural person.

24 (6) In lieu of the provisions of subsections (1)-(5)
25 of this section and s. 634.407, a manufacturer or affiliate as
26 defined in this part is eligible for licensure as a service
27 warranty association under the provisions of this part and
28 shall complete an application evidencing its qualifications as
29 set forth in this section. The application for license as a
30 service warranty association from a manufacturer or affiliate
31 shall be made to, and filed with, the office ~~department~~ on

1 printed forms as promulgated by the commission ~~department~~ to
2 be specifically and exclusively applicable to qualifying
3 manufacturers.

4 (a) The commission ~~department~~ may require that the
5 applicant show:

- 6 1. The state of the applicant's incorporation;
- 7 2. The location of the applicant's home office; and
- 8 3. The names and business addresses of the applicant's
9 board of directors and managing executive officer.

10 (b) The ~~department shall require that the~~ application,
11 when filed, must be accompanied by:

- 12 1. A copy of the applicant's articles of
13 incorporation, certified by the public official having custody
14 of the original, and a copy of the applicant's bylaws,
15 certified by the applicant's corporate secretary;
- 16 2. Evidence that the applicant has complied with all
17 applicable statutory requirements regarding registering to do
18 business in this state; and
- 19 3. A license fee in the amount of \$500.

20 (c) Upon submission of the application for license,
21 the office ~~department~~ shall examine the application to
22 determine its compliance with applicable sections of this
23 part. Applicants shall be advised of any inadequate responses
24 or missing information.

25 (d) Information as required in this section shall be
26 updated as to changes thereto no less than two times annually,
27 once at the time of the submission of the service warranty
28 association's submission of its annual report, and the second
29 time, no later than September 30 of each year.

30 Section 1490. Section 634.405, Florida Statutes, is
31 amended to read:

1 634.405 Required deposit or bond.--

2 (1) To assure the faithful performance of its
3 obligations to its members or subscribers in the event of
4 insolvency, each service warranty association shall, before
5 the issuance of its license by the office ~~department~~ and
6 during such time as the association may have premiums in force
7 in this state, deposit and maintain with the department
8 securities of the type eligible for deposit by insurers under
9 s. 625.52. Whenever the market value of the securities
10 deposited with the department is less than 95 percent of the
11 amount required, the association shall deposit additional
12 securities or otherwise increase the deposit to the amount
13 required. Such securities shall have at all times a market
14 value as follows:

15 (a) Warrantors.--

16 1. Any warrantor which:

17 a. Was licensed under this part before October 1,
18 1983;

19 b. Was transacting service warranty business in this
20 state before June 14, 1978;

21 c. Has continuously transacted service warranty
22 business in this state since June 14, 1978; and

23 d. Has not during any year since June 14, 1978,
24 written more than \$100,000 of gross written premiums,

25
26 shall place and maintain in trust with the department an
27 amount equal to 50 percent of the gross written premiums in
28 force.

29 2. A warrantor which has \$300,000 or less of gross
30 written premiums in this state and to which the provisions of
31 subparagraph 1. do not apply shall place and maintain in trust

1 with the department an amount not less than \$50,000. A new
2 warrantor, before the issuance of its license and before
3 receiving any premiums, shall place and maintain in trust with
4 the department the amount of \$50,000.

5 3. A warrantor which has more than \$300,000 but less
6 than \$750,000 of gross written premiums in this state shall
7 place and maintain in trust with the department an amount not
8 less than \$75,000.

9 4. A warrantor which has \$750,000 or more of gross
10 written premiums in this state shall place and maintain in
11 trust with the department an amount equal to \$100,000.

12 5. All warrantors, upon receipt of written notice from
13 the office ~~department~~, shall have 30 calendar days in which to
14 make additional deposits.

15 (b) Warranty sellers.--A warranty seller shall, before
16 the issuance of its license, place in trust with the
17 department an amount not less than \$100,000.

18 (2) In lieu of any deposit of securities required
19 under subsection (1) and subject to the approval of the office
20 ~~department~~, the service warranty association may file with the
21 office ~~department~~ a surety bond issued by an authorized surety
22 insurer. The bond shall be for the same purpose as the deposit
23 in lieu of which it is filed. The office ~~department~~ may not
24 approve any bond under the terms of which the protection
25 afforded against insolvency is not equivalent to the
26 protection afforded by those securities provided for in
27 subsection (1). When a bond is deposited in lieu of the
28 required securities, no warranties may be written which
29 provide coverage for a time period beyond the duration of such
30 bond. The bond shall guarantee that the service warranty
31 association will faithfully and truly perform all the

1 conditions of any service warranty contract. No such bond may
2 be canceled or subject to cancellation unless at least 60
3 days' advance notice thereof, in writing, is filed with the
4 office ~~department~~. In the event that notice of termination of
5 the bond is filed with the office ~~department~~, the service
6 warranty association insured thereunder shall, within 30 days
7 of the filing of notice of termination, provide the office
8 ~~department~~ with a replacement bond meeting the requirements of
9 this part or deposit additional securities as required under
10 subsection (1). The cancellation of a bond will not relieve
11 the obligation of the issuer of the bond for claims arising
12 out of contracts issued before cancellation of the bond unless
13 a replacement bond or securities are filed. In no event may
14 the liability of the issuer under the bond exceed the face
15 amount of the bond. If within 30 days of filing the notice of
16 termination no replacement bond or additional security is
17 provided, the office ~~department~~ shall suspend the license of
18 the association until the deposit requirements are satisfied.

19 (3) Securities and bonds posted by an association
20 pursuant to this section are for the benefit of, and subject
21 to action thereon in the event of insolvency or impairment of
22 any association or insurer by, any person or persons
23 sustaining an actionable injury due to the failure of the
24 association to faithfully perform its obligations to its
25 warranty holders.

26 (4) The state is responsible for the safekeeping of
27 all securities deposited with the department under this part.
28 Such securities are not, on account of being in this state,
29 subject to taxation, but shall be held exclusively and solely
30 to guarantee the faithful performance by the association of
31 its obligations to its members or subscribers.

1 (5) The depositing association shall, during its
2 solvency, have the right to exchange or substitute other
3 securities of like quality and value for securities on
4 deposit, to receive the interest and other income accruing to
5 such securities, and to inspect the deposit at all reasonable
6 times.

7 (6) Such deposit or bond shall be maintained
8 unimpaired as long as the association continues in business in
9 this state. Whenever the association ceases to do business in
10 this state and furnishes the office ~~department~~ proof
11 satisfactory to the office ~~department~~ that it has discharged
12 or otherwise adequately provided for all its obligations to
13 its members or subscribers in this state, the office and
14 department shall release the deposited securities to the
15 parties entitled thereto, on presentation of the receipts of
16 the department for such securities, or shall release any bond
17 filed with it in lieu of such deposit.

18 (7) Any business, or its affiliate, whose primary
19 source of income is the sale of goods to the final consumer
20 and derives more than 50 percent of its revenue through such
21 sales and maintains a net worth of \$100 million, as evidenced
22 by either filing a form 10-K or other similar statement with
23 the Securities and Exchange Commission or which has an annual
24 financial statement that is audited and certified by an
25 independent public accounting firm, shall be presumed to have
26 complied with this subsection if such forms or statement are
27 filed with the office ~~department~~.

28 Section 1491. Subsections (2), (3), (6), and (7) of
29 section 634.406, Florida Statutes, are amended to read:

30 634.406 Financial requirements.--

31

1 (2) An association utilizing an unearned premium
2 reserve shall deposit with the department a reserve deposit
3 equal to 10 percent of the gross written premium received on
4 all warranty contracts in force. Such reserve deposit shall
5 be of a type eligible for deposit by insurers under s. 625.52.
6 Request for release of all or part of the reserve deposit may
7 be made quarterly and only after the office ~~department~~ has
8 received and approved the association's current financial
9 statements, as well as a statement sworn to by two officers of
10 the association verifying such release will not reduce the
11 reserve deposit to less than 10 percent of the gross written
12 premium. The reserve deposit required under this part shall be
13 included in calculating the reserve required by subsection
14 (1). The deposit required in s. 634.405(1)(b) shall be
15 included in calculating the reserve requirements of this
16 section.

17 (3) An association will not be required to establish
18 an unearned premium reserve if it has purchased contractual
19 liability insurance which demonstrates to the satisfaction of
20 the office ~~department~~ that 100 percent of its claim exposure
21 is covered by such policy. The contractual liability insurance
22 shall be obtained from an insurer that holds a certificate of
23 authority to do business within the state. For the purposes of
24 this subsection, the contractual liability policy shall
25 contain the following provisions:

26 (a) In the event that the service warranty association
27 does not fulfill its obligation under contracts issued in this
28 state for any reason, including insolvency, bankruptcy, or
29 dissolution, the contractual liability insurer will pay losses
30 and unearned premium refunds under such plans directly to the
31 person making a claim under the contract.

1 (b) The insurer issuing the contractual liability
2 policy shall assume full responsibility for the administration
3 of claims in the event of the inability of the association to
4 do so.

5 (c) The policy may not be canceled or not renewed by
6 either the insurer or the association unless 60 days' written
7 notice thereof has been given to the office ~~department~~ by the
8 insurer before the date of such cancellation or nonrenewal.

9 (d) The contractual liability insurance policy shall
10 insure all service warranty contracts which were issued while
11 the policy was in effect whether or not the premium has been
12 remitted to the insurer.

13 (e) In the event the issuer of the contractual
14 liability policy is fulfilling the service warranty covered by
15 policy and in the event the service warranty holder cancels
16 the service warranty, it is the responsibility of the
17 contractual liability policy issuer to effectuate a full
18 refund of unearned premium to the consumer. This refund shall
19 be subject to the cancellation fee provisions of s.
20 634.414(3). The salesperson or agent shall refund to the
21 contractual liability policy issuer the unearned pro rata
22 commission.

23 (f) An association may not utilize both the unearned
24 premium reserve and contractual liability insurance
25 simultaneously. However, an association shall be allowed to
26 have contractual liability coverage on service warranties
27 previously sold and sell new service warranties covered by the
28 unearned premium reserve, and the converse of this shall also
29 be allowed. An association must be able to distinguish how
30 each individual service warranty is covered.

31

1 (6) An association which holds a license under this
2 part and which does not hold any other license under this
3 chapter may allow its premiums to exceed the ratio to net
4 assets limitations of this section if the association meets
5 all of the following:

6 (a) Maintains net assets of at least \$750,000.

7 (b) Utilizes a contractual liability insurance policy
8 approved by the office ~~department~~ which reimburses the service
9 warranty association for 100 percent of its claims liability.

10 (c) The insurer issuing the contractual liability
11 insurance policy:

12 1. Maintains a policyholder surplus of at least \$100
13 million.

14 2. Is rated "A" or higher by A.M. Best Company or an
15 equivalent rating by another national rating service
16 acceptable to the office ~~department~~.

17 3. Is in no way affiliated with the warranty
18 association.

19 4. In conjunction with the warranty association's
20 filing of the quarterly and annual reports, provides, on a
21 form prescribed by the commission ~~department~~, a statement
22 certifying the gross written premiums in force reported by the
23 warranty association and a statement that all of the warranty
24 association's gross written premium in force is covered under
25 the contractual liability policy, whether or not it has been
26 reported.

27 (7) ~~The department shall require that~~ A contractual
28 liability policy must insure 100 percent of an association's
29 claims exposure under all of the association's service
30 warranty contracts, wherever written, unless all of the
31 following are satisfied:

1 (a) The contractual liability policy contains a clause
2 that specifically names the service warranty contract holders
3 as sole beneficiaries of the contractual liability policy and
4 claims are paid directly to the person making a claim under
5 the contract;

6 (b) The contractual liability policy meets all other
7 requirements of this part, including subsection (3) of this
8 section, which are not inconsistent with this subsection;

9 (c) The association has been in existence for at least
10 5 years or the association is a wholly owned subsidiary of a
11 corporation that has been in existence and has been licensed
12 as a service warranty association in the state for at least 5
13 years, and:

14 1. Is listed and traded on a recognized stock
15 exchange; is listed in NASDAQ (National Association of
16 Security Dealers Automated Quotation system) and publicly
17 traded in the over-the-counter securities market; is required
18 to file either of Forms 10-K, 100, or 20-G with the United
19 States Securities and Exchange Commission; or has American
20 Depository Receipts listed on a recognized stock exchange and
21 publicly traded or is the wholly owned subsidiary of a
22 corporation that is listed and traded on a recognized stock
23 exchange; is listed in NASDAQ (National Association of
24 Security Dealers Automated Quotation system) and publicly
25 traded in the over-the-counter securities market; is required
26 to file Form 10-K, Form 100, or Form 20-G with the United
27 States Securities and Exchange Commission; or has American
28 Depository Receipts listed on a recognized stock exchange and
29 is publicly traded;

30

31

1 2. Maintains outstanding debt obligations, if any,
2 rated in the top four rating categories by a recognized rating
3 service;

4 3. Has and maintains at all times a minimum net worth
5 of not less than \$10 million as evidenced by audited financial
6 statements prepared by an independent certified public
7 accountant in accordance with generally accepted accounting
8 principles and submitted to the office ~~department~~ annually;
9 and

10 4. Is authorized to do business in this state; and

11 (d) The insurer issuing the contractual liability
12 policy:

13 1. Maintains and has maintained for the preceding 5
14 years, policyholder surplus of at least \$100 million and is
15 rated "A" or higher by A.M. Best Company or has an equivalent
16 rating by another rating company acceptable to the office
17 ~~department~~;

18 2. Holds a certificate of authority to do business in
19 this state and is approved to write this type of coverage; and

20 3. Acknowledges to the office ~~department~~ quarterly
21 that it insures all of the association's claims exposure under
22 contracts delivered in this state.

23
24 If all the preceding conditions are satisfied, then the scope
25 of coverage under a contractual liability policy shall not be
26 required to exceed an association's claims exposure under
27 service warranty contracts delivered in this state.

28 Section 1492. Section 634.4061, Florida Statutes, is
29 amended to read:

30 634.4061 Assets and liabilities.--
31

1 (1) ASSETS.--In any determination of the financial
2 condition of a service warranty association, there shall be
3 allowed as assets only those assets that are owned by the
4 service warranty association and which assets consist of:

5 (a) Cash in the possession of the service warranty
6 association, or in transit under its control, including the
7 true balance of any deposit in a solvent bank, savings and
8 loan association, or trust company which is domiciled in the
9 United States.

10 (b) Investments, securities, properties, and loans
11 acquired or held in accordance with this part, and in
12 connection therewith the following items:

13 1. Interest due or accrued on any bond or evidence of
14 indebtedness which is not in default and which is not valued
15 on a basis including accrued interest.

16 2. Declared and unpaid dividends on stock and shares,
17 unless the amount of the dividends has otherwise been allowed
18 as an asset.

19 3. Interest due or accrued upon a collateral loan
20 which is not in default in an amount not to exceed 1 year's
21 interest thereon.

22 4. Interest due or accrued on deposits or certificates
23 of deposit in solvent banks, savings and loan associations,
24 and trust companies domiciled in the United States, and
25 interest due or accrued on other assets, if such interest is
26 in the judgment of the office ~~department~~ a collectible asset.

27 5. Interest due or accrued on current mortgage loans,
28 in an amount not exceeding in any event the amount, if any, of
29 the excess of the value of the property less delinquent taxes
30 thereon over the unpaid principal; but in no event shall
31

1 interest accrued for a period in excess of 90 days be allowed
2 as an asset.

3 6. Rent due or accrued on real property if such rent
4 is not in arrears for more than 3 months. However, in no
5 event shall rent accrued for a period in excess of 90 days be
6 allowed as an asset.

7 7. The unaccrued portion of taxes paid prior to the
8 due date on real property.

9 (c) Furniture, fixtures, furnishings, vehicles, and
10 equipment, if the original cost of each item is at least \$200,
11 which cost shall be amortized in full over a period not to
12 exceed 5 calendar years, unless otherwise approved by the
13 office department.

14 (d) Part inventories maintained for the purpose of
15 servicing products warranted. Part inventories must be listed
16 at cost. Associations are required to maintain records to
17 support valuation of parts inventories.

18 (e) The liquidation value of prepaid expenses.

19 (f) Other assets, not inconsistent with the provisions
20 of this section, deemed by the office department to be
21 available for the payment of losses and claims, at values to
22 be determined by it.

23
24 The office department, upon determining that a service
25 warranty association's asset has not been evaluated according
26 to applicable law or that it does not qualify as an asset,
27 shall require the service warranty association to properly
28 reevaluate the asset or replace the asset with an asset
29 suitable to the office department within 30 days of written
30 notification by the office department of this determination,
31

1 if the removal of the asset from the organization's assets
2 would impair the company's solvency.

3 (2) ASSETS NOT ALLOWED.--In addition to assets
4 impliedly excluded by the provisions of subsection (1), the
5 following assets expressly shall not be allowed as assets in
6 any determination of the financial condition of a service
7 warranty association:

8 (a) Goodwill, agreement holder lists, patents, trade
9 names, agreements not to compete, and other like intangible
10 assets.

11 (b) Any note or account receivable from or advances to
12 officers, directors, or controlling stockholders, whether
13 secured or not, and advances to employees, agents, or other
14 persons on personal security only.

15 (c) Stock of the service warranty association owned by
16 it directly or owned by it through any entity in which the
17 organization owns or controls, directly or indirectly, more
18 than 25 percent of the ownership interest.

19 (d) Leasehold improvements, stationery, and
20 literature, except that leasehold improvements made prior to
21 October 1, 1991, shall be allowed as an asset and shall be
22 amortized over the shortest of the following periods:

- 23 1. The life of the lease.
- 24 2. The useful life of the improvements.
- 25 3. The 3-year period following October 1, 1991.

26 (e) Furniture, fixtures, furnishings, vehicles, and
27 equipment, other than those items authorized under paragraph
28 (1)(c).

29 (f) Notes or other evidences of indebtedness which are
30 secured by mortgages or deeds of trust which are in default

31

1 and beyond the express period specified in the instrument for
2 curing the default.

3 (g) Bonds in default for more than 60 days.

4 (h) Deferred costs other than the liquidation value of
5 prepaid expenses.

6 (i) Any note, account receivable, advance, or other
7 evidence of indebtedness, or investment in:

8 1. The parent of the service warranty association;

9 2. Any entity directly or indirectly controlled by the
10 service warranty association parent; or

11 3. An affiliate of the parent or the service warranty
12 association; however, receivables from the parent or
13 affiliated companies shall be considered an admitted asset of
14 the company when the office department is satisfied that the
15 repayment of receivables, loans, and advances from the parent
16 or the affiliated company are guaranteed by an organization in
17 accordance with s. 634.4065.

18 4. Officers, directors, shareholders, employees, or
19 salespersons of the association. However, premium receivables
20 under 45 days old may be considered an admitted asset.

21

22 The office department may, however, allow all or a portion of
23 such asset, at values to be determined by the office
24 ~~department~~, if deemed by the office department to be available
25 for the payment losses and claims.

26 (3) LIABILITIES.--In any determination of the
27 financial condition of a service warranty association,
28 liabilities to be charged against its assets shall include,
29 but not be limited to:

30 (a) The amount, in conformity with generally accepted
31 accounting principles, necessary to pay all of its unpaid

1 losses and claims incurred for or on behalf of an agreement
2 holder, on or prior to the end of the reporting period,
3 whether reported or unreported.

4 (b) Taxes, expenses, and other obligations due or
5 accrued at the date of the statement.

6 (c) Reserve for unearned premiums.
7

8 The office ~~department~~, upon determining that the service
9 warranty association has failed to report liabilities that
10 should have been reported, shall require a correct report
11 which reflects the proper liabilities to be submitted by the
12 service warranty association to the office ~~department~~ within
13 10 working days of receipt of written notification.

14 Section 1493. Subsections (2) and (4) of section
15 634.4065, Florida Statutes, are amended to read:

16 634.4065 Guarantee agreements.--In order to include
17 receivables from affiliated companies as assets under s.
18 634.401(9)~~s. 634.401(10)~~, the service warranty association
19 may provide a written guarantee to assure repayment of all
20 receivables, loans, and advances from affiliated companies,
21 provided that the written guarantee is made by a guaranteeing
22 organization which:

23 (2) Submits a guarantee that is approved by the office
24 ~~department~~ as meeting the requirements of this part, provided
25 that the written guarantee contains a provision which requires
26 that the guarantee be irrevocable unless the guaranteeing
27 organization can demonstrate to the office ~~department~~ that the
28 cancellation of the guarantee will not result in the net
29 assets of the service warranty association falling below its
30 minimum net assets requirement and the office ~~department~~
31 approves cancellation of the guarantee.

1 (4) Submits annually, within 3 months after the end of
2 its fiscal year, an audited financial statement certified by
3 an independent certified public accountant, prepared in
4 accordance with generally accepted accounting principles. The
5 office ~~department~~ may, as it deems necessary, require
6 quarterly financial statements from the guaranteeing
7 organization.

8 Section 1494. Section 634.407, Florida Statutes, is
9 amended to read:

10 634.407 Application for and issuance of license.--

11 (1) An application for license as a service warranty
12 association shall be made to, and filed with, the office
13 ~~department~~ on printed forms as prescribed by the commission
14 and furnished by the office ~~it~~.

15 (2) In addition to information relative to its
16 qualifications as required under s. 634.404, the commission
17 ~~department~~ may require that the application show:

18 (a) The location of the applicant's home office.

19 (b) The name and residence address of each director,
20 officer, and 10-percent or greater stockholder of the
21 applicant.

22 (c) Such other pertinent information as may be
23 required by the commission ~~department~~.

24 (3) The commission ~~department~~ may require that the
25 application, when filed, be accompanied by:

26 (a) A copy of the applicant's articles of
27 incorporation, certified by the public official having custody
28 of the original, and a copy of the applicant's bylaws,
29 certified by the applicant's secretary.

30
31

1 (b) A copy of the most recent financial statement of
2 the applicant, verified under oath of at least two of its
3 principal officers.

4 (c) A license fee in the amount of \$200, as required
5 under s. 634.403.

6 (4) Upon completion of the application for license,
7 the office ~~department~~ shall examine the application and make
8 such further investigation of the applicant as it deems
9 advisable. If it finds that the applicant is qualified
10 therefor, the office ~~department~~ shall issue to the applicant a
11 license as a service warranty association. If the office
12 ~~department~~ does not find the applicant to be qualified, it
13 shall refuse to issue the license and shall give the applicant
14 written notice of such refusal, setting forth the grounds
15 therefor.

16 Section 1495. Subsections (1), (2), and (3) of section
17 634.409, Florida Statutes, are amended to read:

18 634.409 Grounds for suspension or revocation of
19 license.--

20 (1) The license of any service warranty association
21 may be revoked or suspended, or the office ~~department~~ may
22 refuse to renew any such license, if it is determined that the
23 association has violated any lawful rule or order of the
24 commission or office ~~department~~ or any provision of this part.

25 (2) The license of any service warranty association
26 shall be suspended or revoked if it is determined that such
27 association:

28 (a) Is in an unsound financial condition, or is in
29 such condition as would render its further transaction of
30 service warranties in this state hazardous or injurious to its
31 warranty holders or to the public.

1 (b) Has refused to be examined or to produce its
2 accounts, records, and files for examination, or if any of its
3 officers have refused to give information with respect to its
4 affairs or have refused to perform any other legal obligation
5 as to such examination, when required by the office
6 ~~department~~.

7 (c) Has failed to pay any final judgment rendered
8 against it in this state within 60 days after the judgment
9 became final.

10 (d) Has, without just cause, refused to pay proper
11 claims arising under its service warranties or, without just
12 cause, has compelled warranty holders to accept less than the
13 amount due them, or to employ attorneys, or to bring suit
14 against the association to secure full payment or settlement
15 of such claims.

16 (e) Is affiliated with, and under the same general
17 management or interlocking directorate or ownership as,
18 another service warranty association which transacts direct
19 warranties in this state without having a license therefor.

20 (f) Is using such methods or practices in the conduct
21 of its business as would render its further transaction of
22 service warranties in this state hazardous or injurious to its
23 warranty holders or to the public.

24 (3) The office ~~department~~ may, pursuant to s. 120.60,
25 in its discretion and without advance notice or hearing
26 thereon, immediately suspend the license of any service
27 warranty association if it finds that one or more of the
28 following circumstances exist:

29 (a) The association is insolvent or impaired as
30 defined in s. 631.011.

31

1 (b) The association's reserve account required by s.
2 634.406(1) is not being maintained.

3 (c) A proceeding for receivership, conservatorship, or
4 rehabilitation or any other delinquency proceeding regarding
5 the association has been commenced in any state.

6 (d) The financial condition or business practices of
7 the association otherwise pose an imminent threat to the
8 public health, safety, or welfare of the residents of this
9 state.

10 (e) The association fails to affirm or deny coverage
11 of claims upon the written request of the agreement holder
12 within a reasonable time after notification of the claim.

13 (f) The association fails to promptly provide a
14 reasonable explanation in writing to the agreement holder of
15 the basis in the service agreement, in relation to the facts
16 or applicable law, for denial of a claim or for the offer of a
17 compromise settlement.

18 Section 1496. Section 634.411, Florida Statutes, is
19 amended to read:

20 634.411 Order; notice of suspension or revocation of
21 license; effect; publication.--

22 (1) Suspension or revocation of a service warranty
23 association's license shall be by order of the office
24 ~~department~~ mailed to the association by registered or
25 certified mail. The office ~~department~~ shall also promptly give
26 notice of such suspension or revocation to the association's
27 sales representatives in this state which are of record with
28 the department ~~in the department's office~~. The association
29 shall not solicit or write any new service warranties in this
30 state during the period of any such suspension or revocation.

31

1 (2) In its discretion, the office ~~department~~ may cause
2 notice of any such revocation or suspension to be published in
3 one or more newspapers of general circulation published in
4 this state.

5 (3) When the license is surrendered, nonrenewed, or
6 revoked, the association shall proceed, immediately following
7 the effective date of the surrender, nonrenewal, or order of
8 revocation, to conclude the affairs transacted under this
9 part. The association shall not solicit, negotiate, advertise,
10 or effectuate new or renewal service warranty contracts. The
11 office ~~department~~ retains jurisdiction over the association as
12 it may find to be in the best interest of the contract holders
13 until all contracts have been fulfilled, canceled, or expired.

14 Section 1497. Section 634.413, Florida Statutes, is
15 amended to read:

16 634.413 Administrative fine in lieu of suspension or
17 revocation.--If the office ~~department~~ finds that one or more
18 grounds exist for the discretionary revocation or suspension
19 of a certificate of authority issued under this part, the
20 office ~~department~~ may, in lieu of such suspension or
21 revocation, impose a fine upon the insurer or service warranty
22 association in an amount not to exceed \$1,000 per violation;
23 however, if it is found that an insurer or service warranty
24 association has knowingly and willfully violated a lawful rule
25 or order of the commission or office ~~department~~ or a provision
26 of this part, the office ~~department~~ may impose a fine upon the
27 insurer or association in an amount not to exceed \$10,000 for
28 each violation.

29 Section 1498. Subsections (1) and (2) of section
30 634.414, Florida Statutes, are amended to read:

31 634.414 Filing; approval of forms.--

1 (1) No service warranty form or related form shall be
2 issued or used in this state unless it has been filed with and
3 approved by the office ~~department~~. Upon application for a
4 license, the office ~~department~~ shall require the applicant to
5 submit for approval each brochure, pamphlet, circular, form
6 letter, advertisement, or other sales literature or
7 advertising communication addressed or intended for
8 distribution. The office ~~department~~ shall disapprove any
9 document which is untrue, deceptive, or misleading or which
10 contains misrepresentations or omissions of material facts.

11 (a) After an application has been approved, a licensee
12 is not required to submit brochures or advertisement to the
13 office ~~department~~ for approval; however, a licensee may not
14 have published, and a person may not publish, any brochure or
15 advertisement which is untrue, deceptive, or misleading or
16 which contains misrepresentations or omissions of material
17 fact.

18 (b) For purposes of this section, brochures and
19 advertising includes, but is not limited to, any report,
20 circular, public announcement, certificate, or other printed
21 matter or advertising material which is designed or used to
22 solicit or induce any persons to enter into any service
23 warranty agreement.

24 (2) Each filing shall be made not less than 30 days in
25 advance of its issuance or use. At the expiration of 30 days
26 from date of filing, a form so filed shall be deemed approved
27 unless prior thereto it has been affirmatively disapproved by
28 written order of the office ~~department~~.

29 Section 1499. Section 634.4145, Florida Statutes, is
30 amended to read:

31

1 634.4145 Grounds for disapproval of forms.--The office
2 ~~department~~ shall disapprove any form filed under s. 634.414 if
3 the form:

- 4 (1) Violates this part;
- 5 (2) Is misleading in any respect;
- 6 (3) Is reproduced so that any material provision is
7 substantially illegible; or
- 8 (4) Contains provisions which are unfair or
9 inequitable or which encourage misrepresentation.

10 Section 1500. Section 634.415, Florida Statutes, is
11 amended to read:

12 634.415 Tax on premiums; annual statement; reports;
13 quarterly statements.--

14 (1) In addition to the license fees provided in this
15 part for service warranty associations and license taxes as
16 provided in the insurance code as to insurers, each such
17 association and insurer shall, annually on or before March 1,
18 file with the office ~~department~~ its annual statement, in the
19 form prescribed by the commission ~~department~~, showing all
20 premiums or assessments received by it in connection with the
21 issuance of service warranties in this state during the
22 preceding calendar year and using accounting principles which
23 will enable the office ~~department~~ to ascertain whether the
24 financial requirements set forth in s. 634.406 have been
25 satisfied.

26 (2) The gross amount of premiums and assessments is
27 subject to the sales tax imposed by s. 212.0506.

28 (3) The office ~~department~~ may levy a fine of up to
29 \$100 a day for each day an association neglects to file the
30 annual statement in the form and within the time provided by
31 this part. The amount of the fine shall be established by

1 rules adopted promulgated by the commission department. The
2 office department shall deposit all sums collected by it under
3 this section to the credit of the Insurance Commissioner's
4 Regulatory Trust Fund.

5 (4) In addition to an annual statement, the office
6 ~~department~~ may require of licensees, under oath and in the
7 form prescribed by it, quarterly statements or special reports
8 which it deems necessary to the proper supervision of
9 licensees under this part. For manufacturers as defined in s.
10 634.401, the office department shall require only the annual
11 audited financial statements of the warranty operations and
12 corporate reports as filed by the manufacturer with the
13 Securities and Exchange Commission, provided that the office
14 ~~department~~ may require additional reporting by manufacturers
15 upon a showing by the office department that annual reporting
16 is insufficient to protect the interest of purchasers of
17 service warranty agreements in this state or fails to provide
18 sufficient proof of the financial status required by this
19 part.

20 (5) The office department may suspend or revoke the
21 license of a service warranty association failing to file its
22 annual statement or quarterly report when due.

23 (6) The commission department may by rule require each
24 service warranty association to submit to the office
25 ~~department~~, as the commission department may designate, all or
26 part of the information contained in the financial statements
27 and reports required by this section in a computer-readable
28 form compatible with the electronic data processing system
29 specified by the office department.

30 Section 1501. Section 634.416, Florida Statutes, is
31 amended to read:

1 634.416 Examination of associations.--
2 (1) Service warranty associations licensed under this
3 part are subject to periodic examination by the office
4 ~~department~~, in the same manner and subject to the same terms
5 and conditions that apply to insurers under part II of chapter
6 624. However, the rate charged a service warranty association
7 by the office ~~department~~ for examination may be adjusted to
8 reflect the amount collected for the Form 10-K filing fee as
9 provided in this section. On or before May 1 of each year, an
10 association may submit to the office ~~department~~ the Form 10-K,
11 as filed with the United States Securities and Exchange
12 Commission pursuant to the Securities Exchange Act of 1934, as
13 amended. Upon receipt and review of the most current Form
14 10-K, the office ~~department~~ may waive the examination
15 requirement; if the office ~~department~~ determines not to waive
16 the examination, such examination will be limited to that
17 examination necessary to ensure compliance with this part. The
18 Form 10-K shall be accompanied by a filing fee of \$2,000 to be
19 deposited into the Insurance ~~Commissioner's~~ Regulatory Trust
20 Fund.

21 (2) The office ~~department~~ is not required to examine
22 an association that has less than \$20,000 in gross written
23 premiums as reflected in its most recent annual statement. The
24 office ~~department~~ may examine such an association if it has
25 reason to believe that the association may be in violation of
26 this part or is otherwise in an unsound financial condition.
27 If the office ~~department~~ examines an association that has less
28 than \$20,000 in gross written premiums, the examination fee
29 may not exceed 5 percent of the gross written premiums of the
30 association.
31

1 Section 1502. Subsection (10) of section 634.422,
2 Florida Statutes, is amended to read:

3 634.422 Grounds for compulsory refusal, suspension, or
4 revocation of license or appointment of sales
5 representatives.--The department shall deny, suspend, revoke,
6 or refuse to renew or continue the license or appointment of
7 any sales representative if it is found that any one or more
8 of the following grounds applicable to the sales
9 representative exist:

10 (10) Willful failure to comply with, or willful
11 violation of, any proper order or rule of the department or
12 commission, or willful violation of any provision of this
13 part.

14 Section 1503. Subsection (3) of section 634.423,
15 Florida Statutes, is amended to read:

16 634.423 Grounds for discretionary refusal, suspension,
17 or revocation of license or appointment of sales
18 representatives.--The department may deny, suspend, revoke, or
19 refuse to renew or continue the license or appointment of any
20 sales representative if it is found that any one or more of
21 the following grounds applicable to the sales representative
22 exist under circumstances for which such denial, suspension,
23 revocation, or refusal is not mandatory under s. 634.422:

24 (3) Violation of any lawful order or rule of the
25 department or commission.

26 Section 1504. Subsection (2) of section 634.426,
27 Florida Statutes, is amended to read:

28 634.426 Administrative fine in lieu of suspension or
29 revocation of license or appointment.--

30 (2) The order may allow the licensee or appointee a
31 reasonable period, not to exceed 30 days, within which to pay

1 to the department or office the amount of the penalty so
2 imposed. If the licensee or appointee fails to pay the
3 penalty in its entirety to the department or office ~~at its~~
4 ~~office in Tallahassee~~ within the period so allowed, the
5 license and appointment of the licensee or appointee shall
6 stand suspended or revoked or renewal or continuation may be
7 refused, as the case may be, upon expiration of such period
8 and without any further proceedings.

9 Section 1505. Section 634.427, Florida Statutes, is
10 amended to read:

11 634.427 Disposition of taxes and fees.--All license
12 fees, taxes on premiums, registration fees, and administrative
13 fines and penalties collected under this part from service
14 warranty associations and sales representatives shall be
15 deposited to the credit of the Insurance ~~Commissioner's~~
16 Regulatory Trust Fund.

17 Section 1506. Section 634.428, Florida Statutes, is
18 amended to read:

19 634.428 Insurance business not authorized.--Nothing in
20 the Florida Insurance Code or in this part shall be deemed to
21 authorize any service warranty association to transact any
22 insurance business other than that of service warranty as
23 herein defined or otherwise to engage in any other type of
24 insurance unless the association is authorized under a
25 certificate of authority issued by the office ~~department~~ under
26 the provisions of the Florida Insurance Code.

27 Section 1507. Subsection (2) of section 634.430,
28 Florida Statutes, is amended to read:

29 634.430 Dissolution or liquidation.--

30 (2) The department and office shall be notified of the
31 commencement of voluntary dissolution proceedings of a

1 manufacturer licensed under this part. As to the warranty
2 operations of a manufacturer in this state, the department
3 shall supervise the voluntary dissolution and shall require
4 protection of the interests of the department, office, and
5 consumers who have been issued service warranties by the
6 manufacturer by the continuation of deposits or bonds as
7 required by this part until that time as all warranties issued
8 by the manufacturer are no longer in effect or all outstanding
9 warranties have been assigned to another association approved
10 by the department and office. The notification as provided
11 herein shall be made by the manufacturer within 30 days of the
12 commencement of any legal action for dissolution.

13 Section 1508. Subsection (4) of section 634.433,
14 Florida Statutes, is amended to read:

15 634.433 Civil remedy.--

16 (4) This section shall not be construed to authorize a
17 class action suit against a service warranty association or a
18 civil action against the department, the office, their ~~its~~
19 employees, or the Chief Financial Officer ~~Insurance~~
20 ~~Commissioner~~.

21 Section 1509. Section 634.437, Florida Statutes, is
22 amended to read:

23 634.437 Power of department and office to examine and
24 investigate.--The department and office have ~~has~~ the power,
25 within their respective regulatory jurisdictions, to examine
26 and investigate the affairs of every person involved in the
27 business of service warranty in this state in order to
28 determine whether such person has been or is engaged in any
29 unfair method of competition or in any unfair or deceptive act
30 or practice prohibited by s. 634.435, and each shall have the
31

1 powers and duties specified in ss. 634.438-634.442 in
2 connection therewith.

3 Section 1510. Section 634.438, Florida Statutes, is
4 amended to read:

5 634.438 Prohibited practices; hearings; procedure;
6 service of process.--

7 (1) Whenever the department or office has reason to
8 believe that any person has engaged, or is engaging, in this
9 state in any unfair method of competition or any unfair or
10 deceptive act or practice as defined in s. 634.436, or is
11 engaging in the business of service warranty without being
12 properly licensed as required by this part, and that a
13 proceeding by the department or office in respect thereto
14 would be in the interest of the public, the department or
15 office shall conduct or cause to have conducted a hearing in
16 accordance with chapter 120.

17 (2) The department or office, a duly empowered hearing
18 officer, or an administrative law judge shall, during the
19 conduct of such hearing, have those powers enumerated in s.
20 120.569; however, the penalty for failure to comply with a
21 subpoena or with an order directing discovery is limited to a
22 fine not to exceed \$1,000 per violation.

23 (3) A statement of charges, notice, or order under
24 this part may be served by anyone duly authorized by the
25 department or office, either in the manner provided by law for
26 service of process in civil actions or by certifying and
27 mailing a copy thereof to the person affected by such
28 statement, notice, order, or other process at her or his or
29 its residence or principal office or place of business. The
30 verified return by the person so serving such statement,
31 notice, order, or other process, setting forth the manner of

1 the service, is proof of the same; and the return postcard
2 receipt for such statement, notice, order, or other process,
3 certified and mailed as provided in this subsection, is proof
4 of service of the same.

5 Section 1511. Section 634.439, Florida Statutes, is
6 amended to read:

7 634.439 Cease and desist and penalty orders.--After
8 the hearing provided for in s. 634.438, the department or
9 office shall enter a final order in accordance with s.
10 120.569. If it is determined that the person charged has
11 engaged in an unfair or deceptive act or practice or the
12 unlawful transaction of service warranty business, the
13 department or office also shall issue an order requiring the
14 violator to cease and desist from engaging in such method of
15 competition, act, or practice or the unlawful transaction of
16 service warranty business. Further, the department or office
17 may, at its discretion, order any one or more of the following
18 penalties:

19 (1) The suspension or revocation of such person's
20 license, or eligibility for any license, if the person knew,
21 or reasonably should have known, she or he was in violation of
22 this part.

23 (2) If it is determined that the person charged has
24 provided or offered to provide service warranties without
25 proper licensure, the imposition of an administrative penalty
26 not to exceed \$1,000 for each service warranty contract
27 offered or effectuated.

28 Section 1512. Section 634.44, Florida Statutes, is
29 amended to read:

30 634.44 Appeals from orders of the department or
31 office.--Any person subject to an order of the department or

1 office under s. 634.439 may obtain a review of such order by
2 filing an appeal therefrom in accordance with the provisions
3 and procedures for appeal from the orders of the department or
4 office in general under s. 120.68.

5 Section 1513. Section 634.441, Florida Statutes, is
6 amended to read:

7 634.441 Penalty for violation of cease and desist
8 order.--Any person who violates a cease and desist order of
9 the department or office under s. 634.439 while such order is
10 in effect, after notice and hearing as provided in s. 634.438,
11 is subject, at the discretion of the department or office, to
12 any one or more of the following penalties:

13 (1) A monetary penalty of not more than \$50,000 as to
14 all matters determined in such hearing.

15 (2) The suspension or revocation of such person's
16 license or eligibility to hold a license.

17 Section 1514. Section 634.442, Florida Statutes, is
18 amended to read:

19 634.442 Injunctive proceedings.--In addition to the
20 penalties and other enforcement provisions of this part, if
21 any person violates s. 634.403 or s. 634.420 or any rule
22 adopted pursuant thereto, the department or office may resort
23 to a proceeding for injunction in the circuit court of the
24 county where such person resides or has her or his or its
25 principal place of business, and therein apply for such
26 temporary and permanent orders as the department or office
27 deems ~~may deem~~ necessary to restrain such person from engaging
28 in any such activities, until such person has complied with
29 such provision or rule.

30 Section 1515. Section 634.443, Florida Statutes, is
31 amended to read:

1 634.443 Civil liability.--The provisions of this part
2 are cumulative to rights under the general civil and common
3 law, and no action of the department or office will abrogate
4 such rights to damages or other relief in any court.

5 Section 1516. Section 634.444, Florida Statutes, is
6 amended to read:

7 634.444 Investigatory records.--All active examination
8 or investigatory records of the department or office made or
9 received pursuant to this part are confidential and exempt
10 from the provisions of s. 119.07(1) until such investigation
11 is completed or ceases to be active. For the purposes of this
12 section, an investigation is considered "active" while the
13 investigation is being conducted by the department or office
14 with a reasonable, good faith belief that it may lead to the
15 filing of administrative, civil, or criminal proceedings. An
16 investigation does not cease to be active if the department or
17 office is proceeding with reasonable dispatch, and there is
18 good faith belief that action may be initiated by the
19 department or office or other administrative law enforcement
20 agency.

21 Section 1517. Subsection (3) of section 635.011,
22 Florida Statutes, is amended to read:

23 635.011 Definitions.--As used in this chapter, the
24 term:

25 ~~(3) "Department" means the Department of Insurance of~~
26 ~~this state.~~

27 Section 1518. Subsection (1) of section 635.031,
28 Florida Statutes, is amended to read:

29 635.031 Additional limitations.--In addition to laws
30 otherwise applicable, mortgage guaranty insurers are subject
31 to the following limitations:

1 (1) No such insurer may retain risk as to any one
2 subject of insurance in any amount exceeding 10 percent of its
3 surplus as to policyholders. In determining the amount of
4 risk retained, applicable reinsurance in any assuming insurer
5 authorized to transact insurance in this state or approved by
6 the office ~~department~~ shall be deducted from the total direct
7 risk insured.

8 Section 1519. Subsection (2) of section 635.041,
9 Florida Statutes, is amended to read:

10 635.041 Contingency reserve.--

11 (2) Subject to approval by the insurance department of
12 the insurer's state of domicile and upon 30 days' prior notice
13 to the office ~~Department of Insurance of this state~~, the
14 contingency reserve shall be available for loss payments only
15 when the insurer's incurred losses in any one calendar year
16 exceed 35 percent of the corresponding earned premiums.

17 Section 1520. Subsection (3) of section 635.042,
18 Florida Statutes, is amended to read:

19 635.042 Minimum surplus requirement.--

20 (3) If a mortgage guaranty insurer is not in
21 compliance with this section, the office ~~department~~ may take
22 any action against the insurer that the office ~~department~~ may
23 take against an insurer that is not in compliance with s.
24 624.408.

25 Section 1521. Subsections (1) and (2) of section
26 635.071, Florida Statutes, are amended to read:

27 635.071 Filings, approval of forms; rate filings.--

28 (1) No policy form or related form may be issued or
29 used in this state unless it has been filed with and approved
30 by the office ~~department~~ as provided by laws applicable to
31 casualty or surety insurance.

1 (2) Each insurer shall file with the office ~~department~~
2 for informational purposes the rate to be charged and the
3 premium to be paid by the policyholder, including all
4 modifications of rates and premiums.

5 Section 1522. Section 635.081, Florida Statutes, is
6 amended to read:

7 635.081 Administration and enforcement.--The
8 commission may ~~department has authority to~~ adopt rules
9 pursuant to ss. 120.536(1) and 120.54 to implement the
10 provisions of this chapter and shall have the same powers of
11 administration and enforcement of the provisions of this
12 chapter as it has with respect to casualty or surety insurers
13 in general under the Florida Insurance Code.

14 Section 1523. Section 636.003, Florida Statutes, is
15 amended to read:

16 636.003 Definitions.--As used in this act, the term:

17 (1) "Capitation" means the fixed amount paid by a
18 prepaid limited health service organization to a health care
19 provider under contract with the prepaid limited health
20 service organization in exchange for the rendering of covered
21 limited health services.

22 ~~(2) "Commissioner" means the Commissioner of~~
23 ~~Insurance.~~

24 ~~(3) "Department" means the Department of Insurance.~~

25 (2)~~(4)~~ "Enrollee" means an individual, including
26 dependents, who is entitled to limited health services
27 pursuant to a contract, or any other evidence of coverage,
28 with an entity authorized to provide or arrange for such
29 services under this act.

30 (3)~~(5)~~ "Evidence of coverage" means the certificate,
31 agreement, membership card, or contract issued pursuant to

1 this act setting forth the coverage to which an enrollee is
2 entitled.

3 (4)~~(6)~~ "Insolvent" means that all the statutory assets
4 of the prepaid limited health service organization, if made
5 immediately available, would not be sufficient to discharge
6 all of its statutory liabilities or that the prepaid limited
7 health service organization is unable to pay its debts as they
8 become due in the usual course of business.

9 (5)~~(7)~~ "Limited health service" means ambulance
10 services, dental care services, vision care services, mental
11 health services, substance abuse services, chiropractic
12 services, podiatric care services, and pharmaceutical
13 services. "Limited health service" does not include inpatient,
14 hospital surgical services, or emergency services except as
15 such services are provided incident to the limited health
16 services set forth in this subsection.

17 (6)~~(8)~~ "Prepaid limited health service contract" means
18 any contract entered into by a prepaid limited health service
19 organization with a subscriber or group of subscribers to
20 provide limited health services in exchange for a prepaid per
21 capita or prepaid aggregate fixed sum.

22 (7)~~(9)~~ "Prepaid limited health service organization"
23 means any person, corporation, partnership, or any other
24 entity which, in return for a prepayment, undertakes to
25 provide or arrange for, or provide access to, the provision of
26 a limited health service to enrollees through an exclusive
27 panel of providers. Prepaid limited health service
28 organization does not include:

29 (a) An entity otherwise authorized pursuant to the
30 laws of this state to indemnify for any limited health
31 service;

1 (b) A provider or entity when providing limited health
2 services pursuant to a contract with a prepaid limited health
3 service organization, a health maintenance organization, a
4 health insurer, or a self-insurance plan; or

5 (c) Any person who, in exchange for fees, dues,
6 charges or other consideration, provides access to a limited
7 health service provider without assuming any responsibility
8 for payment for the limited health service or any portion
9 thereof.

10 (8)~~(10)~~ "Provider" means, but is not limited to, any
11 physician, dentist, health facility, or other person or
12 institution which is duly licensed in this state to deliver
13 limited health services.

14 (9)~~(11)~~ "Qualified independent actuary" means an
15 actuary who is a member of the American Academy of Actuaries
16 or the Society of Actuaries and has experience in establishing
17 rates for limited health services and who has no financial or
18 employment interest in the prepaid limited health service
19 organization.

20 (10)~~(12)~~ "Reporting period" means the annual
21 accounting period or fiscal year, or any part thereof, of the
22 prepaid limited health service organization. The calendar year
23 shall be the fiscal year for each such organization other than
24 those holding an existing certificate of authority as of
25 October 1, 1993.

26 (11)~~(13)~~ "Subscriber" means an individual who has
27 contracted, or arranged, or on whose behalf a contract or
28 arrangement has been entered into, with a prepaid limited
29 health service organization for health care services or other
30 persons who also receive health care services as a result of
31 the contract.

1 (12)~~(14)~~ "Surplus" means total statutory assets in
2 excess of total liabilities, except that assets pledged to
3 secure debts not reflected on the books of the prepaid limited
4 health service organization shall not be included in surplus.
5 Surplus includes capital stock, capital in excess of par,
6 other contributed capital, retained earnings, and surplus
7 notes.

8 (13)~~(15)~~ "Surplus notes" means debt which has been
9 subordinated to all claims of subscribers and general
10 creditors of the organization and the debt instrument shall so
11 state.

12 (14)~~(16)~~ "Statutory accounting principles" means
13 generally accepted accounting principles, except as modified
14 by this act.

15 (15)~~(17)~~ "Qualified employee" means an employee of the
16 organization:

17 (a) Who has a minimum of 5 years of experience in rate
18 determinations for prepaid health services, and who
19 demonstrates through filings with the office ~~department~~ that
20 the person is in fact qualified under the terms of this act;
21 or

22 (b) Who is a member of the American Academy of
23 Actuaries or the Society of Actuaries and has experience in
24 establishing rates for limited health service.

25 Section 1524. Section 636.006, Florida Statutes, is
26 amended to read:

27 636.006 Insurance business not authorized.--Nothing in
28 the Florida Insurance Code or this act authorizes any prepaid
29 limited health service organization to transact any insurance
30 business other than that specifically authorized by this act,
31 or otherwise to engage in any other type of insurance unless

1 it is authorized under a certificate of authority issued by
2 the office ~~department~~ under the provisions of the Florida
3 Insurance Code.

4 Section 1525. Section 636.007, Florida Statutes, is
5 amended to read:

6 636.007 Certificate of authority required.--A person,
7 corporation, partnership, or other entity may not operate a
8 prepaid limited health service organization in this state
9 without obtaining and maintaining a certificate of authority
10 from the office ~~department~~ pursuant to this act. A political
11 subdivision of this state which is operating an emergency
12 medical services system and offers a prepaid ambulance service
13 plan as a part of its emergency medical services system shall
14 be exempt from the provisions of this act and all other
15 provisions of the insurance code. An insurer, while authorized
16 to transact health insurance in this state, or a health
17 maintenance organization possessing a valid certificate of
18 authority in this state, may also provide services under this
19 act without additional qualification or authority, but shall
20 be otherwise subject to the applicable provisions of this act.

21 Section 1526. Section 636.008, Florida Statutes, is
22 amended to read:

23 636.008 Application for certificate of
24 authority.--Before any entity may operate a prepaid limited
25 health service organization, it must obtain a certificate of
26 authority from the office ~~department~~. An application for a
27 certificate of authority to operate a prepaid limited health
28 service organization must be filed with the office ~~department~~
29 on a form prescribed by the commission ~~department~~. Such
30 application must be sworn to by an officer or authorized
31

1 representative of the applicant and be accompanied by the
2 following:

3 (1) A copy of the applicant's basic organizational
4 document, including the articles of incorporation, articles of
5 association, partnership agreements, trust agreement, or other
6 applicable documents and all amendments to such documents.

7 (2) A copy of all bylaws, rules, and regulations, or
8 similar documents, if any, regulating the conduct of the
9 applicant's internal affairs.

10 (3) A list of the names, addresses, official
11 positions, and biographical information of the individuals who
12 are responsible for conducting the applicant's affairs,
13 including, but not limited to, all members of the board of
14 directors, board of trustees, executive committee, or other
15 governing board or committee, the officers, contracted
16 management company personnel, and any person or entity owning
17 or having the right to acquire 10 percent or more of the
18 voting securities of the applicant. Such listing must fully
19 disclose the extent and nature of any contracts or
20 arrangements between any individual who is responsible for
21 conducting the applicant's affairs and the prepaid limited
22 health service organization, including any possible conflicts
23 of interest.

24 (4) A complete biographical statement, on forms
25 prescribed by the commission ~~department~~, an independent
26 investigation report, and a set of fingerprints, as provided
27 in chapter 624, with respect to each individual identified
28 under subsection (3).

29 (5) A statement generally describing the applicant,
30 its facilities and personnel, and the limited health service
31 or services to be offered.

1 (6) A copy of the form of all contracts made or to be
2 made between the applicant and any providers regarding the
3 provision of limited health services to enrollees.

4 (7) A copy of the form of any contract made or
5 arrangement to be made between the applicant and any person
6 listed in subsection (3).

7 (8) A copy of the form of any contract made or to be
8 made between the applicant and any person, corporation,
9 partnership, or other entity for the performance on the
10 applicant's behalf of any function, including, but not limited
11 to, marketing, administration, enrollment, investment
12 management, and subcontracting for the provision of limited
13 health services to enrollees.

14 (9) A copy of the form of any prepaid limited health
15 service contract which is to be issued to employers, unions,
16 trustees, individuals, or other organizations and a copy of
17 any form of evidence of coverage to be issued to subscribers.

18 (10) A copy of the applicant's most recent financial
19 statements audited by an independent certified public
20 accountant.

21 (11) A copy of the applicant's financial plan,
22 including a 3-year projection of anticipated operating
23 results, a statement of the sources of funding, and provisions
24 for contingencies, for which projection all material
25 assumptions shall be disclosed.

26 (12) A schedule of rates and charges for each contract
27 to be used which contains an opinion from a qualified
28 independent actuary or a qualified employee that the rates are
29 not inadequate, excessive, or discriminatory. If a prepaid
30 limited health service organization does not employ or
31 otherwise retain the services of an independent actuary, the

1 chief executive officer of the prepaid limited health service
2 organization must review and sign the certification indicating
3 her or his agreement with its conclusions. If the office
4 ~~department~~ determines that, based upon documents filed with
5 the office ~~department~~, the qualified employee is not
6 qualified, the organization shall retain the services of a
7 qualified independent actuary.

8 (13) A description of the proposed method of
9 marketing.

10 (14) A description of the subscriber complaint
11 procedures to be established and maintained as required under
12 s. 636.038.

13 (15) A description of how the applicant will comply
14 with s. 636.046.

15 (16) The fee for issuance of a certificate of
16 authority as provided in s. 636.057.

17 (17) Such other information as the commission or
18 office ~~department~~ may reasonably require to make the
19 determinations required by this act.

20
21 The office ~~department~~ shall issue a certificate of authority
22 which shall expire on June 1 each year and which the office
23 ~~department~~ shall renew if the applicant pays the license fees
24 provided in s. 636.057 and if the office ~~department~~ is
25 satisfied that the organization is in compliance with this
26 act.

27 Section 1527. Section 636.009, Florida Statutes, is
28 amended to read:

29 636.009 Issuance of certificate of authority;
30 denial.--

31

1 (1) Following receipt of an application filed pursuant
2 to s. 636.008, the office ~~department~~ shall review such
3 application and notify the applicant of any deficiencies
4 contained therein. The office ~~department~~ shall issue a
5 certificate of authority to an applicant who has filed a
6 completed application in conformity with s. 636.008, upon
7 payment of the fees specified by s. 636.057 and upon the
8 office ~~department~~ being satisfied that the following
9 conditions are met:

10 (a) The requirements of s. 636.008 have been
11 fulfilled.

12 (b) The entity is actuarially sound.

13 (c) The entity has met the applicable minimum surplus
14 requirements specified in s. 636.045.

15 (d) The procedures for offering limited health
16 services and offering and terminating contracts to subscribers
17 will not unfairly discriminate on the basis of age, sex, race,
18 handicap, health, or economic status. However, this paragraph
19 does not prohibit reasonable underwriting classifications for
20 the purposes of establishing contract rates, nor does it
21 prohibit prospective experience rating.

22 (e) The entity furnished evidence of adequate
23 insurance coverage, including, but not limited to, general
24 liability or professional liability coverage, or an adequate
25 plan for self-insurance to respond to claims for injuries
26 arising out of the furnishing covered services.

27 (f) The ownership, control, and management of the
28 entity are competent and trustworthy and possess managerial
29 experience that would make the proposed operation beneficial
30 to the subscribers. The office ~~department~~ shall not grant or
31 continue authority to transact the business of a prepaid

1 limited health service organization in this state at any time
2 during which the office ~~department~~ has good reason to believe
3 that the ownership, control, or management of the organization
4 includes any person whose business operations are or have been
5 marked by business practices or conduct that is to the
6 detriment of the public, stockholders, investors, or
7 creditors.

8 (g) The entity has demonstrated compliance with s.
9 636.047 by obtaining a blanket fidelity bond in the amount of
10 at least \$50,000, issued by a licensed insurance carrier in
11 this state, that will reimburse the entity in the event that
12 anyone handling the funds of the entity either misappropriates
13 or absconds with the funds. All employees handling the funds
14 must be covered by the blanket fidelity bond. However, the
15 fidelity bond need not cover an individual who owns 100
16 percent of the stock of the organization if such stockholder
17 maintains total control of the organization's financial
18 assets, books and records, and fidelity bond coverage is not
19 available for such individual. An agent licensed under the
20 provisions of the Florida Insurance Code may, either directly
21 or indirectly, represent the prepaid limited health service
22 organization in the solicitation, negotiation, effectuation,
23 procurement, receipt, delivery, or forwarding of any
24 subscriber's contract, or collect or forward any consideration
25 paid by the subscriber to the prepaid limited health service
26 organization. The licensed agent shall not be required to post
27 the bond required by this subsection.

28 (h) The prepaid limited health service organization
29 has a grievance procedure that will facilitate the resolution
30 of subscriber grievances and that includes both formal and
31 informal steps available within the organization.

1 (i) The applicant is financially responsible and may
2 reasonably be expected to meet its obligations to enrollees
3 and to prospective enrollees. In making this determination,
4 the office ~~department~~ may consider:

5 1. The financial soundness of the applicant's
6 arrangements for limited health services and the minimum
7 standard rates, deductibles, copayments, and other patient
8 charges used in connection therewith.

9 2. The adequacy of surplus, other sources of funding,
10 and provisions for contingencies.

11 3. The manner in which the requirements of s. 636.046
12 have been fulfilled.

13 (j) The agreements with providers for the provision of
14 limited health services contain the provisions required by s.
15 636.035.

16 (k) Any deficiencies identified by the office
17 ~~department~~ have been corrected.

18 (1) All requirements of this chapter have been met.

19 (2) If the certificate of authority is denied, the
20 office ~~department~~ shall notify the applicant and shall specify
21 the reasons for denial in the notice.

22 Section 1528. Section 636.015, Florida Statutes, is
23 amended to read:

24 636.015 Language used in contracts and advertisements;
25 translations.--

26 (1)(a) All contracts or forms must be printed in
27 English.

28 (b) If the negotiations leading up to the effectuation
29 of a prepaid limited health service organization contract are
30 conducted in a language other than English, the prepaid
31 limited health service organization must supply to the member

1 a written translation of the contract, which translation
2 accurately reflects the substance of the contract and is in
3 the language used to negotiate the contract. The written
4 translation must be affixed to, and shall become a part of,
5 the contract or form, including a certification that the
6 written translation is identical to the English version. Any
7 such translation must be furnished to the office ~~department~~ as
8 part of the filing of the prepaid limited health services
9 contract form. No translation of a prepaid limited health
10 services contract form may be approved by the office
11 ~~department~~ unless the translation accurately reflects the
12 substance of the prepaid limited health services contract form
13 in translation.

14 (2) The text of all advertisements by a prepaid
15 limited health service organization, if printed or broadcast
16 in a language other than English, also must be available in
17 English and must be furnished to the office ~~department~~ upon
18 request. As used in this subsection, the term "advertisement"
19 means any advertisement, circular, pamphlet, brochure, or
20 other printed material disclosing or disseminating advertising
21 material or information by a prepaid limited health service
22 organization to prospective or existing subscribers and
23 includes any radio or television transmittal of an
24 advertisement or information.

25 Section 1529. Paragraph (a) of subsection (1) of
26 section 636.016, Florida Statutes, is amended to read:

27 636.016 Prepaid limited health service contracts.--For
28 any entity licensed prior to October 1, 1993, all subscriber
29 contracts in force at such time shall be in compliance with
30 this section upon renewal of such contract.

31

1 (1) Any entity issued a certificate of authority and
2 otherwise in compliance with this act may enter into contracts
3 in this state to provide an agreed-upon set of limited health
4 services to subscribers in exchange for a prepaid per capita
5 sum or a prepaid aggregate fixed sum.

6 (a) The office ~~department~~ shall disapprove any form
7 filed under this subsection, or withdraw any previous approval
8 thereof, if the form:

9 1. Is in any respect in violation of, or does not
10 comply with, any provision of this act or rule adopted
11 thereunder.

12 2. Contains or incorporates by reference, where such
13 incorporation is otherwise permissible, any inconsistent,
14 ambiguous, or misleading clauses or exceptions and conditions
15 which deceptively affect the risk purported to be assumed in
16 the general coverage of the contract.

17 3. Has any title, heading, or other indication of its
18 provisions which is misleading.

19 4. Is printed or otherwise reproduced in such a manner
20 as to render any material provision of the form substantially
21 illegible.

22 5. Contains provisions which are unfair, inequitable,
23 or contrary to the public policy of this state or which
24 encourage misrepresentation.

25 6. Charges rates that are determined by the office
26 ~~department~~ to be inadequate, excessive, or unfairly
27 discriminatory, or if the rating methodology followed by the
28 prepaid limited health service organization is determined by
29 the office ~~department~~ to be inconsistent with the provisions
30 of s. 636.017.

31

1 Section 1530. Section 636.017, Florida Statutes, is
2 amended to read:

3 636.017 Rates and charges.--

4 (1) The rates charged by any prepaid limited health
5 service organization to its subscribers shall not be
6 excessive, inadequate, or unfairly discriminatory. The
7 commission or office ~~department~~ may require whatever
8 information it deems necessary to determine that a rate or
9 proposed rate meets the requirements of this section.

10 (2) In determining whether a rate is in compliance
11 with subsection (1), the office ~~department~~ must take into
12 consideration the limited services provided, the method in
13 which the services are provided, and the method of provider
14 payment. This section may not be construed as authorizing the
15 commission ~~department~~ to establish by rule minimum loss ratios
16 for prepaid limited health service organizations' rates.

17 Section 1531. Section 636.018, Florida Statutes, is
18 amended to read:

19 636.018 Changes in rates and benefits; material
20 modifications; addition of limited health services.--

21 (1)(a) No prepaid limited health services contract,
22 certificate of coverage, application, enrollment form, rider,
23 endorsement, and applicable rates to be charged may be
24 delivered in this state unless the forms and rates have been
25 filed with the office ~~department~~ by or on behalf of the
26 prepaid limited health service organization and have been
27 approved by the office ~~department~~. Every form filed shall be
28 identified by a unique form number placed in the lower left
29 corner of each form. If a prepaid limited health service
30 organization desires to amend any contract with its
31 subscribers or any certificate or member handbook, or desires

1 to change any rate charged for the contract or to change any
2 basic prepaid limited health services contract, certificate,
3 grievance procedure, or member handbook form, or application
4 form where written application is required and is to be made a
5 part of the contract, or printed amendment, addendum, rider,
6 or endorsement form or form renewal certificate, it must file
7 such changes 30 days prior to the effective date of the
8 proposed change. At least 30 days' written notice must be
9 provided to the subscriber before application of any approved
10 change in rates. In the case of a group enrollee, there may
11 be a contractual agreement with the prepaid limited health
12 service organization to have the contract holder provide the
13 required notice to the individual enrollees of the group. Any
14 proposed change must contain information as required by s.
15 636.017.

16 (b) The prepaid limited health service organization's
17 certification must be prepared by an independent actuary or a
18 qualified employee. The chief executive officer of the
19 prepaid limited health service organization must review and
20 sign the certification indicating her or his agreement with
21 its conclusions. Following receipt of notice of any
22 disapproval or withdrawal of approval, no prepaid limited
23 health service organization may issue or use any form
24 disapproved by the office ~~department~~ or as to which the office
25 ~~department~~ has withdrawn approval.

26 (2) If such filings are disapproved, the office
27 ~~department~~ shall notify the prepaid limited health service
28 organization and shall specify the reasons for disapproval in
29 the notice. The prepaid limited health service organization
30 has 21 days from the date of receipt of notice to request a
31 hearing before the office ~~department~~ pursuant to chapter 120.

1 Section 1532. Subsection (2) of section 636.025,
2 Florida Statutes, is amended to read:

3 636.025 Validity of noncomplying contracts.--

4 (2) Any prepaid limited health services contract
5 delivered or issued for delivery in this state covering a
6 subscriber, which subscriber pursuant to the provisions of
7 this act the organization may not lawfully cover under the
8 contract, is cancelable at any time by the organization, any
9 provision of the contract to the contrary notwithstanding, and
10 the organization must promptly cancel the contract in
11 accordance with the request of the office ~~department~~ therefor.
12 No such illegality or cancellation may be deemed to relieve
13 the organization of any liability incurred by it under the
14 contract while in force or to prohibit the organization from
15 retaining the pro rata earned premium or rate thereon. This
16 subsection does not relieve the organization from any penalty
17 otherwise incurred by the organization under this act for any
18 such violation.

19 Section 1533. Subsection (3) of section 636.029,
20 Florida Statutes, is amended to read:

21 636.029 Construction and relationship with other
22 laws.--

23 (3) The department and office are ~~is~~ vested with all
24 powers granted to it under the insurance code with respect to
25 the investigation of any violation of this act within their
26 respective regulatory jurisdictions.

27 Section 1534. Section 636.036, Florida Statutes, is
28 amended to read:

29 636.036 Administrative, provider, and management
30 contracts.--

31

1 (1) The office ~~department~~ may require a prepaid
2 limited health service organization to submit any contract for
3 administrative services, contract with a provider physician,
4 contract for management services, or contract with an
5 affiliated entity to the office ~~department~~ if the office
6 ~~department~~ has information that the prepaid limited health
7 service organization has entered into a contract which
8 requires it to pay a fee which is unreasonably high in
9 relation to the service provided.

10 (2) After review of a contract, the office ~~department~~
11 may order the prepaid limited health service organization to
12 cancel the contract if it determines that the fees to be paid
13 by the prepaid limited health service organization under the
14 contract are so unreasonably high as compared with similar
15 contracts entered into by the prepaid limited health service
16 organization in similar circumstances that the contract is
17 detrimental to the subscribers, stockholders, investors, or
18 creditors of the prepaid limited health service organization.

19 (3) All contracts for administrative services,
20 management services, or provider services or contracts with
21 affiliated entities, entered into or renewed by a prepaid
22 limited health service organization on or after October 1,
23 1993, must contain a provision that the contract will be
24 canceled upon issuance of an order by the office ~~department~~
25 pursuant to this section.

26 Section 1535. Section 636.037, Florida Statutes, is
27 amended to read:

28 636.037 Contract providers.--Each prepaid limited
29 health service organization must, upon the request of the
30 office ~~department~~, file financial statements for all contract
31 providers of limited health care services who have assumed

1 through capitation or other means more than 10 percent of the
2 health care risks of the prepaid limited health service
3 organization.

4 Section 1536. Section 636.038, Florida Statutes, is
5 amended to read:

6 636.038 Complaint system; annual report.--

7 (1) Every prepaid limited health service organization
8 must establish and maintain a complaint system providing
9 reasonable procedures for resolving written complaints
10 initiated by enrollees and providers. This section does not
11 preclude an enrollee or a provider from filing a complaint
12 with the department or office or limit the department's or
13 office's ability to investigate such complaints.

14 (2) Every prepaid limited health service organization
15 shall report annually to the department and office the total
16 number of grievances handled, a categorization of the cases
17 underlying the grievances, and the final disposition of the
18 grievances.

19 Section 1537. Section 636.039, Florida Statutes, is
20 amended to read:

21 636.039 Examination by the office ~~department~~.--The
22 office ~~department~~ shall examine the affairs, transactions,
23 accounts, business records, and assets of any prepaid limited
24 health service organization, in the same manner and subject to
25 the same terms and conditions that apply to insurers under
26 part II of chapter 624, as often as it deems it expedient for
27 the protection of the people of this state, but not less
28 frequently than once every 3 years. In lieu of making its own
29 financial examination, the office ~~department~~ may accept an
30 independent certified public accountant's audit report
31 prepared on a statutory accounting basis consistent with this

1 act. However, except when the medical records are requested
2 and copies furnished pursuant to s. 456.057, medical records
3 of individuals and records of physicians providing service
4 under contract to the prepaid limited health service
5 organization are not subject to audit, but may be subject to
6 subpoena by court order upon a showing of good cause. For the
7 purpose of examinations, the office ~~department~~ may administer
8 oaths to and examine the officers and agents of a prepaid
9 limited health service organization concerning its business
10 and affairs. The expenses of examination of each prepaid
11 limited health service organization by the office ~~department~~
12 are subject to the same terms and conditions as apply to
13 insurers under part II of chapter 624. Expenses of all
14 examinations of a prepaid limited health service organization
15 may never exceed a maximum of \$20,000 for any 1-year period.

16 Section 1538. Section 636.043, Florida Statutes, is
17 amended to read:

18 636.043 Annual, quarterly, and miscellaneous
19 reports.--

20 (1) Each prepaid limited health service organization
21 must file with the office ~~department~~ annually, within 3 months
22 after the end of its fiscal year, a report verified by the
23 oath of at least two officers covering the preceding calendar
24 year. Any organization licensed prior to October 1, 1993,
25 shall not be required to file a financial statement, as
26 required by paragraph (2)(a), based on statutory accounting
27 principles until the first annual report for fiscal years
28 ending after December 31, 1994.

29 (2) Such report must be on forms prescribed by the
30 commission ~~department~~ and must include:

31

1 (a)1. A statutory financial statement of the
2 organization prepared in accordance with statutory accounting
3 principles, including its balance sheet, income statement, and
4 statement of changes in cash flow for the preceding year,
5 certified by an independent certified public accountant, or a
6 consolidated audited financial statement of its parent company
7 prepared on the basis of statutory accounting principles,
8 certified by an independent certified public accountant,
9 attached to which must be consolidating financial statements
10 of the parent company, including the prepaid limited health
11 service organization.

12 2. Any entity subject to this chapter may make written
13 application to the office ~~department~~ for approval to file
14 audited financial statements prepared in accordance with
15 generally accepted accounting principles in lieu of statutory
16 financial statements. The office ~~department~~ shall approve the
17 application if it finds it to be in the best interest of the
18 subscribers. An application for exemption is required each
19 year and must be filed with the office ~~department~~ at least 2
20 months prior to the end of the fiscal year for which the
21 exemption is being requested.

22 (b) A list of the names and residence addresses of all
23 persons responsible for the conduct of its affairs, together
24 with a disclosure of the extent and nature of any contracts or
25 arrangements between such persons and the prepaid limited
26 health service organization, including any possible conflicts
27 of interest.

28 (c) The number of prepaid limited health services
29 contracts, issued and outstanding, and the number of prepaid
30 limited health services contracts terminated.

31

1 (d) The number and amount of damage claims for medical
2 injury initiated against the prepaid limited health service
3 organization, and if known, any of the providers engaged by it
4 during the reporting year, broken down into claims with and
5 without formal legal process, and the disposition, if any, of
6 each such claim.

7 (e) An actuarial report certified by a qualified
8 independent actuary or qualified employee that:

9 1. The prepaid limited health service organization is
10 actuarially sound, which certification shall consider the
11 rates, benefits, and expenses of, and any other funds
12 available for, the payment of obligations of the organization.

13 2. The rates being charged or to be charged are
14 actuarially adequate to the end of the period for which rates
15 have been guaranteed.

16 3. Incurred but not reported claims and claims
17 reported but not fully paid have been adequately provided for.

18 (f) Such other information relating to the performance
19 of the prepaid limited health service organization as is
20 reasonably required by the commission or office ~~department~~.

21 (3) Every prepaid limited health service organization
22 which fails to file an annual report or quarterly report in
23 the form and within the time required by this section shall
24 forfeit up to \$500 for each day for the first 10 days during
25 which the neglect continues and shall forfeit up to \$1,000 for
26 each day after the first 10 days during which the neglect
27 continues; and, upon notice by the office ~~department~~ to that
28 effect, the organization's authority to enroll new subscribers
29 or to do business in this state ceases while such default
30 continues. The office ~~department~~ shall deposit all sums
31 collected by it under this section to the credit of the

1 Insurance ~~Commissioner's~~ Regulatory Trust Fund. The office
2 ~~department~~ may not collect more than \$50,000 for each report.

3 (4) Each authorized prepaid limited health service
4 organization must file a quarterly report for each calendar
5 quarter within 45 days after the end of the quarter. The
6 report shall contain:

7 (a) A financial statement prepared in accordance with
8 statutory accounting principles. Any entity licensed before
9 October 1, 1993, shall not be required to file a financial
10 statement based on statutory accounting principles until the
11 first quarterly filing after the entity files its annual
12 financial statement based on statutory accounting principles
13 as required by subsection (1).

14 (b) A listing of providers.

15 (c) Such other information relating to the performance
16 of the prepaid limited health service organization as is
17 reasonably required by the commission or office ~~department~~.

18 (5) The office ~~department~~ may require monthly reports
19 if the financial condition of the prepaid limited health
20 service organization has deteriorated from previous periods or
21 if the financial condition of the organization is such that it
22 may be hazardous to subscribers if not monitored more
23 frequently.

24 (6) Each authorized prepaid limited health service
25 organization shall retain an independent certified public
26 accountant, hereinafter referred to as "CPA," who agrees by
27 written contract with the prepaid limited health service
28 organization to comply with the provisions of this act. The
29 contract must state that:

30
31

1 (a) The CPA will provide to the prepaid limited health
2 service organization audited statutory financial statements
3 consistent with this act.

4 (b) Any determination by the CPA that the prepaid
5 limited health service organization does not meet minimum
6 surplus requirements as set forth in this act will be stated
7 by the CPA, in writing, in the audited financial statement.

8 (c) The completed workpapers and any written
9 communications between the CPA and the prepaid limited health
10 service organization relating to the audit of the prepaid
11 limited health service organization will be made available for
12 review on a visual-inspection-only basis by the office
13 ~~department~~ at the offices of the prepaid limited health
14 service organization, at the office ~~department~~, or at any
15 other reasonable place as mutually agreed between the office
16 ~~department~~ and the prepaid limited health service
17 organization. The CPA must retain for review the workpapers
18 and written communications for a period of not less than 6
19 years.

20 Section 1539. Subsection (2) of section 636.045,
21 Florida Statutes, is amended to read:

22 636.045 Minimum surplus requirements.--

23 (2) The office ~~department~~ may not issue a certificate
24 of authority unless the prepaid limited health service
25 organization has a minimum surplus in an amount of \$150,000 or
26 10 percent of liabilities, whichever is the greater amount.

27 Section 1540. Subsections (1) and (2) of section
28 636.046, Florida Statutes, are amended to read:

29 636.046 Insolvency protection.--

30 (1) Except as required in subsection (2), each prepaid
31 limited health service organization must deposit with the

1 department cash or securities of the type eligible under s.
2 641.35 which must have at all times a market value in the
3 amount set forth in this subsection. The amount of the deposit
4 shall be reviewed annually or more often as the office
5 ~~department~~ deems necessary. The market value of the deposit
6 must be \$50,000.

7 (2)(a) If securities or assets deposited by a prepaid
8 limited health service organization under this act are subject
9 to material fluctuations in market value, the office
10 ~~department~~ may in its discretion require the organization to
11 deposit and maintain on deposit additional securities or
12 assets in an amount as may be reasonably necessary to assure
13 that the deposit will at all times have a market value of not
14 less than the amount specified under this section.

15 (b) If for any reason the market value of assets and
16 securities of a prepaid limited health service organization
17 held on deposit under this act falls below the amount
18 required, the organization must promptly deposit other or
19 additional assets or securities eligible for deposit
20 sufficient to cure the deficiency. If the prepaid limited
21 health service organization has failed to cure the deficiency
22 within 30 days after receipt of notice by certified mail from
23 the office ~~department~~, the office ~~department~~ may revoke the
24 certificate of authority of the prepaid limited health service
25 organization.

26 (c) A prepaid limited health service organization may,
27 at its option, deposit assets or securities in an amount
28 exceeding its deposit required or otherwise permitted under
29 this act for the purpose of absorbing fluctuations in the
30 value of securities and assets deposited and to facilitate the
31 exchange and substitution of securities and assets. During

1 the solvency of the prepaid limited health service
2 organization any excess must be released to the organization
3 upon its request. During the insolvency of the prepaid
4 limited health service organization, any excess deposit may be
5 released only as provided in s. 625.62.

6 Section 1541. Section 636.047, Florida Statutes, is
7 amended to read:

8 636.047 Officers' and employees' fidelity bond.--

9 (1) A prepaid limited health service organization must
10 maintain in force a fidelity bond in its own name on its
11 officers and employees, in an amount not less than \$50,000 or
12 in any other amount prescribed by the commission ~~department~~.
13 Except as otherwise provided by this subsection, the bond must
14 be issued by an insurance company that is licensed to do
15 business in this state.

16 (2) In lieu of the bond specified in subsection (1), a
17 prepaid limited health service organization may deposit with
18 the department cash or securities or other investments of the
19 types set forth in s. 636.042. Such a deposit must be
20 maintained in joint custody with the department ~~commissioner~~
21 in the amount and subject to the same conditions required for
22 a bond under this subsection.

23 Section 1542. Section 636.048, Florida Statutes, is
24 amended to read:

25 636.048 Suspension or revocation of certificate of
26 authority; suspension of enrollment of new subscribers; terms
27 of suspension.--

28 (1) The office ~~department~~ may suspend the authority of
29 a prepaid limited health service organization to enroll new
30 subscribers or revoke any certificate issued to a prepaid
31 limited health service organization or order compliance within

1 30 days, if it finds that any of the following conditions
2 exist:

3 (a) The organization is not operating in compliance
4 with this act.

5 (b) The plan is no longer actuarially sound or the
6 organization does not have the minimum surplus as required by
7 this act.

8 (c) The organization has advertised, merchandised, or
9 attempted to merchandise its services in such a manner as to
10 misrepresent its services or capacity for service or has
11 engaged in deceptive, misleading, or unfair practices with
12 respect to advertising or merchandising.

13 (d) The organization is insolvent.

14 (e) The prepaid limited health service organization is
15 operating significantly in contravention of its basic
16 organizational document or in a manner contrary to that
17 described in and reasonably inferred from any other
18 information submitted pursuant to ss. 636.008 and 636.009,
19 unless amendments to such submissions have been filed with and
20 approved by the office ~~department~~.

21 (f) The prepaid limited health service organization is
22 unable to fulfill its obligations to furnish limited health
23 services.

24 (g) The prepaid limited health service organization
25 has no subscribers 12 months after the issuance of the
26 certificate of authority.

27 (h) The continued operation of the prepaid limited
28 health service organization would be hazardous to its
29 enrollees.

30 (2) If the office ~~department~~ has cause to believe that
31 grounds for the suspension or revocation of a certificate of

1 authority exist, it shall notify the prepaid limited health
2 service organization in writing specifically stating the
3 grounds for suspension or revocation and shall pursue a
4 hearing on the matter in accordance with the provisions of
5 chapter 120.

6 (3) When the certificate of authority of a prepaid
7 limited health service organization is surrendered or revoked,
8 such organization must proceed, immediately following the
9 effective date of the order of revocation, to wind up its
10 affairs transacted under the certificate of authority. It may
11 not engage in any further advertising, solicitation, or
12 renewal of contracts. The office ~~department~~ may, by written
13 order, permit such further operation of the organization as it
14 finds to be in the best interest of enrollees, so that
15 enrollees will be afforded the greatest practical opportunity
16 to obtain continuing limited health services.

17 (4) The office ~~department~~ shall, in its order
18 suspending the authority of a prepaid limited health service
19 organization to enroll new subscribers, specify the period
20 during which the suspension is to be in effect and the
21 conditions, if any, which must be met by the prepaid limited
22 health service organization prior to reinstatement of its
23 authority to enroll new subscribers. The order of suspension
24 is subject to rescission or modification by further order of
25 the office ~~department~~ prior to the expiration of the
26 suspension period. Reinstatement may not be made unless
27 requested by the prepaid limited health service organization;
28 however, the office ~~department~~ may not grant reinstatement if
29 it finds that the circumstances for which the suspension
30 occurred still exist or are likely to recur.

31

1 Section 1543. Section 636.049, Florida Statutes, is
2 amended to read:

3 636.049 Administrative penalty in lieu of suspension
4 or revocation.--In lieu of suspending or revoking a
5 certificate of authority, or when no penalty is specifically
6 provided, whenever any prepaid limited health service
7 organization or other person, corporation, partnership, or
8 entity subject to this act has been found to have violated any
9 provision of this act, the office or department, within its
10 respective regulatory jurisdiction, may:

11 (1) Issue and cause to be served upon the
12 organization, person, or entity charged with the violation a
13 copy of such findings and an order requiring such
14 organization, person, or entity to cease and desist from
15 engaging in the act or practice which constitutes the
16 violation.

17 (2) Impose a monetary penalty of not less than \$100
18 for each violation, but not to exceed an aggregate penalty of
19 \$100,000.

20 Section 1544. Section 636.052, Florida Statutes, is
21 amended to read:

22 636.052 Civil remedy.--In any civil action brought to
23 enforce the terms and conditions of a prepaid limited health
24 service organization contract, the prevailing party is
25 entitled to recover reasonable attorney's fees and court
26 costs. This section does not authorize a civil action against
27 the office or department, ~~its employees, or the commissioner~~
28 or against the Agency for Health Care Administration, its
29 employees, or the director of that agency.

30 Section 1545. Section 636.053, Florida Statutes, is
31 amended to read:

1 636.053 Injunction.--In addition to the penalties and
2 other enforcement provisions of this act, the office and
3 department, subject to their respective jurisdiction, are is
4 vested with the power to seek both temporary and permanent
5 injunctive relief when:

6 (1) A prepaid limited health service organization is
7 being operated by any person or entity without a subsisting
8 certificate of authority.

9 (2) Any person, entity, or prepaid limited health
10 service organization has engaged in any activity prohibited by
11 this act or any rule adopted pursuant thereto.

12 (3) Any prepaid limited health service organization,
13 person, or entity is renewing, issuing, or delivering a
14 prepaid limited health services contract without a subsisting
15 certificate of authority.

16
17 The office's or department's authority to seek injunctive
18 relief is not conditioned on having conducted any proceeding
19 pursuant to chapter 120.

20 Section 1546. Section 636.055, Florida Statutes, is
21 amended to read:

22 636.055 Levy upon deposit limited.--No judgment
23 creditor or other claimant, other than the office or
24 department, of a prepaid limited health service organization
25 shall have the right to levy upon any of the assets or
26 securities held in this state as a deposit under s. 636.046.

27 Section 1547. Subsection (1) of section 636.056,
28 Florida Statutes, is amended to read:

29 636.056 Rehabilitation, conservation, liquidation, or
30 reorganization; exclusive methods of remedy.--

31

1 (1) A delinquency proceeding under part I of chapter
2 631 or supervision ~~by the department~~ pursuant to ss.
3 624.80-624.87 constitute the sole and exclusive means of
4 liquidating, reorganizing, rehabilitating, or conserving a
5 prepaid limited health service organization.

6 Section 1548. Section 636.057, Florida Statutes, is
7 amended to read:

8 636.057 Fees.--Every prepaid limited health service
9 organization subject to this act must pay to the office
10 ~~department~~ the following fees:

11 (1) For filing an application for a certificate of
12 authority or amendment thereto: \$500.

13 (2) For filing each annual report: \$200.

14 (3) For each renewal of certificate of authority:
15 \$500.

16 Section 1549. Section 636.058, Florida Statutes, is
17 amended to read:

18 636.058 Investigative power of department and
19 office.--The department and office, within their respective
20 regulatory jurisdictions, have ~~has~~ the power to examine and
21 investigate the affairs of every person, entity, or prepaid
22 limited health service organization in order to determine
23 whether the person, entity, or prepaid limited health service
24 organization is operating in accordance with the provisions of
25 this act or has been or is engaged in any unfair method of
26 competition or in any unfair or deceptive act or practice
27 prohibited by s. 641.3903. The office ~~department~~ also has the
28 powers enumerated in ss. 641.3907, 641.3909, and 641.3913.

29 Section 1550. Section 636.062, Florida Statutes, is
30 amended to read:

31

1 636.062 Appeals from the office or department.--Any
2 person, entity, or prepaid limited health service organization
3 subject to an order of the office or department under s.
4 641.3909 or s. 641.3913 may obtain a review of the order by
5 filing an appeal therefrom in accordance with the provisions
6 and procedures for appeal under s. 120.68.

7 Section 1551. Section 636.063, Florida Statutes, is
8 amended to read:

9 636.063 Civil liability.--The provisions of this act
10 are cumulative to rights under the general civil and common
11 law, and no action of the office or department abrogates such
12 rights to damage or other relief in any court.

13 Section 1552. Subsection (3) of section 636.064,
14 Florida Statutes, is amended to read:

15 636.064 Confidentiality.--

16 (3) Any information obtained or produced by the
17 department or office pursuant to an examination or
18 investigation is confidential and exempt from the provisions
19 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
20 until the examination report has been filed pursuant to s.
21 624.319 or until such investigation is completed or ceases to
22 be active. For purposes of this subsection, an investigation
23 is considered "active" while such investigation is being
24 conducted by the department or office with a reasonable, good
25 faith belief that it may lead to the filing of administrative,
26 civil, or criminal proceedings. An investigation does not
27 cease to be active if the department or office is proceeding
28 with reasonable dispatch and there is a good faith belief that
29 action may be initiated by the department or office or other
30 administrative or law enforcement agency. Except for active
31 criminal intelligence or criminal investigative information,

1 as defined in s. 119.011; personal financial and medical
2 information; information that would defame or cause
3 unwarranted damage to the good name or reputation of an
4 individual; information that would impair the safety and
5 financial soundness of the licensee or affiliated party;
6 proprietary financial information; or information that would
7 reveal the identity of a confidential source, all information
8 obtained by the department or office pursuant to an
9 examination or investigation shall be available after the
10 examination report has been filed or the investigation is
11 completed or ceases to be active.

12 Section 1553. Section 636.067, Florida Statutes, is
13 amended to read:

14 636.067 Rules.--The commission may ~~department has~~
15 ~~authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54
16 to implement the provisions of this act. A violation of any
17 such rule subjects the violator to the provisions of s.
18 636.048.

19 Section 1554. Section 641.185, Florida Statutes, is
20 amended to read:

21 641.185 Health maintenance organization subscriber
22 protections.--

23 (1) With respect to the provisions of this part and
24 part III, the principles expressed in the following statements
25 shall serve as standards to be followed by the commission, the
26 office, the department,~~of Insurance~~ and the Agency for Health
27 Care Administration in exercising their powers and duties, in
28 exercising administrative discretion, in administrative
29 interpretations of the law, in enforcing its provisions, and
30 in adopting rules:

31

1 (a) A health maintenance organization shall ensure
2 that the health care services provided to its subscribers
3 shall be rendered under reasonable standards of quality of
4 care which are at a minimum consistent with the prevailing
5 standards of medical practice in the community pursuant to ss.
6 641.495(1) and 641.51.

7 (b) A health maintenance organization subscriber
8 should receive quality health care from a broad panel of
9 providers, including referrals, preventive care pursuant to s.
10 641.402(1), emergency screening and services pursuant to ss.
11 641.31(12) and 641.513, and second opinions pursuant to s.
12 641.51.

13 (c) A health maintenance organization subscriber
14 should receive assurance that the health maintenance
15 organization has been independently accredited by a national
16 review organization pursuant to s. 641.512, and is financially
17 secure as determined by the state pursuant to ss. 641.221,
18 641.225, and 641.228.

19 (d) A health maintenance organization subscriber
20 should receive continuity of health care, even after the
21 provider is no longer with the health maintenance organization
22 pursuant to s. 641.51(8).

23 (e) A health maintenance organization subscriber
24 should receive timely, concise information regarding the
25 health maintenance organization's reimbursement to providers
26 and services pursuant to ss. 641.31 and 641.31015 and should
27 receive prompt payment from the organization pursuant to s.
28 641.3155.

29 (f) A health maintenance organization subscriber
30 should receive the flexibility to transfer to another Florida
31 health maintenance organization, regardless of health status,

1 pursuant to ss. 641.228, 641.3104, 641.3107, 641.3111,
2 641.3921, and 641.3922.

3 (g) A health maintenance organization subscriber
4 should be eligible for coverage without discrimination against
5 individual participants and beneficiaries of group plans based
6 on health status pursuant to s. 641.31073.

7 (h) A health maintenance organization that issues a
8 group health contract must: provide coverage for preexisting
9 conditions pursuant to s. 641.31071; guarantee renewability of
10 coverage pursuant to s. 641.31074; provide notice of
11 cancellation pursuant to s. 641.3108; provide extension of
12 benefits pursuant to s. 641.3111; provide for conversion on
13 termination of eligibility pursuant to s. 641.3921; and
14 provide for conversion contracts and conditions pursuant to s.
15 641.3922.

16 (i) A health maintenance organization subscriber
17 should receive timely and, if necessary, urgent grievances and
18 appeals within the health maintenance organization pursuant to
19 ss. 641.228, 641.31(5), 641.47, and 641.511.

20 (j) A health maintenance organization should receive
21 timely and, if necessary, urgent review by an independent
22 state external review organization for unresolved grievances
23 and appeals pursuant to s. 408.7056.

24 (k) A health maintenance organization subscriber shall
25 be given written notice at least 30 days in advance of a rate
26 change pursuant to s. 641.31(3)(b). In the case of a group
27 member, there may be a contractual agreement with the health
28 maintenance organization to have the employer provide the
29 required notice to the individual members of the group
30 pursuant to s. 641.31(3)(b).

31

1 (1) A health maintenance organization subscriber shall
2 be given a copy of the applicable health maintenance contract,
3 certificate, or member handbook specifying: all the
4 provisions, disclosure, and limitations required pursuant to
5 s. 641.31(1) and (4); the covered services, including those
6 services, medical conditions, and provider types specified in
7 ss. 641.31, 641.31094, 641.31095, 641.31096, 641.51(11), and
8 641.513; and where and in what manner services may be obtained
9 pursuant to s. 641.31(4).

10 (2) This section shall not be construed as creating a
11 civil cause of action by any subscriber or provider against
12 any health maintenance organization.

13 Section 1555. Section 641.19, Florida Statutes, is
14 amended to read:

15 641.19 Definitions.--As used in this part, the term:

16 (1) "Affiliate" means any entity that ~~which~~ exercises
17 control over or is controlled by the health maintenance
18 organization, directly or indirectly, through:

19 (a) Equity ownership of voting securities;

20 (b) Common managerial control; or

21 (c) Collusive participation by the management of the
22 health maintenance organization and affiliate in the
23 management of the health maintenance organization or the
24 affiliate.

25 (2) "Agency" means the Agency for Health Care
26 Administration.

27 (3) "Capitation" means the fixed amount paid by an HMO
28 to a health care provider under contract with the health
29 maintenance organization in exchange for the rendering of
30 covered medical services.

31

1 (4) "Comprehensive health care services" means
2 services, medical equipment, and supplies furnished by a
3 provider, which may include, but which are not limited to,
4 medical, surgical, and dental care; psychological, optometric,
5 optic, chiropractic, podiatric, nursing, physical therapy, and
6 pharmaceutical services; health education, preventive medical,
7 rehabilitative, and home health services; inpatient and
8 outpatient hospital services; extended care; nursing home
9 care; convalescent institutional care; technical and
10 professional clinical pathology laboratory services;
11 laboratory and ambulance services; appliances, drugs,
12 medicines, and supplies; and any other care, service, or
13 treatment of disease, or correction of defects for human
14 beings.

15 (5) "Copayment" means a specific dollar amount, except
16 as otherwise provided for by statute, that the subscriber must
17 pay upon receipt of covered health care services. Copayments
18 may not be established in an amount that will prevent a person
19 from receiving a covered service or benefit as specified in
20 the subscriber contract approved by the office ~~department~~.

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

22 (6)~~(7)~~ "Emergency medical condition" means:

23 (a) A medical condition manifesting itself by acute
24 symptoms of sufficient severity, which may include severe pain
25 or other acute symptoms, such that the absence of immediate
26 medical attention could reasonably be expected to result in
27 any of the following:

- 28 1. Serious jeopardy to the health of a patient,
29 including a pregnant woman or a fetus.
- 30 2. Serious impairment to bodily functions.
- 31 3. Serious dysfunction of any bodily organ or part.

1 (b) With respect to a pregnant woman:

2 1. That there is inadequate time to effect safe
3 transfer to another hospital prior to delivery;

4 2. That a transfer may pose a threat to the health and
5 safety of the patient or fetus; or

6 3. That there is evidence of the onset and persistence
7 of uterine contractions or rupture of the membranes.

8 (7)~~(8)~~ "Emergency services and care" means medical
9 screening, examination, and evaluation by a physician, or, to
10 the extent permitted by applicable law, by other appropriate
11 personnel under the supervision of a physician, to determine
12 if an emergency medical condition exists and, if it does, the
13 care, treatment, or surgery for a covered service by a
14 physician necessary to relieve or eliminate the emergency
15 medical condition, within the service capability of a
16 hospital.

17 (8)~~(9)~~ "Entity" means any legal entity with continuing
18 existence, including, but not limited to, a corporation,
19 association, trust, or partnership.

20 (9)~~(10)~~ "Geographic area" means the county or
21 counties, or any portion of a county or counties, within which
22 the health maintenance organization provides or arranges for
23 comprehensive health care services to be available to its
24 subscribers.

25 (10)~~(11)~~ "Guaranteeing organization" is an
26 organization that ~~which~~ is domiciled in the United States;
27 that ~~which~~ has authorized service of process against it; and
28 that ~~which~~ has appointed the Chief Financial Officer ~~Insurance~~
29 ~~Commissioner and Treasurer~~ as its agent for service of process
30 issuing upon any cause of action arising in this state, based
31 upon any guarantee entered into under this part.

1 (11)~~(12)~~ "Health maintenance contract" means any
2 contract entered into by a health maintenance organization
3 with a subscriber or group of subscribers to provide
4 comprehensive health care services in exchange for a prepaid
5 per capita or prepaid aggregate fixed sum.

6 (12)~~(13)~~ "Health maintenance organization" means any
7 organization authorized under this part which:

8 (a) Provides emergency care, inpatient hospital
9 services, physician care including care provided by physicians
10 licensed under chapters 458, 459, 460, and 461, ambulatory
11 diagnostic treatment, and preventive health care services;

12 (b) Provides, either directly or through arrangements
13 with other persons, health care services to persons enrolled
14 with such organization, on a prepaid per capita or prepaid
15 aggregate fixed-sum basis;

16 (c) Provides, either directly or through arrangements
17 with other persons, comprehensive health care services which
18 subscribers are entitled to receive pursuant to a contract;

19 (d) Provides physician services, by physicians
20 licensed under chapters 458, 459, 460, and 461, directly
21 through physicians who are either employees or partners of
22 such organization or under arrangements with a physician or
23 any group of physicians; and

24 (e) If offering services through a managed care
25 system, then the managed care system must be a system in which
26 a primary physician licensed under chapter 458 or chapter 459
27 and chapters 460 and 461 is designated for each subscriber
28 upon request of a subscriber requesting service by a physician
29 licensed under any of those chapters, and is responsible for
30 coordinating the health care of the subscriber of the
31 respectively requested service and for referring the

1 subscriber to other providers of the same discipline when
2 necessary. Each female subscriber may select as her primary
3 physician an obstetrician/gynecologist who has agreed to serve
4 as a primary physician and is in the health maintenance
5 organization's provider network.

6 (13)~~(14)~~ "Insolvent" or "insolvency" means that all
7 the statutory assets of the health maintenance organization,
8 if made immediately available, would not be sufficient to
9 discharge all of its liabilities or that the health
10 maintenance organization is unable to pay its debts as they
11 become due in the usual course of business. In the event that
12 all the assets of the health maintenance organization, if made
13 immediately available, would not be sufficient to discharge
14 all of its liabilities, but the organization has a written
15 guarantee of the type and subject to the same provisions as
16 outlined in s. 641.225, the organization shall not be
17 considered insolvent unless it is unable to pay its debts as
18 they become due in the usual course of business.

19 (14)~~(15)~~ "Provider" means any physician, hospital, or
20 other institution, organization, or person that furnishes
21 health care services and is licensed or otherwise authorized
22 to practice in the state.

23 (15)~~(16)~~ "Reporting period" means the annual calendar
24 year accounting period or any part thereof.

25 (16)~~(17)~~ "Statutory accounting principles" means
26 accounting principles as defined in the National Association
27 of Insurance Commissioners Accounting Practices and Procedures
28 Manual as of 2002 ~~effective January 1, 2001~~.

29 (17)~~(18)~~ "Subscriber" means an entity or individual
30 who has contracted, or on whose behalf a contract has been
31 entered into, with a health maintenance organization for

1 health care services or other persons who also receive health
2 care services as a result of the contract.

3 (18)~~(19)~~ "Surplus" means total statutory assets in
4 excess of total liabilities, except that assets pledged to
5 secure debts not reflected on the books of the health
6 maintenance organization shall not be included in surplus.
7 Surplus includes capital stock, capital in excess of par,
8 other contributed capital, retained earnings, and surplus
9 notes.

10 (19)~~(20)~~ "Uncovered expenditures" means the cost of
11 health care services that are covered by a health maintenance
12 organization, for which a subscriber would also be liable in
13 the event of the insolvency of the organization.

14 (20)~~(21)~~ "Health care risk contract" means a contract
15 under which an individual or entity receives consideration or
16 other compensation in an amount greater than 1 percent of the
17 health maintenance organization's annual gross written premium
18 in exchange for providing to the health maintenance
19 organization a provider network or other services, which may
20 include administrative services. The 1-percent threshold shall
21 be calculated on a contract-by-contract basis for each such
22 individual or entity and not in the aggregate for all health
23 care risk contracts.

24 Section 1556. Section 641.2017, Florida Statutes, is
25 amended to read:

26 641.2017 Insurance business not authorized.--Nothing
27 in the Florida Insurance Code or this part shall be deemed to
28 authorize any health maintenance organization to transact any
29 insurance business other than that of health maintenance
30 organization type insurance or otherwise to engage in any
31 other type of insurance unless it is authorized under a

1 certificate of authority issued by the office ~~department~~ under
2 the provisions of the Florida Insurance Code. However, a
3 health maintenance organization may by contract:

4 (1) Enter into arrangements whereby the expected cost
5 of health care services provided directly or through
6 arrangements with other persons by the health maintenance
7 organization is self-funded by the person contracting with the
8 health maintenance organization, but the health maintenance
9 organization assumes the risks that costs will exceed that
10 amount on a prepaid per capita or prepaid aggregate fixed-sum
11 basis; or

12 (2) Enter into arrangements whereby the cost of health
13 care services provided directly or through arrangements with
14 other persons by the health maintenance organization is
15 self-funded by the person contracting with the health
16 maintenance organization.

17 Section 1557. Subsections (1) and (2) of section
18 641.2018, Florida Statutes, are amended to read:

19 641.2018 Limited coverage for home health care
20 authorized.--

21 (1) Notwithstanding other provisions of this chapter,
22 a health maintenance organization may issue a contract that
23 limits coverage to home health care services only. The
24 organization and the contract shall be subject to all of the
25 requirements of this part that do not require or otherwise
26 apply to specific benefits other than home care services. To
27 this extent, all of the requirements of this part apply to any
28 organization or contract that limits coverage to home care
29 services, except the requirements for providing comprehensive
30 health care services as provided in ss. 641.19(4), (11), and

31

1 (12), ~~and (13)~~, and 641.31(1), except ss. 641.31(9), (12),
2 (17), (18), (19), (20), (21), and (24) and 641.31095.

3 (2) Notwithstanding the other provisions of this
4 chapter, a health maintenance organization may apply for and
5 obtain a certificate of authority from the office ~~department~~
6 pursuant to this part and a health care provider certificate
7 pursuant to part III, which certificate limits the authority
8 of the organization to the issuance of contracts that limit
9 coverage to home health care services pursuant to subsection
10 (1). In addition to all applicable requirements of this part,
11 as specified in subsection (1), all of the requirements of
12 part III apply to an organization applying for such a limited
13 certificate, except to the extent that such requirements
14 directly conflict with the limited nature of the coverage
15 provided.

16 Section 1558. Subsections (1) and (2) of section
17 641.21, Florida Statutes, are amended to read:

18 641.21 Application for certificate.--

19 (1) Before any entity may operate a health maintenance
20 organization, it shall obtain a certificate of authority from
21 the office ~~department~~. The office ~~department~~ shall accept and
22 shall begin its review of an application for a certificate of
23 authority anytime after an organization has filed an
24 application for a health care provider certificate pursuant to
25 part III of this chapter. However, the office may ~~department~~
26 ~~shall~~ not issue a certificate of authority to any applicant
27 which does not possess a valid health care provider
28 certificate issued by the agency. Each application for a
29 certificate shall be on such form as the commission ~~department~~
30 shall prescribe, shall be verified by the oath of two officers
31

1 of the corporation and properly notarized, and shall be
2 accompanied by the following:

3 (a) A copy of the articles of incorporation and all
4 amendments thereto;

5 (b) A copy of the bylaws, rules and regulations, or
6 similar form of document, if any, regulating the conduct of
7 the affairs of the applicant;

8 (c) A list of the names, addresses, and official
9 capacities with the organization of the persons who are to be
10 responsible for the conduct of the affairs of the health
11 maintenance organization, including all officers, directors,
12 and owners of in excess of 5 percent of the common stock of
13 the corporation. Such persons shall fully disclose to the
14 office ~~department~~ and the directors of the health maintenance
15 organization the extent and nature of any contracts or
16 arrangements between them and the health maintenance
17 organization, including any possible conflicts of interest;

18 (d) A complete biographical statement on forms
19 prescribed by the commission ~~department~~, and an independent
20 investigation report and fingerprints obtained pursuant to
21 chapter 624, of all of the individuals referred to in
22 paragraph (c);

23 (e) A statement generally describing the health
24 maintenance organization, its operations, and its grievance
25 procedures;

26 (f) Forms of all health maintenance contracts,
27 certificates, and member handbooks the applicant proposes to
28 offer the subscribers, showing the benefits to which they are
29 entitled, together with a table of the rates charged, or
30 proposed to be charged, for each form of such contract. A
31 certified actuary shall:

1 1. Certify that the rates are neither inadequate nor
2 excessive nor unfairly discriminatory;

3 2. Certify that the rates are appropriate for the
4 classes of risks for which they have been computed; and

5 3. File an adequate description of the rating
6 methodology showing that such methodology follows consistent
7 and equitable actuarial principles;

8 (g) A statement describing with reasonable certainty
9 the geographic area or areas to be served by the health
10 maintenance organization;

11 (h) As to any applicant whose business plan indicates
12 that it will receive Medicaid funds, a list of all contracts
13 and agreements and any information relative to any payment or
14 agreement to pay, directly or indirectly, a consultant fee, a
15 broker fee, a commission, or other fee or charge related in
16 any way to the application for a certificate of authority or
17 the issuance of a certificate of authority, including, but not
18 limited to, the name of the person or entity paying the fee;
19 the name of the person or entity receiving the fee; the date
20 of payment; and a brief description of the work performed.
21 The contract, agreement, and related information shall, if
22 requested, be provided to the office ~~department~~.

23 (i) An audited financial statement prepared on the
24 basis of statutory accounting principles and certified by an
25 independent certified public accountant, except that surplus
26 notes acceptable to the office ~~department~~ and meeting the
27 requirements of this act shall be included in the calculation
28 of surplus; and

29 (j) Such additional reasonable data, financial
30 statements, and other pertinent information as the
31 commissioner or office requires ~~department may require~~ with

1 respect to the determination that the applicant can provide
2 the services to be offered.

3 (2) After submission of the application for a
4 certificate of authority, the entity may engage in initial
5 group marketing activities solely with respect to employers,
6 representatives of labor unions, professional associations,
7 and trade associations, so long as it does not enter into,
8 issue, deliver, or otherwise effectuate health maintenance
9 contracts, effectuate or bind coverage or benefits, provide
10 health care services, or collect premiums or charges until it
11 has been issued a certificate of authority by the office
12 ~~department~~. Any such activities, oral or written, shall
13 include a statement that the entity does not possess a valid
14 certificate of authority and cannot enter into health
15 maintenance contracts until such time as it has been issued a
16 certificate of authority by the office ~~department~~.

17 Section 1559. Section 641.215, Florida Statutes, is
18 amended to read:

19 641.215 Conditions precedent to issuance or
20 maintenance of certificate of authority; effect of bankruptcy
21 proceedings.--

22 (1) As a condition precedent to the issuance or
23 maintenance of a certificate of authority, a health
24 maintenance organization insurer must file or have on file
25 with the office ~~department~~:

26 (a) An acknowledgment that a delinquency proceeding
27 pursuant to part I of chapter 631, or supervision by the
28 department pursuant to ss. 624.80-624.87, constitutes the sole
29 and exclusive method for the liquidation, rehabilitation,
30 reorganization, or conservation of a health maintenance
31 organization.

1 (b) A waiver of any right to file or be subject to a
2 bankruptcy proceeding.

3 (2) The commencement of a bankruptcy proceeding either
4 by or against a health maintenance organization shall, by
5 operation of law:

6 (a) Terminate the health maintenance organization's
7 certificate of authority.

8 (b) Vest in the office ~~department~~ for the use and
9 benefit of the subscribers of the health maintenance
10 organization the title to any deposits of the insurer held by
11 the department.

12
13 If the proceeding is initiated by a party other than the
14 health maintenance organization, the operation of subsection
15 (2) shall be stayed for a period of 60 days following the date
16 of commencement of the proceeding.

17 Section 1560. Section 641.22, Florida Statutes, is
18 amended to read:

19 641.22 Issuance of certificate of authority.--The
20 office ~~department~~ shall issue a certificate of authority to
21 any entity filing a completed application in conformity with
22 s. 641.21, upon payment of the prescribed fees and upon the
23 office's ~~department's~~ being satisfied that:

24 (1) As a condition precedent to the issuance of any
25 certificate, the entity has obtained a health care provider
26 certificate from the Agency for Health Care Administration
27 pursuant to part III of this chapter.

28 (2) The health maintenance organization is actuarially
29 sound.

30 (3) The entity has met the applicable requirements
31 specified in s. 641.225.

1 (4) The procedures for offering comprehensive health
2 care services and offering and terminating contracts to
3 subscribers will not unfairly discriminate on the basis of
4 age, sex, race, health, or economic status. However, this
5 section does not prohibit reasonable underwriting
6 classifications for the purposes of establishing contract
7 rates, nor does it prohibit experience rating.

8 (5) The entity furnishes evidence of adequate
9 insurance coverage or an adequate plan for self-insurance to
10 respond to claims for injuries arising out of the furnishing
11 of comprehensive health care.

12 (6) The ownership, control, and management of the
13 entity is competent and trustworthy and possesses managerial
14 experience that would make the proposed health maintenance
15 organization operation beneficial to the subscribers. The
16 office ~~department~~ shall not grant or continue authority to
17 transact the business of a health maintenance organization in
18 this state at any time during which the office ~~department~~ has
19 good reason to believe that:

20 (a) The ownership, control, or management of the
21 organization includes any person:

- 22 1. Who is incompetent or untrustworthy;
- 23 2. Who is so lacking in health maintenance
24 organization expertise as to make the operation of the health
25 maintenance organization hazardous to potential and existing
26 subscribers;
- 27 3. Who is so lacking in health maintenance
28 organization experience, ability, and standing as to
29 jeopardize the reasonable promise of successful operation;
- 30 4. Who is affiliated, directly or indirectly, through
31 ownership, control, reinsurance transactions, or other

1 business relations, with any person whose business operations
2 are or have been marked by business practices or conduct that
3 is to the detriment of the public, stockholders, investors, or
4 creditors; or

5 5. Whose business operations are or have been marked
6 by business practices or conduct that is to the detriment of
7 the public, stockholders, investors, or creditors;

8 (b) Any person, including any stock subscriber,
9 stockholder, or incorporator, who exercises or has the ability
10 to exercise effective control of the organization, or who
11 influences or has the ability to influence the transaction of
12 the business of the health maintenance organization, does not
13 possess the financial standing and business experience for the
14 successful operation of the health maintenance organization;

15 (c) Any person, including any stock subscriber,
16 stockholder, or incorporator, who exercises or has the ability
17 to exercise effective control of the organization, or who
18 influences or has the ability to influence the transaction of
19 the business of the health maintenance organization, has been
20 found guilty of, or has pled guilty or no contest to, any
21 felony or crime punishable by imprisonment of 1 year or more
22 under the laws of the United States or any state thereof or
23 under the laws of any other country, which involves moral
24 turpitude, without regard to whether a judgment or conviction
25 has been entered by the court having jurisdiction in such
26 case. However, in the case of a health maintenance
27 organization operating under a subsisting certificate of
28 authority, the health maintenance organization shall remove
29 any such person immediately upon discovery of the conditions
30 set forth in this paragraph when applicable to such person or
31 under the order of the office ~~department~~, and the failure to

1 so act by the organization is grounds for revocation or
2 suspension of the health maintenance organization's
3 certificate of authority; or

4 (d) Any person, including any stock subscriber,
5 stockholder, or incorporator, who exercises or has the ability
6 to exercise effective control of the organization, or who
7 influences or has the ability to influence the transaction of
8 the business of the health maintenance organization, is now or
9 was in the past affiliated, directly or indirectly, through
10 ownership interest of 10 percent or more, control, or
11 reinsurance transactions, with any business, corporation, or
12 other entity that has been found guilty of or has pleaded
13 guilty or nolo contendere to any felony or crime punishable by
14 imprisonment for 1 year or more under the laws of the United
15 States, any state, or any other country, regardless of
16 adjudication. In the case of a health maintenance organization
17 operating under a subsisting certificate of authority, the
18 health maintenance organization shall immediately remove such
19 person or immediately notify the office ~~department~~ of such
20 person upon discovery of the conditions set forth in this
21 paragraph, either when applicable to such person or upon order
22 of the office ~~department~~. The failure to remove such person,
23 provide such notice, or comply with such order constitutes
24 grounds for suspension or revocation of the health maintenance
25 organization's certificate of authority.

26 (7) The entity has a blanket fidelity bond in the
27 amount of \$100,000, issued by a licensed insurance carrier in
28 this state, that will reimburse the entity in the event that
29 anyone handling the funds of the entity either misappropriates
30 or absconds with the funds. All employees handling the funds
31 shall be covered by the blanket fidelity bond. An agent

1 licensed under the provisions of the Florida Insurance Code
2 may either directly or indirectly represent the health
3 maintenance organization in the solicitation, negotiation,
4 effectuation, procurement, receipt, delivery, or forwarding of
5 any health maintenance organization subscriber's contract or
6 collect or forward any consideration paid by the subscriber to
7 the health maintenance organization; and the licensed agent
8 shall not be required to post the bond required by this
9 subsection.

10 (8) The entity has filed with the office ~~department~~,
11 and obtained approval from the office ~~department~~ of, all
12 reinsurance contracts as provided in s. 641.285.

13 (9) The health maintenance organization has a
14 grievance procedure that will facilitate the resolution of
15 subscriber grievances and that includes both formal and
16 informal steps available within the organization.

17 Section 1561. Subsections (2) and (4), and paragraphs
18 (b) and (d) of subsection (6) of section 641.225, Florida
19 Statutes, are amended to read:

20 641.225 Surplus requirements.--

21 (2) The office ~~department~~ shall not issue a
22 certificate of authority, except as provided in subsection
23 (3), unless the health maintenance organization has a minimum
24 surplus in an amount which is the greater of:

25 (a) Ten percent of their total liabilities based on
26 their startup projection as set forth in this part;

27 (b) Two percent of their total projected premiums
28 based on their startup projection as set forth in this part;
29 or

30 (c) \$1,500,000, plus all startup losses, excluding
31 profits, projected to be incurred on their startup projection

1 until the projection reflects statutory net profits for 12
2 consecutive months.

3 (4) The commission ~~department~~ may adopt rules to set
4 uniform standards and criteria for the early warning that the
5 continued operation of any health maintenance organization
6 might be hazardous to its subscribers, creditors, or the
7 general public, and to set standards for evaluating the
8 financial condition of any health maintenance organization.

9 (6) In lieu of having any minimum surplus, the health
10 maintenance organization may provide a written guarantee to
11 assure payment of covered subscriber claims and all other
12 liabilities of the health maintenance organization, provided
13 that the written guarantee is made by a guaranteeing
14 organization which:

15 (b) Submits a guarantee that is approved by the office
16 ~~department~~ as meeting the requirements of this part, provided
17 that the written guarantee contains a provision which requires
18 that the guarantee be irrevocable unless the guaranteeing
19 organization can demonstrate to the office ~~department~~ that the
20 cancellation of the guarantee will not result in the
21 insolvency of the health maintenance organization and the
22 office ~~department~~ approves cancellation of the guarantee.

23 (d) Submits annually, within 3 months after the end of
24 its fiscal year, an audited financial statement certified by
25 an independent certified public accountant, prepared in
26 accordance with generally accepted accounting principles. The
27 office ~~department~~ may, as it deems necessary, require
28 quarterly financial statements from the guaranteeing
29 organization.

30 Section 1562. Subsection (1) of section 641.227,
31 Florida Statutes, is amended to read:

1 641.227 Rehabilitation Administrative Expense Fund.--

2 (1) The office ~~department~~ shall not issue or permit to
3 exist a certificate of authority to operate a health
4 maintenance organization in this state unless the organization
5 has deposited with the department \$10,000 in cash for use in
6 the Rehabilitation Administrative Expense Fund as established
7 in subsection (2).

8 Section 1563. Subsections (1) and (3) of section
9 641.228, Florida Statutes, are amended to read:

10 641.228 Florida Health Maintenance Organization
11 Consumer Assistance Plan.--

12 (1) The office ~~department~~ shall not issue a
13 certificate to any health maintenance organization after July
14 1, 1989, until the applicant health maintenance organization
15 has paid in full its special assessment as set forth in s.
16 631.819(2)(a).

17 (3) The office ~~department~~ may suspend or revoke the
18 certificate of authority of any health maintenance
19 organization which does not timely pay its assessment to the
20 Florida Health Maintenance Organization Consumer Assistance
21 Plan.

22 Section 1564. Section 641.23, Florida Statutes, is
23 amended to read:

24 641.23 Revocation or cancellation of certificate of
25 authority; suspension of enrollment of new subscribers; terms
26 of suspension.--

27 (1) The maintenance of a valid and current health care
28 provider certificate issued pursuant to part III of this
29 chapter is a condition of the maintenance of a valid and
30 current certificate of authority issued by the office
31 ~~department~~ to operate a health maintenance organization.

1 Denial or revocation of a health care provider certificate
2 shall be deemed to be an automatic and immediate cancellation
3 of a health maintenance organization's certificate of
4 authority. At the discretion of the office ~~Department of~~
5 ~~Insurance~~, nonrenewal of a health care provider certificate
6 may be deemed to be an automatic and immediate cancellation of
7 a health maintenance organization's certificate of authority
8 if the Agency for Health Care Administration notifies the
9 office ~~Department of Insurance~~, in writing, that the health
10 care provider certificate will not be renewed.

11 (2) The office ~~department~~ may suspend the authority of
12 a health maintenance organization to enroll new subscribers or
13 revoke any certificate issued to a health maintenance
14 organization, or order compliance within 30 days, if it finds
15 that any of the following conditions exists:

16 (a) The organization is not operating in compliance
17 with this part;

18 (b) The plan is no longer actuarially sound or the
19 organization does not have the minimum surplus as required by
20 this part;

21 (c) The existing contract rates are excessive,
22 inadequate, or unfairly discriminatory;

23 (d) The organization has advertised, merchandised, or
24 attempted to merchandise its services in such a manner as to
25 misrepresent its services or capacity for service or has
26 engaged in deceptive, misleading, or unfair practices with
27 respect to advertising or merchandising; or

28 (e) The organization is insolvent.

29 (3) Whenever the financial condition of the health
30 maintenance organization is such that, if not modified or
31 corrected, its continued operation would result in impairment

1 or insolvency, the office ~~department~~ may order the health
2 maintenance organization to file with the office ~~department~~
3 and implement a corrective action plan designed to do one or
4 more of the following:

5 (a) Reduce the total amount of present potential
6 liability for benefits by reinsurance or other means.

7 (b) Reduce the volume of new business being accepted.

8 (c) Reduce the expenses of the health maintenance
9 organization by specified methods.

10 (d) Suspend or limit the writing of new business for a
11 period of time.

12 (e) Require an increase in the health maintenance
13 organization's net worth.

14

15 If the health maintenance organization fails to submit a plan
16 within 30 days of the office's ~~department's~~ order or submits a
17 plan which is insufficient to correct the health maintenance
18 organization's financial condition, the office ~~department~~ may
19 order the health maintenance organization to implement one or
20 more of the corrective actions listed in this subsection.

21 (4) The office ~~department~~ shall, in its order
22 suspending the authority of a health maintenance organization
23 to enroll new subscribers, specify the period during which the
24 suspension is to be in effect and the conditions, if any,
25 which must be met by the health maintenance organization prior
26 to reinstatement of its authority to enroll new subscribers.
27 The order of suspension is subject to rescission or
28 modification by further order of the office ~~department~~ prior
29 to the expiration of the suspension period. Reinstatement
30 shall not be made unless requested by the health maintenance
31 organization; however, the office ~~department~~ shall not grant

1 reinstatement if it finds that the circumstances for which the
2 suspension occurred still exist or are likely to recur.

3 (5) The commission ~~department~~ shall adopt ~~promulgate~~
4 rules establishing an actuarially sound medical loss ratio for
5 Medicaid. In determining the appropriate medical loss ratio,
6 the commission ~~department~~ shall consider factors, including
7 but not limited to, plan age, plan structure, geographic
8 service area, product mix, provider network, medical
9 inflation, provider services, other professional services, out
10 of network referrals and expenditures, in and out of network
11 emergency room expenditures, inpatient expenditures, other
12 medical expenditures, incentive pool adjustments, copayments,
13 coordination of benefits, subrogation, and any other expenses
14 associated with the delivery of medical benefits. The
15 commission ~~department~~ shall utilize assistance from the Agency
16 for Health Care Administration, the State University System,
17 an independent actuary, and representatives from health
18 maintenance organizations in developing the rule for
19 appropriate medical loss ratios.

20 (6) The office ~~department~~ shall calculate and publish
21 at least annually the medical loss ratios of all licensed
22 health maintenance organizations. The publication shall
23 include an explanation of what the medical loss ratio means
24 and shall disclose that the medical loss ratio is not a direct
25 reflection of quality, but must be looked at along with
26 patient satisfaction and other standards that define quality.

27 Section 1565. Subsections (1), (2), and (3) of section
28 641.234, Florida Statutes, are amended to read:

29 641.234 Administrative, provider, and management
30 contracts.--

31

1 (1) The office ~~department~~ may require a health
2 maintenance organization to submit any contract for
3 administrative services, contract with a provider other than
4 an individual physician, contract for management services, and
5 contract with an affiliated entity to the office ~~department~~.

6 (2) After review of a contract the office ~~department~~
7 may order the health maintenance organization to cancel the
8 contract in accordance with the terms of the contract and
9 applicable law if it determines:

10 (a) That the fees to be paid by the health maintenance
11 organization under the contract are so unreasonably high as
12 compared with similar contracts entered into by the health
13 maintenance organization or as compared with similar contracts
14 entered into by other health maintenance organizations in
15 similar circumstances that the contract is detrimental to the
16 subscribers, stockholders, investors, or creditors of the
17 health maintenance organization; or

18 (b) That the contract is with an entity that is not
19 licensed under state statutes, if such license is required, or
20 is not in good standing with the applicable regulatory agency.

21 (3) All contracts for administrative services,
22 management services, provider services other than individual
23 physician contracts, and with affiliated entities entered into
24 or renewed by a health maintenance organization on or after
25 October 1, 1988, shall contain a provision that the contract
26 shall be canceled upon issuance of an order by the office
27 ~~department~~ pursuant to this section.

28 Section 1566. Section 641.2342, Florida Statutes, is
29 amended to read:

30 641.2342 Contract providers.--Each health maintenance
31 organization shall file, upon the request of the office

1 ~~department~~, financial statements for all contract providers of
2 comprehensive health care services who have assumed, through
3 capitation or other means, more than 10 percent of the health
4 care risks of the health maintenance organization. However,
5 this provision shall not apply to any individual physician.

6 Section 1567. Section 641.25, Florida Statutes, is
7 amended to read:

8 641.25 Administrative penalty in lieu of suspension or
9 revocation.--If the office ~~department~~ finds that one or more
10 grounds exist for the revocation or suspension of a
11 certificate issued under this part, the office ~~department~~ may,
12 in lieu of revocation or suspension, impose a fine upon the
13 health maintenance organization. With respect to any
14 nonwillful violation, the fine must not exceed \$2,500 per
15 violation. Such fines may not exceed an aggregate amount of
16 \$25,000 for all nonwillful violations arising out of the same
17 action. With respect to any knowing and willful violation of
18 a lawful order or rule of the office or commission ~~department~~
19 or a provision of this part, the office ~~department~~ may impose
20 upon the organization a fine in an amount not to exceed
21 \$20,000 for each such violation. Such fines may not exceed an
22 aggregate amount of \$250,000 for all knowing and willful
23 violations arising out of the same action. The commission
24 ~~department~~ must adopt by rule ~~by January 1, 1997,~~ penalty
25 categories that specify varying ranges of monetary fines for
26 willful violations and for nonwillful violations.

27 Section 1568. Subsection (2) of section 641.255,
28 Florida Statutes, is amended to read:

29 641.255 Acquisition, merger, or consolidation.--

30 (2) In addition to the requirements set forth in ss.
31 628.451, 628.4615, and 628.471, each party to any transaction

1 involving any licensee which, as indicated in its most recent
2 quarterly or annual statement, derives income from Medicaid
3 funds shall in the filing made with the office ~~department~~
4 identify:

5 (a) Any person who has received any payment from
6 either party or any person on that party's behalf; or

7 (b) The existence of any agreement entered into by
8 either party or by any person on that party's behalf to pay a
9 consultant fee, a broker fee, a commission, or other fee or
10 charge,

11
12 which in any way relates to the acquisition, merger, or
13 consolidation. The commission ~~department~~ may adopt a form to
14 be made part of the application which is to be sworn to by an
15 officer of the entity which made or will make the payment. The
16 form shall include the name of the person or entity paying the
17 fee; the name of the person or entity receiving the fee; the
18 date of payment; and a brief description of the work
19 performed.

20 Section 1569. Section 641.26, Florida Statutes, is
21 amended to read:

22 641.26 Annual and quarterly reports.--

23 (1) Every health maintenance organization shall,
24 annually within 3 months after the end of its fiscal year, or
25 within an extension of time therefor as the office ~~department~~,
26 for good cause, may grant, in a form prescribed by the
27 commission ~~department~~, file a report with the office
28 ~~department~~, verified by the oath of two officers of the
29 organization or, if not a corporation, of two persons who are
30 principal managing directors of the affairs of the
31 organization, properly notarized, showing its condition on the

1 last day of the immediately preceding reporting period. Such
2 report shall include:

3 (a) A financial statement of the health maintenance
4 organization filed by electronic means in a computer-readable
5 form ~~on a computer diskette~~ using a format acceptable to the
6 office ~~department~~.

7 (b) A financial statement of the health maintenance
8 organization filed on forms acceptable to the office
9 ~~department~~.

10 (c) An audited financial statement of the health
11 maintenance organization, including its balance sheet and a
12 statement of operations for the preceding year certified by an
13 independent certified public accountant, prepared in
14 accordance with statutory accounting principles.

15 (d) The number of health maintenance contracts issued
16 and outstanding and the number of health maintenance contracts
17 terminated.

18 (e) The number and amount of damage claims for medical
19 injury initiated against the health maintenance organization
20 and any of the providers engaged by it during the reporting
21 year, broken down into claims with and without formal legal
22 process, and the disposition, if any, of each such claim.

23 (f) An actuarial certification that:

24 1. The health maintenance organization is actuarially
25 sound, which certification shall consider the rates, benefits,
26 and expenses of, and any other funds available for the payment
27 of obligations of, the organization.

28 2. The rates being charged or to be charged are
29 actuarially adequate to the end of the period for which rates
30 have been guaranteed.

31

1 3. Incurred but not reported claims and claims
2 reported but not fully paid have been adequately provided for.

3 4. The health maintenance organization has adequately
4 provided for all obligations required by s. 641.35(3)(a).

5 (g) A report prepared by the certified public
6 accountant and filed with the office ~~department~~ describing
7 material weaknesses in the health maintenance organization's
8 internal control structure as noted by the certified public
9 accountant during the audit. The report must be filed with
10 the annual audited financial report as required in paragraph
11 (c). The health maintenance organization shall provide a
12 description of remedial actions taken or proposed to correct
13 material weaknesses, if the actions are not described in the
14 independent certified public accountant's report.

15 (h) Such other information relating to the performance
16 of health maintenance organizations as is required by the
17 commission or office ~~department~~.

18 (2) The office ~~department~~ may require updates of the
19 actuarial certification as to a particular health maintenance
20 organization if the office ~~department~~ has reasonable cause to
21 believe that such reserves are understated to the extent of
22 materially misstating the financial position of the health
23 maintenance organization. Workpapers in support of the
24 statement of the updated actuarial certification must be
25 provided to the office ~~department~~ upon request.

26 (3) Every health maintenance organization shall file
27 quarterly, for the first three calendar quarters of each year,
28 an unaudited financial statement of the organization as
29 described in paragraphs (1)(a) and (b). The statement for the
30 quarter ending March 31 shall be filed on or before May 15,
31 the statement for the quarter ending June 30 shall be filed on

1 or before August 15, and the statement for the quarter ending
2 September 30 shall be filed on or before November 15. The
3 quarterly report shall be verified by the oath of two officers
4 of the organization, properly notarized.

5 (4) Any health maintenance organization that neglects
6 to file an annual report or quarterly report in the form and
7 within the time required by this section shall forfeit up to
8 \$1,000 for each day for the first 10 days during which the
9 neglect continues and shall forfeit up to \$2,000 for each day
10 after the first 10 days during which the neglect continues;
11 and, upon notice by the office ~~department~~ to that effect, the
12 organization's authority to enroll new subscribers or to do
13 business in this state shall cease while such default
14 continues. The office ~~department~~ shall deposit all sums
15 collected by it under this section to the credit of the
16 Insurance ~~Commissioner's~~ Regulatory Trust Fund. The office
17 ~~department~~ shall not collect more than \$100,000 for each
18 report.

19 (5) Each authorized health maintenance organization
20 shall retain an independent certified public accountant,
21 referred to in this section as "CPA," who agrees by written
22 contract with the health maintenance organization to comply
23 with the provisions of this part.

24 (a) The CPA shall provide to the HMO audited financial
25 statements consistent with this part.

26 (b) Any determination by the CPA that the health
27 maintenance organization does not meet minimum surplus
28 requirements as set forth in this part shall be stated by the
29 CPA, in writing, in the audited financial statement.

30 (c) The completed work papers and any written
31 communications between the CPA firm and the health maintenance

1 organization relating to the audit of the health maintenance
2 organization shall be made available for review on a
3 visual-inspection-only basis by the office ~~department~~ at the
4 offices of the health maintenance organization, at the office
5 ~~department~~, or at any other reasonable place as mutually
6 agreed between the office ~~department~~ and the health
7 maintenance organization. The CPA must retain for review the
8 work papers and written communications for a period of not
9 less than 6 years.

10 (d) The CPA shall provide to the office ~~department~~ a
11 written report describing material weaknesses in the health
12 maintenance organization's internal control structure as noted
13 during the audit.

14 (6) To facilitate uniformity in financial statements
15 and to facilitate office ~~department~~ analysis, the commission
16 ~~department~~ may by rule adopt the form for financial statements
17 of a health maintenance organization, including supplements as
18 approved by the National Association of Insurance
19 Commissioners in 1995, and may adopt subsequent amendments
20 thereto if the methodology remains substantially consistent,
21 and may by rule require each health maintenance organization
22 to submit to the office ~~department~~ all or part of the
23 information contained in the annual statement in a
24 computer-readable form compatible with the electronic data
25 processing system specified by the office ~~department~~.

26 (7) In addition to information called for and
27 furnished in connection with its annual or quarterly
28 statements, the health maintenance organization shall furnish
29 to the office ~~department~~ as soon as reasonably possible such
30 information as to its material transactions which, in the
31 office's ~~department's~~ opinion, may have a material adverse

1 effect on the health maintenance organization's financial
2 condition, as the office requests ~~department may request~~ in
3 writing. All such information furnished pursuant to the
4 office's ~~department's~~ request must be verified by the oath of
5 two executive officers of the health maintenance organization.

6 (8) Each health maintenance organization shall file
7 one copy of its annual statement convention blank in
8 electronic form, along with such additional filings as
9 prescribed by the commission ~~department~~ for the preceding
10 calendar year or quarter, with the National Association of
11 Insurance Commissioners. Each health maintenance organization
12 shall pay fees assessed by the National Association of
13 Insurance Commissioners to cover costs associated with the
14 filing and analysis of the documents by the National
15 Association of Insurance Commissioners.

16 Section 1570. Section 641.27, Florida Statutes, is
17 amended to read:

18 641.27 Examination by the department.--

19 (1) The office ~~department~~ shall examine the affairs,
20 transactions, accounts, business records, and assets of any
21 health maintenance organization as often as it deems it
22 expedient for the protection of the people of this state, but
23 not less frequently than once every 3 years. In lieu of
24 making its own financial examination, the office ~~department~~
25 may accept an independent certified public accountant's audit
26 report prepared on a statutory accounting basis consistent
27 with this part. However, except when the medical records are
28 requested and copies furnished pursuant to s. 456.057, medical
29 records of individuals and records of physicians providing
30 service under contract to the health maintenance organization
31 shall not be subject to audit, although they may be subject to

1 subpoena by court order upon a showing of good cause. For the
2 purpose of examinations, the office ~~department~~ may administer
3 oaths to and examine the officers and agents of a health
4 maintenance organization concerning its business and affairs.
5 The examination of each health maintenance organization by the
6 office ~~department~~ shall be subject to the same terms and
7 conditions as apply to insurers under chapter 624. In no
8 event shall expenses of all examinations exceed a maximum of
9 \$20,000 for any 1-year period. Any rehabilitation,
10 liquidation, conservation, or dissolution of a health
11 maintenance organization shall be conducted under the
12 supervision of the department, which shall have all power with
13 respect thereto granted to it under the laws governing the
14 rehabilitation, liquidation, reorganization, conservation, or
15 dissolution of life insurance companies.

16 (2) The office ~~department~~ may contract, at reasonable
17 fees for work performed, with qualified, impartial outside
18 sources to perform audits or examinations or portions thereof
19 pertaining to the qualification of an entity for issuance of a
20 certificate of authority or to determine continued compliance
21 with the requirements of this part, in which case the payment
22 must be made directly to the contracted examiner by the health
23 maintenance organization examined, in accordance with the
24 rates and terms agreed to by the office ~~department~~ and the
25 examiner. Any contracted assistance shall be under the direct
26 supervision of the office ~~department~~. The results of any
27 contracted assistance shall be subject to the review of, and
28 approval, disapproval, or modification by, the office
29 ~~department~~.

30 Section 1571. Section 641.28, Florida Statutes, is
31 amended to read:

1 641.28 Civil remedy.--In any civil action brought to
2 enforce the terms and conditions of a health maintenance
3 organization contract, the prevailing party is entitled to
4 recover reasonable attorney's fees and court costs. This
5 section shall not be construed to authorize a civil action
6 against the commission, office, or department, their ~~its~~
7 employees, or the Chief Financial Officer ~~Insurance~~
8 Commissioner or against the Agency for Health Care
9 Administration, its employees, or the director of the agency.

10 Section 1572. Section 641.281, Florida Statutes, is
11 amended to read:

12 641.281 Injunction.--In addition to the penalties and
13 other enforcement provisions of this part, the office and
14 department, within the scope of their regulatory
15 jurisdictions, are ~~is~~ vested with the power to seek both
16 temporary and permanent injunctive relief when:

17 (1) A health maintenance organization is being
18 operated by any person or entity without a subsisting
19 certificate of authority.

20 (2) Any person, entity, or health maintenance
21 organization has engaged in any activity prohibited by this
22 part or any rule adopted pursuant thereto.

23 (3) Any health maintenance organization, person, or
24 entity is renewing, issuing, or delivering a health
25 maintenance contract or contracts without a subsisting
26 certificate of authority.

27
28 The office's and department's authority to seek injunctive
29 relief shall not be conditioned on having conducted any
30 proceeding pursuant to chapter 120.

31

1 Section 1573. Section 641.284, Florida Statutes, is
2 amended to read:

3 641.284 Liquidation, rehabilitation, reorganization,
4 and conservation; exclusive methods of remedy.--A delinquency
5 proceeding under part I of chapter 631, or supervision by the
6 office ~~department~~ under ss. 624.80-624.87, constitute the sole
7 and exclusive means of liquidating, reorganizing,
8 rehabilitating, or conserving a health maintenance
9 organization.

10 Section 1574. Subsections (1), (2), and (3) of section
11 641.285, Florida Statutes, are amended to read:

12 641.285 Insolvency protection.--

13 (1) Each health maintenance organization shall deposit
14 with the department cash or securities of the type eligible
15 under s. 625.52, which shall have at all times a market value
16 in the amount set forth in this subsection. The amount of the
17 deposit shall be reviewed annually, or more often, as the
18 office ~~department~~ deems necessary. The market value of the
19 deposit shall be a minimum of \$300,000.

20 (2) If securities or assets deposited by a health
21 maintenance organization under this part are subject to
22 material fluctuations in market value, the office ~~department~~
23 may, in its discretion, require the organization to deposit
24 and maintain on deposit additional securities or assets in an
25 amount as may be reasonably necessary to assure that the
26 deposit will at all times have a market value of not less than
27 the amount specified under this section. If for any reason the
28 market value of assets and securities of a health maintenance
29 organization held on deposit in this state under this code
30 falls below the amount required, the organization shall
31 promptly deposit other or additional assets or securities

1 eligible for deposit sufficient to cure the deficiency. If the
2 health maintenance organization has failed to cure the
3 deficiency within 30 days after receipt of notice thereof by
4 registered or certified mail from the office department, the
5 office department may revoke the certificate of authority of
6 the health maintenance organization.

7 (3) Whenever the office department determines that the
8 financial condition of a health maintenance organization has
9 deteriorated to the point that the policyholders' or
10 subscribers' best interests are not being preserved by the
11 activities of a health maintenance organization, the office
12 department may require such health maintenance organization to
13 deposit and maintain deposited in trust with the department
14 for the protection of the health maintenance organization's
15 policyholders, subscribers, and creditors, for such time as
16 the office department deems necessary, securities eligible for
17 such deposit under s. 625.52 having a market value of not less
18 than the amount that the office department determines is
19 necessary, which amount must not be less than \$100,000 or
20 greater than \$2 million. The deposit required under this
21 subsection is in addition to any other deposits required of a
22 health maintenance organization pursuant to subsections (1)
23 and (2).

24 Section 1575. Section 641.29, Florida Statutes, is
25 amended to read:

26 641.29 Fees.--Every health maintenance organization
27 shall pay to the office department the following fees:

28 (1) For filing a copy of its application for a
29 certificate of authority or amendment thereto, a nonrefundable
30 fee in the amount of \$1,000.

31

1 (2) For filing each annual report, which must be filed
2 by electronic means in a computer-readable form ~~on computer~~
3 ~~diskettes~~, \$150.

4 Section 1576. Paragraph (b) of subsection (4) of
5 section 641.3007, Florida Statutes, is amended to read:

6 641.3007 HIV infection and AIDS for contract

7 (4) UTILIZATION OF MEDICAL TESTS.--

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

19 Section 1577. Section 641.305, Florida Statutes, is
20 amended to read:

21 641.305 Language used in contracts and advertisements;
22 translations.--

23 (1)(a) All health maintenance contracts or forms shall
24 be printed in English.

25 (b) If the negotiations by a health maintenance
26 organization with a member leading up to the effectuation of a
27 health maintenance contract are conducted in a language other
28 than English, the health maintenance organization shall supply
29 to the member a written translation of the contract, which
30 translation accurately reflects the substance of the contract
31 and is in the language used to negotiate the contract. The

1 written translation shall be affixed to and shall become a
2 part of the contract or form. Any such translation shall be
3 furnished to the office ~~department~~ as part of the filing of
4 the health maintenance contract form. No translation of a
5 health maintenance contract form shall be approved by the
6 department unless the translation accurately reflects the
7 substance of the health maintenance contract form in
8 translation.

9 (2) The text of all advertisements by a health
10 maintenance organization, if printed or broadcast in a
11 language other than English, also shall be available in
12 English and shall be furnished to the office ~~department~~ upon
13 request. As used in this subsection, the term "advertisement"
14 means any advertisement, circular, pamphlet, brochure, or
15 other printed material disclosing or disseminating advertising
16 material or information by a health maintenance organization
17 to prospective or existing subscribers and includes any radio
18 or television transmittal of an advertisement or information.

19 Section 1578. Subsections (2), (3), (5), and (12) and
20 paragraphs (c) and (e) of subsection (38) of section 641.31,
21 Florida Statutes, are amended to read:

22 641.31 Health maintenance contracts.--

23 (2) The rates charged by any health maintenance
24 organization to its subscribers shall not be excessive,
25 inadequate, or unfairly discriminatory or follow a rating
26 methodology that is inconsistent, indeterminate, or ambiguous
27 or encourages misrepresentation or misunderstanding. The
28 commission ~~department~~, in accordance with generally accepted
29 actuarial practice as applied to health maintenance
30 organizations, may define by rule what constitutes excessive,
31 inadequate, or unfairly discriminatory rates and may require

1 whatever information it deems necessary to determine that a
2 rate or proposed rate meets the requirements of this
3 subsection.

4 (3)(a) If a health maintenance organization desires to
5 amend any contract with its subscribers or any certificate or
6 member handbook, or desires to change any basic health
7 maintenance contract, certificate, grievance procedure, or
8 member handbook form, or application form where written
9 application is required and is to be made a part of the
10 contract, or printed amendment, addendum, rider, or
11 endorsement form or form of renewal certificate, it may do so,
12 upon filing with the office ~~department~~ the proposed change or
13 amendment. Any proposed change shall be effective
14 immediately, subject to disapproval by the office ~~department~~.
15 Following receipt of notice of such disapproval or withdrawal
16 of approval, no health maintenance organization shall issue or
17 use any form disapproved by the office ~~department~~ or as to
18 which the office ~~department~~ has withdrawn approval.

19 (b) Any change in the rate is subject to paragraph (d)
20 and requires at least 30 days' advance written notice to the
21 subscriber. In the case of a group member, there may be a
22 contractual agreement with the health maintenance organization
23 to have the employer provide the required notice to the
24 individual members of the group.

25 (c) The office ~~department~~ shall disapprove any form
26 filed under this subsection, or withdraw any previous approval
27 thereof, if the form:

28 1. Is in any respect in violation of, or does not
29 comply with, any provision of this part or rule adopted
30 thereunder.

31

1 2. Contains or incorporates by reference, where such
2 incorporation is otherwise permissible, any inconsistent,
3 ambiguous, or misleading clauses or exceptions and conditions
4 which deceptively affect the risk purported to be assumed in
5 the general coverage of the contract.

6 3. Has any title, heading, or other indication of its
7 provisions which is misleading.

8 4. Is printed or otherwise reproduced in such a manner
9 as to render any material provision of the form substantially
10 illegible.

11 5. Contains provisions which are unfair, inequitable,
12 or contrary to the public policy of this state or which
13 encourage misrepresentation.

14 6. Excludes coverage for human immunodeficiency virus
15 infection or acquired immune deficiency syndrome or contains
16 limitations in the benefits payable, or in the terms or
17 conditions of such contract, for human immunodeficiency virus
18 infection or acquired immune deficiency syndrome which are
19 different than those which apply to any other sickness or
20 medical condition.

21 (d) Any change in rates charged for the contract must
22 be filed with the office ~~department~~ not less than 30 days in
23 advance of the effective date. At the expiration of such 30
24 days, the rate filing shall be deemed approved unless prior to
25 such time the filing has been affirmatively approved or
26 disapproved by order of the office ~~department~~. The approval of
27 the filing by the office ~~department~~ constitutes a waiver of
28 any unexpired portion of such waiting period. The office
29 ~~department~~ may extend by not more than an additional 15 days
30 the period within which it may so affirmatively approve or
31 disapprove any such filing, by giving notice of such extension

1 before expiration of the initial 30-day period. At the
2 expiration of any such period as so extended, and in the
3 absence of such prior affirmative approval or disapproval, any
4 such filing shall be deemed approved.

5 (e) It is not the intent of this subsection to
6 restrict unduly the right to modify rates in the exercise of
7 reasonable business judgment.

8 (5) Every subscriber shall receive a clear and
9 understandable description of the method of the health
10 maintenance organization for resolving subscriber grievances,
11 and the method shall be set forth in the contract,
12 certificate, and member handbook. The organization shall also
13 furnish, at the time of initial enrollment and when necessary
14 due to substantial changes to the grievance process a separate
15 and additional communication prepared or approved by the
16 office ~~department~~ notifying the contract holder of a group
17 contract or subscriber of an individual contract of their
18 rights and responsibilities under the grievance process.

19 (12) Each health maintenance contract, certificate, or
20 member handbook shall state that emergency services and care
21 shall be provided to subscribers in emergency situations not
22 permitting treatment through the health maintenance
23 organization's providers, without prior notification to and
24 approval of the organization. Not less than 75 percent of the
25 reasonable charges for covered services and supplies shall be
26 paid by the organization, up to the subscriber contract
27 benefit limits. Payment also may be subject to additional
28 applicable copayment provisions, not to exceed \$100 per claim.
29 The health maintenance contract, certificate, or member
30 handbook shall contain the definitions of "emergency services
31 and care" and "emergency medical condition" as specified in s.

1 641.19(6) and (7)~~s. 641.19(7) and (8)~~, shall describe
2 procedures for determination by the health maintenance
3 organization of whether the services qualify for reimbursement
4 as emergency services and care, and shall contain specific
5 examples of what does constitute an emergency. In providing
6 for emergency services and care as a covered service, a health
7 maintenance organization shall be governed by s. 641.513.

8 (38)

9 (c) Premiums paid in for the point-of-service riders
10 may not exceed 15 percent of total premiums for all health
11 plan products sold by the health maintenance organization
12 offering the rider. If the premiums paid for point-of-service
13 riders exceed 15 percent, the health maintenance organization
14 must notify the office ~~department~~ and, once this fact is
15 known, must immediately cease offering such a rider until it
16 is in compliance with the rider premium cap.

17 (e) The term "point of service" may not be used by a
18 health maintenance organization except with riders permitted
19 under this section or with forms approved by the office
20 ~~department~~ in which a point-of-service product is offered with
21 an indemnity carrier.

22 Section 1579. Subsection (2) of section 641.3105,
23 Florida Statutes, is amended to read:

24 641.3105 Validity of noncomplying contracts.--

25 (2) Any health maintenance contract delivered or
26 issued for delivery in this state covering a subscriber, which
27 subscriber, pursuant to the provisions of this part, the
28 organization may not lawfully cover under the contract, shall
29 be cancelable at any time by the organization, any provision
30 of the contract to the contrary notwithstanding; and the
31 organization shall promptly cancel the contract in accordance

1 with the request of the office ~~department~~ therefor. No such
2 illegality or cancellation shall be deemed to relieve the
3 organization of any liability incurred by it under the
4 contract while in force or to prohibit the organization from
5 retaining the pro rata earned premium or rate thereon. This
6 provision does not relieve the organization from any penalty
7 otherwise incurred by the organization under this part on
8 account of any such violation.

9 Section 1580. Subsection (5), paragraph (b) of
10 subsection (7), paragraphs (a) and (e) of subsection (8),
11 paragraph (c) of subsection (9), and paragraph (b) of
12 subsection (10) of section 641.31071, Florida Statutes, are
13 amended to read:

14 641.31071 Preexisting conditions.--

15 (5)(a) The term "creditable coverage" means, with
16 respect to an individual, coverage of the individual under any
17 of the following:

18 1. A group health plan, as defined in s. 2791 of the
19 Public Health Service Act.

20 2. Health insurance coverage consisting of medical
21 care, provided directly, through insurance or reimbursement or
22 otherwise, and including terms and services paid for as
23 medical care, under any hospital or medical service policy or
24 certificate, hospital or medical service plan contract, or
25 health maintenance contract offered by a health insurance
26 issuer.

27 3. Part A or part B of Title XVIII of the Social
28 Security Act.

29 4. Title XIX of the Social Security Act, other than
30 coverage consisting solely of benefits under s. 1928.

31 5. Chapter 55 of Title 10, United States Code.

1 6. A medical care program of the Indian Health Service
2 or of a tribal organization.

3 7. The Florida Comprehensive Health Association or
4 another state health benefit risk pool.

5 8. A health plan offered under chapter 89 of Title 5,
6 United States Code.

7 9. A public health plan as defined by rule of the
8 commission ~~department~~. To the greatest extent possible, such
9 rules must be consistent with regulations adopted by the
10 United States Department of Health and Human Services.

11 10. A health benefit plan under s. 5(e) of the Peace
12 Corps Act (22 U.S.C. s. 2504(e)).

13 (b) Creditable coverage does not include coverage that
14 consists solely of one or more or any combination thereof of
15 the following excepted benefits:

16 1. Coverage only for accident, or disability income
17 insurance, or any combination thereof.

18 2. Coverage issued as a supplement to liability
19 insurance.

20 3. Liability insurance, including general liability
21 insurance and automobile liability insurance.

22 4. Workers' compensation or similar insurance.

23 5. Automobile medical payment insurance.

24 6. Credit-only insurance.

25 7. Coverage for onsite medical clinics.

26 8. Other similar insurance coverage, specified in
27 rules adopted by the commission ~~department~~, under which
28 benefits for medical care are secondary or incidental to other
29 insurance benefits. To the greatest extent possible, such
30 rules must be consistent with regulations adopted by the
31 United States Department of Health and Human Services.

1 (c) The following benefits are not subject to the
2 creditable coverage requirements, if offered separately;

3 1. Limited scope dental or vision benefits.

4 2. Benefits or long-term care, nursing home care, home
5 health care, community-based care, or any combination of
6 these.

7 3. Such other similar, limited benefits as are
8 specified in rules adopted by the commission ~~department~~. To
9 the greatest extent possible, such rules must be consistent
10 with regulations adopted by the United States Department of
11 Health and Human Services.

12 (d) The following benefits are not subject to
13 creditable coverage requirements if offered as independent,
14 noncoordinated benefits:

15 1. Coverage only for a specified disease or illness.

16 2. Hospital indemnity or other fixed indemnity
17 insurance.

18 (e) Benefits provided through Medicare supplemental
19 health insurance, as defined under s. 1882(g)(1) of the Social
20 Security Act, coverage supplemental to the coverage provided
21 under chapter 55 of Title 10, United States Code, and similar
22 supplemental coverage provided to coverage under a group
23 health plan are not considered creditable coverage if offered
24 as a separate insurance policy.

25 (7)

26 (b) A health maintenance organization may elect to
27 count as creditable coverage, coverage of benefits within each
28 of several classes or categories of benefits specified in
29 rules adopted by the commission ~~department~~ rather than as
30 provided under paragraph (a). Such election shall be made on a
31 uniform basis for all participants and beneficiaries. Under

1 such election, a health maintenance organization shall count a
2 period of creditable coverage with respect to any class or
3 category of benefits if any level of benefits is covered
4 within such class or category.

5 (8)(a) Periods of creditable coverage with respect to
6 an individual shall be established through presentation of
7 certifications described in this subsection or in such other
8 manner as may be specified in rules adopted by the commission
9 ~~department~~.

10 (e) The commission ~~department~~ shall adopt rules to
11 prevent an insurer's or health maintenance organization's
12 failure to provide information under this subsection with
13 respect to previous coverage of an individual from adversely
14 affecting any subsequent coverage of the individual under
15 another group health plan or health maintenance organization
16 coverage.

17 (9)

18 (c) As an alternative to the method authorized by
19 paragraph (a), a health maintenance organization may address
20 adverse selection in a method approved by the office
21 ~~department~~.

22 (10)

23 (b) The commission ~~department~~ shall adopt rules that
24 provide a process whereby individuals who need to establish
25 creditable coverage for periods before July 1, 1996, and who
26 would have such coverage credited but for paragraph (a), may
27 be given credit for creditable coverage for such periods
28 through the presentation of documents or other means.

29 Section 1581. Paragraph (b) of subsection (3) of
30 section 641.31074, Florida Statutes, is amended to read:

31 641.31074 Guaranteed renewability of coverage.--

1 (3)

2 (b)1. In any case in which a health maintenance
3 organization elects to discontinue offering all coverage in
4 the small group market or the large group market, or both, in
5 this state, coverage may be discontinued by the insurer only
6 if:

7 a. The health maintenance organization provides notice
8 to the office ~~department~~ and to each contract holder, and
9 participants and beneficiaries covered under such coverage, of
10 such discontinuation at least 180 days prior to the date of
11 the nonrenewal of such coverage; and

12 b. All health insurance issued or delivered for
13 issuance in this state in such market is discontinued and
14 coverage under such health insurance coverage in such market
15 is not renewed.

16 2. In the case of a discontinuation under subparagraph
17 1. in a market, the health maintenance organization may not
18 provide for the issuance of any health maintenance
19 organization contract coverage in the market in this state
20 during the 5-year period beginning on the date of the
21 discontinuation of the last insurance contract not renewed.

22 Section 1582. Subsection (2) of section 641.315,
23 Florida Statutes, is amended to read:

24 641.315 Provider contracts.--

25 (2)(a) For all provider contracts executed after
26 October 1, 1991, and within 180 days after October 1, 1991,
27 for contracts in existence as of October 1, 1991:

28 1. The contracts must require the provider to give 60
29 days' advance written notice to the health maintenance
30 organization and the office ~~department~~ before canceling the
31

1 contract with the health maintenance organization for any
2 reason; and

3 2. The contract must also provide that nonpayment for
4 goods or services rendered by the provider to the health
5 maintenance organization is not a valid reason for avoiding
6 the 60-day advance notice of cancellation.

7 (b) All provider contracts must provide that the
8 health maintenance organization will provide 60 days' advance
9 written notice to the provider and the office ~~department~~
10 before canceling, without cause, the contract with the
11 provider, except in a case in which a patient's health is
12 subject to imminent danger or a physician's ability to
13 practice medicine is effectively impaired by an action by the
14 Board of Medicine or other governmental agency.

15 Section 1583. Subsections (4) and (5) of section
16 641.3154, Florida Statutes, are amended to read:

17 641.3154 Organization liability; provider billing
18 prohibited.--

19 (4) A provider or any representative of a provider,
20 regardless of whether the provider is under contract with the
21 health maintenance organization, may not collect or attempt to
22 collect money from, maintain any action at law against, or
23 report to a credit agency a subscriber of an organization for
24 payment of services for which the organization is liable, if
25 the provider in good faith knows or should know that the
26 organization is liable. This prohibition applies during the
27 pendency of any claim for payment made by the provider to the
28 organization for payment of the services and any legal
29 proceedings or dispute resolution process to determine whether
30 the organization is liable for the services if the provider is
31 informed that such proceedings are taking place. It is

1 presumed that a provider does not know and should not know
2 that an organization is liable unless:

3 (a) The provider is informed by the organization that
4 it accepts liability;

5 (b) A court of competent jurisdiction determines that
6 the organization is liable;

7 (c) The office ~~department~~ or agency makes a final
8 determination that the organization is required to pay for
9 such services subsequent to a recommendation made by the
10 Statewide Provider and Subscriber Assistance Panel pursuant to
11 s. 408.7056; or

12 (d) The agency issues a final order that the
13 organization is required to pay for such services subsequent
14 to a recommendation made by a resolution organization pursuant
15 to s. 408.7057.

16 (5) An organization, the office, and the department
17 shall report any suspected violation of this section by a
18 health care practitioner to the Department of Health and by a
19 facility to the agency, which shall take such action as
20 authorized by law.

21 Section 1584. Subsection (12) of section 641.3155,
22 Florida Statutes, is amended to read:

23 641.3155 Prompt payment of claims.--

24 (12) A permissible error ratio of 5 percent is
25 established for health maintenance organizations' claims
26 payment violations of paragraphs (3)(a), (b), (c), and (e) and
27 (4)(a), (b), (c), and (e). If the error ratio of a particular
28 insurer does not exceed the permissible error ratio of 5
29 percent for an audit period, no fine shall be assessed for the
30 noted claims violations for the audit period. The error ratio
31 shall be determined by dividing the number of claims with

1 violations found on a statistically valid sample of claims for
2 the audit period by the total number of claims in the sample.
3 If the error ratio exceeds the permissible error ratio of 5
4 percent, a fine may be assessed according to s. 624.4211 for
5 those claims payment violations which exceed the error ratio.
6 Notwithstanding the provisions of this section, the office
7 ~~department~~ may fine a health maintenance organization for
8 claims payment violations of paragraphs (3)(e) and (4)(e)
9 which create an uncontestable obligation to pay the claim.
10 The office ~~department~~ shall not fine organizations for
11 violations which the office ~~department~~ determines were due to
12 circumstances beyond the organization's control.

13 Section 1585. Subsection (4), (6), and (7) of section
14 641.316, Florida Statutes, are amended to read:

15 641.316 Fiscal intermediary services.--

16 (4) A fiscal intermediary services organization, as
17 described in subsection (3), shall secure and maintain a
18 surety bond on file with the office ~~department~~, naming the
19 intermediary as principal. The bond must be obtained from a
20 company authorized to write surety insurance in the state, and
21 the office ~~department~~ shall be obligee on behalf of itself and
22 third parties. The penal sum of the bond may not be less than
23 5 percent of the funds handled by the intermediary in
24 connection with its fiscal and fiduciary services during the
25 prior year or \$250,000, whichever is less. The minimum bond
26 amount must be \$10,000. The condition of the bond must be that
27 the intermediary shall register with the office ~~department~~ and
28 shall not misappropriate funds within its control or custody
29 as a fiscal intermediary or fiduciary. The aggregate liability
30 of the surety for any and all breaches of the conditions of
31 the bond may not exceed the penal sum of the bond. The bond

1 must be continuous in form, must be renewed annually by a
2 continuation certificate, and may be terminated by the surety
3 upon its giving 30 days' written notice of termination to the
4 office ~~department~~.

5 (6) Any fiscal intermediary services organization,
6 other than a fiscal intermediary services organization owned,
7 operated, or controlled by a hospital licensed under chapter
8 395, an insurer licensed under chapter 624, a third-party
9 administrator licensed under chapter 626, a prepaid limited
10 health service organization licensed under chapter 636, a
11 health maintenance organization licensed under this chapter,
12 or physician group practices as defined in s. 456.053(3)(h),
13 must register with the office ~~department~~ and meet the
14 requirements of this section. In order to register as a fiscal
15 intermediary services organization, the organization must
16 comply with ss. 641.21(1)(c) and (d) and 641.22(6). Should the
17 office ~~department~~ determine that the fiscal intermediary
18 services organization does not meet the requirements of this
19 section, the registration shall be denied. In the event that
20 the registrant fails to maintain compliance with the
21 provisions of this section, the office ~~department~~ may revoke
22 or suspend the registration. In lieu of revocation or
23 suspension of the registration, the office ~~department~~ may levy
24 an administrative penalty in accordance with s. 641.25.

25 (7) The commission ~~department~~ shall adopt rules
26 necessary to administer this section.

27 Section 1586. Subsections (1), (2), (3), and (4),
28 paragraph (b) of subsection (6), subsection (8), paragraph (c)
29 of subsection (10), subsections (11) and (12), paragraph (a)
30 of subsection (14), and subsections (15), (16), and (17) of
31 section 641.35, Florida Statutes, are amended to read:

1 641.35 Assets, liabilities, and investments.--

2 (1) ASSETS.--In any determination of the financial
3 condition of a health maintenance organization, there shall be
4 allowed as "assets" only those assets that are owned by the
5 health maintenance organization and that consist of:

6 (a) Cash or cash equivalents in the possession of the
7 health maintenance organization, or in transit under its
8 control, including the true balance of any deposit in a
9 solvent bank, savings and loan association, or trust company
10 which is domiciled in the United States. Cash equivalents are
11 short-term, highly liquid investments, with original
12 maturities of 3 months or less, which are both readily
13 convertible to known amounts of cash and so near their
14 maturity that they present insignificant risk of changes in
15 value because of changes in interest rates.

16 (b) Investments, securities, properties, and loans
17 acquired or held in accordance with this part, and in
18 connection therewith the following items:

19 1. Interest due or accrued on any bond or evidence of
20 indebtedness which is not in default and which is not valued
21 on a basis including accrued interest.

22 2. Declared and unpaid dividends on stock and shares,
23 unless the amount of the dividends has otherwise been allowed
24 as an asset.

25 3. Interest due or accrued upon a collateral loan
26 which is not in default in an amount not to exceed 1 year's
27 interest thereon.

28 4. Interest due or accrued on deposits or certificates
29 of deposit in solvent banks, savings and loan associations,
30 and trust companies domiciled in the United States, and
31

1 interest due or accrued on other assets, if such interest is
2 in the judgment of the office department a collectible asset.

3 5. Interest due or accrued on current mortgage loans,
4 in an amount not exceeding in any event the amount, if any, of
5 the excess of the value of the property less delinquent taxes
6 thereon over the unpaid principal; but in no event shall
7 interest accrued for a period in excess of 90 days be allowed
8 as an asset.

9 (c) Premiums in the course of collection, not more
10 than 3 months past due, less commissions payable thereon. The
11 foregoing limitation shall not apply to premiums payable
12 directly or indirectly by any governmental body in the United
13 States or by any of their instrumentalities.

14 (d) The full amount of reinsurance recoverable from a
15 solvent reinsurer, which reinsurance is authorized under s.
16 624.610.

17 (e) Pharmaceutical and medical supply inventories.

18 (f) Goodwill created by acquisitions and mergers
19 occurring on or after January 1, 2001.

20 (g) Loans or advances by a health maintenance
21 organization to its parent or principal owner if approved by
22 the office department.

23 (h) Other assets, not inconsistent with the provisions
24 of this section, deemed by the office department to be
25 available for the payment of losses and claims, at values to
26 be determined by it.

27
28 The office department, upon determining that a health
29 maintenance organization's asset has not been evaluated
30 according to applicable law or that it does not qualify as an
31 asset, shall require the health maintenance organization to

1 properly reevaluate the asset or replace the asset with an
2 asset suitable to the office ~~department~~ within 30 days of
3 receipt of written notification by the office ~~department~~ of
4 this determination, if the removal of the asset from the
5 organization's assets would impair the organization's
6 solvency.

7 (2) ASSETS NOT ALLOWED.--In addition to assets
8 impliedly excluded by the provisions of subsection (1), the
9 following assets expressly shall not be allowed as assets in
10 any determination of the financial condition of a health
11 maintenance organization:

12 (a) Subscriber lists, patents, trade names, agreements
13 not to compete, and other like intangible assets.

14 (b) Any note or account receivable from or advances to
15 officers, directors, or controlling stockholders, whether
16 secured or not, and advances to employees, agents, or other
17 persons on personal security only, other than those
18 transactions authorized under paragraph (1)(g).

19 (c) Stock of the health maintenance organization owned
20 by it directly or owned by it through any entity in which the
21 organization owns or controls, directly or indirectly, more
22 than 25 percent of the ownership interest.

23 (d) Leasehold improvements, nonmedical libraries,
24 stationery, literature, and nonmedical supply inventories,
25 except that leasehold improvements made prior to October 1,
26 1985, shall be allowed as an asset and shall be amortized over
27 the shortest of the following periods:

- 28 1. The life of the lease.
- 29 2. The useful life of the improvements.
- 30 3. The 3-year period following October 1, 1985.

31

1 (e) Furniture, fixtures, furnishings, vehicles,
2 medical libraries, and equipment.

3 (f) Notes or other evidences of indebtedness which are
4 secured by mortgages or deeds of trust which are in default
5 and beyond the express period specified in the instrument for
6 curing the default.

7 (g) Bonds in default for more than 60 days.

8 (h) Prepaid and deferred expenses.

9 (i) Any note, account receivable, advance, or other
10 evidence of indebtedness, or investment in:

11 1. The parent of the health maintenance organization;

12 2. Any entity directly or indirectly controlled by the
13 health maintenance organization parent; or

14 3. An affiliate of the parent or the health
15 maintenance organization,

16
17 except as allowed in subsections (1), (11), and (12). The
18 office department may, however, allow all or a portion of such
19 asset, at values to be determined by the office department, if
20 deemed by the office department to be available for the
21 payment of losses and claims.

22 (3) LIABILITIES.--In any determination of the
23 financial condition of a health maintenance organization,
24 liabilities to be charged against its assets shall include:

25 (a) The amount, estimated consistently with the
26 provisions of this part, necessary to pay all of its unpaid
27 losses and claims incurred for or on behalf of a subscriber,
28 on or prior to the end of the reporting period, whether
29 reported or unreported, including contract and premium
30 deficiency reserves. If a health maintenance organization,
31 through a health care risk contract, transfers to any entity

1 the obligation to pay any provider for any claim arising from
2 services provided to or for the benefit of any subscriber, the
3 liabilities of the health maintenance organization under this
4 section shall include the amount of those losses and claims to
5 the extent that the provider has not received payment. No
6 liability need be established if the entity has provided to
7 the health maintenance organization a financial instrument
8 acceptable to the office ~~department~~ securing the obligations
9 under the contract or if the health maintenance organization
10 has in place an escrow or withhold agreement approved by the
11 office ~~department~~ which assures full payment of those claims.
12 Financial instruments may include irrevocable, clean, and
13 evergreen letters of credit. As used in this paragraph, the
14 term "entity" does not include this state, the United States,
15 or an agency thereof or an insurer or health maintenance
16 organization authorized in this state.

17 (b) The amount equal to the unearned portions of the
18 gross premiums charged on health maintenance contracts in
19 force.

20 (c) Taxes, expenses, and other obligations due or
21 accrued at the date of the statement.

22
23 The office ~~department~~, upon determining that a health
24 maintenance organization has failed to report liabilities that
25 should have been reported, shall require a corrected report
26 which reflects the proper liabilities to be submitted by the
27 organization to the office ~~department~~ within 10 working days
28 of receipt of written notification.

29 (4) INVESTMENTS GENERALLY.--Health maintenance
30 organizations may invest their funds only in accordance with
31 the provisions of this part. Notwithstanding the provisions of

1 this part, however, the office ~~department~~ may, after notice
2 and hearing, order a health maintenance organization to limit
3 or withdraw from certain investments or to discontinue certain
4 investment practices, to the extent that the office ~~department~~
5 finds the investment practices hazardous to the financial
6 condition of the organization. At any such hearing, the
7 office ~~department~~ shall have the burden of presenting a prima
8 facie case that the investment or investment practices are
9 hazardous to the financial condition of the organization. If
10 the office ~~department~~ presents such a prima facie case, then
11 it shall be the organization's burden to demonstrate that the
12 investment or investment practices are not hazardous to the
13 financial condition of the organization.

14 (6) GENERAL QUALIFICATIONS.--

15 (b) No security or investment shall be eligible for
16 purchase at a price above its market value unless it is
17 approved by the office ~~department~~.

18 (8) EXCESSIVE COMMISSIONS AND CERTAIN INTERESTS
19 PROHIBITED.--

20 (a) No health maintenance organization shall pay any
21 commission or brokerage for the purchase or sale of property,
22 whether real or personal, in excess of that usual and
23 customary at the time and in the locality where the purchases
24 or sales are made. Information regarding payments of
25 commissions and brokerage shall be maintained from the date of
26 the most recent examination by the office ~~department~~ pursuant
27 to s. 641.27 until the date of completion of the following
28 examination.

29 (b) No health maintenance organization shall knowingly
30 invest in or loan upon any property, directly or indirectly,
31 whether real or personal, in which any officer or director of

1 the organization has a financial interest, nor shall any
2 organization make a loan of any kind to any officer or
3 director of the organization, except that:

4 1. This paragraph shall not apply to loans in
5 circumstances in which the financial interest of the officer
6 or director is only nominal, trifling, or so remote as not to
7 give rise to a conflict of interest; and

8 2. In any case, the office ~~department~~ may approve a
9 transaction between an organization and its officers or
10 directors under this paragraph if it is satisfied that:

11 a. The transaction is entered into in good faith for
12 the advantage and benefit of the organization,

13 b. The amount of the proposed investment or loan does
14 not violate any other provision of this part or exceed the
15 reasonable, normal value of the property or the interest which
16 the company proposed to acquire,

17 c. The transaction is otherwise fair and reasonable,
18 and

19 d. The transaction will not adversely affect, to any
20 substantial degree, the liquidity of the organization's
21 investments or its ability thereafter to comply with
22 requirements of this part or the payment of its claims and
23 obligations.

24 (10) PROPERTY USED IN THE HEALTH MAINTENANCE
25 ORGANIZATION'S BUSINESS.--Real estate, including leasehold
26 estates, for the convenient accommodation of the
27 organization's business operations, including home office,
28 branch administrative offices, hospitals, medical clinics,
29 medical professional buildings, and any other facility to be
30 used in the provision of health care services, or real estate
31 for rental to any health care provider under contract with the

1 organization to provide health care services which shall be
2 used in the provision of health care services to members of
3 the organization by that provider, is acceptable as an
4 investment on the following conditions:

5 (c) The greater of the admitted value of the asset, as
6 determined by statutory accounting principles, or, if approved
7 by the office department, the health maintenance
8 organization's equity in the real estate plus all encumbrances
9 on the real estate owned by the organization under this
10 subsection, when added to the value of all personal and mixed
11 property used in the organization's business, shall not exceed
12 75 percent of its admitted assets unless, with the permission
13 of the office department, it finds that the percentage of its
14 admitted assets is insufficient to provide convenient
15 accommodation for the organization's business and the
16 operations of the organization would not otherwise be
17 impaired.

18 (11) INVESTMENTS IN ADMINISTRATIVE AND MANAGEMENT
19 SERVICE ENTITIES AND OTHER HEALTH CARE PROVIDERS.--A health
20 maintenance organization may invest directly or indirectly in
21 real estate, common and preferred stocks, bonds or debentures,
22 including convertible debentures, or other evidences of debts
23 of or equity in an entity if the entity is owned by or, with
24 the approval of the office department, under contract to the
25 organization to provide management services, administrative
26 services, or health care services for the organization, on the
27 following conditions:

28 (a) Investments authorized under this subsection shall
29 not exceed 50 percent of admitted assets, and these
30 investments shall be included in the calculation of the
31

1 overall limitation in paragraph (10)(c) relating to all real
2 and personal property.

3 (b) Investments may qualify under this section only
4 insofar as a provider of management, administrative, or health
5 care service relationship as defined herein exists. Upon
6 cessation of such relationship, each investment shall be
7 subject to the rules applicable to an investment of that type
8 and must qualify under the appropriate limitation or, failing
9 that, become ineligible and subject to disposal under
10 subsection (17).

11 (12) EXCHANGES OF FACILITIES OR ASSETS.--Health care
12 or administrative service entities, if subsidiaries of or
13 under contract to the health maintenance organization to
14 provide administrative or health care services to the
15 organization's members, may exchange facilities or similar
16 assets to be used in the organization's business for stock of
17 the organization. However, any exchange involving an entity
18 under contract with the health maintenance organization must
19 have the approval of the office ~~department~~ prior to the
20 exchange. These facilities or assets shall be valued in
21 accordance with statutory accounting principles.

22 (14) SPECIAL LIMITATION INVESTMENTS.--

23 (a) After satisfying the requirements of this part,
24 any funds of the health maintenance organization may be
25 invested in the following investments, subject to a cost
26 limitation of 10 percent of its admitted assets in each
27 category of investment:

28 1. Anticipation obligations of political subdivisions
29 of a state.--Anticipation obligations of any political
30 subdivision of any state of the United States, including, but
31 not limited to, bond anticipation notes, tax anticipation

1 notes, preliminary loan anticipation notes, revenue
2 anticipation notes, and construction anticipation notes, for
3 the payment of money within 12 months from the issuance of the
4 obligation, on the following conditions:

5 a. The anticipation notes are a direct obligation of
6 the issuer under conditions set forth in subsection (9).

7 b. The political subdivision is not in default in the
8 payment of the principal or interest on any of its direct
9 general obligations or any obligation guaranteed by such
10 political subdivision.

11 c. The anticipated funds are specifically pledged to
12 secure the obligations.

13 2. Revenue obligations of state or municipal public
14 utilities.--Obligations of any state of the United States, a
15 political subdivision thereof, or a public instrumentality of
16 any one or more of the foregoing for the payment of money, on
17 the following conditions:

18 a. The obligations are payable from revenues or
19 earnings of a public utility of such state, political
20 subdivision, or public instrumentality which are specifically
21 pledged therefor.

22 b. The law under which the obligations are issued
23 requires that such rates for service shall be charged and
24 collected at all times so as to produce sufficient revenue or
25 earning, together with any other revenues or moneys pledged,
26 to pay all operating and maintenance charges of the public
27 utility and all principal and interest on such charges.

28 c. No prior or parity obligations payable from the
29 revenues or earnings of that public utility are in default at
30 the date of such investment.

31

1 3. Other revenue obligations.--Obligations of any
2 state of the United States, a political subdivision thereof,
3 or a public instrumentality of any of the foregoing for the
4 payment of money, on the following conditions:

5 a. The obligations are payable from revenues or
6 earnings, excluding revenues or earnings from public
7 utilities, specifically pledged therefor by such state,
8 political subdivision, or public instrumentality.

9 b. No prior or parity obligation of the same issuer
10 payable from revenues or earnings from the same source has
11 been in default as to principal or interest during the 5 years
12 next preceding the date of the investment, but the issuer need
13 not have been in existence for that period, and obligations
14 acquired under this paragraph may be newly issued.

15 4. Corporate stocks.--Stocks, common or preferred, of
16 any corporation created or existing under the laws of the
17 United States or any state thereof. The organization may
18 invest in stocks, common or preferred, of any corporation
19 created or existing under the laws of any foreign country if
20 such stocks are listed and traded on a national securities
21 exchange in the United States or, in the alternative, if such
22 investment in stocks of any corporation created or existing
23 under the laws of any foreign country are first approved by
24 the office ~~department~~. Investment in common stock of any one
25 corporation shall not exceed 3 percent of the health
26 maintenance organization's admitted assets.

27 (15) INVESTMENT OF EXCESS FUNDS.--

28 (a) After satisfying the requirements of this part,
29 any funds of a health maintenance organization in excess of
30 its statutorily required reserves and surplus may be invested:
31

1 1. Without limitation in any investments otherwise
2 authorized by this part; or

3 2. In such other investments not specifically
4 authorized by this part, provided such investments do not
5 exceed the lesser of 5 percent of the health maintenance
6 organization's admitted assets or 25 percent of the amount by
7 which a health maintenance organization's surplus exceeds its
8 statutorily required minimum surplus. A health maintenance
9 organization may exceed the limitations of this subparagraph
10 only with the prior written approval of the office ~~department~~.

11 (b) Nothing in this section authorizes a health
12 maintenance organization to:

13 1. Invest any funds in excess of the amount by which
14 its actual surplus exceeds its statutorily required minimum
15 surplus; or

16 2. Make any investment prohibited by this code.

17 (16) PROHIBITED INVESTMENTS AND INVESTMENT
18 UNDERWRITING.--

19 (a) In addition to investments excluded pursuant to
20 other provisions of this act, a health maintenance
21 organization shall not directly or indirectly invest in or
22 lend its funds upon the security of:

23 1. Issued shares of its own capital stock, except in
24 connection with a plan approved by the office ~~department~~ for
25 purchase of the shares by the organization's officers,
26 employees, or agents. However, no such stock shall constitute
27 an asset of the organization in any determination of its
28 financial condition.

29 2. Except with the consent of the office ~~department~~,
30 securities issued by any corporation or enterprise the
31 controlling interest of which is, or will after such

1 acquisition by the organization be, held directly or
2 indirectly by the organization or any combination of the
3 organization and its directors, officers, parent corporation,
4 subsidiaries, or controlling stockholders. Investments in
5 health care providers under subsections (11) and (12) shall
6 not be subject to this provision.

7 3. Any note or other evidence of indebtedness of any
8 director, officer, or controlling stockholder of the health
9 maintenance organization.

10 (b) No health maintenance organization shall
11 underwrite or participate in the underwriting of an offering
12 of securities or property by any other person.

13 (17) TIME LIMIT FOR DISPOSAL OF INELIGIBLE PROPERTY
14 AND SECURITIES; EFFECT OF FAILURE TO DISPOSE.--

15 (a) Any property or securities lawfully acquired by a
16 health maintenance organization which it could not otherwise
17 have invested in or loaned its funds upon at the time of such
18 acquisition shall be disposed of within 6 months from the date
19 of acquisition, unless within such period the security has
20 attained to the standard of eligibility; except that any
21 security or property acquired under any agreement of merger or
22 consolidation may be retained for a longer period if so
23 provided in the plan for such merger or consolidation, as
24 approved by the office ~~department~~. Upon application by the
25 organization and proof to the office ~~department~~ that forced
26 sale of any such property or security would materially injure
27 the interests of the health maintenance organization, the
28 office ~~department~~ shall extend the disposal period for an
29 additional reasonable time.

30
31

1 (b) Notwithstanding the provisions of paragraph (a),
2 any ineligible property or securities shall not be allowed as
3 an asset of the organization.

4 Section 1587. Section 641.36, Florida Statutes, is
5 amended to read:

6 641.36 Adoption of rules; penalty for violation.--The
7 commission ~~department~~ shall adopt rules necessary to carry out
8 the provisions of this part. The office ~~department~~ shall
9 collect and make available all health maintenance organization
10 rules adopted by the commission ~~department~~. Any violation of
11 a rule adopted under this section shall subject the violating
12 entity to the provisions of s. 641.23.

13 Section 1588. Subsections (1), (2), and (5) of section
14 641.365, Florida Statutes, are amended to read:

15 641.365 Dividends.--

16 (1)(a) A health maintenance organization shall not pay
17 any dividend or distribute cash or other property to
18 stockholders except out of that part of its available and
19 accumulated surplus funds which is derived from realized net
20 operating profits on its business and net realized capital
21 gains.

22 (b) Unless prior written approval is obtained from the
23 office ~~department~~, a health maintenance organization may not
24 pay or declare any dividend or distribute cash or other
25 property to or on behalf of any stockholder if, immediately
26 before or after such distribution, the health maintenance
27 organization's available and accumulated surplus funds, which
28 are derived from realized net operating profits on its
29 business and net realized gains, are or would be less than
30 zero.

31

1 (c) A health maintenance organization may make
2 dividend payments or distributions to stockholders without the
3 prior written approval of the office ~~department~~ when:

4 1. The dividend is equal to or less than the greater
5 of:

6 a. Ten percent of the health maintenance
7 organization's accumulated surplus funds which are derived
8 from realized net operating profits on its business and net
9 realized capital gains as of the immediate preceding calendar
10 year; or

11 b. The health maintenance organization's entire net
12 operating profit and realized net capital gains derived during
13 the immediately preceding calendar year.

14 2. The health maintenance organization will have
15 surplus equal to or exceeding 115 percent of the minimum
16 required statutory surplus after the dividend or distribution
17 is made.

18 3. The health maintenance organization has filed a
19 notice with the office ~~department~~ at least 30 days prior to
20 the dividend payment or distribution, or such shorter period
21 of time as approved by the office ~~department~~ on a case-by-case
22 basis.

23 4. The notice includes a certification by an officer
24 of the health maintenance organization attesting that after
25 payment of the dividend or distribution the health maintenance
26 organization will have at least 115 percent of required
27 statutory surplus.

28 5. The health maintenance organization has negative
29 retained earnings, statutory surplus in excess of \$50 million,
30 and statutory surplus greater than or equal to 150 percent of
31 its required statutory surplus before and after the dividend

1 distribution is made based upon the health maintenance
2 organization's most recently filed annual financial statement.

3 (2) The office ~~department~~ shall not approve a dividend
4 or distribution in excess of the maximum amount allowed in
5 subsection (1) unless it determines that the distribution or
6 dividend would not jeopardize the financial condition of the
7 health maintenance organization, considering:

8 (a) The liquidity, quality, and diversification of the
9 health maintenance organization's assets and the effect on its
10 ability to meet its obligations.

11 (b) Any reduction of investment portfolio and
12 investment income.

13 (c) History of capital contributions.

14 (d) Prior dividend distributions of the health
15 maintenance organization.

16 (e) Whether the dividend is only a pass-through
17 dividend from a subsidiary of the health maintenance
18 organization.

19 (5) The office ~~department~~ may revoke or suspend the
20 certificate of authority of a health maintenance organization
21 which has declared or paid such an illegal dividend.

22 Section 1589. Section 641.385, Florida Statutes, is
23 amended to read:

24 641.385 Order to discontinue certain advertising.--If
25 in the opinion of the office ~~department~~ any advertisement by a
26 health maintenance organization violates any of the provisions
27 of this part, the department may enter an immediate order
28 requiring that the use of the advertisement be discontinued.
29 If requested by the health maintenance organization, the
30 office ~~department~~ shall conduct a hearing within 10 days of
31 the entry of such order. If, after the hearing or by

1 agreement with the health maintenance organization, a final
2 determination is made that the advertising was in fact
3 violative of any provision of this part, the office ~~department~~
4 may, in lieu of revocation of the certificate of authority,
5 require the publication of a corrective advertisement; impose
6 an administrative penalty of up to \$10,000; and, in the case
7 of an initial solicitation, require that the health
8 maintenance organization, prior to accepting any application
9 received in response to the advertisement, provide an
10 acceptable clarification of the advertisement to each
11 individual applicant.

12 Section 1590. Subsection (1) of section 641.39001,
13 Florida Statutes, is amended to read:

14 641.39001 Soliciting or accepting new or renewal
15 health maintenance contracts by insolvent or impaired health
16 maintenance organization prohibited; penalty.--

17 (1) Whether or not delinquency proceedings as to a
18 health maintenance organization have been or are to be
19 initiated, a director or officer of a health maintenance
20 organization, except with the written permission of the office
21 ~~Department of Insurance~~, may not authorize or permit the
22 health maintenance organization to solicit or accept new or
23 renewal health maintenance contracts or provider contracts in
24 this state after the director or officer knew, or reasonably
25 should have known, that the health maintenance organization
26 was insolvent or impaired. As used in this section, the term
27 "impaired" means that the health maintenance organization does
28 not meet the requirements of s. 641.225.

29 Section 1591. Subsections (6) and (10) of section
30 641.3903, Florida Statutes, are amended to read:

31

1 641.3903 Unfair methods of competition and unfair or
2 deceptive acts or practices defined.--The following are
3 defined as unfair methods of competition and unfair or
4 deceptive acts or practices:

5 (6) FAILURE TO MAINTAIN COMPLAINT-HANDLING
6 PROCEDURES.--Failure of any person to maintain a complete
7 record of all the complaints received since the date of the
8 most recent examination of the health maintenance organization
9 by the office ~~department~~. For the purposes of this
10 subsection, the term "complaint" means any written
11 communication primarily expressing a grievance and requesting
12 a remedy to the grievance.

13 (10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED
14 CHARGES FOR HEALTH MAINTENANCE COVERAGE.--

15 (a) Knowingly collecting any sum as a premium or
16 charge for health maintenance coverage which is not then
17 provided or is not in due course to be provided, subject to
18 acceptance of the risk by the health maintenance organization,
19 by a health maintenance contract issued by a health
20 maintenance organization as permitted by this part.

21 (b) Knowingly collecting as a premium or charge for
22 health maintenance coverage any sum in excess of or less than
23 the premium or charge applicable to health maintenance
24 coverage, in accordance with the applicable classifications
25 and rates as filed with the office ~~department~~, and as
26 specified in the health maintenance contract.

27 Section 1592. Section 641.3905, Florida Statutes, is
28 amended to read:

29 641.3905 General powers and duties of the department
30 and office.--In addition to the powers and duties set forth in
31 s. 624.307, the department and office shall each have the

1 power within its respective regulatory jurisdiction to examine
2 and investigate the affairs of every person, entity, or health
3 maintenance organization in order to determine whether the
4 person, entity, or health maintenance organization is
5 operating in accordance with the provisions of this part or
6 has been or is engaged in any unfair method of competition or
7 in any unfair or deceptive act or practice prohibited by s.
8 641.3901, and each shall have the powers and duties specified
9 in ss. 641.3907-641.3913 in connection therewith.

10 Section 1593. Section 641.3907, Florida Statutes, is
11 amended to read:

12 641.3907 Defined unfair practices; hearings,
13 witnesses, appearances, production of books, and service of
14 process.--

15 (1) Whenever the department or office has reason to
16 believe that any person, entity, or health maintenance
17 organization has engaged, or is engaging, in this state in any
18 unfair method of competition or any unfair or deceptive act or
19 practice as defined in s. 641.3903 or is operating a health
20 maintenance organization without a certificate of authority as
21 required by this part and that a proceeding by it in respect
22 thereto would be to the interest of the public, the department
23 or office shall conduct or cause to have conducted a hearing
24 in accordance with chapter 120.

25 (2) The department or office, a duly empowered hearing
26 officer, or an administrative law judge shall, during the
27 conduct of such hearing, have those powers enumerated in s.
28 120.569; however, the penalties for failure to comply with a
29 subpoena or with an order directing discovery shall be limited
30 to a fine not to exceed \$1,000 per violation.

31

1 (3) Statements of charges, notices, and orders under
2 this part may be served by anyone duly authorized by the
3 department or office, either in the manner provided by law for
4 service of process in civil actions or by certifying and
5 mailing a copy thereof to the person, entity, or health
6 maintenance organization affected by the statement, notice,
7 order, or other process at her or his or its residence or
8 principal office or place of business. The verified return by
9 the person so serving such statement, notice, order, or other
10 process, setting forth the manner of the service, shall be
11 proof of the same, and the return postcard receipt for such
12 statement, notice, order, or other process, certified and
13 mailed as aforesaid, shall be proof of service of the same.

14 Section 1594. Section 641.3909, Florida Statutes, is
15 amended to read:

16 641.3909 Cease and desist and penalty orders.--After
17 the hearing provided in s. 641.3907, the department or office
18 shall enter a final order in accordance with s. 120.569. If it
19 is determined that the person, entity, or health maintenance
20 organization charged has engaged in an unfair or deceptive act
21 or practice or the unlawful operation of a health maintenance
22 organization without a subsisting certificate of authority,
23 the department or office shall also issue an order requiring
24 the violator to cease and desist from engaging in such method
25 of competition, act, or practice or unlawful operation of a
26 health maintenance organization. Further, if the act or
27 practice constitutes a violation of s. 641.3155, s. 641.3901,
28 or s. 641.3903, the department or office may, at its
29 discretion, order any one or more of the following:

30 (1) Suspension or revocation of the health maintenance
31 organization's certificate of authority if it knew, or

1 reasonably should have known, it was in violation of this
2 part.

3 (2) If it is determined that the person or entity
4 charged has engaged in the business of operating a health
5 maintenance organization without a certificate of authority,
6 an administrative penalty not to exceed \$1,000 for each health
7 maintenance contract offered or effectuated.

8 Section 1595. Section 641.3911, Florida Statutes, is
9 amended to read:

10 641.3911 Appeals from the department or office.--Any
11 person, entity, or health maintenance organization subject to
12 an order of the department or office under s. 641.3909 or s.
13 641.3913 may obtain a review of the order by filing an appeal
14 therefrom in accordance with the provisions and procedures for
15 appeal under s. 120.68.

16 Section 1596. Section 641.3913, Florida Statutes, is
17 amended to read:

18 641.3913 Penalty for violation of cease and desist
19 orders.--Any person, entity, or health maintenance
20 organization which violates a cease and desist order of the
21 department or office under s. 641.3909 while such order is in
22 effect, after notice and hearing as provided in s. 641.3907,
23 shall be subject, at the discretion of the department or
24 office, to any one or more of the following:

25 (1) A monetary penalty of not more than \$200,000 as to
26 all matters determined in such hearing.

27 (2) Suspension or revocation of the health maintenance
28 organization's certificate of authority.

29 Section 1597. Section 641.3917, Florida Statutes, is
30 amended to read:

31

1 641.3917 Civil liability.--The provisions of this part
2 are cumulative to rights under the general civil and common
3 law, and no action of the department or office shall abrogate
4 such rights to damage or other relief in any court.

5 Section 1598. Subsections (3), (10), and (14) of
6 section 641.3922, Florida Statutes, are amended to read:

7 641.3922 Conversion contracts; conditions.--Issuance
8 of a converted contract shall be subject to the following
9 conditions:

10 (3) CONVERSION PREMIUM.--The premium for the converted
11 contract shall be determined in accordance with premium rates
12 applicable to the age and class of risk of each person to be
13 covered under the converted contract and to the type and
14 amount of coverage provided. However, the premium for the
15 converted contract may not exceed 200 percent of the standard
16 risk rate, as established by the office ~~department~~ under s.
17 627.6675(3). The mode of payment for the converted contract
18 shall be quarterly or more frequently at the option of the
19 organization, unless otherwise mutually agreed upon between
20 the subscriber and the organization.

21 (10) ALTERNATE PLANS.--The health maintenance
22 organization shall offer a standard health benefit plan as
23 established pursuant to s. 627.6699(12). The health
24 maintenance organization may, at its option, also offer
25 alternative plans for group health conversion in addition to
26 those required by this section, provided any alternative plan
27 is approved by the office ~~department~~ or is a converted policy,
28 approved under s. 627.6675 and issued by an insurance company
29 authorized to transact insurance in this state. Approval by
30 the office ~~department~~ of an alternative plan shall be based on
31 compliance by the alternative plan with the provisions of this

1 part and the rules promulgated thereunder, applicable
2 provisions of the Florida Insurance Code and rules promulgated
3 thereunder, and any other applicable law.

4 (14) NOTIFICATION.--A notification of the conversion
5 privilege shall be included in each health maintenance
6 contract and in any certificate or member's handbook. The
7 organization shall mail an election and premium notice form,
8 including an outline of coverage, on a form approved by the
9 office department, within 14 days after any individual who is
10 eligible for a converted health maintenance contract gives
11 notice to the organization that the individual is considering
12 applying for the converted contract or otherwise requests such
13 information. The outline of coverage must contain a
14 description of the principal benefits and coverage provided by
15 the contract and its principal exclusions and limitations,
16 including, but not limited to, deductibles and coinsurance.

17 Section 1599. Section 641.402, Florida Statutes, is
18 amended to read:

19 641.402 Definitions.--As used in this part, the term:

20 (1) "Basic services" includes any of the following:
21 emergency care, physician care other than hospital inpatient
22 physician services, ambulatory diagnostic treatment, and
23 preventive health care services.

24 ~~(2) "Department" means the Department of Insurance.~~

25 (2)~~(3)~~ "Guaranteeing organization" means an
26 organization that ~~which~~ is domiciled in the United States;
27 that ~~which~~ has authorized service of process against it; and
28 that ~~which~~ has appointed the Chief Financial Officer Insurance
29 ~~Commissioner and Treasurer~~ as its agent for service of process
30 in connection with any cause of action arising in this state,
31 based upon any guarantee entered into under this part.

1 (3)~~(4)~~ "Insolvent" or "insolvency" means the inability
2 of a prepaid health clinic to discharge its liabilities as
3 they become due in the normal course of business.

4 (4)~~(5)~~ "Prepaid health clinic" means any organization
5 authorized under this part which provides, either directly or
6 through arrangements with other persons, basic services to
7 persons enrolled with such organization, on a prepaid per
8 capita or prepaid aggregate fixed-sum basis, including those
9 basic services which subscribers might reasonably require to
10 maintain good health. However, no clinic that ~~which~~ provides
11 or contracts for, either directly or indirectly, inpatient
12 hospital services, hospital inpatient physician services, or
13 indemnity against the cost of such services shall be a prepaid
14 health clinic.

15 (5)~~(6)~~ "Prepaid health clinic contract" means any
16 contract entered into by a prepaid health clinic with a
17 subscriber or group of subscribers to provide any of the basic
18 services in exchange for a prepaid per capita or prepaid
19 aggregate fixed sum.

20 (6)~~(7)~~ "Provider" means any physician or person other
21 than a hospital that furnishes health care services and is
22 licensed or authorized to practice in this state.

23 (7)~~(8)~~ "Reporting period" means the particular span of
24 time by or for which accounts are redeemed on an annualized
25 basis.

26 (8)~~(9)~~ "Subscriber" means an individual who has
27 contracted, or on whose behalf a contract has been entered
28 into, with a prepaid health clinic for health care services.

29 (9)~~(10)~~ "Surplus" means total unencumbered assets in
30 excess of total liabilities. Surplus includes capital stock,
31

1 capital in excess of par, and retained earnings and may
2 include surplus notes.

3 (10)~~(11)~~ "Surplus notes" means debt that ~~which~~ has
4 been guaranteed by the United States Government or its
5 agencies or debt that ~~which~~ has been subordinated to all
6 claims of subscribers and general creditors of the prepaid
7 health clinic.

8 Section 1600. Section 641.403, Florida Statutes, is
9 amended to read:

10 641.403 Rulemaking authority.--The commission may
11 ~~Department of Insurance has authority to~~ adopt rules pursuant
12 to ss. 120.536(1) and 120.54 to implement the provisions of
13 this part.

14 Section 1601. Section 641.405, Florida Statutes, is
15 amended to read:

16 641.405 Application for certificate of authority to
17 operate prepaid health clinic.--

18 (1) No person may operate a prepaid health clinic
19 without first obtaining a certificate of authority from the
20 office ~~department~~. The office ~~department~~ shall not issue a
21 certificate of authority to any applicant which does not
22 possess a valid Health Care Provider Certificate issued by the
23 Agency for Health Care Administration.

24 (2) Each application for a certificate of authority
25 shall be on such form as the commission ~~department~~ prescribes,
26 and such application shall be accompanied by:

27 (a) A copy of the basic organizational document of the
28 applicant, if any, such as the articles of incorporation,
29 articles of association, partnership agreement, trust
30 agreement, or other applicable document, and all amendments to
31 such document.

1 (b) A copy of the constitution, bylaws, rules and
2 regulations, or similar form of document, if any, regulating
3 the conduct of the affairs of the applicant.

4 (c) A list of the names, addresses, and official
5 capacities with the applicant of the persons who are to be
6 responsible for the conduct of the affairs of the clinic,
7 including all members of the governing body, the officers and
8 directors in the case of a corporation, and the partners or
9 associates in the case of a partnership or association. Such
10 persons shall fully disclose to the office ~~department~~ and the
11 governing body of the clinic the extent and nature of any
12 contracts or arrangements between them and the clinic,
13 including any possible conflicts of interest.

14 (d) A statement generally describing the clinic and
15 its operations.

16 (e) Each form of prepaid health clinic contract that
17 the applicant proposes to offer the subscribers, showing for
18 each form of contract the benefits to which the subscribers
19 are entitled, together with a table of the rates charged, or
20 proposed to be charged.

21 (f) A copy of the applicant's Health Care Provider
22 Certificate from the Agency for Health Care Administration,
23 issued pursuant to part III of this chapter.

24 (g) A financial statement prepared on the basis of
25 generally accepted accounting principles, except that surplus
26 notes acceptable to the office ~~department~~ may be included in
27 the calculation of surplus.

28 Section 1602. Section 641.406, Florida Statutes, is
29 amended to read:

30 641.406 Issuance of certificate of authority.--The
31 office ~~department~~ shall issue a certificate of authority for a

1 prepaid health clinic to any applicant filing a properly
2 completed application in conformity with s. 641.405, upon
3 payment of the prescribed fees and upon the office's
4 ~~department's~~ being satisfied that:

5 (1) As a condition precedent to the issuance of any
6 certificate, the applicant has obtained a Health Care Provider
7 Certificate from the Agency for Health Care Administration
8 pursuant to part III of this chapter.

9 (2) The proposed rates are actuarially sound for the
10 benefits provided, including administrative costs.

11 (3) The applicant has met the minimum surplus
12 requirements of s. 641.407.

13 (4) The procedures for offering basic services and
14 offering and terminating contracts to subscribers will not
15 unfairly discriminate on the basis of age, health, or economic
16 status. However, this subsection does not prohibit reasonable
17 underwriting classifications for the purposes of establishing
18 contract rates, nor does it prohibit experience rating.

19 (5) The procedures for offering basic services and
20 offering and terminating contracts to subscribers will not
21 discriminate on the basis of sex, race, or national origin.

22 (6) The applicant furnishes evidence of adequate
23 insurance coverage or an adequate plan for self-insurance to
24 respond to claims for injuries arising out of the furnishing
25 of basic services.

26 (7) The ownership, control, or management of the
27 applicant is competent and trustworthy and possesses
28 managerial experience that would make the proposed clinic
29 operation beneficial to the subscribers. The office ~~department~~
30 shall not grant or continue authority to transact the business
31 of a prepaid health clinic in this state at any time during

1 which the office ~~department~~ has good reason to believe that
2 the ownership, control, or management of the clinic is under
3 the control of any person whose business operations are or
4 have been marked by business practices or conduct that is to
5 the detriment of the public, stockholders, investors, or
6 creditors; by the improper manipulation of assets or of
7 accounts; or by bad faith.

8 (8) The application and the applicant are in
9 conformity with all requirements of this part.

10 Section 1603. Section 641.4065, Florida Statutes, is
11 amended to read:

12 641.4065 Insurance business not authorized.--Nothing
13 in the Florida Insurance Code or this part shall be deemed to
14 authorize any prepaid health clinic to transact any insurance
15 business other than that issuing prepaid health clinic
16 contracts or otherwise to engage in any other type of
17 insurance unless it is authorized under a certificate of
18 authority issued by the office ~~department~~ under the provisions
19 of the Florida Insurance Code.

20 Section 1604. Subsection (2) of section 641.407,
21 Florida Statutes, is amended to read:

22 641.407 Minimum surplus.--

23 (2) In lieu of having any minimum surplus, the prepaid
24 health clinic may provide a written guaranty to assure payment
25 of covered subscriber claims if the guaranteeing organization
26 has been in operation for at least 3 years and has a surplus,
27 not including land, buildings, and equipment, equal to the
28 product of 2 times the amount of the required statutory
29 surplus. Such guaranteeing organization and such written
30 guaranty must be acceptable to, and approved by, the office
31 ~~department~~. The office ~~department~~ shall consider the

1 likelihood of the payment of subscriber claims in granting or
2 withholding such approval.

3 Section 1605. Section 641.409, Florida Statutes, is
4 amended to read:

5 641.409 Insolvency protection.--

6 (1) Every prepaid health clinic shall comply with one
7 of the following paragraphs:

8 (a) The prepaid health clinic shall secure insurance
9 to the satisfaction of the office ~~department~~ to protect
10 subscribers in the event the prepaid health clinic is unable
11 to meet its obligations to subscribers under the terms of any
12 prepaid health clinic contract issued to a subscriber.

13 (b) The prepaid health clinic shall file with the
14 office ~~department~~ a surety bond issued by an authorized surety
15 insurer. The bond shall be for the same purpose as the
16 insurance in lieu of which the bond is filed. The office
17 ~~department~~ shall not approve any bond under the terms of which
18 the protection afforded against insolvency is not equivalent
19 to the protection afforded by such insurance. The bond shall
20 guarantee that the prepaid health clinic will faithfully and
21 truly perform all the conditions of any prepaid health clinic
22 contract. No such bond shall be canceled or subject to
23 cancellation unless at least 60 days' notice of the
24 cancellation, in writing, is filed with the office ~~department~~.
25 In the event that the notice of termination of the bond is
26 filed with the office ~~department~~, the prepaid health clinic
27 insured under the bond shall, within 30 days of the filing of
28 the notice of termination, provide the office ~~department~~ with
29 a replacement bond meeting the requirements of this part or
30 secure insurance as required by paragraph (a). The
31 cancellation of a bond does not relieve the obligation of the

1 issuer of the bond for claims arising out of contracts issued
2 prior to the cancellation of the bond unless a replacement
3 bond or insurance is secured. In no event shall the issuer's
4 aggregate liability under the bond exceed the face amount of
5 the bond. If, within 30 days of filing the notice of
6 termination, a replacement bond or insurance has not been
7 secured and filed with the office ~~department~~, the office
8 ~~department~~ shall suspend the certificate of the prepaid health
9 clinic until the deposit requirements are satisfied. Whenever
10 the prepaid health clinic ceases to do business in this state
11 and furnishes to the office ~~department~~ satisfactory proof that
12 it has discharged or otherwise adequately provided for all of
13 its obligations to its subscribers, the office ~~department~~
14 shall release any bond filed by the prepaid health clinic.

15 (2) In determining the sufficiency of the insurance
16 required under paragraph (1)(a) or the surety bond required
17 under paragraph (1)(b), the office ~~department~~ may consider the
18 number of subscribers, the basic services included in
19 subscriber contracts, and the cost of providing such basic
20 services to subscribers in the geographic area served.

21 (3) Every prepaid health clinic shall deposit with the
22 department a cash deposit in the amount of \$30,000 to
23 guarantee that the obligations to the subscribers will be
24 performed.

25 Section 1606. Section 641.41, Florida Statutes, is
26 amended to read:

27 641.41 Annual report of prepaid health clinic;
28 administrative penalty.--

29 (1) Each prepaid health clinic shall file a report
30 with the office ~~department~~, annually on or before March 1, or
31 within 3 months of the end of the reporting period of the

1 clinic, or within such extension of time for the filing of the
2 report as the office ~~department~~, for good cause, may grant.
3 The report of the prepaid health clinic must be filed on forms
4 prescribed by the commission ~~department~~ and must be verified
5 under oath by two executive officers of the clinic or, if the
6 clinic is not a corporation, verified under oath by two
7 persons who are principal managing directors of the affairs of
8 the clinic. The report of the clinic shall show the condition
9 of the clinic on the last day of the immediately preceding
10 reporting period. Such report shall include:

11 (a) A financial statement of the clinic, including its
12 balance sheet and a statement of operations for the preceding
13 year;

14 (b) A list of the name and residence address of every
15 person responsible for the conduct of the affairs of the
16 clinic, together with a disclosure of the extent and nature of
17 any contract or arrangement between such person and the
18 clinic, including any possible conflicts of interest;

19 (c) The number of prepaid health clinic contracts
20 issued and outstanding, and the number of prepaid health
21 clinic contracts terminated and a compilation of the reasons
22 for such terminations;

23 (d) Such statistical information as is requested by
24 the commission or office ~~department~~, which information shows
25 the rates of the clinic for all basic services provided under
26 prepaid health clinic contracts;

27 (e) The number and amount of damage claims for medical
28 injury initiated against the clinic and any of the providers
29 engaged by it during the reporting year, broken down into
30 claims with and without formal legal process, and the
31 disposition, if any, of each such claim; and

1 (f) Such other information relating to the performance
2 of the clinic as is required by the commission or office
3 ~~department~~.

4 (2) Any clinic which neglects to file the annual
5 report in the form and within the time required by this
6 section is subject to an administrative penalty, not to exceed
7 \$100 for each day during which the neglect continues; and,
8 upon notice by the office ~~department~~ to that effect, the
9 authority of the clinic to do business in this state shall
10 cease while such default continues.

11 Section 1607. Section 641.412, Florida Statutes, is
12 amended to read:

13 641.412 Fees.--

14 (1) Every prepaid health clinic shall pay to the
15 office ~~department~~ the following fees:

16 (a) For filing a copy of its application for a
17 certificate of authority or an amendment to such certificate,
18 a nonrefundable fee in the amount of \$150.

19 (b) For filing each annual report, a fee in the amount
20 of \$150.

21 (2) The fees charged under this section shall be
22 distributed as follows:

23 (a) One-third of the total amount of fees shall be
24 distributed to the Agency for Health Care Administration; and

25 (b) Two-thirds of the total amount of fees shall be
26 distributed to the office ~~Department of Insurance~~.

27 Section 1608. Section 641.418, Florida Statutes, is
28 amended to read:

29 641.418 Examination of prepaid health clinic by the
30 office ~~department~~.--The office ~~department~~ shall examine the
31 affairs, transactions, accounts, business records, and assets

1 of any prepaid health clinic as often as the office ~~department~~
2 deems it expedient for the protection of the people of this
3 state. Every clinic shall submit its books and records and
4 take other appropriate action as may be necessary to
5 facilitate an examination. However, medical records of
6 individuals and records of physicians providing services under
7 contracts to the clinic are not subject to audit, although
8 such records may be subject to subpoena by court order upon a
9 showing of good cause. For the purpose of examinations, the
10 office ~~department~~ may administer oaths to and examine the
11 officers and agents of a clinic concerning its business and
12 affairs. The expenses for the examination of each clinic by
13 the office ~~department~~ are subject to the same terms and
14 conditions that apply to insurers under part II of chapter
15 624. In no event shall the expenses of all examinations exceed
16 the maximum amount of \$15,000 per year.

17 Section 1609. Subsections (2), (3), (5), and (7) of
18 section 641.42, Florida Statutes, is amended to read:

19 641.42 Prepaid health clinic contracts.--

20 (2) The rates charged by any clinic to its subscribers
21 shall not be excessive, inadequate, or unfairly
22 discriminatory. The commission ~~department~~, in accordance with
23 generally accepted actuarial practice, may define by rule what
24 constitutes excessive, inadequate, or unfairly discriminatory
25 rates and may require whatever information the commission
26 ~~department~~ deems necessary to determine that a rate or
27 proposed rate meets the requirements of this subsection.

28 (3) No clinic shall issue or agree to issue any
29 prepaid health clinic contract to a subscriber unless the
30 contract has first been filed with, and approved by, the
31 office ~~department~~.

1 (5) Every subscriber shall receive a clear and
2 understandable description of the method of the clinic for
3 resolving subscriber grievances; such method shall be set
4 forth in the contract and shall be approved by the office
5 ~~department~~ on the basis of its underlying fairness.

6 (7)(a) If a clinic desires to amend any contract with
7 any of its subscribers or desires to change any rate charged
8 for the contract, the clinic may do so, upon filing with the
9 office ~~department~~ the proposed amendment or change in rates.

10 (b) No prepaid health clinic contract form or
11 application form when written application is required and is
12 to be made a part of the policy or contract, or no printed
13 amendment, addendum, rider, or endorsement form or form of
14 renewal certificate, shall be delivered or issued for delivery
15 in this state, unless the form has been filed with the office
16 ~~department at its offices in Tallahassee~~ by or in behalf of
17 the clinic which proposes to use such form and has been
18 approved by the office ~~department~~. Every such filing shall be
19 made not less than 30 days in advance of any such use or
20 delivery. At the expiration of such 30 days, the form so filed
21 shall be deemed approved unless prior to the end of the 30
22 days the form has been affirmatively approved or disapproved
23 by the office ~~department~~. The approval of any such form by the
24 office ~~department~~ constitutes a waiver of any unexpired
25 portion of such waiting period. The office ~~department~~ may
26 extend by not more than an additional 15 days the period
27 within which the office ~~department~~ may so affirmatively
28 approve or disapprove any such form, by giving notice of such
29 extension before the expiration of the initial 30-day period.
30 At the expiration of any such period as so extended, and in
31 the absence of such prior affirmative approval or disapproval,

1 such form shall be deemed approved. The office ~~department~~ may,
2 for cause, withdraw a previous approval. No clinic shall issue
3 or use any form which has been disapproved by the office
4 ~~department~~ or any form for which the office ~~department~~ has
5 withdrawn approval.

6 (c) The office ~~department~~ shall disapprove any form
7 filed under this subsection, or withdraw any previous approval
8 of the form, only if the form:

9 1. Is in any respect in violation of, or does not
10 comply with, any provision of this part or rule adopted under
11 this part.

12 2. Contains or incorporates by reference, where such
13 incorporation is otherwise permissible, any inconsistent,
14 ambiguous, or misleading clauses, or exceptions and conditions
15 which deceptively affect the risk purported to be assumed in
16 the general coverage of the contract.

17 3. Has a misleading title, misleading heading, or
18 other indication of the provisions of the form which is
19 misleading.

20 4. Is printed or otherwise reproduced in such manner
21 as to render any material provision of the form substantially
22 illegible.

23 5. Provides benefits which are unreasonable in
24 relation to the rate charged or contains provisions which are
25 unfair, inequitable, or contrary to the public policy of this
26 state or encourage misrepresentation.

27 (d) In determining whether the benefits are reasonable
28 in relation to the rate charged, the office ~~department~~, in
29 accordance with reasonable actuarial techniques, shall
30 consider:

31

1 1. Past loss experience and prospective loss
2 experience.

3 2. Allocation of expenses.

4 3. Risk and contingency margins, along with
5 justification of such margins.

6 4. Acquisition costs.

7 5. Other factors deemed appropriate by the office
8 ~~department~~, based on sound actuarial techniques.

9 Section 1610. Section 641.421, Florida Statutes, is
10 amended to read:

11 641.421 Language used in contracts and advertisements;
12 translations.--

13 (1)(a) All prepaid health clinic contracts or forms
14 shall be printed in English.

15 (b) If the negotiations by a prepaid health clinic
16 with a subscriber leading up to the effectuation of a prepaid
17 health clinic contract are conducted in a language other than
18 English, the prepaid health clinic shall supply to the
19 subscriber a written translation of the contract, which
20 translation accurately reflects the substance of the contract
21 and is in the language used to negotiate the contract. Any
22 such translation shall be furnished to the office ~~department~~
23 as part of the filing of the prepaid health clinic contract
24 form and shall be approved by the office ~~department~~ prior to
25 use. No translation of a prepaid health clinic contract form
26 shall be approved by the office ~~department~~ unless the
27 translation accurately reflects the substance of the prepaid
28 health clinic contract form in translation. When a translation
29 of a prepaid health clinic contract is used, the translation
30 shall clearly and conspicuously state on its face and in the
31 language of the translation:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

READ THIS FIRST

This is a translation of the document that you are about to sign.

(2) All advertisements by a prepaid health clinic, if printed or broadcast in a language other than English, also shall be available in English and shall be furnished to the office ~~department~~ upon request. As used in this subsection, the term "advertisement" means any advertisement, circular, pamphlet, brochure, or other printed material disclosing or disseminating advertising material or information by a clinic to prospective or existing subscribers and includes any radio or television transmittal of an advertisement or information.

Section 1611. Subsection (2) of section 641.424, Florida Statutes, is amended to read:

641.424 Validity of noncomplying contracts.--

(2) Any contract delivered or issued for delivery in this state covering a subscriber resident, located, or to be performed in this state, which subscriber, pursuant to the provisions of this part, the clinic may not lawfully provide under such a contract, is cancelable at any time by the clinic, any provision of the contract to the contrary notwithstanding; and the clinic shall promptly cancel the contract in accordance with the request of the office ~~department~~ for such cancellation. No such illegality or cancellation shall be deemed to relieve the clinic of any liability incurred by the clinic under the contract while the contract was in force or to prohibit the clinic from retaining the pro rata earned premium on the contract. This provision does not relieve the clinic from any penalty otherwise

1 incurred by the clinic under this part on account of any such
2 violation.

3 Section 1612. Section 641.437, Florida Statutes, is
4 amended to read:

5 641.437 Investigatory power of office ~~department~~.--The
6 office ~~department~~ has the power to examine and investigate the
7 affairs of every person, entity, or prepaid health clinic in
8 order to determine whether the person, entity, or prepaid
9 health clinic is operating in accordance with the provisions
10 of this part or has been or is engaged in any unfair method of
11 competition or any unfair or deceptive act or practice
12 prohibited by s. 641.44.

13 Section 1613. Section 641.443, Florida Statutes, is
14 amended to read:

15 641.443 Temporary restraining orders.--

16 (1) The office ~~department~~ is vested with the power to
17 seek a temporary restraining order:

18 (a) On behalf of the office ~~department~~ or on behalf of
19 a subscriber or subscribers of a prepaid health clinic that is
20 being operated by a person or entity without a subsisting
21 certificate of authority; or

22 (b) On behalf of the office ~~department~~ or on behalf of
23 a subscriber or subscribers to whom a prepaid health clinic,
24 person, or entity is issuing, delivering, or renewing prepaid
25 health clinic contracts without an existing certificate of
26 authority.

27 (2) The office ~~department~~ and the Agency for Health
28 Care Administration are each vested with the power to seek a
29 temporary restraining order on their behalf or on behalf of a
30 subscriber or subscribers of a prepaid health clinic that is
31 being operated in violation of any provision of this part or

1 any rule promulgated under this part, or any other applicable
2 law or rule.

3 Section 1614. Section 641.444, Florida Statutes, is
4 amended to read:

5 641.444 Injunction.--In addition to the penalties and
6 other enforcement provisions of this part, if a person,
7 entity, or prepaid health clinic has engaged in any activity
8 prohibited by this part or any rule adopted pursuant to this
9 part, the office ~~department~~ may resort to a proceeding for
10 injunction in the circuit court of the county where such
11 person, entity, or prepaid health clinic is located or has her
12 or his or its principal place of business; and the office
13 ~~department~~ may apply in such court for such temporary and
14 permanent orders as the office ~~department~~ may deem necessary
15 to restrain the person, entity, or prepaid health clinic from
16 engaging in any such activity, until the person, entity, or
17 prepaid health clinic complies with the provisions and rules.

18 Section 1615. Section 641.445, Florida Statutes, is
19 amended to read:

20 641.445 Defined practices; hearings, witnesses,
21 appearances, production of books, and service of process.--

22 (1) Whenever the office ~~department~~ has reason to
23 believe that a person, entity, or prepaid health clinic has
24 engaged, or is engaging, in this state in any unfair method of
25 competition or any unfair or deceptive act or practice as
26 defined in s. 641.441, or is operating a prepaid health clinic
27 without a certificate of authority as required by this part or
28 otherwise operating in violation of any provision of this part
29 or rule adopted pursuant to this part, and that a proceeding
30 by the office ~~department~~ in respect thereto would be in the
31 interest of the public, the office ~~department~~ shall conduct,

1 or cause to have conducted, a hearing in accordance with
2 chapter 120.

3 (2) The office ~~department~~, a duly empowered hearing
4 officer, or an administrative law judge shall, during the
5 conduct of such hearing, have those powers enumerated in s.
6 120.569; however, the penalty for the failure to comply with a
7 subpoena or with an order directing discovery is limited to a
8 fine not to exceed \$1,000 per violation.

9 (3) A statement of charges, notice, or order under
10 this part may be served by anyone duly authorized by the
11 office ~~department~~, either in the manner provided by law for
12 service of process in civil actions or by certifying and
13 mailing a copy of the statement of charges, notice, or order
14 to the person, entity, or prepaid health clinic affected by
15 the statement, notice, or order or other process at his or her
16 or its residence or principal office or place of business.
17 The verified return by the person so serving such statement,
18 notice, or order or other process, setting forth the manner of
19 the service, is proof of such service; and the return postcard
20 receipt for such statement, notice, or order or other process,
21 certified and mailed as provided in this subsection, is proof
22 of the service of the statement, notice, or order or other
23 process.

24 Section 1616. Section 641.446, Florida Statutes, is
25 amended to read:

26 641.446 Cease and desist and penalty orders.--After
27 the hearing provided in s. 641.445, the office ~~department~~
28 shall enter a final order in accordance with s. 120.569. If it
29 is determined that the person, entity, or prepaid health
30 clinic charged has engaged in an unfair or deceptive act or
31 practice or the unlawful operation of a prepaid health clinic,

1 the office department also shall issue an order requiring the
2 violator to cease and desist from engaging in such method of
3 competition, act, or practice or unlawful operation of a
4 prepaid health clinic. Furthermore, the office department may,
5 at its discretion, order any one or more of the following:

6 (1) The suspension or revocation of the certificate of
7 authority of the prepaid health clinic if it knew, or
8 reasonably should have known, that it was in violation of this
9 part.

10 (2) If it is determined that the person or entity
11 charged has engaged in the business of operating a prepaid
12 health clinic without a certificate of authority, an
13 administrative penalty not to exceed \$1,000 for each prepaid
14 health clinic contract offered or effectuated.

15 Section 1617. Section 641.447, Florida Statutes, is
16 amended to read:

17 641.447 Appeal from ~~departmental~~ order.--Any person,
18 entity, or prepaid health clinic that is subject to an order
19 of the office department under s. 641.446 may obtain a review
20 of the order by filing an appeal from the order in accordance
21 with the provisions and procedures for appeal under s. 120.68.

22 Section 1618. Section 641.448, Florida Statutes, is
23 amended to read:

24 641.448 Penalty for violation of cease and desist
25 order.--Any person, entity, or prepaid health clinic that
26 violates a cease and desist order of the office department
27 under s. 641.446 while such order is in effect, after notice
28 and hearing as provided in s. 641.445, is subject, at the
29 discretion of the office department, to any one or more of the
30 following:

31

1 (1) A monetary penalty of not more than \$50,000 as to
2 all matters determined in such hearing.

3 (2) The suspension or revocation of the certificate of
4 authority of the prepaid health clinic.

5 Section 1619. Section 641.45, Florida Statutes, is
6 amended to read:

7 641.45 Revocation or cancellation of certificate of
8 authority; suspension of authority to enroll new subscribers;
9 terms of suspension.--

10 (1) The maintenance of a valid and current Health Care
11 Provider Certificate issued pursuant to part III of this
12 chapter is a condition of the maintenance of a valid and
13 current certificate of authority issued by the office
14 ~~department~~ to operate a prepaid health clinic. Revocation or
15 nonrenewal of a Health Care Provider Certificate shall be
16 deemed to be an automatic and immediate cancellation of a
17 prepaid health clinic's certificate of authority.

18 (2) The office ~~department~~ may suspend the authority of
19 a clinic to enroll new subscribers or revoke any certificate
20 of authority issued to a prepaid health clinic, or order
21 compliance within 60 days, if the office ~~department~~ finds that
22 any of the following conditions exist:

23 (a) The clinic is not operating in compliance with
24 this part or any rule promulgated under this part.

25 (b) The plan is no longer actuarially sound or the
26 clinic does not have the minimum surplus as required by this
27 part.

28 (c) The existing contract rates are excessive,
29 inadequate, or unfairly discriminatory.

30 (d) The clinic has advertised, merchandised, or
31 attempted to merchandise its services in such a manner as to

1 misrepresent its services or capacity for services or has
2 engaged in deceptive, misleading, or unfair practices with
3 respect to advertising or merchandising.

4 (e) The organization is insolvent.

5 (f) The clinic has not complied with the grievance
6 procedures for subscribers that are set forth in any prepaid
7 health clinic contract.

8 (g) The clinic has not fully satisfied a judgment
9 against the clinic within 10 days of the entry of the judgment
10 by any court in the state or, in the case of an appeal from
11 such judgment, has not fully satisfied the judgment within 60
12 days after affirmance of the judgment by the appellate court.

13 (3) The office ~~department~~ shall, in its order
14 suspending the authority of a clinic to enroll new
15 subscribers, specify the period during which the suspension is
16 to be in effect and the conditions, if any, which must be met
17 by the clinic prior to reinstatement of its authority to
18 enroll new subscribers. The order of suspension is subject to
19 rescission or modification by further order of the office
20 ~~department~~ prior to the expiration of the suspension period.
21 Reinstatement shall not be made unless requested by the
22 clinic; however, the office ~~department~~ shall not grant
23 reinstatement if it finds that the circumstances for which the
24 suspension occurred still exist or are likely to recur.

25 Section 1620. Section 641.452, Florida Statutes, is
26 amended to read:

27 641.452 Administrative penalty in lieu of suspension
28 or revocation of certificate of authority.--The office
29 ~~department~~ may, in lieu of suspension or revocation of a
30 certificate of authority, levy an administrative penalty in an
31 amount not more than \$10,000 for each violation by a prepaid

1 health clinic. In levying such fine, the office ~~department~~
2 shall consider the number of members and total revenues of the
3 clinic and whether the violation was committed knowingly and
4 willfully.

5 Section 1621. Section 641.453, Florida Statutes, is
6 amended to read:

7 641.453 Civil liability.--The provisions of this part
8 are cumulative to the rights under the general civil law and
9 common law, and no action of the office ~~department~~ shall
10 abrogate such rights to damages or other relief in any court.

11 Section 1622. Section 641.454, Florida Statutes, is
12 amended to read:

13 641.454 Civil action to enforce prepaid health clinic
14 contract; attorney's fees; court costs.--In any civil action
15 brought to enforce the terms and conditions of a prepaid
16 health clinic contract, the prevailing party is entitled to
17 recover reasonable attorney's fees and court costs. This
18 section shall not be construed to authorize a civil action
19 against the commission or office ~~department~~, or their ~~its~~
20 employees, ~~or the Insurance Commissioner and Treasurer~~ or
21 against the Agency for Health Care Administration, the
22 employees of the Agency for Health Care Administration, or the
23 Secretary of Health Care Administration.

24 Section 1623. Section 641.455, Florida Statutes, is
25 amended to read:

26 641.455 Disposition of moneys collected under this
27 part.--Fees, administrative penalties, examination expenses,
28 and other sums collected by the office ~~department~~ under this
29 part shall be deposited to the credit of the Insurance
30 ~~Commissioner's~~ Regulatory Trust Fund; however, fees,
31 examination expenses, and other sums collected by, or

1 allocated to, the Agency for Health Care Administration under
2 this part shall be deposited to the credit of the General
3 Revenue Fund.

4 Section 1624. Section 641.457, Florida Statutes, is
5 amended to read:

6 641.457 Exemption for certain operational prepaid
7 health clinics.--The provisions of this part do not apply to
8 those prepaid health clinics providing the services defined in
9 ss. 641.40 through 641.459, which clinics have been
10 continuously engaged in providing such services since January
11 1, 1947, provided that any prepaid health clinic claiming an
12 exemption under this section notified ~~notifies~~ the former
13 Department of Insurance of its claim on or before January 1,
14 1985. This exemption will terminate upon a change in
15 controlling ownership of the organization.

16 Section 1625. Section 641.48, Florida Statutes, is
17 amended to read:

18 641.48 Purpose and application of part.--The purpose
19 of this part is to ensure that health maintenance
20 organizations and prepaid health clinics deliver high-quality
21 health care to their subscribers. To achieve this purpose,
22 this part requires all such organizations to obtain a health
23 care provider certificate from the agency as a condition
24 precedent to obtaining a certificate of authority to do
25 business in Florida from the office ~~Department of Insurance~~,
26 under part I or part II of this chapter.

27 Section 1626. Subsection (2) of section 641.49,
28 Florida Statutes, is amended to read:

29 641.49 Certification of health maintenance
30 organization and prepaid health clinic as health care
31 providers; application procedure.--

1 (2) The office ~~Department of Insurance~~ shall not issue
2 a certificate of authority under part I or part II of this
3 chapter to any applicant which does not possess a valid health
4 care provider certificate issued by the agency under this
5 part.

6 Section 1627. Subsection (4) of section 641.495,
7 Florida Statutes, is amended to read:

8 641.495 Requirements for issuance and maintenance of
9 certificate.--

10 (4) The organization shall ensure that the health care
11 services it provides to subscribers, including physician
12 services as required by s. 641.19(12)(d) and (e)~~s.~~

13 ~~641.19(13)(d) and (e)~~, are accessible to the subscribers, with
14 reasonable promptness, with respect to geographic location,
15 hours of operation, provision of after-hours service, and
16 staffing patterns within generally accepted industry norms for
17 meeting the projected subscriber needs. The health maintenance
18 organization must provide treatment authorization 24 hours a
19 day, 7 days a week. Requests for treatment authorization may
20 not be held pending unless the requesting provider
21 contractually agrees to take a pending or tracking number.

22 Section 1628. Subsections (7), (8), and (11) of
23 section 641.511, Florida Statutes, are amended to read:

24 641.511 Subscriber grievance reporting and resolution
25 requirements.--

26 (7) Each organization shall send to the agency a copy
27 of its quarterly grievance reports submitted to the office
28 ~~Department of Insurance~~ pursuant to s. 408.7056(12).

29 (8) The agency shall investigate all reports of
30 unresolved quality of care grievances received from:

31

1 (a) Annual and quarterly grievance reports submitted
2 by the organization to the office ~~Department of Insurance~~.

3 (b) Review requests of subscribers whose grievances
4 remain unresolved after the subscriber has followed the full
5 grievance procedure of the organization.

6 (11) Each organization, as part of its contract with
7 any provider, must require the provider to post a consumer
8 assistance notice prominently displayed in the reception area
9 of the provider and clearly noticeable by all patients. The
10 consumer assistance notice must state the addresses and
11 toll-free telephone numbers of the Agency for Health Care
12 Administration, the Statewide Provider and Subscriber
13 Assistance Program, and the Department of Financial Services
14 ~~Insurance~~. The consumer assistance notice must also clearly
15 state that the address and toll-free telephone number of the
16 organization's grievance department shall be provided upon
17 request. The agency may adopt ~~is authorized to promulgate~~
18 rules to implement this section.

19 Section 1629. Subsections (1), (3), and (6) of section
20 641.512, Florida Statutes, are amended to read:

21 641.512 Accreditation and external quality assurance
22 assessment.--

23 (1)(a) To promote the quality of health care services
24 provided by health maintenance organizations and prepaid
25 health clinics in this state, the office ~~department~~ shall
26 require each health maintenance organization and prepaid
27 health clinic to be accredited within 1 year of the
28 organization's receipt of its certificate of authority and to
29 maintain accreditation by an accreditation organization
30 approved by the office ~~department~~, as a condition of doing
31 business in the state.

1 (b) In the event that no accreditation organization
2 can be approved by the office ~~department~~, the office
3 ~~department~~ shall require each health maintenance organization
4 and prepaid health clinic to have an external quality
5 assurance assessment performed by a review organization
6 approved by the office ~~department~~, as a condition of doing
7 business in the state. The assessment shall be conducted
8 within 1 year of the organization's receipt of its certificate
9 of authority and every 2 years thereafter, or when the office
10 ~~department~~ deems additional assessments necessary.

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

22 (6) The accreditation or review organization shall
23 issue a written report of its findings to the health
24 maintenance organization's or prepaid health clinic's board of
25 directors. A copy of the report shall be submitted to the
26 office ~~department~~ by the organization within 30 business days
27 of its receipt by the health maintenance organization or
28 prepaid health clinic.

29 Section 1630. Section 641.52, Florida Statutes, is
30 amended to read:

31

1 641.52 Revocation of certificate; suspension of new
2 enrollment; suspension of the health care provider
3 certificate; administrative fine; notice of action to the
4 office ~~Department of Insurance~~; penalty for use of unlicensed
5 providers.--

6 (1) The agency may suspend the authority of an
7 organization to enroll new subscribers or revoke the health
8 care provider certificate of any organization, or order
9 compliance within a time certain, if it finds that any of the
10 following conditions exist:

11 (a) The organization is in substantial violation of
12 its contracts.

13 (b) The organization is unable to fulfill its
14 obligations under outstanding contracts entered into with its
15 subscribers.

16 (c) The organization knowingly utilizes a provider who
17 is furnishing or has furnished health care services and who
18 does not have a subsisting license or other authority to
19 practice or furnish health care services in this state.

20 (d) The organization no longer meets the requirements
21 for the certificate as originally issued.

22 (e) The organization has violated any lawful rule or
23 order of the agency or any provision of this part.

24 (f) The organization has refused to be examined or to
25 produce its accounts, records, and files for examination or to
26 perform any other legal obligation as to such examination,
27 when required by the agency.

28 (g) The organization has not, after given reasonable
29 notice, maintained accreditation or received favorable
30 external quality assurance reviews under s. 641.512 or,
31 following an investigation under s. 641.515, has been

1 determined to not materially meet requirements under this
2 part.

3 (2) Revocation of an organization's certificate shall
4 be for a period of 2 years. After 2 years, the organization
5 may apply for a new certificate by compliance with all
6 application requirements applicable to first-time applicants.

7 (3) Suspension of an organization's authority to
8 enroll new subscribers shall be for such period, not to exceed
9 1 year, as is fixed by the agency. The agency shall, in its
10 order suspending the authority of an organization to enroll
11 new subscribers, specify the period during which the
12 suspension is to be in effect and the conditions, if any,
13 which must be met by the organization prior to reinstatement
14 of its authority to enroll new subscribers. The order of
15 suspension is subject to rescission or modification by further
16 order of the agency prior to the expiration of the suspension
17 period. Authority to enroll new subscribers shall not be
18 reinstated unless requested by the organization; however, the
19 agency may not grant reinstatement if it finds that the
20 circumstances for which the suspension of authority to enroll
21 new subscribers occurred still exist or are likely to recur.

22 (4) The agency may suspend the health care provider
23 certificate issued to an organization. The agency shall, in
24 its order suspending the health care provider certificate,
25 specify the period during which the suspension is to be in
26 effect and the conditions, if any, which must be met by the
27 organization for reinstatement. Upon expiration of the
28 suspension period, the organization's certificate
29 automatically reinstates unless the agency finds that the
30 causes of the suspension have not been removed or that the
31 organization is otherwise not in compliance with this part.

1 If the agency makes such a finding, the health care provider
2 certificate shall not be reinstated and is considered to have
3 expired as of the end of the suspension period.

4 (5) If the agency finds that one or more grounds exist
5 for the revocation or suspension of a certificate issued under
6 this part, the agency may, in lieu of such revocation or
7 suspension, impose a fine upon the organization. With respect
8 to any nonwillful violation, the fine may not exceed \$2,500
9 per violation. Such fines may not exceed an aggregate amount
10 of \$25,000 for all nonwillful violations arising out of the
11 same action. With respect to any knowing and willful
12 violation of a lawful order or rule of the agency or a
13 provision of this part, the agency may impose a fine upon the
14 organization in an amount not to exceed \$20,000 for each such
15 violation. Such fines may not exceed an aggregate amount of
16 \$250,000 for all knowing and willful violations arising out of
17 the same action. The agency shall, by January 1, 1997, adopt
18 by rule penalty categories that specify varying ranges of
19 fines for willful violations and for nonwillful violations.

20 (6) The agency shall immediately notify the office
21 ~~Department of Insurance~~ whenever it issues an administrative
22 complaint or an order or otherwise initiates legal proceedings
23 resulting in or which may result in suspension or revocation
24 of an organization's health care provider certificate or
25 suspension of new enrollment.

26 (7) Any organization that knowingly utilizes the
27 services of a provider who is not licensed or otherwise
28 authorized by law to provide such services is guilty of a
29 felony of the third degree, punishable as provided in s.
30 775.082, s. 775.083, or s. 775.084.

31

1 Section 1631. Subsection (2) of section 641.54,
2 Florida Statutes, is amended to read:

3 641.54 Information disclosure.--

4 (2) The list shall be made available, upon request, to
5 the office ~~department~~. The list shall also be made available,
6 upon request:

7 (a) With respect to negotiation, application, or
8 effectuation of a group health maintenance contract, to the
9 employer or other person who will hold the contract on behalf
10 of the subscriber group. The list may be restricted to
11 include only physicians and hospitals in the group's
12 geographic area.

13 (b) With respect to an individual health maintenance
14 contract or any contract offered to a person who is entitled
15 to have payments for health care costs made under Medicare, to
16 the person considering or making application to, or under
17 contract with, the health maintenance organization. The list
18 may be restricted to include only physicians and hospitals in
19 the person's geographic area.

20 Section 1632. Subsection (4) of section 641.55,
21 Florida Statutes, is amended to read:

22 641.55 Internal risk management program.--

23 (4) The Agency for Health Care Administration shall
24 adopt rules necessary to carry out the provisions of this
25 section, including rules governing the establishment of
26 required internal risk management programs to meet the needs
27 of individual organizations and each specific organization
28 type governed by this part. The office ~~Department of~~
29 ~~insurance~~ shall assist the agency in preparing these rules.
30 Each internal risk management program shall include the use of
31 incident reports to be filed with the risk manager. The risk

1 manager shall have free access to all organization or provider
2 medical records. The incident reports shall be considered to
3 be a part of the workpapers of the attorney defending the
4 organization in litigation relating thereto and shall be
5 subject to discovery, but not be admissible as evidence in
6 court, nor shall any person filing an incident report be
7 subject to civil suit by virtue of the incident report and the
8 matters it contains. As a part of each internal risk
9 management program, the incident reports shall be utilized to
10 develop categories of incidents which identify problem areas.
11 Once identified, procedures must be adjusted to correct these
12 problem areas.

13

14 The gross data compiled under this section or s. 395.0197
15 shall be furnished by the agency upon request to organizations
16 to be utilized for risk management purposes. The agency shall
17 adopt rules necessary to carry out the provisions of this
18 section.

19 Section 1633. Subsection (2) of section 641.58,
20 Florida Statutes, is amended to read:

21 641.58 Regulatory assessment; levy and amount; use of
22 funds; tax returns; penalty for failure to pay.--

23 (2) The office ~~Department of Insurance~~ shall determine
24 the amount of gross premiums for the purposes of the
25 regulatory assessment, and then the agency shall determine on
26 or before December 1 of each year the regulatory assessment
27 percentage necessary to be imposed for that calendar year,
28 payable on or before the following April 1, as herein
29 prescribed, to provide the funds appropriated to the agency to
30 carry out the provisions of subsection (4).

31

1 Section 1634. Section 642.015, Florida Statutes, is
2 amended to read:

3 642.015 Definitions.--As used in ss. 642.011-642.049,
4 the term:

5 ~~(1) "Department" means the Department of Insurance.~~

6 (1)(2) "Gross written premiums" means the total amount
7 of premiums paid by the consumer for the entire period of the
8 legal expense insurance contract, including commissions.

9 ~~(3) "Insurance code" means the Florida Insurance Code
10 as provided in s. 624.01.~~

11 (2)(4) "Insurer" means any person authorized to
12 conduct a life or casualty insurance business in this state or
13 a legal expense insurance corporation authorized under ss.
14 642.011-642.049.

15 (3)(5) "Legal expense insurance" means a contractual
16 obligation to provide specific legal services, or to reimburse
17 for specific legal expenses, in consideration of a specified
18 payment for an interval of time, regardless of whether the
19 payment is made by the beneficiaries individually or by a
20 third person for them, but does not include the provision of,
21 or reimbursement for, legal services incidental to other
22 insurance coverages.

23 Section 1635. Section 642.017, Florida Statutes, is
24 amended to read:

25 642.017 Exemptions.--The provisions of the Florida
26 Insurance Code ~~and ss. 642.011-642.049~~ do not apply to:

27 (1) Retainer contracts made by attorneys at law with
28 individual clients with fees based on estimates of the nature
29 and amount of services to be provided to the specific client
30 and similar contracts made with a group of clients involved in
31 the same or closely related legal matters.

1 (2) Any lawyer referral service authorized by The
2 Florida Bar.

3 (3) The furnishing of legal assistance by labor unions
4 or other employee organizations to their members in matters
5 relating to employment or occupation.

6 (4) The furnishing of legal assistance to members, or
7 their dependents, by a church, cooperative, educational
8 institution, credit union, or organization of employees, in
9 which the organization contracts directly with a lawyer or law
10 firm for the provision of legal services and the
11 administration and marketing of such legal services are
12 conducted wholly by the organization.

13 (5) Employee welfare benefit plans to the extent that
14 state laws are superseded by the Employee Retirement Income
15 Security Act of 1974, 29 U.S.C. s. 1144, provided evidence of
16 exemption from state laws is shown to the office ~~department~~.

17 Section 1636. Section 642.021, Florida Statutes, is
18 amended to read:

19 642.021 Certificate of authority.--

20 (1) It is unlawful for any person to engage in a legal
21 expense insurance business in this state without a valid
22 certificate of authority issued by the office ~~department~~,
23 pursuant to ss. 642.011-642.049, except that a domestic,
24 foreign, or alien insurer authorized to transact life or
25 casualty insurance in this state may transact legal expense
26 insurance provided it complies with the applicable provisions
27 of ss. 642.011-642.049. A certificate of authority under ss.
28 642.011-642.049 may be issued only to a legal expense
29 insurance corporation.

30 (2) The corporation shall file with the office
31 ~~department~~ an application for a certificate of authority upon

1 a form adopted by the commission and ~~to be~~ furnished by the
2 office department, which shall include or have attached the
3 following:

4 (a) The names, addresses, and occupations of all
5 directors and officers and of each shareholder who owns or
6 controls 10 percent or more of the shares of the applicant
7 corporation.

8 (b) A certified copy of the corporate articles and
9 bylaws and, for the 3 most recent years, the annual statements
10 and reports of the corporation.

11 (c) Each agreement relating to the corporation to
12 which any director or officer, or any shareholder who owns or
13 controls 10 percent or more of the shares of the corporation,
14 is a party.

15 (d) A statement of the amount and sources of the funds
16 available for organization expenses and the proposed
17 arrangements for reimbursement and compensation of
18 incorporators or other persons.

19 (e) A statement of compensation to be provided
20 directors and officers.

21 (f) The forms to be used for any proposed contracts
22 between the corporation and participating attorneys or between
23 the corporation and corporations which perform administration,
24 marketing, or management services and the forms relating to
25 the provision of services to insureds.

26 (g) The plan for conducting the insurance business,
27 which plan shall include all of the following:

28 1. The geographical area in which business is intended
29 to be conducted in the first 5 years.

30 2. The types of insurance intended to be written in
31 the first 5 years, including specification whether and to what

1 extent indemnity rather than service benefits are to be
2 provided.

3 3. The proposed marketing methods.

4 (h) A current statement of the assets and liabilities
5 of the corporate applicant.

6 (i) Forms of all legal service contracts the applicant
7 proposes to offer showing the rates to be charged for each
8 form of contract.

9 (j) Such other documents and information as the
10 commission or office department may reasonably require.

11 (3) Copies of the documents filed pursuant to
12 paragraphs (f) and (i) of subsection (2) shall be filed with
13 The Florida Bar within 5 days after filing with the office
14 department.

15 (4) The office department shall issue a certificate of
16 authority only to a legal expense insurance corporation,
17 provided it is satisfied that:

18 (a) All requirements of law have been met;

19 (b) All natural persons who are directors and
20 officers, and each shareholder who owns or controls 10 percent
21 or more of the shares of the applicant corporation, are
22 trustworthy and collectively have the competence and
23 experience to engage in the particular insurance business
24 proposed; and

25 (c) The business plan is consistent with the interests
26 of potential insureds and of the public.

27 Section 1637. Section 642.022, Florida Statutes, is
28 amended to read:

29 642.022 Insurance business not authorized.--Nothing in
30 the Florida Insurance Code or this chapter shall be deemed to
31 authorize any legal expense corporation to transact any

1 insurance business other than that of legal expense insurance
2 or to otherwise engage in any other type of insurance unless
3 it is authorized under a certificate of authority issued by
4 the office ~~department~~ under the provisions of the Florida
5 Insurance Code.

6 Section 1638. Subsections (2), (5), (6), and (7) of
7 section 642.023, Florida Statutes, are amended to read:

8 642.023 Required deposit or bond.--

9 (2) In lieu of any deposit of securities required
10 under subsection (1) and subject to the approval of the office
11 ~~department~~, a legal service insurance corporation may file
12 with the office ~~department~~ a surety bond issued by an
13 authorized surety insurer. The bond shall be for the same
14 purpose as the deposit in lieu of which it is filed. The
15 office ~~department~~ may not approve any bond under the terms of
16 which the protection afforded against insolvency is not
17 equivalent to the protection afforded by those securities
18 provided for in subsection (1).

19 (5) Such deposit or bond shall be maintained
20 unimpaired as long as the legal expense insurance corporation
21 continues to do business in this state. Whenever the
22 corporation ceases to do business in this state and furnishes
23 proof satisfactory to the office ~~department~~ that it has
24 discharged or otherwise adequately provided for all its
25 obligations to its insureds in this state, the office ~~and~~
26 department shall release the deposited securities to the
27 parties entitled thereto, on presentation of the receipts of
28 the department for such securities, or shall release the bond
29 filed with it in lieu of such deposit.

30 (6) The office ~~department~~, upon written request of the
31 legal expense insurance corporation, may reduce the amount of

1 deposit or bond required under subsection (1) if it finds that
2 the policyholders and certificateholders of the corporation
3 are adequately protected by:

4 (a) The terms and number of existing contracts with
5 subscribers;

6 (b) Financial guarantees of financially sound public
7 or private organizations or agencies;

8 (c) Other reliable financial guarantees; or

9 (d) Plan attorney agreements that provide for full
10 plan benefits to subscribers without additional payments by
11 the subscribers if the plan terminates.

12 (7) The office ~~department~~ may at any time enter an
13 order modifying the amount of the deposit or bond specified
14 under subsection (1) or subsection (2) if it finds that there
15 has been a substantial change in the facts on which the
16 determination was based.

17 Section 1639. Subsections (2), (3), and (4) of section
18 642.025, Florida Statutes, are amended to read:

19 642.025 Policy and certificate forms.--

20 (2) No policy or certificate of legal expense
21 insurance may be issued in this state unless a copy of the
22 form has been filed with and approved by the office ~~department~~
23 pursuant to s. 627.410.

24 (3) The office ~~department~~ shall not approve any policy
25 or certificate form which does not meet the following
26 requirements:

27 (a) Policies shall contain a list and description of
28 the legal services to be supplied or the legal matters for
29 which expenses are to be reimbursed and any limits on the
30 amounts to be reimbursed.

31

1 (b) Policies and certificates shall indicate the name
2 of the insurer and the full address of its principal place of
3 business.

4 (c) Certificates issued under group policies shall
5 contain a full statement of the benefits provided and
6 exceptions thereto but may summarize the other terms of the
7 master policy.

8 (d) Policies providing for legal services to be
9 supplied by a limited number of attorneys who have executed
10 provider contracts with the insurer, whether the attorney in
11 an individual case is to be selected by the insured or by the
12 insurer, shall provide for alternative benefits if the insured
13 is unable to find a participating attorney willing to perform
14 the services or the attorney selected by the insurer is
15 disqualified or otherwise unable to perform the services. The
16 alternative benefit may consist of furnishing the services of
17 an attorney selected and paid by the insurer or paying the fee
18 of an attorney selected by the insured. The policy shall also
19 provide a procedure that includes impartial review for
20 settling disagreements concerning the grounds for demanding an
21 alternative benefit.

22 (e) No policy, except one issued by a mutual or
23 reciprocal insurance company, may provide for assessments on
24 policyholders or for reduction of benefits for the purpose of
25 maintaining the insurer's solvency.

26 (f) Policies shall contain a statement that the
27 subscriber has a right to file a complaint with The Florida
28 Bar concerning attorney conduct pursuant to the plan.

29 (g) Policies shall contain a statement that the
30 individual beneficiary has the right to retain, at his or her
31

1 own expense, except when the policy provides otherwise, any
2 attorney authorized to practice law in this state.

3 (4) The office ~~department~~ may disapprove a policy or
4 certificate form if it finds that the form:

5 (a) Is unfair, unfairly discriminatory, misleading, or
6 ambiguous or encourages misrepresentation or misunderstanding
7 of the contract;

8 (b) Provides coverage or benefits or contains other
9 provisions that would endanger the solvency of the insurer; or

10 (c) Is contrary to law.

11 Section 1640. Section 642.027, Florida Statutes, is
12 amended to read:

13 642.027 Premium rates.--No policy of legal expense
14 insurance may be issued in this state unless the premium rates
15 for the insurance have been filed with and approved by the
16 office ~~department~~. Premium rates shall be established and
17 justified in accordance with generally accepted insurance
18 principles, including, but not limited to, the experience or
19 judgment of the insurer making the rate filing or actuarial
20 computations. The office ~~department~~ may disapprove rates that
21 are excessive, inadequate, or unfairly discriminatory. Rates
22 are not unfairly discriminatory because they are averaged
23 broadly among persons insured under group, blanket, or
24 franchise policies. The office ~~department~~ may require the
25 submission of any other information reasonably necessary in
26 determining whether to approve or disapprove a filing made
27 under this section or s. 642.025.

28 Section 1641. Section 642.029, Florida Statutes, is
29 amended to read:

30 642.029 Contracts by insurers.--

31

1 (1) Contracts made between the insurer and
 2 participating attorneys, management contracts, or contracts
 3 with providers of other services covered by the legal expense
 4 insurance policy shall be filed with and approved by the
 5 office ~~department~~.

6 (2) An insurer shall annually report to the office
 7 ~~department~~ the number and geographical distribution of
 8 attorneys and providers of other services covered by the legal
 9 expense insurance policy with whom it maintains contractual
 10 relations and the nature of the relations. The office
 11 ~~department~~ may require more frequent reports from an insurer
 12 or group of insurers.

13 Section 1642. Section 642.0301, Florida Statutes, is
 14 amended to read:

15 642.0301 Filing, license, statement, and miscellaneous
 16 fees.--

17 (1) Every legal expense insurance corporation must pay
 18 to the office ~~department~~ the following fees:

19 (a) Certificate of authority of legal expense
 20 insurance corporation. Filing application for original
 21 certificate of authority, including all accompanying
 22 documents, filing fee.....\$250

23 (b) Annual license fee for legal expense insurance
 24 corporations.....\$300

25 (c) Statements of legal expense insurance corporation:
 26 1. Annual statement.....\$100
 27 2. Quarterly statement.....\$25

28 (2) For any service not described in subsection (1),
 29 the fee is that prescribed in s. 624.501.

30 Section 1643. Section 642.0331, Florida Statutes, is
 31 amended to read:

1 642.0331 Grounds for suspension or revocation of
2 certificate.--

3 (1) The certificate of authority of an insurer,
4 whether issued pursuant to this chapter or the insurance code,
5 may be revoked or suspended, or the office ~~department~~ may
6 refuse to renew a certificate of authority, if the office
7 ~~department~~ determines that the insurer:

8 (a) Has violated any lawful rule or order of the
9 commission or office ~~department~~ or any provision of this
10 chapter.

11 (b) Is in an unsound financial condition which would
12 render its further transaction of business in this state
13 hazardous or injurious to its policyholders, its
14 certificateholders, or the public.

15 (c) Is using such methods or practices in the conduct
16 of its business so as to render its further transaction of
17 business in this state hazardous or injurious to its
18 policyholders, its certificateholders, or the public.

19 (d) Has refused to be examined or to produce its
20 accounts, records, or files for examination, or if any of its
21 officers have refused to give information with respect to its
22 affairs or have refused to perform any other legal obligation
23 as to such examination, when required by the office
24 ~~department~~.

25 (e) Has failed to pay any final judgment rendered
26 against it in this state within 60 days after the judgment
27 became final.

28 (f) Without just cause has refused to pay proper
29 claims or perform services arising under its policies or
30 contracts; without just cause has compelled policyholders or
31 certificateholders to accept less than the amount due them; or

1 has employed attorneys, or has brought suit against the
2 association, to secure full payment or settlement of such
3 claims.

4 (g) Is affiliated with, and under the same general
5 management or interlocking directorate or ownership as,
6 another insurer which transacts business in this state without
7 having a certificate of authority.

8 (2) The office ~~department~~ may, pursuant to s. 120.60,
9 in its discretion and without advance notice or hearing
10 thereon, immediately suspend the certificate of any insurer,
11 whether such certificate was issued pursuant to this chapter
12 or the insurance code, if it finds that one or more of the
13 following circumstances exist:

14 (a) The insurer is insolvent or impaired.

15 (b) The deposit required by s. 642.023 is not being
16 maintained.

17 (c) Proceedings for receivership, conservatorship, or
18 rehabilitation or other delinquency proceedings regarding the
19 insurer have been commenced in any state.

20 (d) The financial condition or business practices of
21 the insurer otherwise pose an imminent threat to the public
22 health, safety, or welfare of the residents of this state.

23 Section 1644. Section 642.0334, Florida Statutes, is
24 amended to read:

25 642.0334 Order; notice of suspension or revocation of
26 certificate; effect; publication.--

27 (1) Suspension or revocation of a certificate of
28 authority of an insurer shall be by order of the office
29 ~~department~~ mailed to the corporation by registered or
30 certified mail. The office ~~department~~ also shall promptly give
31 notice of such suspension or revocation to the sales

1 representatives in this state of the corporation who are of
2 record in the office of the office ~~department~~. The insurer
3 shall not solicit or write any new contracts in this state
4 during the period of any such suspension or revocation.

5 (2) In its discretion, the office ~~department~~ may cause
6 notice of the revocation or suspension to be published in one
7 or more newspapers of general circulation published in this
8 state.

9 Section 1645. Subsections (1), (3), and (4) of section
10 642.0338, Florida Statutes, are amended to read:

11 642.0338 Administrative fine in lieu of suspension or
12 revocation.--

13 (1) If the office ~~department~~ finds that one or more
14 grounds exist for the revocation or suspension of a
15 certificate of authority issued under this chapter, the office
16 ~~department~~ may, in lieu of such suspension or revocation,
17 impose a fine upon the insurer.

18 (3) With respect to any knowing and willful violation
19 of an order or rule of the office or commission ~~department~~ or
20 a provision of this chapter, the office ~~department~~ may impose
21 a fine upon the insurer in an amount not to exceed \$5,000 for
22 each such violation. In no event shall such fine exceed an
23 aggregate amount of \$25,000 for all knowing and willful
24 violations arising out of the same action. In addition to
25 such fines, such insurer shall make restitution when due in
26 accordance with the provisions of subsection (2).

27 (4) The failure of an insurer to make restitution when
28 due as required under this section constitutes a willful
29 violation of this chapter. However, if an insurer in good
30 faith is uncertain as to whether any restitution is due or as
31 to the amount of such restitution, it shall promptly notify

1 the office ~~department~~ of the circumstances, and the failure to
2 make restitution pending a determination thereof will not
3 constitute a violation of this chapter.

4 Section 1646. Subsection (10) of section 642.041,
5 Florida Statutes, is amended to read:

6 642.041 Grounds for compulsory refusal, suspension, or
7 revocation of license or appointment of contracting sales
8 representatives.--The department shall, pursuant to the
9 insurance code, deny, suspend, revoke, or refuse to renew or
10 continue the license or appointment of any sales
11 representative or the license or appointment of any general
12 lines agent if it finds that, as to the sales representative
13 or general lines agent, any one or more of the following
14 applicable grounds exist:

15 (10) Willful failure to comply with, or willful
16 violation of, any proper order or rule of the office,
17 commission, or department or willful violation of any
18 provision of ss. 642.011-642.049.

19 Section 1647. Subsection (3) of section 642.043,
20 Florida Statutes, is amended to read:

21 642.043 Grounds for discretionary refusal, suspension,
22 or revocation of license or appointment of sales
23 representatives.--The department may, in its discretion, deny,
24 suspend, revoke, or refuse to renew or continue the license or
25 appointment of any sales representative if it finds that, as
26 to the representative, any one or more of the following
27 applicable grounds exist under circumstances for which such
28 denial, suspension, revocation, or refusal is not mandatory
29 under s. 642.041:

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

1 Section 1648. Subsection (2) of section 642.047,
2 Florida Statutes, is amended to read:

3 642.047 Administrative fine in lieu of suspension or
4 revocation of license or appointment.--

5 (2) The order may allow the licensee or appointee a
6 reasonable period not to exceed 30 days, within which to pay
7 to the department or office the amount of the penalty so
8 imposed. If the licensee or appointee fails to pay the
9 penalty in its entirety to the department or office ~~at its~~
10 ~~office in Tallahassee~~ within the period so allowed, the
11 license or appointment of the licensee or appointee shall
12 stand suspended or revoked, or renewal or continuation may be
13 refused, as the case may be, upon expiration of such period
14 and without any further proceedings.

15 Section 1649. Subsection (4) of section 642.0475,
16 Florida Statutes, is amended to read:

17 642.0475 Civil remedy.--

18 (4) This section shall not be construed to authorize a
19 class action suit against a legal expense insurance
20 corporation or a civil action against the department,
21 commission, or office or their ~~its employees, or the Insurance~~
22 ~~Commissioner.~~

23 Section 1650. Section 648.25, Florida Statutes, is
24 amended to read:

25 648.25 Definitions.--As used in this chapter, the
26 term:

27 (1) "Bail bond agency" means:

28 (a) The building where a licensee maintains an office
29 and where all records required by ss. 648.34 and 648.36 are
30 maintained; or

31 (b) An entity that:

1 1. Charges a fee or premium to release an accused
2 defendant or detainee from jail; or

3 2. Engages in or employs others to engage in any
4 activity that may be performed only by a licensed and
5 appointed bail bond agent.

6 (2) "Bail bond agent" means a limited surety agent or
7 a professional bail bond agent as hereafter defined.

8 ~~(3) "Department" means the Department of Insurance.~~

9 (3)~~(4)~~ "Managing general agent" means any individual,
10 partnership, association, or corporation appointed or employed
11 by an insurer to supervise or manage the bail bond business
12 written in this state by limited surety agents appointed by
13 the insurer.

14 (4)~~(5)~~ "Insurer" means any domestic, foreign, or alien
15 surety company which has been authorized to transact surety
16 business in this state.

17 (5)~~(6)~~ "Limited surety agent" means any individual
18 appointed by an insurer by power of attorney to execute or
19 countersign bail bonds in connection with judicial proceedings
20 who receives or is promised money or other things of value
21 therefor.

22 (6)~~(7)~~ "Primary bail bond agent" means a licensed bail
23 bond agent who is responsible for the overall operation and
24 management of a bail bond agency location and whose
25 responsibilities include hiring and supervising all
26 individuals within that location. A bail bond agent may be
27 designated as primary bail bond agent for only one bail bond
28 agency location.

29 (7)~~(8)~~ "Professional bail bond agent" means any person
30 who pledges United States currency, United States postal money
31 orders, or cashier's checks as security for a bail bond in

1 connection with a judicial proceeding and receives or is
2 promised therefor money or other things of value.

3 (8)~~(9)~~ "Temporary bail bond agent" means a person
4 employed by a bail bond agent or agency, insurer, or managing
5 general agent, and such licensee has the same authority as a
6 licensed bail bond agent, including presenting defendants in
7 court; apprehending, arresting, and surrendering defendants to
8 the proper authorities, while accompanied by a supervising
9 bail bond agent or an agent from the same agency; and keeping
10 defendants under necessary surveillance. However, a temporary
11 licensee may not execute or sign bonds, handle collateral
12 receipts, or deliver bonds to appropriate authorities. A
13 temporary licensee may not operate an agency or branch agency
14 separate from the location of the supervising bail bond agent,
15 managing general agent, or insurer by whom the licensee is
16 employed. This does not affect the right of a bail bond agent
17 or insurer to hire counsel or to obtain the assistance of law
18 enforcement officers.

19 Section 1651. Section 648.26, Florida Statutes, is
20 amended to read:

21 648.26 Department of Financial Services ~~Insurance~~;
22 administration.--

23 (1) The department shall administer the provisions of
24 this chapter as provided in this chapter.

25 (a) The department has authority to adopt rules
26 pursuant to ss. 120.536(1) and 120.54 to implement the
27 provisions of this chapter conferring powers or duties upon
28 it.

29 (b) The department may employ and discharge such
30 employees, examiners, counsel, and other assistants as shall
31 be deemed necessary, and it shall prescribe their duties;

1 their compensation shall be the same as other state employees
2 receive for similar services.

3 (2) The department shall adopt a seal by which its
4 proceedings are authenticated. Any written instrument
5 purporting to be a copy of any action, proceeding, or finding
6 of fact by the department, or any record of the department
7 authenticated by the seal, shall be accepted by all the courts
8 of this state as prima facie evidence of the contents thereof.

9 (3) The papers, documents, reports, or any other
10 investigatory records of the department are confidential and
11 exempt from the provisions of s. 119.07(1) until such
12 investigation is completed or ceases to be active. For the
13 purpose of this section, an investigation is considered
14 "active" while the investigation is being conducted by the
15 department with a reasonable, good faith belief that it may
16 lead to the filing of administrative, civil, or criminal
17 proceedings. An investigation does not cease to be active if
18 the department is proceeding with reasonable dispatch and
19 there is good faith belief that action may be initiated by the
20 department or other administrative or law enforcement agency.

21 Section 1652. Subsection (2) of section 648.33,
22 Florida Statutes, is amended to read:

23 648.33 Bail bond rates.--

24 (2) It is unlawful for a bail bond agent to execute a
25 bail bond without charging a premium therefor, and the premium
26 rate may not exceed or be less than the premium rate as filed
27 with and approved by the office ~~department~~.

28 Section 1653. Subsection (3) of section 648.34,
29 Florida Statutes, is amended to read:

30 648.34 Bail bond agents; qualifications.--

31

1 (3) The department may collect a fee necessary to
2 cover the cost of a character and credit report made by an
3 established and reputable independent reporting service. The
4 fee shall be deposited to the credit of the Insurance
5 ~~Commissioner's~~ Regulatory Trust Fund. Any information so
6 furnished is confidential and exempt from the provisions of s.
7 119.07(1).

8 Section 1654. Section 648.35, Florida Statutes, is
9 amended to read:

10 648.35 Professional bail bond agent;
11 qualifications.--In addition to the qualifications prescribed
12 in s. 648.34, to qualify as a professional bail bond agent an
13 applicant shall:

14 (1) File with his or her application for licensure and
15 with each application for renewal or continuation of his or
16 her appointment a detailed financial statement under oath; and

17 (2) File with his or her application for licensure the
18 rating plan proposed for use in writing bail bonds. Such
19 rating plan must be approved by the office ~~department~~ prior to
20 issuance of the license.

21 Section 1655. Subsection (5) of section 648.355,
22 Florida Statutes, is amended to read:

23 648.355 Temporary limited license as limited surety
24 agent or professional bail bond agent; pending examination.--

25 (5) The department may collect a fee necessary to
26 cover the cost of a character and credit report made by an
27 established and reputable independent reporting service. The
28 fee shall be deposited to the credit of the Insurance
29 ~~Commissioner's~~ Regulatory Trust Fund.

30 Section 1656. Section 648.365, Florida Statutes, is
31 amended to read:

1 648.365 Statistical reporting requirements; penalty
2 for failure to comply.--

3 (1) Each insurer and each bail bond agent who writes
4 bail bonds in this state, shall maintain and transmit the
5 following information, based on their Florida bail bond
6 business, to the department or office when requested and shall
7 report the information separately for each company represented
8 but only insurers shall report the information specified in
9 paragraphs (a), (l), and (m):

10 (a) Commissions paid.

11 (b) The number of, and the total dollar amount of,
12 bonds executed.

13 (c) The number of, and the total dollar amount of,
14 bonds declared forfeited.

15 (d) The number of, and the total dollar amount of,
16 forfeitures discharged, remitted, or otherwise recovered prior
17 to payment for any reason.

18 (e) The number of, and the total dollar amount of,
19 forfeitures discharged, remitted, or otherwise recovered prior
20 to payment due to the apprehension of the defendant by the
21 bail bond agent.

22 (f) The number of, and the total dollar amount of,
23 judgments entered.

24 (g) The number of, and the total dollar amount of,
25 forfeitures paid and subsequently recovered from the court by
26 discharge or remission or otherwise.

27 (h) A list of every outstanding or unpaid forfeiture,
28 estreature, and judgment, with the case number and the name of
29 the court in which such forfeiture, estreature, or judgment is
30 recorded and the name of each agency or firm that employs the
31 bail bond agent.

1 (i) The number of, and the total dollar amount of,
2 bonds for which collateral was accepted.

3 (j) The actual realized value of collateral converted,
4 excluding the cost of converting the collateral.

5 (k) The cost of converting collateral.

6 (l) The underwriting gain or loss.

7 (m) The net investment gain or loss allocated to the
8 flow of funds associated with Florida business.

9 (n) Such additional information as the department or
10 office may require in order to:

11 1. Evaluate the reasonableness of rates or assure that
12 such rates are not excessive or unfairly discriminatory.

13 2. Evaluate the financial condition or trade practices
14 of bail bond agents and sureties executing bail bonds.

15 3. Evaluate the performance of the commercial bail
16 bond industry in accordance with appropriate criminal justice
17 system goals and standards.

18
19 Each bail bond agent shall submit a copy of such information
20 to each insurer he or she represents.

21 (2) Any person who intentionally fails to provide the
22 information in this section when requested by the department
23 or office, intentionally provides incorrect or misleading
24 information, or intentionally omits any required information
25 commits a misdemeanor of the first degree, punishable as
26 provided in s. 775.082 or s. 775.083.

27 Section 1657. Subsections (1) and (2) of section
28 648.386, Florida Statutes, are amended to read:

29 648.386 Qualifications for prelicensing and continuing
30 education schools and instructors.--

31

1 (1) SCHOOLS AND CURRICULUM FOR PRELICENSING
2 SCHOOLS.--In order to be considered for approval and
3 certification as an approved limited surety agent and
4 professional bail bond agent prelicensing school, such entity
5 must:

6 (a)1. Offer a minimum of two 120-hour
7 classroom-instruction basic certification courses in the
8 criminal justice system per calendar year unless a reduced
9 number of course offerings per calendar year is warranted in
10 accordance with rules promulgated by the department; or

11 2. Offer a department-approved correspondence course
12 pursuant to department rules.

13 (b) Submit a prelicensing course curriculum to the
14 department ~~of Insurance~~ for approval.

15 (c) If applicable, offer prelicensing classes which
16 are taught by instructors approved by the department.

17 (2) SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION
18 SCHOOLS.--In order to be considered for approval and
19 certification as an approved limited surety agent and
20 professional bail bond agent continuing education school, such
21 entity must:

22 (a) Provide a minimum of three continuing education
23 classes per calendar year.

24 (b) Submit a course curriculum to the department ~~of~~
25 ~~Insurance~~ for approval.

26 (c) Offer continuing education classes which are
27 comprised of a minimum of 2 hours of approved coursework and
28 are taught by an approved supervising instructor or guest
29 lecturer approved by the entity or the supervising instructor.

30 Section 1658. Paragraph (j) of subsection (1) of
31 section 648.44, Florida Statutes, is amended to read:

1 648.44 Prohibitions; penalty.--

2 (1) A bail bond agent or temporary bail bond agent may
3 not:

4 (j) Accept anything of value from a principal for
5 providing a bail bond except the premium and transfer fee
6 authorized by the office ~~department~~, except that the bail bond
7 agent may accept collateral security or other indemnity from
8 the principal or another person in accordance with the
9 provisions of s. 648.442, together with documentary stamp
10 taxes, if applicable. No fees, expenses, or charges of any
11 kind shall be permitted to be deducted from the collateral
12 held or any return premium due, except as authorized by this
13 chapter or rule of the department or commission. A bail bond
14 agent may, upon written agreement with another party, receive
15 a fee or compensation for returning to custody an individual
16 who has fled the jurisdiction of the court or caused the
17 forfeiture of a bond.

18 Section 1659. Subsection (10) of section 648.442,
19 Florida Statutes, is amended to read:

20 648.442 Collateral security.--

21 (10) An indemnity agreement may not be entered into
22 between a principal and either a surety or any agent of the
23 surety, and an application may not be accepted either by a
24 bail bond agent engaged in the bail bond business or by a
25 surety company for a bail bond in which an indemnity agreement
26 is required between a principal and either a surety or any
27 agent of such surety, unless the indemnity agreement reads as
28 follows: "For good and valuable consideration, the undersigned
29 principal agrees to indemnify and hold harmless the surety
30 company or its agent for all losses not otherwise prohibited

31

1 by law or by rules of the Department of Financial Services
2 ~~Insurance.~~"

3 Section 1660. Paragraph (a) of subsection (3) of
4 section 648.571, Florida Statutes, is amended to read:

5 648.571 Failure to return collateral; penalty.--

6 (3)(a) Fees or charges other than those provided in
7 this chapter or by rule of the department or commission may
8 not be deducted from the collateral due.

9 Section 1661. Subsection (4) of section 650.06,
10 Florida Statutes, is amended to read:

11 650.06 Social Security Contribution Trust Fund.--

12 (4) The Chief Financial Officer ~~Treasurer of the state~~
13 shall be ex officio treasurer and custodian of the Social
14 Security Contribution Trust Fund and shall administer such
15 fund in accordance with the provisions of this chapter and the
16 directions of the state agency. The Chief Financial Officer
17 ~~Treasurer~~ shall pay all warrants drawn ~~by the Comptroller~~ upon
18 the fund in accordance with the provisions of this section and
19 with such regulations as the state agency may prescribe
20 pursuant thereto.

21 Section 1662. Section 651.011, Florida Statutes, is
22 amended to read:

23 651.011 Definitions.--For the purposes of this
24 chapter, the term:

25 (1) "Advisory council" means the Continuing Care
26 Advisory Council established by s. 651.121.

27 (2) "Continuing care" or "care" means furnishing
28 pursuant to a contract shelter and either nursing care or
29 personal services as defined in s. 400.402, whether such
30 nursing care or personal services are provided in the facility
31 or in another setting designated by the contract for

1 continuing care, to an individual not related by consanguinity
2 or affinity to the provider furnishing such care, upon payment
3 of an entrance fee. Other personal services provided shall be
4 designated in the continuing care contract. Contracts to
5 provide continuing care include agreements to provide care for
6 any duration, including contracts that are terminable by
7 either party.

8 ~~(3) "Department" means the Department of Insurance of~~
9 ~~this state.~~

10 (3)~~(4)~~ "Entrance fee" means an initial or deferred
11 payment of a sum of money or property made as full or partial
12 payment to assure the resident a place in a facility. An
13 accommodation fee, admission fee, or other fee of similar form
14 and application shall be considered to be an entrance fee.

15 (4)~~(5)~~ "Facility" means a place in which it is
16 undertaken to provide continuing care.

17 (5)~~(6)~~ "Licensed" means that the provider has obtained
18 a certificate of authority from the department.

19 (6)~~(7)~~ "Provider" means the owner or operator, whether
20 a natural person, partnership or other unincorporated
21 association, however organized, trust, or corporation, of an
22 institution, building, residence, or other place, whether
23 operated for profit or not, which owner or operator undertakes
24 to provide continuing care for a fixed or variable fee, or for
25 any other remuneration of any type, whether fixed or variable,
26 for the period of care, payable in a lump sum or lump sum and
27 monthly maintenance charges or in installments, but does not
28 mean any entity that has existed and continuously operated a
29 facility located on no less than 63 acres in this state
30 providing residential lodging to members and their spouses for
31 at least 66 years on or before July 1, 1989, and such facility

1 has the residential capacity of 500 persons, is directly or
2 indirectly owned or operated by a nationally recognized
3 fraternal organization, is not open to the public, and accepts
4 only its members and their spouses as residents at such a
5 facility.

6 (7)~~(8)~~ "Records" means the permanent financial,
7 directory, and personnel information and data maintained by a
8 provider pursuant to this chapter.

9 (8)~~(9)~~ "Resident" means a purchaser of or a nominee
10 of, or a subscriber to, a continuing care agreement. Such an
11 agreement may not be construed to give the resident a part
12 ownership of the facility in which the resident is to reside,
13 unless expressly provided for in the agreement.

14 (9)~~(10)~~ "Generally accepted accounting principles"
15 means those accounting principles and practices adopted by the
16 Financial Accounting Standards Board and the American
17 Institute of Certified Public Accountants, including Statement
18 of Position 90-8 with respect to any full year to which the
19 statement applies.

20 (10)~~(11)~~ "Insolvency" means the condition in which the
21 provider is unable to pay its obligations as they come due in
22 the normal course of business.

23 (11)~~(12)~~ "Advertising" means the dissemination of any
24 written, visual, or electronic information by a provider, or
25 any person affiliated with or controlled by a provider, to
26 potential residents or their representatives for the purpose
27 of inducing such persons to subscribe to or enter into a
28 contract to reside in a continuing care community covered by
29 this act.

30 Section 1663. Section 651.012, Florida Statutes, is
31 amended to read:

1 651.012 Exempted facility; written disclosure of
2 exemption.--Any facility exempted under ss. 632.637(1)(e) and
3 651.011(6)~~651.011(7)~~ must provide written disclosure of such
4 exemption to each person admitted to the facility after
5 October 1, 1996. This disclosure must be written using
6 language likely to be understood by the person and must
7 briefly explain the provisions of ss. 632.637(1)(e) and
8 651.011(6)~~651.011(7)~~.

9 Section 1664. Subsection (2) of section 651.013,
10 Florida Statutes, is amended to read:

11 651.013 Chapter exclusive; applicability of other
12 laws.--

13 (2) In addition to other applicable provisions cited
14 in this chapter, the office ~~department~~ has the authority
15 granted under ss. 624.302-624.305, 624.308-624.312,
16 624.319(1)-(3), 624.320-624.321, 624.324, and 624.34 of the
17 Florida Insurance Code to regulate providers of continuing
18 care.

19 Section 1665. Section 651.014, Florida Statutes, is
20 amended to read:

21 651.014 Insurance business not authorized.--Nothing in
22 the Florida Insurance Code or this chapter shall be deemed to
23 authorize any provider of a continuing care facility to
24 transact any insurance business other than that of continuing
25 care insurance or otherwise to engage in any other type of
26 insurance unless it is authorized under a certificate of
27 authority issued by the office ~~department~~ under the provisions
28 of the Florida Insurance Code.

29 Section 1666. Section 651.015, Florida Statutes, is
30 amended to read:

31

1 651.015 Administration; forms; fees; rules;
2 fines.--The administration of this chapter is vested in the
3 commission, office, and department, which shall:

4 (1) Prepare and furnish all forms necessary under the
5 provisions of this chapter in relation to applications for
6 provisional certificates of authority, certificates of
7 authority or renewals thereof, statements, examinations, and
8 other required reports. The office ~~department~~ is authorized to
9 accept any application statement, report, or information
10 submitted electronically or by facsimile to comply with
11 requirements in this chapter or rules adopted under this
12 section. The commission ~~department~~ may adopt rules to
13 implement the provisions of this subsection.

14 (2) Collect in advance, and the applicant shall pay in
15 advance, the following fees:

16 (a) At the time of filing an application for a
17 certificate of authority, an application fee in the amount of
18 \$75 for each facility.

19 (b) At the time of filing the annual report required
20 by s. 651.026, a fee in the amount of \$100 for each year or
21 part thereof for each facility.

22 (c) A late fee not to exceed \$50 a day for each day of
23 noncompliance.

24 (d) A fee to cover the actual cost of a credit report
25 and fingerprint processing.

26 (e) At the time of filing an application for a
27 provisional certificate of authority, a fee in the amount of
28 \$50.

29 (3) Adopt rules pursuant to ss. 120.536(1) and 120.54
30 to implement the provisions of this chapter.

31

1 (4) Impose administrative fines and penalties pursuant
2 to this chapter.

3 (5) Deposit all fees and fines collected under the
4 provisions of this chapter into the Insurance ~~Commissioner's~~
5 Regulatory Trust Fund.

6 Section 1667. Section 651.018, Florida Statutes, is
7 amended to read:

8 651.018 Administrative supervision.--The office
9 ~~department~~ may place a facility in administrative supervision
10 pursuant to part VI of chapter 624.

11 Section 1668. Section 651.019, Florida Statutes, is
12 amended to read:

13 651.019 New financing, additional financing, or
14 refinancing.--

15 (1) After issuance of a certificate of authority, the
16 provider shall submit to the office ~~department~~ a general
17 outline, including intended use of proceeds, with respect to
18 any new financing, additional financing, or refinancing at
19 least 30 days before the closing date of such financing
20 transaction.

21 (2) The provider shall furnish any information the
22 office ~~department~~ may reasonably request in connection with
23 any new financing, additional financing, or refinancing,
24 including, but not limited to, the financing agreements and
25 any related documents, escrow or trust agreements, and
26 statistical or financial data. The provider shall also submit
27 to the office ~~department~~ copies of executed financing
28 documents within 30 days after the closing date.

29 Section 1669. Section 651.021, Florida Statutes, is
30 amended to read:

31 651.021 Certificate of authority required.--

1 (1) No person may engage in the business of providing
2 continuing care or issuing continuing care agreements or
3 construct a facility for the purpose of providing continuing
4 care in this state without a certificate of authority therefor
5 obtained from the office ~~department~~ as provided in this
6 chapter. This subsection shall not be construed to prohibit
7 preparation of the construction site or construction of a
8 model residence unit for marketing purposes, or both. The
9 office ~~department~~ may allow the purchase of an existing
10 building for the purpose of providing continuing care if the
11 office ~~department~~ determines that the purchase is not being
12 made for the purpose of circumventing the prohibitions
13 contained in this section.

14 (2)(a) Before commencement of construction or
15 marketing for any expansion of a certificated facility
16 equivalent to the addition of at least 20 percent of existing
17 units, written approval must be obtained from the office
18 ~~department~~. This provision does not apply to construction for
19 which a certificate of need from the Agency for Health Care
20 Administration is required.

21 (b) The application for such approval shall be on
22 forms adopted by the commission and provided by the office
23 ~~department~~. The application shall include the feasibility
24 study required by s. 651.022(3) or s. 651.023(1)(b) and such
25 other information as required by s. 651.023.

26 (c) In determining whether an expansion should be
27 approved, the office ~~department~~ shall utilize the criteria
28 provided in ss. 651.022(6) and 651.023(2).

29 Section 1670. Subsection (2), paragraph (i) of
30 subsection (3), and subsections (5), (6), (7), and (8) of
31 section 651.022, Florida Statutes, are amended to read:

1 651.022 Provisional certificate of authority;
2 application.--

3 (2) The application for a provisional certificate of
4 authority shall be on a form prescribed by the commission
5 ~~department~~ and shall contain the following information:

6 (a) If the applicant or provider is a corporation, a
7 copy of the articles of incorporation and bylaws; if the
8 applicant or provider is a partnership or other unincorporated
9 association, a copy of the partnership agreement, articles of
10 association, or other membership agreement; and, if the
11 applicant or provider is a trust, a copy of the trust
12 agreement or instrument.

13 (b) The full names, residences, and business addresses
14 of:

15 1. The proprietor, if the applicant or provider is an
16 individual.

17 2. Every partner or member, if the applicant or
18 provider is a partnership or other unincorporated association,
19 however organized, having fewer than 50 partners or members,
20 together with the business name and address of the partnership
21 or other organization.

22 3. The principal partners or members, if the applicant
23 or provider is a partnership or other unincorporated
24 association, however organized, having 50 or more partners or
25 members, together with the business name and business address
26 of the partnership or other organization. If such
27 unincorporated organization has officers and a board of
28 directors, the full name and business address of each officer
29 and director may be set forth in lieu of the full name and
30 business address of its principal members.

31

1 4. The corporation and each officer and director
2 thereof, if the applicant or provider is a corporation.

3 5. Every trustee and officer, if the applicant or
4 provider is a trust.

5 6. The manager, whether an individual, corporation,
6 partnership, or association.

7 7. Any stockholder holding at least a 10-percent
8 interest in the operations of the facility in which the care
9 is to be offered.

10 8. Any person whose name is required to be provided in
11 the application under the provisions of this paragraph and who
12 owns any interest in or receives any remuneration from, either
13 directly or indirectly, any professional service firm,
14 association, trust, partnership, or corporation providing
15 goods, leases, or services to the facility for which the
16 application is made, with a real or anticipated value of \$500
17 or more, and the name and address of the professional service
18 firm, association, trust, partnership, or corporation in which
19 such interest is held. The applicant shall describe such
20 goods, leases, or services and the probable cost to the
21 facility or provider and shall describe why such goods,
22 leases, or services should not be purchased from an
23 independent entity.

24 9. Any person, corporation, partnership, association,
25 or trust owning land or property leased to the facility, along
26 with a copy of the lease agreement.

27 10. Any affiliated parent or subsidiary corporation or
28 partnership.

29 (c)1. Evidence that the applicant is reputable and of
30 responsible character. If the applicant is a firm,
31 association, organization, partnership, business trust,

1 corporation, or company, the form shall require evidence that
2 the members or shareholders are reputable and of responsible
3 character, and the person in charge of providing care under a
4 certificate of authority shall likewise be required to produce
5 evidence of being reputable and of responsible character.

6 2. Evidence satisfactory to the office ~~department~~ of
7 the ability of the applicant to comply with the provisions of
8 this chapter and with rules adopted by the commission
9 ~~department~~ pursuant to this chapter.

10 3. A statement of whether a person identified in the
11 application for a provisional certificate of authority or the
12 administrator or manager of the facility, if such person has
13 been designated, or any such person living in the same
14 location:

15 a. Has been convicted of a felony or has pleaded nolo
16 contendere to a felony charge, or has been held liable or has
17 been enjoined in a civil action by final judgment, if the
18 felony or civil action involved fraud, embezzlement,
19 fraudulent conversion, or misappropriation of property.

20 b. Is subject to a currently effective injunctive or
21 restrictive order or federal or state administrative order
22 relating to business activity or health care as a result of an
23 action brought by a public agency or department, including,
24 without limitation, an action affecting a license under
25 chapter 400.

26
27 The statement shall set forth the court or agency, the date of
28 conviction or judgment, and the penalty imposed or damages
29 assessed, or the date, nature, and issuer of the order. Before
30 determining whether a provisional certificate of authority is
31 to be issued, the office ~~department~~ may make an inquiry to

1 determine the accuracy of the information submitted pursuant
2 to subparagraphs 1. and 2.

3 (d) The agreements for continuing care to be entered
4 into between the provider and residents which meet the minimum
5 requirements of s. 651.055 and which include a statement
6 describing the procedures required by law relating to the
7 release of escrowed entrance fees. Such statement may be
8 furnished through an addendum.

9 (e) Any advertisement or other written material
10 proposed to be used in the solicitation of residents.

11 (f) Such other reasonable data, financial statements,
12 and pertinent information as the commission or office
13 ~~department~~ may reasonably require with respect to the provider
14 or the facility, including the most recent audited financial
15 statements of comparable facilities currently or previously
16 owned, managed, or developed by the applicant or its
17 principal, to assist in determining the financial viability of
18 the project and the management capabilities of its managers
19 and owners.

20 (3) In addition to the information required in
21 subsection (2), an applicant for a provisional certificate of
22 authority shall submit a market feasibility study. The market
23 feasibility study shall include at least the following
24 information:

25 (i) The application for a provisional certificate of
26 authority shall be accompanied by the forms of the continuing
27 care residency and reservation contracts and escrow agreements
28 proposed to be used by the provider in the furnishing of care.
29 If the office ~~department~~ finds that the continuing care
30 contracts and escrow agreements comply with ss. 651.023(1)(c),
31 651.033, and 651.055, it shall approve them. Thereafter, no

1 other form of contract or agreement may be used by the
2 provider until it has been submitted to the office ~~department~~
3 and approved.

4 (5)(a) Within 30 days after receipt of an application
5 for a provisional certificate of authority, the office
6 ~~department~~ shall examine the application and shall notify the
7 applicant in writing, specifically setting forth and
8 specifically requesting any additional information the office
9 ~~department~~ is permitted by law to require. If the application
10 submitted is determined by the office ~~department~~ to be
11 substantially incomplete so as to require substantial
12 additional information, including biographical information,
13 the office ~~department~~ may return the application to the
14 applicant with a written notice that the application as
15 received is substantially incomplete and, therefore,
16 unacceptable for filing without further action required by the
17 office ~~department~~. Any filing fee received shall be refunded
18 to the applicant.

19 (b) Within 15 days after receipt of all of the
20 requested additional information, the office ~~department~~ shall
21 notify the applicant in writing that all of the requested
22 information has been received and the application is deemed to
23 be complete as of the date of the notice. Failure to so notify
24 the applicant in writing within the 15-day period shall
25 constitute acknowledgment by the office ~~department~~ that it has
26 received all requested additional information, and the
27 application shall be deemed to be complete for purposes of
28 review upon the date of the filing of all of the requested
29 additional information.

30 (6) Within 45 days from the date an application is
31 deemed to be complete, as set forth in paragraph (5)(b), the

1 ~~office department~~ shall complete its review and shall issue a
2 provisional certificate of authority to the applicant based
3 upon its review and a determination that the application meets
4 all requirements of law and that the feasibility study was
5 based on sufficient data and reasonable assumptions and that
6 the applicant will be able to provide continuing care as
7 proposed and meet all financial obligations related to its
8 operations, including the financial requirements of this
9 chapter to provide continuing care as proposed. If the
10 application is denied, the ~~office department~~ shall notify the
11 applicant in writing, citing the specific failures to meet the
12 provisions of this chapter. Such denial shall entitle the
13 applicant to a hearing pursuant to the provisions of chapter
14 120.

15 (7) The issuance of a provisional certificate of
16 authority entitles the applicant to collect entrance fees and
17 reservation deposits from prospective residents. All or any
18 part of an entrance fee or deposit collected shall be placed
19 in an escrow account or on deposit with the department,
20 pursuant to s. 651.033, until a certificate of authority is
21 issued by the ~~office department~~.

22 (8) The ~~office department~~ shall not approve any
23 application which includes in the plan of financing any
24 encumbrance of the operating reserves required by this
25 chapter.

26 Section 1671. Section 651.023, Florida Statutes, is
27 amended to read:

28 651.023 Certificate of authority; application.--

29 (1) After issuance of a provisional certificate of
30 authority, the ~~office department~~ shall issue to the holder of
31 such provisional certificate of authority a certificate of

1 authority; provided, however, that no certificate of authority
2 shall be issued until the holder of such provisional
3 certificate of authority provides the office ~~department~~ with
4 the following information:

5 (a) Any material change in status with respect to the
6 information required to be filed under s. 651.022(2) in the
7 application for a provisional certificate of authority.

8 (b) A feasibility study prepared by an independent
9 consultant which contains all of the information required by
10 s. 651.022(3) and contains financial forecasts or projections
11 prepared in accordance with standards promulgated by the
12 American Institute of Certified Public Accountants or
13 financial forecasts or projections prepared in accordance with
14 standards for feasibility studies or continuing care
15 retirement communities promulgated by the Actuarial Standards
16 Board. The study must also contain an independent evaluation
17 and examination opinion, or a comparable opinion acceptable to
18 the office ~~department~~, by the consultant who prepared the
19 study, of the underlying assumptions used as a basis for the
20 forecasts or projections in the study and that the assumptions
21 are reasonable and proper and that the project as proposed is
22 feasible. The study shall take into account project costs,
23 actual marketing results to date and marketing projections,
24 resident fees and charges, competition, resident contract
25 provisions, and any other factors which affect the feasibility
26 of operating the facility.

27 (c) Subject to the requirements of subsection (2), a
28 provider may submit an application for a certificate of
29 authority and any required exhibits upon submission of proof
30 that the project has a minimum of 30 percent of the units
31 reserved for which the provider is charging an entrance fee;

1 however, this provision shall not apply to an application for
2 a certificate of authority for the acquisition of a facility
3 for which a certificate of authority was issued prior to
4 October 1, 1983, to a provider who subsequently becomes a
5 debtor in a case under the United States Bankruptcy Code, 11
6 U.S.C. ss. 101 et seq., or to a provider for which the
7 department has been appointed receiver pursuant to the
8 provisions of part II of chapter 631.

9 (d) Proof that commitments have been secured for both
10 construction financing and long-term financing or a documented
11 plan acceptable to the office ~~department~~ has been adopted by
12 the applicant for long-term financing.

13 (e) Proof that all conditions of the lender have been
14 satisfied to activate the commitment to disburse funds other
15 than the obtaining of the certificate of authority, the
16 completion of construction, or the closing of the purchase of
17 realty or buildings for the facility.

18 (f) Proof that the aggregate amount of entrance fees
19 received by or pledged to the applicant, plus anticipated
20 proceeds from any long-term financing commitment, plus funds
21 from all other sources in the actual possession of the
22 applicant, equal not less than 100 percent of the aggregate
23 cost of constructing or purchasing, equipping, and furnishing
24 the facility plus 100 percent of the anticipated startup
25 losses of the facility.

26 (g) Complete audited financial statements of the
27 applicant, prepared by an independent certified public
28 accountant in accordance with generally accepted accounting
29 principles, as of the date the applicant commenced business
30 operations or for the fiscal year that ended immediately
31 preceding the date of application, whichever is later, and

1 complete unaudited quarterly financial statements attested to
2 by the applicant subsequent to the date of the last audit.

3 (h) Proof that the applicant has complied with the
4 escrow requirements of subsection (3) or subsection (5) and
5 will be able to comply with s. 651.035.

6 (i) Such other reasonable data, financial statements,
7 and pertinent information as the commission or office
8 ~~department~~ may require with respect to the applicant or the
9 facility, to determine the financial status of the facility
10 and the management capabilities of its managers and owners.

11 (j) Within 30 days of the receipt of the information
12 required under paragraphs (a)-(h), the office ~~department~~ shall
13 examine such information and shall notify the provider in
14 writing, specifically requesting any additional information
15 the office ~~department~~ is permitted by law to require. Within
16 15 days after receipt of all of the requested additional
17 information, the office ~~department~~ shall notify the provider
18 in writing that all of the requested information has been
19 received and the application is deemed to be complete as of
20 the date of the notice. Failure to so notify the applicant in
21 writing within the 15-day period shall constitute
22 acknowledgment by the office ~~department~~ that it has received
23 all requested additional information, and the application
24 shall be deemed to be complete for purposes of review upon the
25 date of the filing of all of the required additional
26 information.

27 (k) Within 45 days after an application is deemed
28 complete as set forth in paragraph (j), and upon completion of
29 the remaining requirements of this section, the office
30 ~~department~~ shall complete its review and shall issue, or deny,
31 to the holder of a provisional certificate of authority a

1 certificate of authority. If a certificate of authority is
2 denied, the office ~~department~~ shall notify the holder of the
3 provisional certificate of authority in writing, citing the
4 specific failures to satisfy the provisions of this chapter.
5 If denied, the holder of the provisional certificate of
6 authority shall be entitled to an administrative hearing
7 pursuant to chapter 120.

8 (2)(a) The office ~~department~~ shall issue a certificate
9 of authority upon its determination that the applicant meets
10 all requirements of law and has submitted all of the
11 information required by this section, that all escrow
12 requirements have been satisfied, and that the fees prescribed
13 in s. 651.015(2) have been paid. Notwithstanding satisfaction
14 of the 30-percent minimum reservation requirement of paragraph
15 (1)(c), no certificate of authority shall be issued until the
16 project has a minimum of 50 percent of the units reserved for
17 which the provider is charging an entrance fee, and proof
18 thereof is provided to the office ~~department~~.

19 (b) In order for a unit to be considered reserved
20 under this section, the provider must collect a minimum
21 deposit of 10 percent of the then-current entrance fee for
22 that unit, and must assess a forfeiture penalty of 2 percent
23 of the entrance fee due to termination of the reservation
24 contract after 30 days for any reason other than the death or
25 serious illness of the resident, the failure of the provider
26 to meet its obligations under the reservation contract, or
27 other circumstances beyond the control of the resident that
28 equitably entitle the resident to a refund of the resident's
29 deposit. The reservation contract shall state the cancellation
30 policy and the terms of the continuing care contract to be
31 entered into.

1 (3) No more than 25 percent of the moneys paid for all
2 or any part of an initial entrance fee may be included or
3 pledged for the construction or purchase of the facility, or
4 included or pledged as security for long-term financing. The
5 term "initial entrance fee" means the total entrance fee
6 charged by the facility to the first occupant of a unit. A
7 minimum of 75 percent of the moneys paid for all or any part
8 of an initial entrance fee collected shall be placed in an
9 escrow account or on deposit with the department as prescribed
10 in s. 651.033.

11 (4) The provider shall be entitled to secure release
12 of the moneys held in escrow within 7 days after receipt by
13 the office ~~department~~ of an affidavit from the provider, along
14 with appropriate copies to verify, and notification to the
15 escrow agent by certified mail, that the following conditions
16 have been satisfied:

17 (a) A certificate of occupancy has been issued.

18 (b) Payment in full has been received for no less than
19 70 percent of the total units of a phase or of the total of
20 the combined phases constructed.

21 (c) The consultant who prepared the feasibility study
22 required by this section or a substitute approved by the
23 office ~~department~~ certifies that there has been no material
24 adverse change in status with regard to the feasibility study,
25 with such statement dated not more than 12 months from the
26 date of filing for office ~~department~~ approval. If a material
27 adverse change should exist at the time of submission, then
28 sufficient information acceptable to the office ~~department~~ and
29 the feasibility consultant shall be submitted which remedies
30 the adverse condition.

31

1 (d) Proof that commitments have been secured or a
2 documented plan adopted by the applicant has been approved by
3 the office ~~department~~ for long-term financing.

4 (e) Proof that the provider has sufficient funds to
5 meet the requirements of s. 651.035, which may include funds
6 deposited in the initial entrance fee account.

7 (f) Proof as to the intended application of the
8 proceeds upon release and proof that the entrance fees when
9 released will be applied as represented to the office
10 ~~department~~.

11
12 Notwithstanding any provision of chapter 120, no person, other
13 than the provider, the escrow agent, and the office
14 ~~department~~, shall have a substantial interest in any office
15 ~~departmental~~ decision regarding release of escrow funds in any
16 proceedings under chapter 120 or this chapter regarding
17 release of escrow funds.

18 (5) In lieu of the provider fulfilling the
19 requirements in subsection (3) and paragraphs (4)(b) and (d),
20 the office ~~department~~ may authorize the release of escrowed
21 funds to retire all outstanding debts on the facility and
22 equipment upon application of the provider and upon the
23 provider's showing that the provider will grant to the
24 residents a first mortgage on the land, buildings, and
25 equipment that constitute the facility, and that the provider
26 satisfies the requirements of paragraphs (4)(a), (c), and (e).
27 Such mortgage shall secure the refund of the entrance fee in
28 the amount required by this chapter. The granting of such
29 mortgage shall be subject to the following:

30 (a) The first mortgage shall be granted to an
31 independent trust which is beneficially held by the residents.

1 The document creating the trust shall contain a provision that
2 it agrees to an annual audit and will furnish to the office
3 ~~department~~ all information the office ~~department~~ may
4 reasonably require. The mortgage may secure payment on bonds
5 issued to the residents or trustee. Such bonds shall be
6 redeemable after termination of the residency contract in the
7 amount and manner required by this chapter for the refund of
8 an entrance fee.

9 (b) Before granting a first mortgage to the residents,
10 all construction shall be substantially completed and
11 substantially all equipment shall be purchased. No part of
12 the entrance fees may be pledged as security for a
13 construction loan or otherwise used for construction expenses
14 before the completion of construction.

15 (c) If the provider is leasing the land or buildings
16 used by the facility, the leasehold interest shall be for a
17 term of at least 30 years.

18 (6) The timeframes provided under s. 651.022(5) and
19 (6) apply to applications submitted under s. 651.021(2). The
20 office ~~department~~ may not issue a certificate of authority
21 under this chapter to any facility which does not have a
22 component which is to be licensed pursuant to part II or part
23 III of chapter 400 or which will not offer personal services
24 or nursing services through written contractual agreement. Any
25 written contractual agreement must be disclosed in the
26 continuing care contract and is subject to the provisions of
27 s. 651.1151, relating to administrative, vendor, and
28 management contracts.

29 (7) The office ~~department~~ shall not approve an
30 application which includes in the plan of financing any
31

1 encumbrance of the operating reserves required by this
2 chapter.

3 Section 1672. Section 651.0235, Florida Statutes, is
4 amended to read:

5 651.0235 Validity of provisional certificates of
6 authority and certificates of authority.--

7 (1) The provisional certificate of authority and
8 certificate of authority shall be valid for as long as the
9 office department determines that the provider continues to
10 meet the requirements of this chapter.

11 (2) If the provider fails to meet the requirements of
12 this chapter for a provisional certificate of authority or a
13 certificate of authority, the office department may notify the
14 provider of any deficiencies and require the provider to
15 correct such deficiencies within a period to be determined by
16 the office department. If such deficiencies are not corrected
17 within 20 days after the notice to the provider, or within
18 less time at the discretion of the office department, the
19 office department shall notify the advisory council, which may
20 assist the facility in formulating a remedial plan to be
21 submitted to the office department no later than 60 days from
22 the date of notification. The time period granted to correct
23 deficiencies may be extended upon submission of a plan for
24 corrective action approved by the office department. If such
25 deficiencies have not been cleared by the expiration of such
26 time period, as extended, the office department shall petition
27 for a delinquency proceeding or pursue such other relief as is
28 provided for under this chapter, as the circumstances may
29 require.

30 (3) The office ~~Department of Insurance~~ shall notify
31 the Agency for Health Care Administration of any facility for

1 which a provisional certificate of authority or certificate of
2 authority is no longer valid.

3 Section 1673. Section 651.026, Florida Statutes, is
4 amended to read:

5 651.026 Annual reports.--

6 (1) Annually, on or before May 1, the provider shall
7 file an annual report and such other information and data
8 showing its condition as of the last day of the preceding
9 calendar year, except as provided in subsection (5). If the
10 office ~~department~~ does not receive the required information on
11 or before May 1, a late fee may be charged pursuant to s.
12 651.015(2)(c). The office ~~department~~ may approve an extension
13 of up to 30 days.

14 (2) The annual report shall be in such form as the
15 commission ~~department~~ prescribes and shall contain at least
16 the following:

17 (a) Any change in status with respect to the
18 information required to be filed under s. 651.022(2).

19 (b) Financial statements audited by an independent
20 certified public accountant, which shall contain, for two or
21 more periods if the facility has been in existence that long,
22 the following:

23 1. An accountant's opinion and, in accordance with
24 generally accepted accounting principles:

25 a. A balance sheet;

26 b. A statement of income and expenses;

27 c. A statement of equity or fund balances; and

28 d. A statement of changes in cash flows; and

29 2. Notes to the financial statements considered
30 customary or necessary to full disclosure or adequate

31

1 understanding of the financial statements, financial
2 condition, and operation.

3 (c) The following financial information:

4 1. A detailed listing of the assets maintained in the
5 liquid reserve as required in s. 651.035 and in accordance
6 with part II of chapter 625;

7 2. A schedule giving additional information relating
8 to property, plant, and equipment having an original cost of
9 at least \$25,000, so as to show in reasonable detail with
10 respect to each separate facility original costs, accumulated
11 depreciation, net book value, appraised value or insurable
12 value and date thereof, insurance coverage, encumbrances, and
13 net equity of appraised or insured value over encumbrances.
14 Any property not used in continuing care shall be shown
15 separately from property used in continuing care;

16 3. The level of participation in Medicare or Medicaid
17 programs, or both;

18 4. A statement of all fees required of residents,
19 including, but not limited to, a statement of the entrance fee
20 charged, the monthly service charges, the proposed application
21 of the proceeds of the entrance fee by the provider, and the
22 plan by which the amount of the entrance fee is determined if
23 the entrance fee is not the same in all cases; and

24 5. Any change or increase in fees when the provider
25 changes either the scope of, or the rates for, care or
26 services, regardless of whether the change involves the basic
27 rate or only those services available at additional costs to
28 the resident.

29 6.a. If the provider has more than one certificated
30 facility, it shall submit a statement of operations for each
31

1 facility as supplemental information to the audited financial
2 statements required as part of the annual report.

3 b. If the provider has operations that are not Florida
4 certificated facilities, the provider shall also submit as
5 supplemental information to the audited financial statements,
6 balance sheets, statements of changes in equity, and
7 statements of cash flows for each Florida certificated
8 facility.

9 (d) Such other reasonable data, financial statements,
10 and pertinent information as the commission or office
11 ~~department~~ may require with respect to the provider or the
12 facility, or its directors, trustees, members, branches,
13 subsidiaries, or affiliates, to determine the financial status
14 of the facility and the management capabilities of its
15 managers and owners.

16 (e) Each facility shall file with the office
17 ~~department~~ annually, together with the annual report required
18 by this section, a computation of its minimum liquid reserve
19 calculated in accordance with s. 651.035 on a form prescribed
20 by the commission ~~department~~.

21 (3) The commission ~~department~~ shall adopt by rule
22 meaningful measures of assessing the financial viability of a
23 provider. The rule may include the following factors:

- 24 (a) Debt service coverage ratios.
25 (b) Current ratios.
26 (c) Adjusted current ratios.
27 (d) Cash flows.
28 (e) Occupancy rates.
29 (f) Other measures, ratios, or trends.
30 (g) Other factors as may be appropriate.

31

1 (4) If the provider is an individual, the annual
2 statement shall be sworn to by him or her; if a limited
3 partnership, by the general partner; if a partnership other
4 than a limited partnership, by all the partners; if any other
5 unincorporated association, by all its members or officers and
6 directors; if a trust, by all its trustees and officers; and,
7 if a corporation, by the president and secretary thereof.

8 (5) A provider may declare at the time of application
9 a fiscal year other than the calendar year, and may use such
10 fiscal year for its accounting period. A provider may
11 subsequently adopt a fiscal year upon providing the office
12 ~~department~~ with a copy of the Internal Revenue Service
13 approval of such change, if such approval is required. The
14 annual report filing with the office ~~department~~ must be made
15 within 120 days of the last day of the fiscal year of the
16 provider.

17 (6) The workpapers, account analyses, descriptions of
18 basic assumptions, and other information necessary for a full
19 understanding of the annual statement of a provider as filed
20 with the office ~~department~~ shall be made available for visual
21 inspection by the office ~~department~~ at the facility or, if the
22 office ~~department~~ requests, at another agreed-upon site.
23 Photocopies may not be made unless consented to by the
24 provider.

25 (7) A filing fee in the amount of \$100 shall accompany
26 each annual report required by this section.

27 (8) All financial reports and any supplemental
28 financial information submitted to the office ~~department~~ shall
29 be prepared in conformity with generally accepted accounting
30 principles.

31

1 Section 1674. Section 651.0261, Florida Statutes, is
2 amended to read:

3 651.0261 Quarterly statements.--If the office
4 ~~department~~ finds, pursuant to rules of the commission
5 ~~department~~, that such information is needed to properly
6 monitor the financial condition of a provider or facility or
7 is otherwise needed to protect the public interest, the office
8 ~~department~~ may require the provider to file, within 45 days
9 after the end of each fiscal quarter, a quarterly unaudited
10 financial statement of the provider or of the facility in the
11 form prescribed by the commission ~~department~~ by rule.

12 Section 1675. Section 651.028, Florida Statutes, is
13 amended to read:

14 651.028 Accredited facilities.--If a provider is
15 accredited by a process found by the office ~~department~~ to be
16 acceptable and substantially equivalent to the provisions of
17 this chapter, the office ~~department~~ may, pursuant to rule of
18 the commission, waive any requirements of this chapter with
19 respect to the provider if the office ~~department~~ finds that
20 such waivers are not inconsistent with the security
21 protections intended by this chapter.

22 Section 1676. Section 651.033, Florida Statutes, is
23 amended to read:

24 651.033 Escrow accounts.--

25 (1) When funds are required to be deposited in an
26 escrow account pursuant to s. 651.022, s. 651.023, s. 651.035,
27 or s. 651.055:

28 (a) The escrow account shall be established in a
29 Florida bank, Florida savings and loan association, or Florida
30 trust company acceptable to the office ~~department~~ or on
31 deposit with the department; and the funds deposited therein

1 shall be kept and maintained in an account separate and apart
2 from the provider's business accounts.

3 (b) An escrow agreement shall be entered into between
4 the bank, savings and loan association, or trust company and
5 the provider of the facility; the agreement shall state that
6 its purpose is to protect the resident or the prospective
7 resident; and, upon presentation of evidence of compliance
8 with applicable portions of this chapter, or upon order of a
9 court of competent jurisdiction, the escrow agent shall
10 release and pay over the funds, or portions thereof, together
11 with any interest accrued thereon or earned from investment of
12 the funds, to the provider or resident as directed.

13 (c) Any agreement establishing an escrow account
14 required under the provisions of this chapter shall be subject
15 to approval by the office ~~department~~. The agreement shall be
16 in writing and shall contain, in addition to any other
17 provisions required by law, a provision whereby the escrow
18 agent agrees to abide by the duties imposed under this
19 section.

20 (d) All funds deposited in an escrow account, if
21 invested, shall be invested as set forth in part II of chapter
22 625; however, such investment shall not diminish the funds
23 held in escrow below the amount required by this chapter. All
24 funds deposited in an escrow account shall not be subject to
25 any charges by the escrow agent except escrow agent fees
26 associated with administering the accounts, or subject to any
27 liens, judgments, garnishments, creditor's claims, or other
28 encumbrances against the provider or facility except as
29 provided in s. 651.035(2).

30
31

1 (e) At the request of either the provider or the
2 office department, the escrow agent shall issue a statement
3 indicating the status of the escrow account.

4 (2) In addition, the escrow agreement shall provide
5 that the escrow agent or another person designated to act in
6 the escrow agent's place and the provider, except as otherwise
7 provided in s. 651.035, shall notify the office department in
8 writing at least 10 days before the withdrawal of any portion
9 of any funds required to be escrowed under the provisions of
10 s. 651.035. However, in the event of an emergency and upon
11 petition by the provider, the office department may waive the
12 10-day notification period and allow a withdrawal of up to 10
13 percent of the required minimum liquid reserve. The office
14 ~~department~~ shall have 3 working days to deny the petition for
15 the emergency 10-percent withdrawal. If the office department
16 fails to deny the petition within 3 working days, the petition
17 shall be deemed to have been granted by the office department.
18 For the purpose of this section, "working day" means each day
19 that is not a Saturday, Sunday, or legal holiday as defined by
20 Florida law. Also for the purpose of this section, the day the
21 petition is received by the office department shall not be
22 counted as one of the 3 days.

23 (3) In addition, when entrance fees are required to be
24 deposited in an escrow account pursuant to s. 651.022, s.
25 651.023, or s. 651.055:

26 (a) The provider shall deliver to the resident a
27 written receipt. The receipt shall show the payor's name and
28 address, the date, the price of the care contract, and the
29 amount of money paid. A copy of each receipt together with the
30 funds shall be deposited with the escrow agent or as provided
31 in paragraph (c). The escrow agent shall release such funds to

1 the provider upon the expiration of 7 days after the date of
2 receipt of the funds by the escrow agent if the provider,
3 operating under a certificate of authority issued by the
4 office ~~department~~, has met the requirements of s. 651.023(4).
5 However, if the resident rescinds the contract within the
6 7-day period, the escrow agent shall release the escrowed fees
7 to the resident.

8 (b) At the request of an individual resident of a
9 facility, the escrow agent shall issue a statement indicating
10 the status of the resident's portion of the escrow account.

11 (c) At the request of an individual resident of a
12 facility, the provider may hold the check for the 7-day period
13 and shall not deposit it during this time period. If the
14 resident rescinds the contract within the 7-day period, the
15 check shall be immediately returned to the resident. Upon the
16 expiration of the 7 days, the provider shall deposit the
17 check.

18 (4) Any fees of \$1,500 or less which are assessed with
19 respect to prospective residents to have their names placed on
20 a facility's waiting list shall not be subject to the escrow
21 provisions of this section.

22 (5) When funds are required to be deposited in an
23 escrow account pursuant to s. 651.022, s. 651.023, or s.
24 651.035, the following shall apply:

25 (a) The escrow agreement shall require that the escrow
26 agent furnish the provider with a quarterly statement
27 indicating the amount of any disbursements from or deposits to
28 the escrow account and the condition of the account during the
29 period covered by the statement. The agreement shall require
30 that the statement be furnished to the provider by the escrow
31 agent on or before the 10th day of the month following the end

1 of the quarter for which the statement is due. If the escrow
2 agent does not provide the quarterly statement to the provider
3 on or before the 10th day of the month following the month for
4 which the statement is due, the office ~~department~~ may, in its
5 discretion, levy against the escrow agent a fine not to exceed
6 \$25 a day for each day of noncompliance with the provisions of
7 this subsection.

8 (b) If the escrow agent does not provide the quarterly
9 statement to the provider on or before the 10th day of the
10 month following the quarter for which the statement is due,
11 the provider shall, on or before the 15th day of the month
12 following the quarter for which the statement is due, send a
13 written request for the statement to the escrow agent by
14 certified mail return receipt requested.

15 (c) On or before the 20th day of the month following
16 the quarter for which the statement is due, the provider shall
17 file with the office ~~department~~ a copy of the escrow agent's
18 statement or, if the provider has not received the escrow
19 agent's statement, a copy of the written request to the escrow
20 agent for the statement.

21 (d) The office ~~department~~ may, in its discretion, in
22 addition to any other penalty that may be provided for under
23 this chapter, levy a fine against the provider not to exceed
24 \$25 a day for each day the provider fails to comply with the
25 provisions of this subsection.

26 (e) Funds held on deposit with the department are
27 exempt from the reporting requirements of this subsection.

28 Section 1677. Paragraphs (b) and (c) of subsection
29 (2), paragraph (b) of subsection (4) and subsections (5), (6),
30 (7), and (8) of section 651.035, Florida Statutes, are amended
31 to read:

1 651.035 Minimum liquid reserve requirements.--

2 (2)

3 (b) A provider which has outstanding indebtedness
4 which requires what is normally referred to as a "debt service
5 reserve" to be held in escrow pursuant to a trust indenture or
6 mortgage lien on the facility and for which the debt service
7 reserve may only be used to pay principal and interest
8 payments on the debt which the debtor is obligated to pay, and
9 which may include taxes and insurance, may include such debt
10 service reserve in its computation of its minimum liquid
11 reserve to satisfy this subsection, provided that the provider
12 furnishes to the office ~~Department of Insurance~~ a copy of the
13 agreement under which such debt service is held, together with
14 a statement of the amount being held in escrow for the debt
15 service reserve, certified by the lender or trustee and the
16 provider to be correct. The trustee shall provide the office
17 ~~department~~ with any information concerning the debt service
18 reserve account upon request of the provider or the office
19 ~~department~~.

20 (c) Each provider shall maintain in escrow an
21 operating reserve in an amount equal to 30 percent of the
22 total operating expenses projected in the feasibility study
23 required by s. 651.023 for the first 12 months of operation.
24 Thereafter, each provider shall maintain in escrow an
25 operating reserve in an amount equal to 15 percent of the
26 total operating expenses in the annual report filed pursuant
27 to s. 651.026. Where a provider has been in operation for more
28 than 12 months, the total annual operating expenses shall be
29 determined by averaging the total annual operating expenses
30 reported to the office ~~department~~ by the number of annual
31 reports filed with the office ~~department~~ within the immediate

1 preceding 3-year period subject to adjustment in the event
2 there is a change in the number of facilities owned. For
3 purposes of this subsection, total annual operating expenses
4 shall include all expenses of the facility except:
5 depreciation and amortization; interest, insurance and taxes
6 included in subsection (1); extraordinary expenses which are
7 adequately explained and documented in accordance with
8 generally accepted accounting principles; liability insurance
9 premiums in excess of those paid in calendar year 1999; and
10 changes in the obligation to provide future services to
11 current residents. For providers initially licensed during or
12 after calendar year 1999, liability insurance shall be
13 included in the total operating expenses in an amount not to
14 exceed the premium paid during the first 12 months of facility
15 operation. Beginning January 1, 1993, the operating reserves
16 required under this subsection shall be in an unencumbered
17 account held in escrow for the benefit of the residents. Such
18 funds may not be encumbered or subject to any liens or charges
19 by the escrow agent or judgments, garnishments, or creditors'
20 claims against the provider or facility. However, if a
21 facility had a lien, mortgage, trust indenture, or similar
22 debt instrument in place prior to January 1, 1993, which
23 encumbered all or any part of the reserves required by this
24 subsection and such funds were used to meet the requirements
25 of this subsection, then such arrangement may be continued,
26 unless a refinancing or acquisition has occurred, and the
27 provider shall be in compliance with this subsection.

28 (4)

29 (b) In facilities which have voluntarily and
30 permanently discontinued marketing continuing care contracts,
31 the office ~~department~~ may allow a reduced debt service reserve

1 as required in subsection (1) based upon the ratio of
2 residents under continuing care contracts to those residents
3 who do not hold such contracts if the office ~~department~~ finds
4 that such reduction is not inconsistent with the security
5 protections intended by this chapter. In making this
6 determination, the office ~~department~~ may consider such factors
7 as the financial condition of the facility, the provisions of
8 the outstanding continuing care contracts, the ratio of
9 residents under continuing care agreements to those residents
10 who do not hold a continuing care contract, current occupancy
11 rates, previous sales and marketing efforts, life expectancy
12 of the remaining contract holders, and the written policies of
13 the board of directors of the provider or a similar board.

14 (5) When principal and interest payments are paid to a
15 trust which is beneficially held by the residents as described
16 in s. 651.023(5), the office ~~department~~ may waive all or any
17 portion of the escrow requirements for mortgage principal and
18 interest contained in subsection (1) if the office ~~department~~
19 finds that such waiver is not inconsistent with the security
20 protections intended by this chapter.

21 (6) The office ~~department~~, upon approval of a plan for
22 fulfilling the requirements of this section and upon
23 demonstration by the facility of an annual increase in liquid
24 reserves, may extend the time for compliance.

25 (7)(a) A provider may satisfy the minimum liquid
26 reserve requirements of this section by acquiring from a
27 financial institution, as specified in paragraph (b), a clean,
28 unconditional irrevocable letter of credit in an amount equal
29 to the requirements of this section. The letter of credit
30 shall be issued by a financial institution participating in
31 the State of Florida Treasury Certificate of Deposit Program,

1 and the letter of credit shall be subject to the approval of
2 the office ~~department~~ prior to issuance and prior to any
3 renewal or modification thereof. At a minimum, the letter of
4 credit shall provide for:

5 1. Ninety days' prior written notice to both the
6 provider and the office ~~department~~ of the financial
7 institution's determination not to renew or extend the term of
8 the letter of credit.

9 2. Unless otherwise arranged by the provider to the
10 satisfaction of the office ~~department~~, deposit by the
11 financial institution of such letter of credit funds in an
12 account designated by the office ~~department~~ no later than 30
13 days prior to the expiration of the letter of credit.

14 3. Deposit by the financial institution of such letter
15 of credit funds in an account designated by the office
16 ~~department~~ no later than 4 business days following written
17 instructions from the office ~~department~~ that, in the sole
18 judgment of the office ~~department~~, funding of the minimum
19 liquid reserve is required.

20 (b) The terms of such letter of credit shall be
21 approved by the office ~~department~~ and the long-term debt of
22 the financial institution providing such letter of credit
23 shall be rated in one of their top three long-term debt rating
24 categories by either Moody's Investors Service, Standard &
25 Poor's Corporation, or a recognized securities rating agency
26 acceptable to the office ~~department~~.

27 (c) The letter of credit shall name the office
28 ~~department~~ as beneficiary.

29 (d) Notwithstanding any other provision of this
30 section, a provider utilizing a letter of credit pursuant to
31 this subsection shall, at all times, have and maintain in

1 escrow an operating cash reserve equal to 2 months' operating
2 expenses as determined pursuant to s. 651.026.

3 (e) In the event the issuing financial institution no
4 longer participates in the State of Florida Treasury
5 Certificate of Deposit Program, such financial institution
6 shall deposit as collateral with the department ~~State of~~
7 ~~Florida Treasury~~ eligible securities, as prescribed by s.
8 625.52, having a market value equal to or greater than 100
9 percent of the stated amount of the letter of credit.

10 (8)(a) Each fiscal year, a provider may withdraw up to
11 33 percent of the total renewal and replacement reserve
12 available. The reserve available is equal to the market value
13 of the invested reserves at the end of the provider's prior
14 fiscal year. The withdrawal is to be used for capital items or
15 major repairs, and before any funds are eligible for
16 withdrawal, the provider must obtain written permission from
17 the office ~~department~~ by submitting the following information:

18 1. The amount of the withdrawal and the intended use
19 of the proceeds.

20 2. A board resolution and sworn affidavit signed by
21 two officers or general partners of the provider which
22 indicates approval of the withdrawal and use of the funds.

23 3. Proof that the provider has met all funding
24 requirements for the operating, debt service, and renewal and
25 replacement reserves computed for the previous fiscal year.

26 4. Anticipated payment schedule for refunding the
27 renewal and replacement reserve fund.

28 (b) Within 30 days after the withdrawal of funds from
29 the renewal and replacement reserve fund, the provider must
30 begin refunding the reserve account in equal monthly payments
31 which allow for a complete funding of such withdrawal within

1 36 months. If the payment schedule required under subparagraph
2 (a)4. has changed, the provider must update the office
3 ~~department~~ with the new payment schedule. If the provider
4 fails to make a required monthly payment or the payment is
5 late, the provider must notify the office ~~department~~ within 5
6 days after the due date of the payment. No additional
7 withdrawals from the renewal and replacement reserve will be
8 allowed until all scheduled payments are current.

9 Section 1678. Section 651.051, Florida Statutes, is
10 amended to read:

11 651.051 Maintenance of assets and records in
12 state.--No records or assets may be removed from this state by
13 a provider unless the office ~~department~~ consents to such
14 removal in writing before such removal. Such consent shall be
15 based upon the provider's submitting satisfactory evidence
16 that the removal will facilitate and make more economical the
17 operations of the provider and will not diminish the service
18 or protection thereafter to be given the provider's residents
19 in this state. Prior to such removal, the provider shall give
20 notice to the president or chair of the facility's residents'
21 council. If such removal is part of a cash management system
22 which has been approved by the office ~~department~~, disclosure
23 of the system shall meet the notification requirements.

24 Section 1679. Subsection (1) of section 651.055,
25 Florida Statutes, is amended to read:

26 651.055 Contracts; right to rescind.--

27 (1) Each continuing care contract and each addendum to
28 such contract shall be submitted to and approved by the office
29 ~~department~~ prior to its use in this state. Thereafter, no
30 other form of contract shall be used by the provider unless it
31

1 has been submitted to and approved by the office ~~department~~.

2 Each contract shall:

3 (a) Provide for the continuing care of only one
4 resident, or for two persons occupying space designed for
5 double occupancy, under appropriate regulations established by
6 the provider and shall list all properties transferred and
7 their market value at the time of transfer, including
8 donations, subscriptions, fees, and any other amounts paid or
9 payable by, or on behalf of, the resident or residents.

10 (b) Specify all services which are to be provided by
11 the provider to each resident, including, in detail, all items
12 which each resident will receive, whether the items will be
13 provided for a designated time period or for life, and whether
14 the services will be available on the premises or at another
15 specified location. The provider shall indicate which services
16 or items are included in the contract for continuing care and
17 which services or items are made available at or by the
18 facility at extra charge. Such items shall include, but are
19 not limited to, food, shelter, personal services or nursing
20 care, drugs, burial, and incidentals.

21 (c) Describe the terms and conditions under which a
22 contract for continuing care may be canceled by the provider
23 or by a resident and the conditions, if any, under which all
24 or any portion of the entrance fee will be refunded in the
25 event of cancellation of the contract by the provider or by
26 the resident, including the effect of any change in the health
27 or financial condition of a person between the date of
28 entering a contract for continuing care and the date of
29 initial occupancy of a living unit by that person.

30 (d) Describe the health and financial conditions
31 required for a person to be accepted as a resident and to

1 continue as a resident, once accepted, including the effect of
2 any change in the health or financial condition of a person
3 between the date of entering into a continuing care contract
4 and the date of taking occupancy in a unit.

5 (e) Describe the circumstances under which the
6 resident will be permitted to remain in the facility in the
7 event of financial difficulties of the resident. The stated
8 policy may not be less than the terms stated in s. 651.061.

9 (f) State the fees that will be charged if the
10 resident marries while at the designated facility, the terms
11 concerning the entry of a spouse to the facility, and the
12 consequences if the spouse does not meet the requirements for
13 entry.

14 (g) Provide that the contract may be canceled upon the
15 giving of written notice of cancellation of at least 30 days
16 by the provider, the resident, or the person who provided the
17 transfer of property or funds for the care of such resident;
18 however, if a contract is canceled because there has been a
19 good faith determination that a resident is a danger to
20 himself or herself or others, only such notice as is
21 reasonable under the circumstances shall be required.

22 1. The contract shall further provide in clear and
23 understandable language, in print no smaller than the largest
24 type used in the body of the contract, the terms governing the
25 refund of any portion of the entrance fee.

26 2. For a resident whose contract with the facility
27 provides that the resident does not receive a transferable
28 membership or ownership right in the facility, and who has
29 occupied his or her unit, the refund shall be calculated on a
30 pro rata basis with the facility retaining no more than 2
31 percent per month of occupancy by the resident and no more

1 than a 4-percent fee for processing. Such refund shall be paid
2 no later than 120 days after the giving of notice of intention
3 to cancel.

4 3. If the contract provides for the facility to retain
5 no more than 1 percent per month of occupancy by the resident,
6 it may provide that such refund will be paid from the proceeds
7 of the next entrance fees received by the provider for units
8 for which there are no prior claims by any resident until paid
9 in full or, if the provider has discontinued marketing
10 continuing care contracts, within 200 days after the date of
11 notice.

12 4. Unless the provisions of subsection (5) apply, for
13 any prospective resident, regardless of whether or not such a
14 resident receives a transferable membership or ownership right
15 in the facility, who cancels the contract prior to occupancy
16 of the unit, the refund shall be the entire amount paid toward
17 the entrance fee, less a processing fee not to exceed 4
18 percent of the entire entrance fee, but in no event shall such
19 processing fee exceed the amount paid by the prospective
20 resident. Such refund shall be paid no later than 60 days
21 after the giving of notice of intention to cancel. For a
22 resident who has occupied his or her unit and who has received
23 a transferable membership or ownership right in the facility,
24 the foregoing refund provisions shall not apply but shall be
25 deemed satisfied by the acquisition or receipt of a
26 transferable membership or an ownership right in the facility.
27 The provider shall not charge any fee for the transfer of
28 membership or sale of an ownership right.

29 (h) State the terms under which a contract is canceled
30 by the death of the resident. These terms may contain a
31 provision that, upon the death of a resident, the entrance fee

1 of such resident shall be considered earned and shall become
2 the property of the provider. When the unit is shared, the
3 conditions with respect to the effect of the death or removal
4 of one of the residents shall be included in the contract.

5 (i) Describe the policies which may lead to changes in
6 monthly recurring and nonrecurring charges or fees for goods
7 and services received. The contract shall provide for advance
8 notice to the resident, of not less than 60 days, before any
9 change in fees or charges or the scope of care or services may
10 be effective, except for changes required by state or federal
11 assistance programs.

12 (j) Provide that charges for care paid in one lump sum
13 shall not be increased or changed during the duration of the
14 agreed upon care, except for changes required by state or
15 federal assistance programs.

16 (k) Specify whether or not the facility is, or is
17 affiliated with, a religious, nonprofit, or proprietary
18 organization or management entity; the extent to which the
19 affiliate organization will be responsible for the financial
20 and contractual obligations of the provider; and the
21 provisions of the federal Internal Revenue Code, if any, under
22 which the provider or affiliate is exempt from the payment of
23 federal income tax.

24 Section 1680. Subsection (3) of section 651.083,
25 Florida Statutes, is amended to read:

26 651.083 Residents' rights.--

27 (3) Any violation of the residents' rights set forth
28 in subsection (1) constitutes grounds for disciplinary action
29 by the office ~~department~~ under ss. 651.106 and 651.108.

30 Section 1681. Subsection (1) of section 651.085,
31 Florida Statutes, is amended to read:

1 651.085 Quarterly meetings between residents and the
2 governing body of the provider; resident representation before
3 the governing body of the provider.--

4 (1) The governing body of a provider, or the
5 designated representative of the provider, shall hold
6 quarterly meetings with the residents of the continuing care
7 facility for the purpose of free discussion of subjects
8 including, but not limited to, income, expenditures, and
9 financial trends and problems as they apply to the facility,
10 as well as a discussion on proposed changes in policies,
11 programs, and services. Upon request of the residents'
12 organization, a member of the governing body of the provider,
13 such as a board member, a general partner, or a principal
14 owner shall attend such meetings. Residents shall be entitled
15 to at least 7 days' advance notice of each quarterly meeting.
16 An agenda and any materials that will be distributed by the
17 governing body or representative of the provider shall be
18 posted in a conspicuous place at the facility and shall be
19 available upon request to residents of the facility. The
20 office ~~department~~ shall request verification from a facility
21 that quarterly meetings are held and open to all residents
22 when it receives a complaint from the residents' council that
23 a facility is not in compliance with the provisions of this
24 subsection. In addition, a facility shall report to the office
25 ~~department~~ in the annual report required under s. 651.026 the
26 dates on which quarterly meetings were held during the
27 reporting period.

28 Section 1682. Section 651.091, Florida Statutes, is
29 amended to read:

30 651.091 Availability, distribution, and posting of
31 reports and records; requirement of full disclosure.--

1 (1) Each continuing care facility shall maintain as
2 public information, available upon request, records of all
3 cost and inspection reports pertaining to that facility that
4 have been filed with or issued by any governmental agency. A
5 copy of each such report shall be retained in such records for
6 not less than 5 years from the date the report is filed or
7 issued. Each facility shall also maintain as public
8 information, available upon request, all annual statements
9 that have been filed with the office ~~department~~.

10 (2) Every continuing care facility shall:

11 (a) Display the certificate of authority in a
12 conspicuous place inside the facility.

13 (b) Post in a prominent position in the facility so as
14 to be accessible to all residents and to the general public a
15 concise summary of the last examination report issued by the
16 office ~~department~~, with references to the page numbers of the
17 full report noting any deficiencies found by the office
18 ~~department~~, and the actions taken by the provider to rectify
19 such deficiencies, indicating in such summary where the full
20 report may be inspected in the facility.

21 (c) Post in a prominent position in the facility so as
22 to be accessible to all residents and to the general public a
23 summary of the latest annual statement, indicating in the
24 summary where the full annual statement may be inspected in
25 the facility. A listing of any proposed changes in policies,
26 programs, and services shall also be posted.

27 (d) Distribute a copy of the full annual statement to
28 the president or chair of the residents' council within 30
29 days after the filing of the annual report with the office
30 ~~department~~, and designate a staff person to provide
31 explanation thereof.

1 (e) Notify the residents' council of any plans filed
2 with the office ~~department~~ to obtain new financing, additional
3 financing, or refinancing for the facility and of any
4 applications to the office ~~department~~ for any expansion of the
5 facility.

6 (3) Before entering into a contract to furnish
7 continuing care, the provider undertaking to furnish the care,
8 or the agent of the provider, shall make full disclosure, and
9 provide copies of the disclosure documents to the prospective
10 resident or his or her legal representative, of the following
11 information:

12 (a) The contract to furnish continuing care.

13 (b) The summary listed in paragraph (2)(b).

14 (c) All ownership interests and lease agreements,
15 including information specified in s. 651.022(2)(b)8.

16 (d) In keeping with the intent of this subsection
17 relating to disclosure, the provider shall make available for
18 review, master plans approved by the provider's governing
19 board and any plans for expansion or phased development, to
20 the extent that the availability of such plans will not put at
21 risk real estate, financing, acquisition, negotiations, or
22 other implementation of operational plans and thus jeopardize
23 the success of negotiations, operations, and development.

24 (e) Copies of the rules and regulations of the
25 facility and an explanation of the responsibilities of the
26 resident.

27 (f) The policy of the facility with respect to
28 admission to and discharge from the various levels of health
29 care offered by the facility.

30 (g) The amount and location of any reserve funds
31 required by this chapter, and the name of the person or entity

1 having a claim to such funds in the event of a bankruptcy,
2 foreclosure, or rehabilitation proceeding.

3 (h) A copy of the resident's rights as described in s.
4 651.083.

5
6 A true and complete copy of the full disclosure document to be
7 used shall be filed with the office ~~department~~ prior to its
8 use. A resident or prospective resident or his or her legal
9 representative shall be permitted to inspect the full reports
10 referred to in paragraph (2)(b); the charter or other
11 agreement or instrument required to be filed with the office
12 ~~department~~ pursuant to s. 651.022(2), together with all
13 amendments thereto; and the bylaws of the corporation or
14 association, if any. Upon request, copies of the reports and
15 information shall be provided to the individual requesting
16 them if the individual agrees to pay a reasonable charge to
17 cover copying costs.

18 Section 1683. Subsections (1) and (2) of section
19 651.095, Florida Statutes, are amended to read:

20 651.095 Advertisements; requirements; penalties.--

21 (1) Upon application for a provisional certificate of
22 authority, the office ~~department~~ shall require the applicant
23 to submit for approval all advertising. Approval of the
24 application constitutes approval of the advertising, unless
25 the office ~~department~~ has otherwise notified the applicant.
26 The office ~~department~~ shall disapprove any document which is a
27 violation of any provision of part IX of chapter 626.

28 (2) After an application has been approved, a provider
29 is not required to submit new advertising to the office
30 ~~department~~ for approval; however, a provider may not use, and
31 may not have published, and a person may not use or may not

1 have published, any advertisement which is a violation of any
2 provision of part IX of chapter 626 or which has previously
3 been disapproved by the office ~~department~~.

4 Section 1684. Section 651.105, Florida Statutes, is
5 amended to read:

6 651.105 Examination and inspections.--

7 (1) The office ~~department~~ may at any time, and shall
8 at least once every 3 years, examine the business of any
9 applicant for a certificate of authority and any provider
10 engaged in the execution of care contracts or engaged in the
11 performance of obligations under such contracts, in the same
12 manner as is provided for examination of insurance companies
13 pursuant to s. 624.316. Such examinations shall be made by a
14 representative or examiner designated by the office
15 ~~department~~, whose compensation will be fixed by the office
16 ~~department~~ pursuant to s. 624.320. Routine examinations may be
17 made by having the necessary documents submitted to the office
18 ~~department~~; and, for this purpose, financial documents and
19 records conforming to commonly accepted accounting principles
20 and practices, as required under s. 651.026, will be deemed
21 adequate. The final written report of each such examination
22 shall be filed with ~~in~~ the office ~~of the department~~ and, when
23 so filed, will constitute a public record. Any provider being
24 examined shall, upon request, give reasonable and timely
25 access to all of its records. The representative or examiner
26 designated by the office ~~department~~ may at any time examine
27 the records and affairs and inspect the physical property of
28 any provider, whether in connection with a formal examination
29 or not.

30 (2) Any duly authorized officer, employee, or agent of
31 the office ~~department~~ may, upon presentation of proper

1 identification, have access to, and inspect, any records, with
2 or without advance notice, to secure compliance with, or to
3 prevent a violation of, any provision of this chapter.

4 (3) Reports of the results of such financial
5 examinations must be kept on file by the office ~~department~~.
6 Any investigatory records, reports, or documents held by the
7 office ~~department~~ are confidential and exempt from the
8 provisions of s. 119.07(1), until the investigation is
9 completed or ceases to be active. For the purpose of this
10 section, an investigation is active while it is being
11 conducted by the office ~~department~~ with a reasonable, good
12 faith belief that it could lead to the filing of
13 administrative, civil, or criminal proceedings. An
14 investigation does not cease to be active if the office
15 ~~department~~ is proceeding with reasonable dispatch and has a
16 good faith belief that action could be initiated by the office
17 ~~department~~ or other administrative or law enforcement agency.

18 (4) The office ~~department~~ shall notify the provider in
19 writing of all deficiencies in its compliance with the
20 provisions of this chapter and the rules adopted pursuant to
21 this chapter and shall set a reasonable length of time for
22 compliance by the provider. In addition, the office ~~department~~
23 shall require corrective action or request a corrective action
24 plan from the provider which plan demonstrates a good faith
25 attempt to remedy the deficiencies by a specified date. If the
26 provider fails to comply within the established length of
27 time, the office ~~department~~ may initiate action against the
28 provider in accordance with the provisions of this chapter.

29 Section 1685. Section 651.106, Florida Statutes, is
30 amended to read:

31

1 651.106 Grounds for discretionary refusal, suspension,
2 or revocation of certificate of authority.--The office
3 ~~department~~, in its discretion, may deny, suspend, or revoke
4 the provisional certificate of authority or the certificate of
5 authority of any applicant or provider if it finds that any
6 one or more of the following grounds applicable to the
7 applicant or provider exist:

8 (1) Failure by the provider to continue to meet the
9 requirements for the authority originally granted.

10 (2) Failure by the provider to meet one or more of the
11 qualifications for the authority specified by this chapter.

12 (3) Material misstatement, misrepresentation, or fraud
13 in obtaining the authority, or in attempting to obtain the
14 same.

15 (4) Demonstrated lack of fitness or trustworthiness.

16 (5) Fraudulent or dishonest practices of management in
17 the conduct of business.

18 (6) Misappropriation, conversion, or withholding of
19 moneys.

20 (7) Failure to comply with, or violation of, any
21 proper order or rule of the office or commission ~~department~~ or
22 violation of any provision of this chapter.

23 (8) The insolvent condition of the provider or the
24 provider's being in such condition or using such methods and
25 practices in the conduct of its business as to render its
26 further transactions in this state hazardous or injurious to
27 the public.

28 (9) Refusal by the provider to be examined or to
29 produce its accounts, records, and files for examination, or
30 refusal by any of its officers to give information with
31 respect to its affairs or to perform any other legal

1 obligation under this chapter when required by the office
2 ~~department~~.

3 (10) Failure by the provider to comply with the
4 requirements of s. 651.026 or s. 651.033.

5 (11) Failure by the provider to maintain escrow
6 accounts or funds as required by this chapter.

7 (12) Failure by the provider to meet the requirements
8 of this chapter for disclosure of information to residents
9 concerning the facility, its ownership, its management, its
10 development, or its financial condition or failure to honor
11 its continuing care contracts.

12 (13) Any cause for which issuance of the license could
13 have been refused had it then existed and been known to the
14 office ~~department~~.

15 (14) Having been found guilty of, or having pleaded
16 guilty or nolo contendere to, a felony in this state or any
17 other state, without regard to whether a judgment or
18 conviction has been entered by the court having jurisdiction
19 of such cases.

20 (15) In the conduct of business under the license,
21 engaging in unfair methods of competition or in unfair or
22 deceptive acts or practices prohibited under part IX of
23 chapter 626.

24 (16) A pattern of bankrupt enterprises.

25
26 Revocation of a certificate of authority under this section
27 does not relieve a provider from the provider's obligation to
28 residents under the terms and conditions of any continuing
29 care contract between the provider and residents or the
30 provisions of this chapter. The provider shall continue to
31 file its annual statement and pay license fees to the office

1 ~~department~~ as required under this chapter as if the
2 certificate of authority had continued in full force, but the
3 provider shall not issue any new continuing care contracts.
4 The office ~~department~~ may seek an action in the circuit court
5 of Leon County to enforce the office's ~~department's~~ order and
6 the provisions of this section.

7 Section 1686. Subsections (1) and (3) of section
8 651.107, Florida Statutes, are amended to read:

9 651.107 Duration of suspension; obligations during
10 suspension period; reinstatement.--

11 (1) Suspension of a certificate of authority shall be
12 for such period, not to exceed 1 year, as is fixed by the
13 office ~~department~~ in the order of suspension, unless the
14 office ~~department~~ shortens or rescinds such suspension or the
15 order of suspension is modified, rescinded, or reversed.

16 (3) Upon expiration of the suspension period, if
17 within such period the certificate of authority has not
18 otherwise terminated, the provider's certificate of authority
19 shall automatically be reinstated unless the office ~~department~~
20 finds that the causes for the suspension have not been removed
21 or that the provider is otherwise not in compliance with the
22 requirements of this chapter. If not so automatically
23 reinstated, the certificate of authority shall be deemed to be
24 revoked as of the end of the suspension period or upon failure
25 of the provider to continue the certificate during the
26 suspension period, whichever event first occurs.

27 Section 1687. Section 651.108, Florida Statutes, is
28 amended to read:

29 651.108 Administrative fines.--

30 (1) If the office ~~department~~ finds that one or more
31 grounds exist for the discretionary revocation or suspension

1 of a certificate of authority issued under this chapter, the
2 office department, in lieu of such revocation or suspension,
3 may impose a fine upon the provider in an amount not to exceed
4 \$1,000 per violation.

5 (2) If it is found that the provider has knowingly and
6 willfully violated a lawful order of the office department or
7 a provision of this chapter, the office department may impose
8 a fine in an amount not to exceed \$10,000 for each such
9 violation.

10 Section 1688. Subsections (1) and (2) of section
11 651.1081, Florida Statutes, are amended to read:

12 651.1081 Remedies available in cases of unlawful
13 sale.--

14 (1) Upon a determination by the office department that
15 a provider is or has been violating the provisions of this
16 chapter, the office department may order the provider to cease
17 sales and make a rescission offer to the resident in
18 accordance with the provisions of this section.

19 (2) Upon such order by the office department, every
20 unlawful sale made in violation of this chapter may be
21 rescinded at the election of the resident without penalty.

22 Section 1689. Subsections (1), (2), and (3) of section
23 651.111, Florida Statutes, are amended to read:

24 651.111 Requests for inspections.--

25 (1) Any interested party may request an inspection of
26 the records and related financial affairs of a provider
27 providing care in accordance with the provisions of this
28 chapter by transmitting to the office department notice of an
29 alleged violation of applicable requirements prescribed by
30 statute or by rule, specifying to a reasonable extent the
31

1 details of the alleged violation, which notice shall be signed
2 by the complainant.

3 (2) The substance of the complaint shall be given to
4 the provider no earlier than the time of the inspection.
5 Unless the complainant specifically requests otherwise,
6 neither the substance of the complaint which is provided to
7 the provider nor any copy of the complaint or any record which
8 is published, released, or otherwise made available to the
9 provider shall disclose the name of any person mentioned in
10 the complaint except the name of any duly authorized officer,
11 employee, or agent of the office ~~department~~ conducting the
12 investigation or inspection pursuant to this chapter.

13 (3) Upon receipt of a complaint, the office ~~department~~
14 shall make a preliminary review; and, unless the office
15 ~~department~~ determines that the complaint is without any
16 reasonable basis, the office ~~department~~ shall make an
17 inspection. The complainant shall be advised, within 30 days
18 after the receipt of the complaint by the office ~~department~~,
19 of the proposed course of action of the office ~~department~~.

20 Section 1690. Section 651.114, Florida Statutes, is
21 amended to read:

22 651.114 Delinquency proceedings; remedial rights.--

23 (1) Upon determination by the office ~~department~~ that a
24 provider is not in compliance with this chapter, the office
25 ~~department~~ may notify the chair of the advisory council, who
26 may assist the office ~~department~~ in formulating a corrective
27 action plan.

28 (2) A provider shall make available to the advisory
29 council, no later than 30 days after being requested to do so
30 by the advisory council, a plan for obtaining compliance or
31 solvency.

- 1 (3) The council shall, no later than 30 days after
2 notification:
- 3 (a) Consider and evaluate the plan submitted by the
4 provider.
- 5 (b) Discuss the problem and solutions with the
6 provider.
- 7 (c) Conduct such other business as is necessary.
- 8 (d) Report its findings and recommendations to the
9 office ~~department~~, which may require additional modification
10 of the plan.
- 11 (4)(a) Upon approval of a plan by the office
12 ~~department~~, the provider shall submit monthly a progress
13 report to the council or the office ~~department~~, or both, in a
14 manner prescribed by the office ~~department~~.
- 15 (b) After a period of 3 months, or at any earlier time
16 deemed necessary, the council shall evaluate the progress by
17 the provider and shall advise the office ~~department~~ of its
18 findings.
- 19 (5) Should the office ~~department~~ find that sufficient
20 grounds exist for rehabilitation, liquidation, conservation,
21 reorganization, seizure, or summary proceedings of an insurer
22 as set forth in ss. 631.051, 631.061, and 631.071, the office
23 ~~department~~ may petition for an appropriate court order or may
24 pursue such other relief as is afforded in part I of chapter
25 631. Before invoking its powers under part I of chapter 631,
26 the office ~~department~~ shall notify the chair of the advisory
27 council.
- 28 (6) In the event an order of rehabilitation,
29 liquidation, conservation, reorganization, seizure, or summary
30 proceeding has been entered against a provider, the department
31 and office are ~~is~~ vested with all of the powers and duties

1 they have ~~it has~~ under the provisions of part I of chapter 631
2 in regard to delinquency proceedings of insurance companies.

3 (7) If the financial condition of the continuing care
4 facility or provider is such that, if not modified or
5 corrected, its continued operation would result in insolvency,
6 the office ~~department~~ may direct the provider to formulate and
7 file with the office ~~department~~ a corrective action plan. If
8 the provider fails to submit a plan within 30 days after the
9 office's ~~department's~~ directive or submits a plan that is
10 insufficient to correct the condition, the office ~~department~~
11 may specify a plan and direct the provider to implement the
12 plan.

13 (8)(a) The rights of the office ~~department~~ described
14 in this section shall be subordinate to the rights of a
15 trustee or lender pursuant to the terms of a resolution,
16 ordinance, loan agreement, indenture of trust, mortgage,
17 lease, security agreement, or other instrument creating or
18 securing bonds or notes issued to finance a facility, and the
19 office ~~department~~, subject to the provisions of paragraph (c),
20 shall not exercise its remedial rights provided under this
21 section and ss. 651.018, 651.106, 651.108, and 651.116 with
22 respect to a facility that is subject to a lien, mortgage,
23 lease, or other encumbrance or trust indenture securing bonds
24 or notes issued in connection with the financing of the
25 facility, if the trustee or lender, by inclusion or by
26 amendment to the loan documents or by a separate contract with
27 the office ~~department~~, agrees that the rights of residents
28 under a continuing care contract will be honored and will not
29 be disturbed by a foreclosure or conveyance in lieu thereof as
30 long as the resident:

31

1 1. Is current in the payment of all monetary
2 obligations required by the continuing care contract;

3 2. Is in compliance and continues to comply with all
4 provisions of the resident's continuing care contract; and

5 3. Has asserted no claim inconsistent with the rights
6 of the trustee or lender.

7 (b) Nothing in this subsection requires a trustee or
8 lender to:

9 1. Continue to engage in the marketing or resale of
10 new continuing care contracts;

11 2. Pay any rebate of entrance fees as may be required
12 by a resident's continuing care contract as of the date of
13 acquisition of the facility by the trustee or lender and until
14 expiration of the period described in paragraph (d);

15 3. Be responsible for any act or omission of any owner
16 or operator of the facility arising prior to the acquisition
17 of the facility by the trustee or lender; or

18 4. Provide services to the residents to the extent
19 that the trustee or lender would be required to advance or
20 expend funds that have not been designated or set aside for
21 such purposes.

22 (c) Should the office ~~department~~ determine, at any
23 time during the suspension of its remedial rights as provided
24 in paragraph (a), that the trustee or lender is not in
25 compliance with the provisions of paragraph (a), or that a
26 lender or trustee has assigned or has agreed to assign all or
27 a portion of a delinquent or defaulted loan to a third party
28 without the office's ~~department's~~ written consent, the office
29 ~~department~~ shall notify the trustee or lender in writing of
30 its determination, setting forth the reasons giving rise to
31 the determination and specifying those remedial rights

1 afforded to the office ~~department~~ which the office ~~department~~
2 shall then reinstate.

3 (d) Upon acquisition of a facility by a trustee or
4 lender and evidence satisfactory to the office ~~department~~ that
5 the requirements of paragraph (a) have been met, the office
6 ~~department~~ shall issue a 90-day temporary certificate of
7 authority granting the trustee or lender the authority to
8 engage in the business of providing continuing care and to
9 issue continuing care contracts subject to the office's
10 ~~department's~~ right to immediately suspend or revoke the
11 temporary certificate of authority if the office ~~department~~
12 determines that any of the grounds described in s. 651.106
13 apply to the trustee or lender or that the terms of the
14 agreement used as the basis for the issuance of the temporary
15 certificate of authority by the office ~~department~~ have not
16 been or are not being met by the trustee or lender since the
17 date of acquisition.

18 Section 1691. Section 651.1151, Florida Statutes, is
19 amended to read:

20 651.1151 Administrative, vendor, and management
21 contracts.--

22 (1) The office ~~department~~ may require a provider to
23 submit any contract for administrative, vendor, or management
24 services if the office ~~department~~ has information and belief
25 that a provider has entered into a contract with an affiliate,
26 an entity controlled by the provider, or an entity controlled
27 by an affiliate of the provider, which has not been disclosed
28 to the office ~~department~~ or which contract requires the
29 provider to pay a fee that is unreasonably high in relation to
30 the service provided.

31

1 (2) After review of the contract, the office
2 ~~department~~ may order the provider to cancel the contract in
3 accordance with the terms of the contract and applicable law
4 if it determines that the fees to be paid are so unreasonably
5 high as compared with similar contracts entered into by other
6 providers in similar circumstances that the contract is
7 detrimental to the facility or its residents.

8 (3) Any contract with an affiliate, an entity
9 controlled by the provider, or an entity controlled by an
10 affiliate of the provider for administrative, vendor, or
11 management services entered into or renewed after October 1,
12 1991, shall contain a provision that the contract shall be
13 canceled upon issuance of an order by the office ~~department~~
14 pursuant to this section. A copy of the current management
15 services contract, pursuant to this section, if any, must be
16 on file in the marketing office or other accessible area to
17 residents and the appropriate resident organizations.

18 (4) Any action of the office ~~department~~ under this
19 section is subject to review pursuant to the procedures
20 provided in chapter 120.

21 Section 1692. Subsection (12) of section 651.118,
22 Florida Statutes, is amended to read:

23 651.118 Agency for Health Care Administration;
24 certificates of need; sheltered beds; community beds.--

25 (12) A facility that is under administrative
26 supervision for financial problems pursuant to s. 651.018 may
27 petition the Agency for Health Care Administration for the
28 conversion of sheltered beds to community nursing home beds in
29 accordance with the corrective action plan approved by the
30 office ~~department~~. The agency shall, upon petition by the
31 facility and through an expedited review, issue a certificate

1 of need converting the sheltered nursing home beds to
2 community nursing home beds.

3 Section 1693. Section 52 of chapter 2001-45, Laws of
4 Florida, is amended to read:

5 Section 52. Notwithstanding the establishment of need
6 as provided for in chapter 408, Florida Statutes, no
7 certificate of need for additional community nursing home beds
8 shall be approved by the agency until July 1, 2006. The
9 Legislature finds that the continued growth in the Medicaid
10 budget for nursing home care has constrained the ability of
11 the state to meet the needs of its elderly residents through
12 the use of less restrictive and less institutional methods of
13 long-term care. It is therefore the intent of the Legislature
14 to limit the increase in Medicaid nursing home expenditures in
15 order to provide funds to invest in long-term care that is
16 community-based and provides supportive services in a manner
17 that is both more cost-effective and more in keeping with the
18 wishes of the elderly residents of this state. This moratorium
19 on certificates of need shall not apply to sheltered nursing
20 home beds in a continuing care retirement community certified
21 by the former Department of Insurance or by the Office of
22 Insurance Regulation pursuant to chapter 651, Florida
23 Statutes.

24 Section 1694. Section 651.119, Florida Statutes, is
25 amended to read:

26 651.119 Assistance to persons affected by closure due
27 to liquidation or pending liquidation.--

28 (1) If a facility closes and ceases to operate as a
29 result of liquidation or pending liquidation and residents are
30 forced to relocate, the department shall become a creditor of
31 the facility for the purpose of providing moving expenses for

1 displaced residents and such other care or services as is made
2 possible by the unencumbered assets of the facility. To the
3 extent that another provider provides, as approved by the
4 office department, direct assistance to such residents, the
5 cost of such direct assistance shall be offset against
6 reserves pursuant to subsection (4). The department shall
7 provide proportional reimbursements of such costs to the
8 respective providers from such unencumbered assets.

9 (2) If the moneys and direct assistance made available
10 under subsection (1) are not sufficient to cover moving costs,
11 the office department may seek voluntary contributions from
12 the reserves maintained by providers under s. 651.035 in
13 amounts approved by the office department to provide for the
14 moving expenses of the residents in moving to another
15 residence within the state.

16 (3) If the moneys and direct assistance provided under
17 subsections (1) and (2) are not sufficient to provide for the
18 moving expenses of displaced residents in moving to other
19 residences within the state, the office department may levy
20 pro rata assessments on the reserves of providers maintained
21 under s. 651.035 for such moving expenses of any displaced
22 resident who lacks sufficient assets to pay for such moving
23 expenses. The assessments for such moving expenses on any
24 particular provider may not exceed for any 12-month period an
25 aggregate of 1 percent of the unencumbered portion of the
26 reserves maintained by the provider under s. 651.035. If the
27 office department determines that payment of an assessment
28 under this subsection would impair the financial standing of a
29 facility or its residents, the office department may waive or
30 temporarily defer all or part of the assessment with respect
31 to that provider. The office department shall apply any moneys

1 voluntarily paid by a provider under subsection (1) or
2 subsection (2) to satisfaction of assessments under this
3 subsection.

4 (4) The office ~~department~~ shall permanently reduce the
5 reserves required of a provider under s. 651.035 to the extent
6 of the provider's costs under subsection (1), voluntary
7 contributions under subsection (2), and assessments under
8 subsection (3). However, the office ~~department~~ shall
9 thereafter raise the reserve requirements of a provider to the
10 extent of reimbursements paid to the provider under subsection
11 (1) unless such increase would raise the reserve requirement
12 above the amount required under s. 651.035.

13 (5) No payment, contribution, or assessment may be
14 paid by a provider under this section if the release of funds
15 from the reserves of the provider would violate a bond or
16 lending commitment or covenant.

17 (6) Moneys received under this section for the support
18 of residents shall be kept in a separate fund maintained and
19 administered by the department. The Continuing Care Advisory
20 Council shall monitor the collection and use of such funds and
21 shall advise the office or ~~department~~ on plans for resident
22 relocation. The council shall seek the assistance of providers
23 licensed under this chapter and other service providers in
24 locating alternative housing and care arrangements.

25 (7) For the purposes of this section, "moving
26 expenses" means transportation expenses and the cost of
27 packing and relocating personal belongings.

28 Section 1695. Subsections (1), (3), and (5) of section
29 651.121, Florida Statutes, are amended to read:

30 651.121 Advisory council.--

31

1 (1) The Continuing Care Advisory Council to the office
2 ~~department of Insurance~~ is created to consist of 10 members
3 who are residents of this state appointed by the Governor and
4 geographically representative of this state. Three members
5 shall be administrators of facilities which hold valid
6 certificates of authority under this chapter and shall have
7 been actively engaged in the offering of continuing care
8 agreements in this state for 5 years before appointment. The
9 remaining members shall include:

10 (a) A representative of the business community whose
11 expertise is in the area of management.

12 (b) A representative of the financial community who is
13 not a facility owner or administrator.

14 (c) A certified public accountant.

15 (d) An attorney.

16 (e) Three residents who hold continuing care
17 agreements with a facility certified in this state.

18 (3) The council members shall serve without pay, but
19 shall be reimbursed for per diem and travel expenses by the
20 office ~~department~~ in accordance with s. 112.061.

21 (5) The council shall:

22 (a) Meet at least once a year and, at such annual
23 meeting, elect a chair from their number and elect or appoint
24 a secretary, each of whom shall hold office for 1 year and
25 thereafter until a successor is elected and qualified.

26 (b) Hold other meetings at such times and places as
27 the office ~~department~~ or the chair of the council may direct.

28 (c) Keep a record of its proceedings. The books and
29 records of the council shall be prima facie evidence of all
30 matters reported therein and, except for proceedings conducted
31 under s. 651.018, shall be open to inspection at all times.

1 (d) Act in an advisory capacity to the office
2 ~~department~~.

3 (e) Recommend to the office ~~department~~ needed changes
4 in statutes and rules.

5 (f) Upon the request of the office ~~department~~, assist,
6 with any corrective action, rehabilitation or cessation of
7 business plan of a provider.

8 Section 1696. Section 651.123, Florida Statutes, is
9 amended to read:

10 651.123 Alternative dispute resolution.--The
11 commission ~~department~~ shall, by rule, adopt alternative
12 procedures for resolution of disputes between residents and
13 providers. The rules shall provide for an informal, nonbinding
14 mediation process, and for binding arbitration when mediation
15 fails to resolve a dispute, and shall provide minimum
16 qualifications for arbitrators substantially similar to other
17 arbitration programs under the Florida Insurance Code. The
18 rules shall specify the types of disputes that are subject to
19 mediation or arbitration, and shall provide that disputes over
20 increases in monthly maintenance fees are not subject to
21 mediation or arbitration. Arbitration is available only if
22 all parties agree in advance to be bound by the result.

23 Section 1697. Subsections (2), (3), and (4) of section
24 651.125, Florida Statutes, are amended to read:

25 651.125 Criminal penalties; injunctive relief.--

26 (2) The state attorney for a circuit shall, upon
27 application of the office ~~department~~ or its authorized
28 representative, institute and conduct the prosecution of an
29 action for violation, within such circuit, of any provision of
30 this chapter.

31

1 (3) The office ~~department~~ may bring an action to
2 enjoin a violation, threatened violation, or continued
3 violation of this chapter in the circuit court in and for the
4 county in which the violation occurred, is occurring, or is
5 about to occur.

6 (4) Any action brought by the office ~~department~~
7 against a provider shall not abate by reason of a sale or
8 other transfer of ownership of the facility used to provide
9 care, which provider is a party to the action, except with the
10 express written consent of the director of the office
11 ~~Treasurer and Insurance Commissioner.~~

12 Section 1698. Section 651.134, Florida Statutes, is
13 amended to read:

14 651.134 Investigatory records.--Any active
15 investigatory record of the office ~~department~~ made or received
16 under this chapter, and any active examination record
17 necessary to complete an active investigation, is confidential
18 and exempt from s. 119.07(1) until such investigation is
19 completed or ceases to be active. For the purpose of this
20 section, an investigation is active while it is being
21 conducted by the office ~~department~~ with a reasonable, good
22 faith belief that it could lead to the filing of
23 administrative, civil, or criminal proceedings. An
24 investigation does not cease to be active if the office
25 ~~department~~ is proceeding with reasonable dispatch and has a
26 good faith belief that action could be initiated by the office
27 ~~department~~ or other administrative or law enforcement agency.

28 Section 1699. Subsection (1) and paragraph (j) of
29 subsection (2) of section 655.001, Florida Statutes, are
30 amended to read:

31

1 655.001 Purpose; application.--The purposes of the
2 financial institutions codes are to:

3 (1) Provide general regulatory powers to be exercised
4 by the Financial Services Commission and the Office of
5 Financial Regulation ~~Department of Banking and Finance~~ in
6 relation to the regulation of financial institutions. The
7 financial institutions codes apply to all state-authorized or
8 state-chartered financial institutions and to the enforcement
9 of all laws relating to state-authorized or state-chartered
10 financial institutions.

11 (2) Provide for and promote:

12 (j) The delegation to the commission ~~department~~ of
13 adequate rulemaking power and to the office adequate
14 administrative discretion, subject to the provisions of the
15 financial institutions codes and to the purposes and policies
16 stated in this section, in order that the supervision and
17 regulation of financial institutions may be flexible and
18 readily responsive to changes in economic conditions, in
19 technology, and in financial institution practices.

20 Section 1700. Paragraphs (e), (i), (m), (q), and (r)
21 of subsection (1) of section 655.005, Florida Statutes, are
22 amended, and paragraph (s) is added to that subsection, to
23 read:

24 655.005 Definitions.--

25 (1) As used in the financial institutions codes,
26 unless the context otherwise requires, the term:

27 (e) "Commission" means the Financial Services
28 Commission ~~"Department"~~ means the ~~Department of Banking and~~
29 ~~Finance~~.

30 (i) "Financial institution-affiliated party" means:
31

1 1. Any director, officer, employee, or controlling
2 stockholder (other than a financial institution holding
3 company) of, or agent for, a financial institution,
4 subsidiary, or service corporation;

5 2. Any other person who has filed or is required to
6 file a change-of-control notice with the appropriate state or
7 federal regulatory agency;

8 3. Any stockholder (other than a financial institution
9 holding company), any joint venture partner, or any other
10 person as determined by the office ~~department~~ who participates
11 in the conduct of the affairs of a financial institution,
12 subsidiary, or service corporation; or

13 4. Any independent contractor (including any attorney,
14 appraiser, consultant, or accountant) who knowingly or
15 recklessly participates in:

- 16 a. Any violation of any law or regulation;
17 b. Any breach of fiduciary duty; or
18 c. Any unsafe and unsound practice,

19
20 which caused or is likely to cause more than a minimal
21 financial loss to, or a significant adverse effect on, the
22 financial institution, subsidiary, or service corporation.

23 (m) "Main office" or "principal office" of a financial
24 institution means the main business office designated or
25 provided for in the articles of incorporation or bylaws of a
26 financial institution at such identified location as has been
27 or is hereafter approved by the Office of Financial Regulation
28 ~~department~~, in the case of a state financial institution, or
29 by the appropriate federal regulatory agency, in the case of a
30 federal financial institution; and, with respect to the trust
31 department of a bank or association that has trust powers,

1 each of these terms means the office or place of business of
2 the trust department at such identified location, which need
3 not be the same location as the main office of the bank or
4 association exclusive of the trust department, as has been or
5 is hereafter approved by the Office of Financial Regulation
6 ~~department~~, in the case of a state bank or association that
7 has a trust department, or by the appropriate federal
8 regulatory agency, in the case of a national bank or federal
9 association that has a trust department. "Main office" or
10 "principal office" of a trust company means the office
11 designated or provided for as such in its articles of
12 incorporation, at such identified location as has been or is
13 hereafter approved by the relevant chartering authority.

14 (q) "Subsidiary" means any organization permitted by
15 the office ~~department~~ which is controlled by a financial
16 institution.

17 (r) "Unsafe or unsound practice" means any practice or
18 conduct found by the office ~~department~~ to be contrary to
19 generally accepted standards applicable to the specific
20 financial institution, or a violation of any prior order of a
21 state or federal regulatory agency, which practice, conduct,
22 or violation creates the likelihood of loss, insolvency, or
23 dissipation of assets or otherwise prejudices the interest of
24 the specific financial institution or its depositors or
25 members. In making this determination, the office ~~department~~
26 must consider the size and condition of the financial
27 institution, the gravity of the violation, and the prior
28 conduct of the person or institution involved.

29 (s) "Office" means the Office of Financial Regulation.

30 Section 1701. Section 655.012, Florida Statutes, is
31 amended to read:

1 655.012 General supervisory powers ~~of the department;~~
2 rulemaking; seal.--

3 (1) In addition to other powers conferred by the
4 financial institutions codes, the office ~~department~~ shall
5 have:

6 (a)~~(1)~~ General supervision over all state financial
7 institutions, their subsidiaries, and service corporations.

8 (b)~~(2)~~ Access to all books and records of all persons
9 over whom the office ~~department~~ exercises general supervision
10 as is necessary for the performance of the duties and
11 functions of the office ~~department~~ prescribed by the financial
12 institutions codes.

13 (c)~~(3)~~ Power to issue orders and declaratory
14 statements, disseminate information, and otherwise exercise
15 its discretion to effectuate the purposes, policies, and
16 provisions of the financial institutions codes.

17 (2) In addition to other powers conferred by the
18 financial institutions codes, the commission shall have the
19 power ~~and~~ to adopt rules pursuant to ss. 120.536(1) and 120.54
20 to implement the provisions of such codes.

21 (3) The office shall have an official seal by which
22 its proceedings are authenticated.

23 Section 1702. Section 655.015, Florida Statutes, is
24 amended to read:

25 655.015 Construction; standards to be observed by
26 commission and office ~~department~~.--

27 (1) The financial institutions codes shall be
28 liberally construed and applied to promote their purposes and
29 policies.

30 (2) The purposes and policies as stated in s. 655.001
31 constitute standards to be observed by the commission and

1 ~~office department~~ in the exercise of their ~~its~~ discretionary
2 powers under the financial institutions codes, in the adoption
3 of rules, in the issuance of orders and declaratory
4 statements, in the examination and supervision of financial
5 institutions, and in all matters of construction and
6 application of the financial institutions codes required for
7 any determination or action ~~by the department~~.

8 (3) The headings, captions, and catchlines at the
9 beginning of sections, subsections, and paragraphs are for
10 convenience only, do not constitute any part of the statutes
11 comprising the financial institutions codes, do not constitute
12 a complete index of the financial institutions codes, are not
13 indicative of the intent of the financial institutions codes,
14 and may not be used in construing or interpreting the
15 financial institutions codes.

16 Section 1703. Section 655.016, Florida Statutes, is
17 amended to read:

18 655.016 Liability when acting upon rule, order, or
19 declaratory statement ~~issued by department~~.--No person acting,
20 or who has acted, in good faith reliance upon a rule, order,
21 or declaratory statement issued by the commission or office
22 ~~department~~ shall be subject to any criminal, civil, or
23 administrative liability for such action, notwithstanding a
24 subsequent decision by a court of competent jurisdiction
25 invalidating the rule, order, or declaratory statement. In
26 the case of an order or a declaratory statement which is not
27 of general application, no person other than the person to
28 whom the order or declaratory statement was issued is entitled
29 to rely upon it, except upon material facts or circumstances
30 which are substantially the same as those upon which the order
31 or declaratory statement was based.

1 Section 1704. Section 655.031, Florida Statutes, is
2 amended to read:

3 655.031 Administrative enforcement guidelines.--

4 (1) In imposing any administrative remedy or penalty
5 provided for in the financial institutions codes, the office
6 ~~department~~ shall take into account the appropriateness of the
7 penalty with respect to the size of the financial resources
8 and good faith of the person charged, the gravity of the
9 violation, the history of previous violations, and such other
10 matters as justice may require.

11 (2) All administrative proceedings under ss. 655.033
12 and 655.037 shall be conducted in accordance with chapter 120.
13 Any service required or authorized to be made by the office
14 ~~department~~ under the financial institutions codes may be made
15 by certified mail, return receipt requested, delivered to
16 addressee only; by personal delivery; or in accordance with
17 chapter 48. The service provided for hereunder is effective
18 from the date of delivery.

19 Section 1705. Section 655.032, Florida Statutes, is
20 amended to read:

21 655.032 Investigations, subpoenas, hearings, and
22 witnesses.--

23 (1) The office ~~department~~ may make investigations,
24 within or outside this state, which it deems necessary to
25 determine whether a person has violated or is about to violate
26 any provision of the financial institutions codes or of the
27 rules adopted by the commission ~~department~~ pursuant to such
28 codes.

29 (2)(a) In the course of or in connection with an
30 investigation by the office ~~department~~ pursuant to the
31 provisions of subsection (1) or an investigation or

1 examination in connection with any application to the office
2 ~~department~~ for the organization or establishment of a state
3 financial institution or a branch thereof, and in connection
4 with an examination of a state financial institution,
5 subsidiary, or service corporation by the office ~~department~~,
6 the office ~~department~~, or any of its officers holding no
7 lesser title and position than examiner in charge or attorney
8 at law, shall have the power:

9 1. To administer oaths and affirmations;

10 2. To take or cause to be taken testimony and
11 depositions; and

12 3. To issue, revoke, quash, or modify subpoenas and
13 subpoenas duces tecum under the seal of the office ~~department~~
14 or to cause any such subpoena or subpoena duces tecum to be
15 issued by any county court judge or clerk of the circuit court
16 or county court to require persons to be or appear before the
17 office ~~department~~ at a time and place to be therein named and
18 to bring such books, records, and documents for inspection as
19 may be therein designated. Such subpoenas may be served by a
20 representative of the office ~~department~~ or may be served as
21 otherwise provided for by law for the service of subpoenas.

22 (b) In connection with any such investigation or
23 examination, the office ~~department~~ may permit a person to file
24 a statement in writing, under oath or otherwise as the office
25 ~~department~~ determines, as to facts and circumstances specified
26 by the office ~~department~~.

27 (3)(a) In the event of noncompliance with a subpoena
28 issued or caused to be issued by the office ~~department~~
29 pursuant to this section, the office ~~department~~ may petition
30 the circuit court of the county in which the person subpoenaed
31 resides or has its principal place of business for an order

1 requiring the subpoenaed person to appear and testify and to
2 produce such books, records, and documents as are specified in
3 such subpoena duces tecum. The office ~~department~~ is entitled
4 to the summary procedure provided in s. 51.011, and the court
5 shall advance the cause on its calendar.

6 (b) A copy of the petition shall be served upon the
7 person subpoenaed by any person authorized by this section to
8 serve subpoenas, who shall make and file with the court an
9 affidavit showing the time, place, and date of service.

10 (c) At any hearing on any such petition, the person
11 subpoenaed, or any person whose interests will be
12 substantially affected by the investigation, examination, or
13 subpoena, may appear and object to the subpoena and to the
14 granting of the petition. The court may make any order which
15 justice requires to protect a party or other person and his or
16 her personal and property rights, including, but not limited
17 to, protection from annoyance, embarrassment, oppression, or
18 undue burden or expense.

19 (d) Failure to comply with an order granting, in whole
20 or in part, a petition for enforcement of a subpoena is a
21 contempt of court.

22 (4) Witnesses shall be entitled to the same fees and
23 mileage to which they might be entitled by law for attending
24 as witnesses in the circuit court, except that no fees or
25 mileage shall be allowed in the case of testimony of a
26 financial institution-affiliated party if such testimony is
27 taken at the principal office of the state financial
28 institution, subsidiary, or service corporation or at the
29 residence of the financial institution-affiliated party.

30 (5) Reasonable and necessary expenses incurred by the
31 office ~~department~~ and payable to persons in investigations may

1 be assessed against such an applicant, state financial
2 institution, subsidiary, service corporation, or financial
3 institution-affiliated party on the basis of actual costs
4 incurred. Assessable expenses include, but are not limited to:
5 expenses for interpreters; expenses for communications;
6 expenses for legal representation; expenses for economic,
7 legal, or other research, analyses, and testimony; and fees
8 and expenses for witnesses. The failure to reimburse the
9 office ~~department~~ is a ground for denial of the application or
10 for revocation of any approval thereof.

11 Section 1706. Section 655.0321, Florida Statutes, is
12 amended to read:

13 655.0321 Restricted access to certain hearings,
14 proceedings, and related documents.--The office ~~department~~
15 shall consider the public purposes specified in s.
16 119.14(4)(b) in determining whether the hearings and
17 proceedings conducted pursuant to s. 655.033 for the issuance
18 of cease and desist orders and s. 655.037 for the issuance of
19 suspension or removal orders shall be closed and exempt from
20 the provisions of s. 286.011, and whether related documents
21 shall be confidential and exempt from the provisions of s.
22 119.07(1).

23 Section 1707. Subsections (1), (3), and (4) of section
24 655.0322, Florida Statutes, are amended to read:

25 655.0322 Prohibited acts and practices; criminal
26 penalties.--

27 (1) As used in this section, the term "financial
28 institution" means a financial institution as defined in s.
29 655.50 which includes a state trust company, state or national
30 bank, state or federal association, state or federal savings
31 bank, state or federal credit union, Edge Act or agreement

1 corporation, international bank agency, representative office
2 or administrative office or other business entity as defined
3 by the commission ~~department~~ by rule, whether organized under
4 the laws of this state, the laws of another state, or the laws
5 of the United States, which institution is located in this
6 state.

7 (3) It is unlawful for any financial
8 institution-affiliated party to:

9 (a) Knowingly receive or possess himself or herself of
10 any of its property otherwise than in payment of a just
11 demand, and, with intent to deceive or defraud, to omit to
12 make or cause to be made a full and true entry thereof in its
13 books and accounts, or concur in omitting to make any material
14 entry thereof;

15 (b) Embezzle, abstract, or misapply any money,
16 property, or thing of value of the financial institution,
17 subsidiary, or service corporation with intent to deceive or
18 defraud such financial institution, subsidiary, or service
19 corporation;

20 (c) Knowingly make, draw, issue, put forth, or assign
21 any certificate of deposit, draft, order, bill of exchange,
22 acceptance, note, debenture, bond or other obligation,
23 mortgage, judgment, or decree without authority from the board
24 of directors of such financial institution;

25 (d) Make any false entry in any book, report, or
26 statement of such financial institution, subsidiary, or
27 service corporation with intent to deceive or defraud such
28 financial institution or another person, firm, or corporation,
29 or with intent to deceive the office ~~department~~, any other
30 appropriate federal regulatory agency, or any authorized
31

1 representative appointed to examine the affairs of such
2 financial institution, subsidiary, or service corporation; or
3 (e) Deliver or disclose to the office ~~department~~ or
4 any of its employees any examination report, report of
5 condition, report of income and dividends, internal audit,
6 account, statement, or document known by him or her to be
7 fraudulent or false as to any material matter.

8
9 Any person who violates this subsection is guilty of a felony
10 of the third degree, punishable as provided in s. 775.082, s.
11 775.083, or s. 775.084.

12 (4) It is unlawful for any financial
13 institution-affiliated party to knowingly place among the
14 assets of such financial institution, subsidiary, or service
15 corporation any note, obligation, or security which the
16 financial institution, subsidiary, or service corporation does
17 not own or which to the individual's knowledge is fraudulent
18 or otherwise worthless or for any such individual to represent
19 to the office ~~department~~ that any note, obligation, or
20 security carried as an asset of such financial institution,
21 subsidiary, or service corporation is the property of the
22 financial institution, subsidiary, or service corporation and
23 is genuine if it is known to such individual that such
24 representation is false or that such note, obligation, or
25 security is fraudulent or otherwise worthless. Any person who
26 violates this subsection is guilty of a felony of the third
27 degree, punishable as provided in s. 775.082, s. 775.083, or
28 s. 775.084.

29 Section 1708. Subsections (1), (3), and (6) of section
30 655.033, Florida Statutes, are amended to read:

31 655.033 Cease and desist orders.--

1 (1) The office ~~department~~ may issue and serve upon any
2 state financial institution, subsidiary, or service
3 corporation, or upon any financial institution-affiliated
4 party, a complaint stating charges whenever the office
5 ~~department~~ has reason to believe that such state financial
6 institution, subsidiary, service corporation, financial
7 institution-affiliated party, or individual named therein is
8 engaging in or has engaged in conduct that is:
9 (a) An unsafe or unsound practice;
10 (b) A violation of any law relating to the operation
11 of a financial institution;
12 (c) A violation of any rule of the commission
13 ~~department~~;
14 (d) A violation of any order of the office ~~department~~;
15 (e) A breach of any written agreement with the office
16 ~~department~~;
17 (f) A prohibited act or practice pursuant to s.
18 655.0322; or
19 (g) A willful failure to provide information or
20 documents to the office ~~department~~ or any appropriate federal
21 agency, or any of its representatives, upon written request.
22 (3) If no hearing is requested within the time allowed
23 by ss. 120.569 and 120.57, or if a hearing is held and the
24 office ~~department~~ finds that any of the charges are true, the
25 office ~~department~~ may enter an order directing the state
26 financial institution, subsidiary, service corporation,
27 financial institution-affiliated party, or the individual
28 named therein to cease and desist from engaging in the conduct
29 complained of and to take corrective action.
30 (6) Whenever the office ~~department~~ finds that conduct
31 described in subsection (1) is likely to cause insolvency,

1 substantial dissipation of assets or earnings of the state
2 financial institution, subsidiary, or service corporation or
3 substantial prejudice to the depositors, members, or
4 shareholders, it may issue an emergency cease and desist order
5 requiring the state financial institution, subsidiary, service
6 corporation, or financial institution-affiliated party to
7 immediately cease and desist from engaging in the conduct
8 complained of and to take corrective action. The emergency
9 order is effective immediately upon service of a copy of the
10 order upon the state financial institution, subsidiary,
11 service corporation, or financial institution-affiliated party
12 and remains effective for 90 days. If the office ~~department~~
13 begins nonemergency cease and desist proceedings under
14 subsection (1), the emergency order remains effective until
15 the conclusion of the proceedings under ss. 120.569 and
16 120.57. Any emergency order entered under this subsection is
17 confidential and exempt from s. 119.07(1) until the emergency
18 order is made permanent, unless the office ~~department~~ finds
19 that such confidentiality will result in substantial risk of
20 financial loss to the public.

21 Section 1709. Section 655.034, Florida Statutes, is
22 amended to read:

23 655.034 Injunctions.--Whenever a violation of the
24 financial institutions codes is threatened or impending and
25 such violation will cause substantial injury to a state
26 financial institution or to the depositors, members,
27 creditors, or stockholders thereof, the circuit court has
28 jurisdiction to hear any complaint filed by the office
29 ~~department~~ and, upon proper showing, to issue an injunction
30 restraining such violation or granting other such appropriate
31 relief.

1 Section 1710. Section 655.037, Florida Statutes, is
2 amended to read:

3 655.037 Removal of a financial institution-affiliated
4 party by the office ~~department~~.--

5 (1) The office ~~department~~ may issue and serve upon any
6 financial institution-affiliated party and upon the state
7 financial institution, subsidiary, or service corporation
8 involved, a complaint stating charges whenever the office
9 ~~department~~ has reason to believe that the financial
10 institution-affiliated party is engaging or has engaged in
11 conduct that is:

12 (a) An unsafe or unsound practice;

13 (b) A prohibited act or practice;

14 (c) A willful violation of any law relating to
15 financial institutions;

16 (d) A violation of any other law involving fraud or
17 moral turpitude which constitutes a felony;

18 (e) A violation of s. 655.50, relating to the Florida
19 Control of Money Laundering in Financial Institutions Act;
20 chapter 896, relating to offenses related to financial
21 transactions; or any similar state or federal law;

22 (f) A willful violation of any rule of the commission
23 ~~department~~;

24 (g) A willful violation of any order of the office
25 ~~department~~;

26 (h) A willful breach of any written agreement with the
27 office ~~department~~; or

28 (i) An act of commission or omission or a practice
29 which is a breach of trust or a breach of fiduciary duty.
30
31

1 (2) The complaint must contain the statement of facts
2 and notice of opportunity for a hearing pursuant to ss.
3 120.569 and 120.57.

4 (3) If no hearing is requested within the time allowed
5 by ss. 120.569 and 120.57, or if a hearing is held and the
6 office ~~department~~ finds that any of the charges in the
7 complaint are true and that the state financial institution
8 has suffered or will likely suffer loss or other damage or
9 that the interests of the depositors, members, or shareholders
10 could be seriously prejudiced by reason of such violation or
11 practice or breach of fiduciary duty or that the financial
12 institution-affiliated party has received financial gain by
13 reason of such violation, practice, or breach of fiduciary
14 duty, and that such violation, practice, or breach of
15 fiduciary duty is one involving personal dishonesty on the
16 part of such financial institution-affiliated party or a
17 continuing disregard for the safety or soundness of the state
18 financial institution, subsidiary, or service corporation, the
19 office ~~department~~ may enter an order removing the financial
20 institution-affiliated party or restricting or prohibiting
21 participation by such financial institution-affiliated party
22 in the affairs of that particular state financial institution,
23 subsidiary, or service corporation or any other state
24 financial institution, subsidiary, or service corporation.

25 (4) If the financial institution-affiliated party
26 fails to respond to the complaint within the time allowed in
27 ss. 120.569 and 120.57, such failure constitutes a default and
28 justifies the entry of an order of removal.

29 (5) A contested or default order of removal is
30 effective when reduced to writing and served on the state
31 financial institution, subsidiary, or service corporation and

1 the financial institution-affiliated party. An uncontested
2 order of removal is effective as agreed.

3 (6)(a) The chief executive officer, or the person
4 holding the equivalent office, of a state financial
5 institution shall promptly notify the office ~~department~~ if he
6 or she has actual knowledge that any financial
7 institution-affiliated party is charged with a felony in a
8 state or federal court.

9 (b) Whenever any financial institution-affiliated
10 party is charged with a felony in a state or federal court, or
11 in the courts of any foreign country with which the United
12 States maintains diplomatic relations, and such charge alleges
13 violation of any law involving fraud, currency transaction
14 reporting, money laundering, theft, or moral turpitude and the
15 charge under such foreign law is equivalent to a felony charge
16 under state or federal law, the office ~~department~~ may enter an
17 emergency order suspending such financial
18 institution-affiliated party or restricting or prohibiting
19 participation by such financial institution-affiliated party
20 in the affairs of that particular state financial institution,
21 subsidiary, or service corporation or any other financial
22 institution, subsidiary, or service corporation, upon service
23 of the order upon the state financial institution, subsidiary,
24 or service corporation and the financial
25 institution-affiliated party so charged. The order shall
26 contain notice of opportunity for a hearing pursuant to ss.
27 120.569 and 120.57, where the financial institution-affiliated
28 party may request a postsuspension hearing to show that
29 continued service to or participation in the affairs of the
30 state financial institution, subsidiary, or service
31 corporation does not pose a threat to the interests of the

1 state financial institution's depositors, members, or
2 stockholders, or threaten to impair public confidence in the
3 state financial institution. In accordance with applicable
4 commission ~~departmental~~ rules, the office ~~department~~ shall
5 notify the financial institution-affiliated party whether the
6 order suspending or prohibiting the financial
7 institution-affiliated party from participation in the affairs
8 of a state financial institution, subsidiary, or service
9 corporation will be rescinded or otherwise modified. The
10 emergency order will remain in effect, unless otherwise
11 modified by the office ~~department~~, until the criminal charge
12 is disposed of. The acquittal of the financial
13 institution-affiliated party charged, or the final, unappealed
14 dismissal of all charges against such person, will dissolve
15 the emergency order, but will not prohibit the office
16 ~~department~~ from instituting proceedings under subsection (1).
17 If the financial institution-affiliated party charged is
18 convicted or pleads guilty or nolo contendere, whether or not
19 an adjudication of guilt is entered by the court, the
20 emergency order becomes final.

21 (7) Any financial institution-affiliated party removed
22 from office pursuant to this section is not eligible for
23 reelection to such position or to any official position in any
24 financial institution in this state except with the written
25 consent of the office ~~department~~. Any financial
26 institution-affiliated party who is removed, restricted, or
27 prohibited from participation in the affairs of a state
28 financial institution pursuant to this section may petition
29 the office ~~department~~ for modification or termination of any
30 such removal, restriction, or prohibition.

31

1 (8) The resignation, termination of employment or
2 participation, or separation from a state financial
3 institution, subsidiary, or service corporation of the
4 financial institution-affiliated party does not affect the
5 jurisdiction and authority of the office ~~department~~ to issue
6 any notice and proceed under this section against such
7 financial institution-affiliated party, if such notice is
8 served before the end of the 6-year period beginning on the
9 date such person ceases to be such a financial
10 institution-affiliated party with respect to such state
11 financial institution, subsidiary, or service corporation.

12 Section 1711. Section 655.0385, Florida Statutes, is
13 amended to read:

14 655.0385 Disapproval of directors and executive
15 officers.--

16 (1) Each state financial institution shall notify the
17 office ~~department~~ of the proposed appointment of any
18 individual to the board of directors or the employment of any
19 individual as an executive officer or equivalent position at
20 least 60 days before such appointment or employment becomes
21 effective, if the state financial institution:

22 (a) Has been chartered for less than 2 years;

23 (b) Has undergone a change in control or conversion
24 within the preceding 2 years. The office ~~department~~ may exempt
25 a financial institution from this paragraph if it operates in
26 a safe and sound manner;

27 (c) Is not in compliance with the minimum capital
28 requirements applicable to such financial institution; or

29 (d) Is otherwise operating in an unsafe and unsound
30 condition, as determined by the office ~~department~~, on the
31

1 basis of such financial institution's most recent report of
2 condition or report of examination.

3 (2) A state financial institution may not appoint any
4 individual to the board of directors, or employ any individual
5 as an executive officer or equivalent position, if the office
6 ~~department~~ issues a notice of disapproval with respect to that
7 person.

8 (3) The office ~~department~~ shall issue a notice of
9 disapproval if the competence, experience, character, or
10 integrity of the individual to be appointed or employed
11 indicates that it is not in the best interests of the
12 depositors, the members, or the public to permit the
13 individual to be employed by or associated with the state
14 financial institution.

15 (4) The commission ~~department~~ may adopt rules to
16 implement this section.

17 Section 1712. Subsection (2) of section 655.0386,
18 Florida Statutes, is amended to read:

19 655.0386 Transactions with financial
20 institution-affiliated parties.--

21 (2) DISCLOSURE OF PERSONAL INTEREST.--Without
22 limitation by any of the specific provisions of this section,
23 the commission or office ~~department~~ may require the disclosure
24 by financial institution-affiliated parties of their personal
25 interests, directly or indirectly, in any business or
26 transactions on behalf of or involving the state financial
27 institution, subsidiary, or service corporation and of their
28 control of or active participation in enterprises having
29 activities related to the business of the state financial
30 institution, subsidiary, or service corporation.

31

1 Section 1713. Section 655.0391, Florida Statutes, is
2 amended to read:

3 655.0391 Retention of supervision by office
4 ~~department~~.--A state financial institution may not cause to be
5 performed, by contract or otherwise, any financial-institution
6 services for itself, whether at or away from its main or
7 branch office or on or off its premises, unless assurances
8 satisfactory to the office ~~department~~ are furnished to the
9 office ~~department~~ by both the state financial institution and
10 the person performing such services that the performance
11 thereof will be subject to regulation and examination by the
12 office ~~department~~ to the same extent as if such services were
13 being performed by the state financial institution itself on
14 its own premises.

15 Section 1714. Section 655.041, Florida Statutes, is
16 amended to read:

17 655.041 Administrative fines; enforcement.--

18 (1) The office ~~department~~ may, by complaint, initiate
19 a proceeding pursuant to chapter 120 to impose an
20 administrative fine against any person found to have violated
21 any provision of the financial institutions codes or a cease
22 and desist order of the office ~~department~~ or any written
23 agreement with the office ~~department~~. No such proceeding
24 shall be initiated and no fine shall accrue pursuant to this
25 section until after such person has been notified in writing
26 of the nature of the violation and has been afforded a
27 reasonable period of time, as set forth in the notice, to
28 correct the violation and has failed to do so.

29 (2) Any such fine may not exceed \$2,500 a day for each
30 violation except as provided in this section.

31

1 (a) If the office ~~department~~ determines that any such
2 person has recklessly violated any provision of the financial
3 institutions codes or a cease and desist order of the office
4 ~~department~~ or any written agreement with the office
5 ~~department~~, which violation results in more than a minimal
6 loss to a financial institution, subsidiary, or service
7 corporation, or a pecuniary benefit to such person, the office
8 ~~department~~ may impose a fine not exceeding \$10,000 a day for
9 each day the violation continues.

10 (b) If the office ~~department~~ determines that any such
11 person has knowingly violated any provision of the financial
12 institutions codes or a cease and desist order of the office
13 ~~department~~ or any written agreement with the office
14 ~~department~~, which violation results in more than a minimal
15 loss to a financial institution, subsidiary, or service
16 corporation, or a pecuniary benefit to such a person, the
17 office ~~department~~ may impose a fine not exceeding the lesser
18 of \$500,000 per day or 1 percent of the total assets in the
19 case of a financial institution, or \$50,000 per day in any
20 other case for each day the violation continues.

21 (c) The office ~~department~~ may by complaint impose an
22 administrative fine, not exceeding \$10,000 a day, upon any
23 financial institution-affiliated party, and upon a state
24 financial institution, subsidiary, service corporation, or
25 affiliate, who refuses to permit an examiner to examine a
26 state financial institution, subsidiary, or service
27 corporation, who refuses to permit an examiner to review the
28 books and records of an affiliate, or who refuses to give an
29 examiner any information required in the course of any
30 examination or review of the books and records.

31

1 (3) Any administrative fine levied by the office
2 ~~department~~ may be enforced by the office ~~department~~ by
3 appropriate proceedings in the circuit court of the county in
4 which such person resides or in which the principal office of
5 a state financial institution is located. In any
6 administrative or judicial proceeding arising under this
7 section, a party may elect to correct the violation asserted
8 by the office ~~department~~ and, upon doing so, any fine ceases
9 to accrue; however, an election to correct the violation does
10 not render any administrative or judicial proceeding moot.

11 Section 1715. Section 655.043, Florida Statutes, is
12 amended to read:

13 655.043 Articles of incorporation; amendments;
14 approval.--A bank, trust company, or association may not amend
15 its articles of incorporation without the written approval of
16 the office ~~department~~.

17 Section 1716. Subsections (1) and (2) of section
18 655.044, Florida Statutes, are amended to read:

19 655.044 Accounting practices; bad debts ineligible to
20 be carried as assets.--

21 (1) Except as otherwise provided by law, a state
22 financial institution shall observe generally accepted
23 accounting principles and practices. The commission
24 ~~department~~ may authorize by rule exceptions to such accounting
25 practices as necessary.

26 (2) A state financial institution, subsidiary, or
27 service corporation may not carry as an asset any note,
28 obligation, or security which it does not own absolutely or
29 which is known by the state financial institution to be
30 fraudulent or otherwise worthless; and a state financial
31 institution may not carry as an asset, in any report to the

1 ~~office department~~ or in any published report, any note or
2 other obligation which is past due or upon which no interest
3 has been paid for 1 year or longer or which has been
4 determined by the ~~office department~~ to be a loss. However,
5 past due paper may be carried to the extent of the reasonable
6 value of any lien or other collateral given to secure such
7 obligation; and, if the obligation is in the process of
8 collection, it may be carried at its reasonable value as
9 determined by the board of directors. The ~~office department~~
10 may order the revision of any value so determined hereunder.

11 Section 1717. Section 655.045, Florida Statutes, is
12 amended to read:

13 655.045 Examinations, reports, and internal audits;
14 penalty.--

15 (1)(a) The ~~office department~~ shall conduct an
16 examination of the condition of each state financial
17 institution during each 18-month period, beginning July 1,
18 1981. The ~~office department~~ may accept an examination made by
19 the appropriate federal regulator, insuring or guaranteeing
20 corporation, or agency with respect to the condition of the
21 state financial institution or may make a joint or concurrent
22 examination with the appropriate federal regulator, insuring
23 or guaranteeing corporation, or agency. However, at least
24 once during each 36-month period beginning on July 3, 1992,
25 the ~~office department~~ shall conduct an examination of each
26 state financial institution in such a manner as to allow the
27 preparation of a complete examination report not subject to
28 the right of any federal or other non-Florida entity to limit
29 access to the information contained therein. If, as a part of
30 an examination or investigation of a state financial
31 institution, subsidiary, or service corporation, the office

1 ~~department~~ has reason to believe that an affiliate is engaged
2 in an unsafe or unsound practice or that the affiliate has a
3 negative impact on the state financial institution,
4 subsidiary, or service corporation, then the office ~~department~~
5 may review such books and records as are reasonably related to
6 the examination or investigation. The office ~~department~~ may
7 furnish a copy of all examinations or reviews made of such
8 financial institutions or their affiliates to the state or
9 federal financial institution regulators participating in the
10 examination of a bank holding company; an association holding
11 company; or any of their subsidiaries, service corporations,
12 or affiliates; an insuring or guaranteeing corporation or
13 agency or its representatives; or state financial institution
14 regulators participating in the examination of a holding
15 company or its subsidiaries.

16 (b) The office ~~department~~ may recover the costs of
17 examination and supervision of a state financial institution,
18 subsidiary, or service corporation that is determined by the
19 office ~~department~~ to be engaged in an unsafe or unsound
20 practice. The office ~~department~~ may also recover the costs of
21 any review conducted pursuant to paragraph (a) of any
22 affiliate of a state financial institution determined by the
23 office ~~department~~ to have contributed to an unsafe or unsound
24 practice at a state financial institution, subsidiary, or
25 service corporation.

26 (c) For the purposes of this section, the term "costs"
27 means the salary and travel expenses directly attributable to
28 the field staff examining the state financial institution,
29 subsidiary, or service corporation, and the travel expenses of
30 any supervisory staff required as a result of examination
31 findings. The mailing of any costs incurred under this

1 subsection must be postmarked not later than 30 days after the
2 date of receipt of a notice stating that such costs are due.
3 The office ~~department~~ may levy a late payment of up to \$100
4 per day or part thereof that a payment is overdue, unless it
5 is excused for good cause. However, for intentional late
6 payment of costs, the office ~~department~~ may levy an
7 administrative fine of up to \$1,000 per day for each day the
8 payment is overdue.

9 (d) The office ~~department~~ may require an audit of any
10 state financial institution, subsidiary, or service
11 corporation by an independent certified public accountant
12 approved by the office ~~department~~ whenever the office
13 ~~department~~, after conducting an examination of such state
14 financial institution, subsidiary, or service corporation, or
15 after accepting an examination of such state financial
16 institution by the appropriate state or federal regulatory
17 agency, determines that such an audit is necessary in order to
18 ascertain the condition of the financial institution,
19 subsidiary, or service corporation. The cost of such audit
20 shall be paid by the state financial institution, subsidiary,
21 or state service corporation.

22 (2)(a) ~~The department shall require~~ Each state
23 financial institution, subsidiary, or service corporation
24 shall ~~to~~ submit a report, at least four times each calendar
25 year, as of such dates as the commission or office determines
26 ~~department may determine~~. Such report must include such
27 information as the commission ~~department~~ by rule requires for
28 that type of institution.

29 (b) The office ~~department~~ shall levy an administrative
30 fine of up to \$100 per day for each day the report is past
31 due, unless it is excused for good cause. However, for

1 intentional late filing of the report required under paragraph
2 (a), the office ~~department~~ shall levy an administrative fine
3 of up to \$1,000 per day for each day the report is past due.

4 (3)(a) ~~The department shall require~~ The board of
5 directors of each state financial institution or, in the case
6 of a credit union, the supervisory committee or audit
7 committee shall ~~to~~ perform or cause to be performed, within
8 each calendar year, an internal audit of each state financial
9 institution, subsidiary, or service corporation and to file a
10 copy of the report and findings of such audit with the office
11 ~~department~~ on a timely basis. Such internal audit must
12 include such information as the commission ~~department~~ by rule
13 requires for that type of institution.

14 (b) With the approval of the office ~~department~~, the
15 board of directors or, in the case of a credit union, the
16 supervisory committee may elect, in lieu of such periodic
17 audits, to adopt and implement an adequate continuous audit
18 system and procedure which must include full, adequate, and
19 continuous written reports to, and review by, the board of
20 directors or, in the case of a credit union, the supervisory
21 committee, together with written statements of the actions
22 taken thereon and reasons for omissions to take actions, all
23 of which shall be noted in the minutes and filed among the
24 records of the board of directors or, in the case of a credit
25 union, the supervisory committee. If at any time such
26 continuous audit system and procedure, including the reports
27 and statements, becomes inadequate, in the judgment of the
28 office ~~department~~, the state financial institution shall
29 promptly make such changes as may be required by the office
30 ~~department~~ to cause the same to accomplish the purpose of this
31 section.

1 (4) A copy of the report of each examination must be
2 furnished to the financial institution examined. Such report
3 of examination shall be presented to the board of directors at
4 its next regular or special meeting.

5 Section 1718. Section 655.047, Florida Statutes, is
6 amended to read:

7 655.047 Assessments; financial institutions.--

8 (1) Each state financial institution shall pay to the
9 office department a semiannual assessment based on the total
10 assets as shown on the statement of condition of the financial
11 institution on the last business day in December and the last
12 business day in June of each year.

13 (2) The mailing of a semiannual assessment must be
14 postmarked on or before January 31 and July 31 of each year.
15 The office department may levy a late payment penalty of up to
16 \$100 per day or part thereof that a semiannual assessment
17 payment is overdue, unless it is excused for good cause.
18 However, for intentional late payment of a semiannual
19 assessment, the office department shall levy an administrative
20 fine of up to \$1,000 a day for each day the semiannual
21 assessment is overdue.

22 (3) The assessments required by this section cover the
23 6-month period following the first day of the month in which
24 they are due. The office department may prorate the amount of
25 the semiannual assessment; however, no portion of a semiannual
26 assessment is refundable.

27 Section 1719. Section 655.049, Florida Statutes, is
28 amended to read:

29 655.049 Deposit of fees and assessments.--The
30 assessments, application fees, late payment penalties, civil
31 penalties, administrative fines, and other fees or penalties

1 provided for in the financial institutions codes shall, in all
2 cases, be paid directly to the office ~~department~~, which shall
3 deposit all thereof in the Financial Institutions' Regulatory
4 Trust Fund, which fund shall be used by the office ~~department~~
5 to pay its costs for administration of the financial
6 institutions codes. The office ~~department~~ shall determine and
7 report to the Legislature whether the fees and assessments
8 provided in the financial institutions codes and assessed
9 against and collected from the financial institutions that are
10 subject to the financial institutions codes support the
11 office's ~~department's~~ expenditures. The Financial
12 Institutions' Regulatory Trust Fund is subject to the service
13 charge imposed pursuant to chapter 215.

14 Section 1720. Section 655.057, Florida Statutes, is
15 amended to read:

16 655.057 Records; limited restrictions upon public
17 access.--

18 (1) Except as otherwise provided in this section and
19 except for such portions thereof which are otherwise public
20 record, all records and information relating to an
21 investigation by the office ~~department~~ are confidential and
22 exempt from the provisions of s. 119.07(1) until such
23 investigation is completed or ceases to be active. For
24 purposes of this subsection, an investigation is considered
25 "active" while such investigation is being conducted by the
26 office ~~department~~ with a reasonable, good faith belief that it
27 may lead to the filing of administrative, civil, or criminal
28 proceedings. An investigation does not cease to be active if
29 the office ~~department~~ is proceeding with reasonable dispatch,
30 and there is a good faith belief that action may be initiated
31 by the office ~~department~~ or other administrative or law

1 enforcement agency. After an investigation is completed or
2 ceases to be active, portions of such records relating to the
3 investigation shall be confidential and exempt from the
4 provisions of s. 119.07(1) to the extent that disclosure
5 would:

6 (a) Jeopardize the integrity of another active
7 investigation;

8 (b) Impair the safety and soundness of the financial
9 institution;

10 (c) Reveal personal financial information;

11 (d) Reveal the identity of a confidential source;

12 (e) Defame or cause unwarranted damage to the good
13 name or reputation of an individual or jeopardize the safety
14 of an individual; or

15 (f) Reveal investigative techniques or procedures.

16 (2) Except as otherwise provided in this section and
17 except for such portions thereof which are public record,
18 reports of examinations, operations, or condition, including
19 working papers, or portions thereof, prepared by, or for the
20 use of, the office ~~department~~ or any state or federal agency
21 responsible for the regulation or supervision of financial
22 institutions in this state are confidential and exempt from
23 the provisions of s. 119.07(1). However, such reports or
24 papers or portions thereof may be released to:

25 (a) The financial institution under examination;

26 (b) Any holding company of which the financial
27 institution is a subsidiary;

28 (c) Proposed purchasers if necessary to protect the
29 continued financial viability of the financial institution,
30 upon prior approval by the board of directors of such
31 institution;

1 (d) Persons proposing in good faith to acquire a
2 controlling interest in or to merge with the financial
3 institution, upon prior approval by the board of directors of
4 such financial institution;

5 (e) Any officer, director, committee member, employee,
6 attorney, auditor, or independent auditor officially connected
7 with the financial institution, holding company, proposed
8 purchaser, or person seeking to acquire a controlling interest
9 in or merge with the financial institution; or

10 (f) A fidelity insurance company, upon approval of the
11 financial institution's board of directors. However, a
12 fidelity insurance company may receive only that portion of an
13 examination report relating to a claim or investigation being
14 conducted by such fidelity insurance company.

15 (g) Examination, operation, or condition reports of a
16 financial institution shall be released by the office
17 ~~department~~ within 1 year after the appointment of a
18 liquidator, receiver, or conservator to such financial
19 institution. However, any portion of such reports which
20 discloses the identities of depositors, bondholders, members,
21 borrowers, or stockholders, other than directors, officers, or
22 controlling stockholders of the institution, shall remain
23 confidential and exempt from the provisions of s. 119.07(1).
24

25 Any confidential information or records obtained from the
26 office ~~department~~ pursuant to this paragraph shall be
27 maintained as confidential and exempt from the provisions of
28 s. 119.07(1).

29 (3) The provisions of this section do not prevent or
30 restrict:
31

1 (a) Publishing reports required to be submitted to the
2 office ~~department~~ pursuant to s. 655.045(2)(a) or required by
3 applicable federal statutes or regulations to be published.

4 (b) Furnishing records or information to any other
5 state, federal, or foreign agency responsible for the
6 regulation or supervision of financial institutions, including
7 Federal Home Loan Banks.

8 (c) Furnishing records or information, in the case of
9 a credit union, to the Florida Credit Union Guaranty
10 Corporation, Inc.

11 (d) Disclosing or publishing summaries of the
12 condition of financial institutions and general economic and
13 similar statistics and data, provided that the identity of a
14 particular financial institution is not disclosed.

15 (e) Reporting any suspected criminal activity, with
16 supporting documents and information, to appropriate law
17 enforcement and prosecutorial agencies.

18 (f) Furnishing information upon request to the Chief
19 Financial Officer or the Division of Treasury of the
20 Department of Financial Services ~~State Treasurer~~ regarding the
21 financial condition of any financial institution that is, or
22 has applied to be, designated as a qualified public depository
23 pursuant to chapter 280.

24
25 Any confidential information or records obtained from the
26 office ~~department~~ pursuant to this subsection shall be
27 maintained as confidential and exempt from the provisions of
28 s. 119.07(1).

29 (4)(a) Orders of courts or of administrative law
30 judges for the production of confidential records or
31 information shall provide for inspection in camera by the

1 court or the administrative law judge and, after the court or
2 administrative law judge has made a determination that the
3 documents requested are relevant or would likely lead to the
4 discovery of admissible evidence, said documents shall be
5 subject to further orders by the court or the administrative
6 law judge to protect the confidentiality thereof. Any order
7 directing the release of information shall be immediately
8 reviewable, and a petition by the office ~~department~~ for review
9 of such order shall automatically stay further proceedings in
10 the trial court or the administrative hearing until the
11 disposition of such petition by the reviewing court. If any
12 other party files such a petition for review, it will operate
13 as a stay of such proceedings only upon order of the reviewing
14 court.

15 (b) Confidential records and information furnished
16 pursuant to a legislative subpoena shall be kept confidential
17 by the legislative body or committee which received the
18 records or information, except in a case involving
19 investigation of charges against a public official subject to
20 impeachment or removal, and then disclosure of such
21 information shall be only to the extent determined by the
22 legislative body or committee to be necessary.

23 (5) Every credit union and mutual association shall
24 maintain, in the principal office where its business is
25 transacted, full and correct records of the names and
26 residences of all the members of the credit union or mutual
27 association. Such records shall be subject to the inspection
28 of all the members of the credit union or mutual association,
29 and the officers authorized to assess taxes under state
30 authority, during business hours of each business day. A
31 current list of members shall be made available to the

1 office's ~~department's~~ examiners for their inspection and, upon
2 the request of the office department, shall be submitted to
3 the office department. Except as otherwise provided in this
4 subsection, the list of the members of the credit union or
5 mutual association is confidential and exempt from the
6 provisions of s. 119.07(1).

7 (6) Every bank, trust company, and stock association
8 shall maintain, in the principal office where its business is
9 transacted, full and complete records of the names and
10 residences of all the shareholders of the bank, trust company,
11 or stock association and the number of shares held by each.
12 Such records shall be subject to the inspection of all the
13 shareholders of the bank, trust company, or stock association,
14 and the officers authorized to assess taxes under state
15 authority, during business hours of each banking day. A
16 current list of shareholders shall be made available to the
17 office's ~~department's~~ examiners for their inspection and, upon
18 the request of the office department, shall be submitted to
19 the office department. Except as otherwise provided in this
20 subsection, any portion of this list which reveals the
21 identities of the shareholders is confidential and exempt from
22 the provisions of s. 119.07(1).

23 (7) Materials supplied to the office department or to
24 employees of any financial institution by other governmental
25 agencies, federal or state, or the Florida Credit Union
26 Guaranty Corporation, Inc., shall remain the property of the
27 submitting agency or the corporation, and any document request
28 must be made to the appropriate agency. Any confidential
29 documents supplied to the office department or to employees of
30 any financial institution by other governmental agencies,
31 federal or state, or by the Florida Credit Union Guaranty

1 Corporation, Inc., shall be confidential and exempt from the
2 provisions of s. 119.07(1). Such information shall be made
3 public only with the consent of such agency or the
4 corporation.

5 (8) Examination reports, investigatory records,
6 applications, and related information compiled by the office
7 ~~department~~, or photographic copies thereof, shall be retained
8 by the office ~~department~~ for a period of at least 10 years.

9 (9) A copy of any document on file with the office
10 ~~department~~ which is certified by the office ~~department~~ as
11 being a true copy may be introduced in evidence as if it were
12 the original. The commission ~~department~~ shall establish a
13 schedule of fees for preparing true copies of documents.

14 (10) Any person who willfully discloses information
15 made confidential by this section is guilty of a felony of the
16 third degree, punishable as provided in s. 775.082, s.
17 775.083, or s. 775.084.

18 Section 1721. Subsection (1) of section 655.059,
19 Florida Statutes, is amended to read:

20 655.059 Access to books and records; confidentiality;
21 penalty for disclosure.--

22 (1) The books and records of a financial institution
23 are confidential and shall be made available for inspection
24 and examination only:

25 (a) To the office ~~department~~ or its duly authorized
26 representative;

27 (b) To any person duly authorized to act for the
28 financial institution;

29 (c) To any federal or state instrumentality or agency
30 authorized to inspect or examine the books and records of an
31 insured financial institution;

1 (d) With respect to an international banking
2 corporation, to the home-country supervisor of the
3 corporation, provided:

4 1. The supervisor provides advance notice to the
5 office ~~department~~ that the supervisor intends to examine the
6 Florida office of the corporation.

7 2. The supervisor confirms to the office ~~department~~
8 that the purpose of the examination is to ensure the safety
9 and soundness of the corporation.

10 3. The books and records pertaining to customer
11 deposit, investment, and custodial accounts are not disclosed
12 to the supervisor.

13 4. At any time during the conduct of the examination,
14 the office ~~department~~ reserves the right to have an examiner
15 present or to participate jointly in the examination.

16
17 For purposes of this paragraph, "home-country supervisor"
18 means the governmental entity in the corporation's home
19 country with responsibility for the supervision and regulation
20 of the corporation;—

21 (e) As compelled by a court of competent jurisdiction;

22 (f) As compelled by legislative subpoena as provided
23 by law, in which case the provisions of s. 655.057 apply;

24 (g) Pursuant to a subpoena, to any federal or state
25 law enforcement or prosecutorial instrumentality authorized to
26 investigate suspected criminal activity;

27 (h) As authorized by the board of directors of the
28 financial institution; or

29 (i) As provided in subsection (2).

30 Section 1722. Section 655.061, Florida Statutes, is
31 amended to read:

1 655.061 Competitive equality with federally organized
2 or chartered financial institutions.--Subject to the prior
3 approval of the office ~~department~~ pursuant to commission rule
4 or office order of general application, state financial
5 institutions subject to the financial institutions codes may
6 make any loan or investment or exercise any power which they
7 could make or exercise if incorporated or operating in this
8 state as a federally chartered or regulated financial
9 institution of the same type and are entitled to all
10 privileges and protections granted federally chartered or
11 regulated financial institutions of the same type under
12 federal statutes and regulations. The provisions of this
13 section take precedence over, and must be given effect over,
14 any other general or specific provisions of the financial
15 institutions codes to the contrary. In issuing an order or
16 rule under this section, the office or commission ~~department~~
17 shall consider the importance of maintaining a competitive
18 dual system of financial institutions and whether such an
19 order or rule is in the public interest.

20 Section 1723. Section 655.071, Florida Statutes, is
21 amended to read:

22 655.071 International banking facilities; definitions;
23 notice before establishment.--

24 (1) "International banking facility" means a set of
25 asset and liability accounts segregated on the books and
26 records of a banking organization, as that term is defined in
27 s. 199.023, that includes only international banking facility
28 deposits, borrowings, and extensions of credit, as those terms
29 shall be defined by the commission ~~department~~ pursuant to
30 subsection (2).

31

1 (2) The commission ~~department~~ shall by rule define the
2 terms "deposit," "borrowing," and "extension of credit" as
3 they relate to the activities of international banking
4 facilities. These definitions shall take into account all
5 transactions in which international banking facilities are
6 permitted to engage by regulations of the Board of Governors
7 of the Federal Reserve System, as from time to time amended.
8 When adopting ~~promulgating~~ such rules, the commission
9 ~~department~~ shall also consider the public interest, including
10 the need to maintain a sound and competitive banking system,
11 as well as the purpose of this act, which is to create an
12 environment conducive to the conduct of an international
13 banking business in the state.

14 (3) Before establishing an international banking
15 facility, a state-chartered or state-licensed banking
16 organization shall notify the office ~~department~~ in the manner
17 prescribed by rule of the commission ~~department~~.

18 Section 1724. Subsections (1) and (2) of section
19 655.411, Florida Statutes, are amended to read:

20 655.411 Conversion of charter.--

21 (1) Any financial entity may apply to the office
22 ~~department~~ for permission to convert its charter without a
23 change of business form or convert its charter in order to do
24 business as another type of financial entity in accordance
25 with the following procedures:

26 (a) The board of directors must approve a plan of
27 conversion by a vote of a majority of all the directors. The
28 plan must include a statement of:

29 1. The type of financial entity which would result if
30 the application were approved and the proposed name under
31 which it would do business.

1 2. The method and schedule for terminating any
2 activities and disposing of any assets or liabilities which
3 would not conform to the requirements applicable to the
4 resulting financial entity.

5 3. The competitive impact of such change, including
6 any effect on the availability of particular financial
7 services in the market area served by the financial entity.

8 4. Such financial data as may be required to determine
9 compliance with the capital, reserve, and liquidity
10 requirements applicable to the resulting financial entity.

11 5. Such other information as the commission ~~department~~
12 may by rule require.

13 (b) Following approval by the board of directors, the
14 conversion plan, together with a certified copy of the
15 authorizing resolution adopted by the board, must be submitted
16 to the office ~~department~~ for approval before being submitted
17 to the members or stockholders of the financial entity. The
18 application for conversion must be in the ~~such~~ form prescribed
19 by the commission, ~~and~~ contain such additional information as
20 the commission or office ~~department~~ reasonably requires, and
21 ~~must~~ be accompanied by a filing fee in accordance with s.
22 657.066(4) or s. 658.73. Additionally, the office ~~department~~
23 is authorized to assess any financial entity, applying to
24 convert pursuant to this section, a nonrefundable examination
25 fee to cover the actual costs of any examination required as a
26 part of the application process.

27 (c) The office ~~department~~ shall approve the plan if it
28 finds that:

29 1. The resulting financial entity would have an
30 adequate capital structure with regard to its activities and
31 its deposit liabilities.

1 2. The proposed conversion would not cause a
2 substantially adverse effect on the financial condition of any
3 financial entity already established in the primary service
4 area.

5 3. The officers and directors have sufficient
6 experience, ability, and standing to indicate reasonable
7 promise for successful operation of the resulting financial
8 entity.

9 4. The schedule for termination of any nonconforming
10 activities and disposition of any nonconforming assets and
11 liabilities is reasonably prompt, and the plan for such
12 termination and disposition does not include any unsafe or
13 unsound practice.

14 5. None of the officers or directors has been
15 convicted of, or pled guilty or nolo contendere to, a
16 violation of s. 655.50, relating to the Florida Control of
17 Money Laundering in Financial Institutions Act; chapter 896,
18 relating to offenses related to financial transactions; or any
19 similar state or federal law.

20
21 If the office ~~department~~ disapproves the plan, it shall state
22 its objections and give an opportunity to the parties to amend
23 the plan to overcome such objections. The office ~~department~~
24 may deny an application by any financial entity which is
25 subject to a cease and desist order or other supervisory
26 restriction or order imposed by any state or federal
27 supervisory authority, insurer, or guarantor.

28 (d) If the office ~~department~~ approves the plan, it may
29 be submitted to the members or stockholders at an annual
30 meeting or at any special meeting called to consider such
31 action. Upon a favorable vote of a majority of the total

1 number of votes eligible to be cast or, in the case of a
2 credit union, a majority of the members present at the
3 meeting, the plan is adopted. Copies of the minutes of the
4 proceedings of such meeting of the members or stockholders,
5 verified by the affidavit of an officer, as established in the
6 bylaws of the financial institution, must be filed with the
7 office ~~department~~ within 10 days after such meeting. Such
8 verified copies of the proceedings of such meeting are
9 presumptive evidence of the holding and action of such
10 meeting. If the members or stockholders approve the plan of
11 conversion, the directors shall then execute new articles of
12 incorporation or amendments to existing articles and two
13 copies of the new bylaws. The directors shall insert in the
14 articles of incorporation the following: "This ...(bank,
15 association, etc.)... is incorporated by conversion from a
16 ...(national bank, state association, etc.)...."

17 (e) If the members or stockholders adopt the plan of
18 conversion, the financial entity shall apply to the
19 appropriate insurer for a commitment for insurance of accounts
20 for the shares and deposits of the resulting financial entity.

21 (f) The plan shall not take effect until the office
22 ~~department~~ has received notice that the commitment for
23 insurance of accounts has been given by the insurer. Upon
24 receipt of such notice, the office ~~department~~ shall issue a
25 new charter to the financial entity authorizing it to transact
26 business pursuant to applicable law.

27 (2) The commission ~~department~~ may provide by rule for
28 any additional procedures to be followed by any national or
29 federal financial entity seeking to convert its charter
30 pursuant to this section.

31

1 Section 1725. Subsection (1) of section 655.412,
2 Florida Statutes, is amended to read:

3 655.412 Merger and consolidation.--

4 (1) With the approval of the office ~~department~~, any
5 capital stock financial institution may be merged into or
6 consolidated with another capital stock financial institution
7 or a mutual financial institution. The provisions of ss.
8 658.41-658.45 govern any merger or consolidation pursuant to
9 this subsection; and, for this purpose, references therein to
10 banks and trust companies are deemed to refer to capital stock
11 financial institutions.

12 Section 1726. Section 655.414, Florida Statutes. is
13 amended to read:

14 655.414 Acquisition of assets; assumption of
15 liabilities.--With prior approval of the office ~~department~~ and
16 upon such conditions as the commission ~~department~~ prescribes
17 by rule, any financial entity may acquire all or substantially
18 all of the assets of, or assume the liabilities of, any other
19 financial entity in accordance with the procedures and subject
20 to the following conditions and limitations:

21 (1) ADOPTION OF A PLAN.--The board of directors of the
22 acquiring or assuming financial entity and the board of
23 directors of the transferring financial entity must adopt, by
24 a majority vote, a plan for such acquisition, assumption, or
25 sale on such terms as are mutually agreed upon. The plan must
26 include:

27 (a) The names and types of financial entities
28 involved.

29 (b) A statement setting forth the material terms of
30 the proposed acquisition, assumption, or sale, including the
31

1 plan for disposition of all assets and liabilities not subject
2 to the plan.

3 (c) A provision for liquidation of the transferring
4 financial entity upon execution of the plan.

5 (d) A statement that the entire transaction is subject
6 to written approval of the office ~~department~~ and approval of
7 the members or stockholders of the transferring financial
8 entity.

9 (e) If a stock financial institution is the
10 transferring financial entity and the proposed sale is not to
11 be for cash, a clear and concise statement that dissenting
12 stockholders of such financial entity are entitled to the
13 rights set forth in s. 658.44(4) and (5).

14 (f) The proposed effective date of such acquisition,
15 assumption, or sale and such other information and provisions
16 as may be necessary to execute the transaction or as may be
17 required by the office ~~department~~.

18 (2) APPROVAL OF OFFICE ~~DEPARTMENT~~.--Following approval
19 by the board of directors of each participating financial
20 entity, the plan, together with certified copies of the
21 authorizing resolutions adopted by the boards and a completed
22 application with a nonrefundable filing fee, must be forwarded
23 to the office ~~department~~ for its approval or disapproval. The
24 office ~~department~~ shall approve the plan of acquisition,
25 assumption, or sale if it appears that:

26 (a) The resulting financial entity would have an
27 adequate capital structure in relation to its activities and
28 its deposit liabilities;

29 (b) The plan is fair to all parties; and

30 (c) The plan is not contrary to the public interest.

31

1 If the office ~~department~~ disapproves the plan, it shall state
2 its objections and give an opportunity to the parties to amend
3 the plan to overcome such objections.

4 (3) VOTE OF MEMBERS OR STOCKHOLDERS.--If the office
5 ~~department~~ approves the plan, it may be submitted to the
6 members or stockholders of the transferring financial entity
7 at an annual meeting or at any special meeting called to
8 consider such action. Upon a favorable vote of 51 percent or
9 more of the total number of votes eligible to be cast or, in
10 the case of a credit union, 51 percent or more of the members
11 present at the meeting, the plan is adopted.

12 (4) ADOPTED PLAN; CERTIFICATE; ABANDONMENT.--

13 (a) If the plan is adopted by the members or
14 stockholders of the transferring financial entity, the
15 president or vice president and the cashier, manager, or
16 corporate secretary of such financial entity shall submit the
17 adopted plan to the office ~~department~~, together with a
18 certified copy of the resolution of the members or
19 stockholders approving it.

20 (b) Upon receipt of the certified copies and evidence
21 that the participating financial entities have complied with
22 all applicable federal law and regulations, the office
23 ~~department~~ shall certify, in writing, to the participants that
24 the plan has been approved.

25 (c) Notwithstanding approval of the members or
26 stockholders or certification by the office ~~department~~, the
27 board of directors of the transferring financial entity may,
28 in its discretion, abandon such a transaction without further
29 action or approval by the members or stockholders, subject to
30 the rights of third parties under any contracts relating
31 thereto.

1 (5) FEDERALLY CHARTERED INSTITUTION AS A
2 PARTICIPANT.--If one of the participants in a transaction
3 under this section is a federally chartered financial entity,
4 all participants must also comply with such requirements as
5 may be imposed by federal law for such an acquisition,
6 assumption, or sale and provide evidence of such compliance to
7 the office ~~department~~ as a condition precedent to the issuance
8 of a certificate authorizing the transaction; however, if the
9 purchasing or assuming financial entity is a federally
10 chartered financial entity, approval of the office ~~department~~
11 is not required.

12 (6) STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.--A
13 mutual financial institution may not sell all or substantially
14 all of its assets to a stock financial entity until it has
15 first converted into a capital stock financial institution in
16 accordance with s. 665.033(1) and (2). For this purpose,
17 references in s. 665.033(1) and (2) to associations are deemed
18 to refer also to credit unions; but, in the case of a credit
19 union, the provision therein concerning proxy statements does
20 not apply.

21 Section 1727. Section 655.416, Florida Statutes, is
22 amended to read:

23 655.416 Book value of assets.--Upon the effective date
24 of a merger, consolidation, conversion, or acquisition
25 pursuant to ss. 655.41-655.419, an asset may not be carried on
26 the books of the resulting financial entity at a valuation
27 higher than that at which it was carried on the books of a
28 participating or converting financial entity at the time of
29 its last examination by a state or federal examiner before the
30 effective date of such merger, consolidation, conversion, or
31

1 acquisition, without written approval from the office
2 ~~department~~.

3 Section 1728. Subsections (3) and (4) of section
4 655.418, Florida Statutes, are amended to read:

5 655.418 Nonconforming activities; cessation.--If, as a
6 result of a merger, consolidation, conversion, or acquisition
7 pursuant to ss. 655.41-655.419, the resulting financial entity
8 is to be of a different type or of a different character than
9 any one or all of the participating or converting financial
10 entities, such resulting financial entity will be subject to
11 the following conditions and limitations:

12 (3) COMPLIANCE WITH LENDING AND INVESTMENT
13 LIMITATIONS.--If, as a result of such merger, consolidation,
14 conversion, or acquisition, the resulting financial entity
15 will exceed any lending, investment, or other limitations
16 imposed by law, the financial entity shall conform to such
17 limitations within such period of time as is established by
18 the office ~~department~~.

19 (4) DIVESTITURE.--The office ~~department~~ may, as a
20 condition to such merger, consolidation, conversion, or
21 acquisition, require a nonconforming activity to be divested
22 in accordance with such additional requirements as it
23 considers appropriate under the circumstances.

24 Section 1729. Subsection (2), paragraph (f) of
25 subsection (3), paragraph (a) of subsection (4), and
26 subsections (5), (6), (7), (8), and (9) of section 655.50,
27 Florida Statutes, are amended to read:

28 655.50 Florida Control of Money Laundering in
29 Financial Institutions Act; reports of transactions involving
30 currency or monetary instruments; when required; purpose;
31 definitions; penalties.--

1 (2) It is the purpose of this section to require
2 submission to the office ~~department~~ of certain reports and
3 maintenance of certain records of transactions involving
4 currency or monetary instruments when such reports and records
5 deter the use of financial institutions to conceal the
6 proceeds of criminal activity and have a high degree of
7 usefulness in criminal, tax, or regulatory investigations or
8 proceedings.

9 (3) As used in this section, the term:

10 (f) "Report" means a report of each deposit,
11 withdrawal, exchange of currency, or other payments or
12 transfer, by, through, or to that financial institution, that
13 involves a transaction required or authorized to be reported
14 by this section, and includes the electronic submission of
15 such information in the manner provided for by rule of the
16 commission ~~department~~.

17 (4)(a) Every financial institution shall keep a record
18 of each financial transaction occurring in this state known to
19 it to involve currency or other monetary instrument, as the
20 commission ~~department~~ prescribes by rule, of a value in excess
21 of \$10,000, to involve the proceeds of specified unlawful
22 activity, or to be designed to evade the reporting
23 requirements of this section, chapter 896, or any similar
24 state or federal law and shall maintain appropriate procedures
25 to ensure compliance with this section, chapter 896, and any
26 other similar state or federal law.

27 (5)(a) Each financial institution shall file a report
28 with the office ~~department~~ of the record required under
29 paragraphs (4)(a) and (b) and any record maintained pursuant
30 to paragraph (4)(c). Each record filed pursuant to subsection
31

1 (4) must be filed at such time and contain such information as
2 the commission ~~department~~ requires by rule.

3 (b) The timely filing of the report required by 31
4 U.S.C. s. 5313 with the appropriate federal agency is deemed
5 compliance with the reporting requirements of this subsection
6 unless the reports are not regularly and comprehensively
7 transmitted by the federal agency to the office ~~department~~.

8 (6) Each financial institution shall maintain a record
9 of each designation of a person granted exemption under the
10 authority of 31 U.S.C. s. 5313, including any name, address,
11 and taxpayer identification number of the exempt person, as
12 well as the name and address of the financial institution and
13 the signature of the financial institution official
14 designating the exempt person. Such record of exemptions shall
15 be made available to the office ~~department~~ for inspection and
16 copying and shall be submitted to the office ~~department~~ within
17 15 days after request.

18 (7) All reports and records filed with the office
19 ~~department~~ pursuant to this section are confidential and
20 exempt from s. 119.07(1). However, the office ~~department~~
21 shall provide any report filed pursuant to this section, or
22 information contained therein, to federal, state, and local
23 law enforcement and prosecutorial agencies, and any federal or
24 state agency responsible for the regulation or supervision of
25 financial institutions.

26 (8)(a) The office ~~department~~ shall retain a copy of
27 all reports received under subsection (4) for a minimum of 5
28 calendar years after receipt of the report. However, if a
29 report or information contained in a report is known by the
30 office ~~department~~ to be the subject of an existing criminal
31

1 proceeding, the report shall be retained for a minimum of 10
2 calendar years after receipt of the report.

3 (b) Each financial institution shall maintain for a
4 minimum of 5 calendar years full and complete records of all
5 financial transactions, including all records required by 31
6 C.F.R. parts 103.33 and 103.34.

7 (c) The financial institution shall retain a copy of
8 all reports filed with the office ~~department~~ under subsection
9 (4) for a minimum of 5 calendar years after submission of the
10 report. However, if a report or information contained in a
11 report is known by the financial institution to be the subject
12 of an existing criminal proceeding, the report shall be
13 retained for a minimum of 10 calendar years after submission
14 of the report.

15 (d) The financial institution shall retain a copy of
16 all records of exemption for each designation of exempt person
17 made pursuant to subsection (6) for a minimum of 5 calendar
18 years after termination of exempt status of such customer.
19 However, if it is known by the financial institution that the
20 customer or the transactions of the customer are the subject
21 of an existing criminal proceeding, the records shall be
22 retained for a minimum of 10 calendar years after termination
23 of exempt status of such customer.

24 (9) In addition to any other power conferred upon it
25 to enforce and administer this chapter and the financial
26 institutions codes, the office ~~department~~ may:

27 (a) Bring an action in any court of competent
28 jurisdiction to enforce or administer this section. In such
29 action, the office ~~department~~ may seek award of any civil
30 penalty authorized by law and any other appropriate relief at
31 law or equity.

1 (b) Pursuant to s. 655.033, issue and serve upon a
2 person an order requiring such person to cease and desist and
3 take corrective action whenever the office ~~department~~ finds
4 that such person is violating, has violated, or is about to
5 violate any provision of this section, chapter 896, or any
6 similar state or federal law; any rule or order adopted under
7 this section, chapter 896, or any similar state or federal
8 law; or any written agreement related to this section, chapter
9 896, or any similar state or federal law and entered into with
10 the office ~~department~~.

11 (c) Pursuant to s. 655.037, issue and serve upon any
12 person an order of removal whenever the office ~~department~~
13 finds that such person is violating, has violated, or is about
14 to violate any provision of this section, chapter 896, or any
15 similar state or federal law; any rule or order adopted under
16 this section, chapter 896, or any similar state or federal
17 law; or any written agreement related to this section, chapter
18 896, or any similar state or federal law and entered into with
19 the office ~~department~~.

20 (d) Impose and collect an administrative fine against
21 any person found to have violated any provision of this
22 section, chapter 896, or any similar state or federal law; any
23 rule or order adopted under this section, chapter 896, or any
24 similar state or federal law; or any written agreement related
25 to this section, chapter 896, or any similar state or federal
26 law and entered into with the office ~~department~~, in an amount
27 not exceeding \$10,000 a day for each willful violation or \$500
28 a day for each negligent violation.

29 Section 1730. Section 655.60, Florida Statutes, is
30 amended to read:

31 655.60 Appraisals.--

1 (1) The office ~~department~~ is authorized to cause to be
2 made appraisals of real estate or other property held by any
3 state financial institution, subsidiary, or service
4 corporation or securing the assets of the state financial
5 institution, subsidiary, or service corporation when specific
6 facts or information with respect to real estate or other
7 property held, secured loans, or lending, or when in its
8 opinion the state financial institution's policies, practices,
9 operating results, and trends give evidence that the state
10 financial institution's appraisals or evaluations of ability
11 to make payments may be excessive, that lending or investment
12 may be of a marginal nature, that appraisal policies and loan
13 practices may not conform with generally accepted and
14 established professional standards, or that real estate or
15 other property held by the state financial institution,
16 subsidiary, or service corporation or assets secured by real
17 estate or other property are overvalued. In lieu of causing
18 such appraisals to be made, the office ~~department~~ may accept
19 any appraisal caused to be made by an appropriate state or
20 federal regulatory agency or other insuring agency or
21 corporation of a state financial institution. Unless
22 otherwise ordered by the office ~~department~~, an appraisal of
23 real estate or other property pursuant to this section must be
24 made by a licensed or certified appraiser or appraisers
25 selected by the office ~~department~~, and the cost of such
26 appraisal shall be paid promptly by such state financial
27 institution, subsidiary, or service corporation directly to
28 such appraiser or appraisers upon receipt by the state
29 financial institution of a statement of such cost bearing the
30 written approval of the office ~~department~~. A copy of the
31 report of each appraisal caused to be made by the office

1 ~~department~~ pursuant to this section shall be furnished to the
2 state financial institution, subsidiary, or service
3 corporation within a reasonable time, not exceeding 60 days,
4 following the completion of such appraisal and may be
5 furnished to the insuring agency or corporation or federal or
6 state regulatory agency.

7 (2) A state financial institution may not make loans
8 based on the security of real estate unless appraisal
9 standards and policies have been previously established by the
10 board of directors. Such standards must be in written form
11 and include, without limitation, information required by rules
12 of the commission ~~department~~.

13 (3) If any appraisal required pursuant to this section
14 discloses that any asset of a state financial institution,
15 subsidiary, or service corporation is overvalued on its books,
16 the office ~~department~~ may require the state financial
17 institution, subsidiary, or service corporation to charge off
18 such asset or portion thereof pursuant to s. 655.044.

19 Section 1731. Section 655.762, Florida Statutes, is
20 amended to read:

21 655.762 Sale of assets.--A state financial institution
22 may sell any asset in the ordinary course of business or with
23 the approval of the office ~~department~~ in any other
24 circumstances.

25 Section 1732. Subsection (6) of section 655.89,
26 Florida Statutes, is amended to read:

27 655.89 Legal holidays; business days; business and
28 transactions.--

29 (6) With prior written approval of the office
30 ~~department~~, an institution may designate another day or other
31

1 days on which the institution may be closed and which day or
2 days will not be considered business days.

3 Section 1733. Paragraph (a) of subsection (1) of
4 section 655.90, Florida Statutes, is amended to read:

5 655.90 Closing during emergencies and other special
6 days.--

7 (1) DEFINITIONS.--As used in this section, the term:

8 (a) "Commissioner" means the director of the Office of
9 Financial Regulation ~~officer of this state designated by law~~
10 ~~as the head of the Department of Banking and Finance~~ and any
11 other person lawfully exercising such powers, ~~whether as a~~
12 ~~deputy to such officer, as a director, bureau chief, or~~
13 ~~financial administrator of or within such department, or~~
14 otherwise.

15 Section 1734. Subsection (3) of section 655.922,
16 Florida Statutes, is amended to read:

17 655.922 Banking business by unauthorized persons; use
18 of name.--

19 (3) Any court, in a proceeding brought by the office
20 ~~department~~, by any financial institution the principal place
21 of business of which is in this state, or by any other person
22 residing, or whose principal place of business is located, in
23 this state and whose interests are substantially affected
24 thereby, may enjoin any person from violating any of the
25 provisions of this section. For the purposes of this
26 subsection, the interests of a trade organization or
27 association are deemed to be substantially affected if the
28 interests of any of its members are so affected. In addition,
29 the office ~~department~~ may issue and serve upon any person who
30 violates any of the provisions of this section a complaint

31

1 seeking a cease and desist order in accordance with the
2 procedures and in the manner prescribed by s. 655.033.

3 Section 1735. Subsection (1) of section 655.942,
4 Florida Statutes, is amended to read:

5 655.942 Standards of conduct; institutions.--

6 (1) A financial institution that ~~which~~ is licensed or
7 authorized to do business pursuant to the financial
8 institutions codes, or its officers, directors, or employees
9 may not make or grant any loan or gratuity to any employee of
10 the office ~~department~~ who has authority to examine or
11 otherwise supervise such financial institution.

12 Section 1736. Section 655.943, Florida Statutes, is
13 amended to read:

14 655.943 Applications; verification.--All information
15 required by the financial institutions codes or rule of the
16 commission ~~department~~ to be furnished in conjunction with
17 applications to form, acquire or acquire assets of, merge, or
18 change control of a financial institution must be verified by
19 the office ~~department~~ by all reasonable means available. The
20 office ~~department~~ shall conduct a detailed review of all
21 financial information provided by an applicant, including a
22 review of assets totaling 5 percent or more of the applicant's
23 net worth.

24 Section 1737. Subsection (1), paragraph (b) of
25 subsection (2), and paragraph (a) of subsection (4) of section
26 655.948, Florida Statutes, are amended to read:

27 655.948 Significant events; notice required.--

28 (1) Unless exempted by the office ~~department~~ pursuant
29 to subsection (4), every financial institution shall notify
30 the office ~~department~~ of the occurrence of any of the events
31 listed in subsection (2) by filing with the office ~~department~~

1 a disclosure in a form to be specified by the commission
2 ~~department~~. The form shall include the number and caption of
3 all applicable events, along with a summary of each. Completed
4 forms shall be certified for authenticity and accuracy by the
5 chief executive officer of the financial institution.

6 (2) Events for which disclosure forms must be filed
7 and the filing schedule for each are as follows:

8 (b) Every financial institution shall notify the
9 office ~~department~~ within 30 days of the existence of any asset
10 which is defined as a nonaccrual asset and which is in excess
11 of 15 percent of total assets.

12 (4)(a) The office ~~department~~ must exempt a financial
13 institution from any of the provisions of this section if the
14 office ~~department~~ determines that such financial institution
15 is operating in a safe and sound manner pursuant to commission
16 ~~departmental~~ rules relating to safe and sound operations. The
17 commission ~~department, prior to granting any such exemption,~~
18 shall adopt rules defining the term "safe and sound" and
19 explicitly stating the criteria which shall constitute
20 operating in a safe and sound manner.

21 Section 1738. Section 655.949, Florida Statutes, is
22 amended to read:

23 655.949 ~~Department~~ Personnel; qualifications.--~~Before~~
24 ~~January 1, 1993,~~The office ~~department~~ shall establish and
25 publish educational, professional, and other appropriate
26 qualifications for each position in the office ~~department~~ ~~and~~
27 ~~the Office of the Comptroller~~ authorized to participate in the
28 regulation of financial institutions, including positions with
29 the authority to overrule the actions or decisions of
30 professional examiners or legal staff in their exercise of
31 their duties under the financial institutions codes ~~excepting~~

1 ~~the position of assistant comptroller.~~ Such qualifications
2 shall contain at a minimum sufficient experience and expertise
3 in the regulation of financial institutions as to clearly
4 justify the exercise of authority to overrule the actions or
5 decisions of professional examiners or legal staff.

6 Section 1739. Section 655.963, Florida Statutes, is
7 amended to read:

8 655.963 Access devices.--Customers receiving access
9 devices shall be furnished by the respective issuers thereof
10 with such information regarding safety precautions as the
11 commission ~~department~~ may require by rule. This information
12 shall be furnished by personally delivering or mailing the
13 information to each customer whose mailing address as to the
14 account to which the access device relates is in this state.
15 Such information shall be furnished with respect to access
16 devices issued on or after October 1, 1994, at or before the
17 time the customer is furnished with his or her access device.
18 With respect to a customer to whom an "accepted access
19 device," as defined in Federal Reserve Board Regulation E, 12
20 C.F.R. part 205, has been issued prior to October 1, 1994, the
21 information shall be delivered on or before 6 months from
22 October 1, 1994. Only one notice need be furnished per
23 household, and if access devices are furnished to more than
24 one customer for a single account or set of accounts or on the
25 basis of a single application or other request for access
26 devices, only a single notice need be furnished in
27 satisfaction of the notification responsibilities as to those
28 customers. The information may be included with other
29 disclosures related to the access device furnished to the
30 customer, such as with any initial or periodic disclosure
31

1 statement furnished pursuant to the Electronic Fund Transfer
2 Act.

3 Section 1740. Section 657.002, Florida Statutes, is
4 amended to read:

5 657.002 Definitions.--As used in this part:

6 (1) "Capital" means shares, deposits, and equity.

7 (2) "Central credit union" means a credit union the
8 membership of which includes, but is not limited to, other
9 credit unions, members of credit unions, credit union
10 employees, employees of organizations serving credit unions,
11 and the families of such members.

12 (3) "Corporate credit union" means any central credit
13 union organized pursuant to any state or federal act for the
14 purpose of serving other credit unions.

15 (4) "The corporation" means the Florida Credit Union
16 Guaranty Corporation, Inc.

17 (5) "Correspondent" means that person designated on an
18 application to organize a credit union as the person to whom
19 all correspondence regarding the application should be sent.

20 (6) "Credit union" means any cooperative society
21 organized pursuant to this part.

22 ~~(7) "Department" means the Department of Banking and~~
23 ~~Finance.~~

24 (7)~~(8)~~ "Deposits" means that portion of the capital
25 paid into the credit union by members on which a contractual
26 rate of interest will be paid.

27 (8)~~(9)~~ "Equity" means undivided earnings, reserves,
28 and allowance for loan losses.

29 (9)~~(10)~~ "Foreign credit union" means a credit union
30 organized and operating under the laws of another state.

31

1 (10)~~(11)~~ "Immediate family" means parents, children,
2 spouse, or surviving spouse of the member, or any other
3 relative by blood, marriage, or adoption.

4 (11)~~(12)~~ "Limited field of membership" means the
5 defined group of persons designated as eligible for membership
6 in the credit union who:

7 (a) Have a similar profession, occupation, or formal
8 association with an identifiable purpose; or

9 (b) Reside within an identifiable neighborhood,
10 community, rural district, or county; or

11 (c) Are employed by a common employer; or

12 (d) Are employed by the credit union; and

13

14 members of the immediate family of persons within such group.

15 (12)~~(13)~~ "Shares" means that portion of the capital
16 paid into the credit union by members on which dividends may
17 be paid.

18 (13)~~(14)~~ "Unimpaired capital" means capital which is
19 not impaired by losses that exceed applicable reserves.

20 Section 1741. Section 657.005, Florida Statutes, is
21 amended to read:

22 657.005 Notice of intent to organize; investigation ~~by~~
23 ~~department~~; application for authority to organize a credit
24 union.--

25 (1) The proposed organizers of the proposed credit
26 union shall file with the office ~~department~~ a notice of intent
27 to organize, upon such form as the commission ~~department~~ may,
28 by rule, prescribe.

29 (2) Any five or more residents of this state who
30 represent a limited field of membership may apply to the
31 office ~~department~~ for permission to organize a credit union.

1 The fact that individuals within the proposed limited field of
2 membership have credit union services available to them
3 through another limited field of membership shall not preclude
4 the granting of a certificate of authorization to engage in
5 the business of a credit union.

6 (3) The application shall be submitted to the office
7 ~~department~~ on forms and in the manner prescribed by rules
8 adopted by the commission ~~department~~ and shall be accompanied
9 by a nonrefundable filing fee of \$250. Such application shall
10 include:

11 (a) The proposed name and the proposed location where
12 the proposed credit union is to have its principal place of
13 business.

14 (b) Designation of the par value of each share of the
15 credit union.

16 (c) Designation of at least five persons who agree to
17 serve on the board of directors, and at least three other
18 persons who agree to serve on the supervisory committee or
19 audit committee, with a signed agreement to serve in these
20 capacities until the first annual meeting or until the
21 election of their successors, whichever is later, executed by
22 those who so agree.

23 (d) Any information required by the commission or
24 office ~~department~~ to be submitted to the corporation or
25 insuring agency.

26 (e) Bylaws of the credit union, which bylaws shall be
27 in the form and substance as required by the commission
28 ~~department~~.

29 (4) The office ~~department~~ shall have the power of
30 investigation to the extent necessary to make the finding
31 required under this section.

1 (5) The application shall be approved if the office
2 ~~department~~ determines that:

3 (a) There is a showing of sufficient interest on the
4 part of the proposed limited field of membership;

5 (b) The qualifications of the proposed board of
6 directors and committee members are such as to indicate a
7 reasonable likelihood that the affairs of the proposed credit
8 union will be administered consistently with sound financial
9 and credit union practices;

10 (c) The organization of the credit union would benefit
11 its members; and

12 (d) The limited field of membership is of sufficient
13 financial viability to indicate reasonable promise of
14 successful operation of the proposed credit union. In
15 determining the financial viability of the proposed limited
16 field of membership and chances for reasonable promise of
17 success of the proposed credit union, the office ~~department~~
18 shall consider:

19 1. The size of the proposed limited field of
20 membership, excluding potential members based upon familial
21 relationships; and

22 2. Any other evidence that tends to indicate the
23 reasonable promise of success of the proposed credit union.

24 (6) If the organization of a proposed credit union
25 would result in an overlapping limited field of membership,
26 the office ~~department~~ may disapprove the application if it
27 finds that the formation of the proposed credit union will
28 result in a substantial, adverse financial impact to an
29 existing credit union having the same or substantially the
30 same limited field of membership.

31

1 (7) Concurrently with submission of the application to
2 the office ~~department~~, the applicant shall apply for insurance
3 of accounts with the National Credit Union Administration.

4 (8) The applicant shall not accept any payments for
5 credit to share or deposit accounts, or commence business
6 operations as a credit union, until the certificate of
7 authorization and the insurance certificate have been
8 delivered to the credit union.

9 (9) The office ~~department~~ shall perform a preopening
10 examination to verify good faith compliance with all the
11 requirements of law. If the office ~~department~~ finds that such
12 requirements have been met, it shall issue and deliver the
13 certificate of authorization to transact business. Any credit
14 union which fails to open for business within 6 months after
15 the issuance of such certificate will forfeit its existence as
16 a credit union, and the certificate of authorization shall be
17 revoked. For good cause shown, the office ~~department~~ may
18 extend the opening date for an additional 6 months on its own
19 motion or at the request of the credit union. Amounts
20 credited on share accounts, less expenditures authorized by
21 law, shall be returned pro rata to the respective account
22 holders.

23 (10) All preopening costs and expenses in connection
24 with the organization of the credit union and preparation for
25 opening for business may be paid only from funds provided by
26 the organizers or a sponsor and may be reimbursed by the
27 credit union only out of undivided earnings, after provision
28 has been made for reserves and dividends. However, the credit
29 union may reimburse, as an operating expense, for forms and
30 supplies, insurance, rent, and other expenses applicable to or
31

1 consumed in the period after opening in accordance with rules
2 adopted by the commission ~~department~~.

3 (11) The commission shall adopt and the office
4 ~~department~~ shall provide a form certificate of authorization
5 and bylaws consistent with this chapter which shall be used by
6 applicants for credit unions.

7 Section 1742. Section 657.0061, Florida Statutes, is
8 amended to read:

9 657.0061 Amendments to bylaws.--

10 (1) All bylaw amendments must be submitted to the
11 office ~~department~~. The office ~~department~~ shall approve or
12 disapprove bylaw amendments within 60 days after receipt. The
13 office ~~department~~ shall approve the proposed bylaw amendment
14 unless it finds that the amendment:

15 (a) Is not in the best interest of the membership;

16 (b) Is not in accord with sound credit union
17 practices; or

18 (c) Exposes the assets of the credit union to
19 unnecessary risks.

20 (2) The commission ~~department~~ may, by rule, allow
21 certain bylaw amendments that are ministerial in nature to
22 become effective immediately upon filing with the office
23 ~~department~~.

24 Section 1743. Paragraph (a) of subsection (2) and
25 subsections (5) and (6) of section 657.008, Florida Statutes,
26 are amended to read:

27 657.008 Place of doing business.--

28 (2)(a) With 30 days ~~days~~ prior written notification
29 to the office ~~department~~, a credit union may maintain branches
30 at locations other than its main office or relocate branches
31 previously established if the maintenance of such branches is

1 determined by the board of directors to be reasonably
2 necessary to furnish service to its members.

3 (5) A credit union may change its principal place of
4 business within this state upon approval by the office
5 ~~department~~.

6 (6)(a) The office ~~department~~ may authorize foreign
7 credit unions to establish branches in Florida if all of the
8 following criteria are met:

9 1. The state in which the foreign credit union's home
10 office is located permits Florida credit unions to do business
11 in the state under restrictions that are no greater than those
12 placed upon a domestic credit union doing business in that
13 state. For this purpose, such restrictions shall include, but
14 are not limited to, any fees, bonds, or other charges levied
15 on domestic credit unions doing business in that state.

16 2. The deposits of such foreign credit union and its
17 proposed Florida branch will be insured or guaranteed by an
18 insurer or guarantor acceptable to the office ~~department~~.
19 Insurance or guarantee of accounts comparable to that provided
20 by the Florida Credit Union Guaranty Corporation is deemed to
21 be acceptable; however, acceptance of insurance or guarantee
22 of accounts by any insuring or guaranteeing agencies or
23 companies shall be subject to a determination by the office
24 ~~department~~ that the insuring or guaranteeing agency or company
25 is in sound financial condition and that its reserves with
26 respect to its insured or guaranteed accounts are no less than
27 those of the Florida Credit Union Guaranty Corporation.

28 3. The credit union's field of membership is so
29 limited as to be within that meaning of that term as defined
30 in s. 657.002.

31

1 (b) Every foreign credit union operating in Florida
2 shall keep the office ~~department~~ informed of every location at
3 which it is operating.

4 (c) If the office ~~department~~ has reason to believe
5 that a foreign credit union is operating a branch in this
6 state in an unsafe and unsound manner, it shall have the right
7 to examine such branch. If, upon examination, the office
8 ~~department~~ finds that such branch is operating in an unsafe
9 and unsound manner, it shall require the branch office to make
10 appropriate modifications to bring such branch operations into
11 compliance with generally accepted credit union operation in
12 this state. Such foreign credit union shall reimburse the
13 office ~~department~~ for the full cost of this examination. Costs
14 shall include examiner salaries, per diem, and travel
15 expenses.

16 (d) Any foreign credit union operating in this state
17 shall in any connection therewith be subject to suit in the
18 courts of this state, by this state and the citizens of this
19 state.

20 Section 1744. Subsection (3) and paragraphs (a) and
21 (e) of subsection (7) of section 657.021, Florida Statutes,
22 are amended to read:

23 657.021 Board of directors; executive committee.--

24 (3) Each director, upon assuming office, shall
25 acknowledge that he or she is familiar with his or her
26 responsibilities as a director and that he or she will
27 diligently and honestly administer the affairs of such credit
28 union and will not knowingly violate, or willfully permit to
29 be violated, any of the provisions of the financial
30 institution's codes or pertinent rules of the commission

31

1 ~~department~~. The signed copy of such oath shall be filed with
2 the office ~~department~~ within 30 days after election.

3 (7) The board of directors must exercise the following
4 duties which are nondelegable:

5 (a) Require any officer or employee who has custody of
6 or handles funds to give bond with good and sufficient surety
7 in an amount and character determined by the board of
8 directors in compliance with rules adopted by the commission
9 ~~department~~.

10 (e) Adequately provide for reserves as required by
11 this part or by rules or order of the commission or office
12 ~~department~~ or as otherwise determined necessary by the board.

13 Section 1745. Subsections (3) and (4) of section
14 657.026, Florida Statutes, are amended to read:

15 657.026 Supervisory or audit committee.--

16 (3) The supervisory or audit committee shall:

17 (a) Make or cause to be made a comprehensive annual
18 audit of the credit union, in accordance with the rules of the
19 commission ~~department~~.

20 (b) Make or cause to be made such supplementary audits
21 or examinations as it deems necessary or as are requested by
22 the board of directors or the office ~~department~~.

23 (c) Submit a report of every required audit or
24 examination within a reasonable time to the board of directors
25 with a copy to the office ~~department~~ and, depending upon which
26 organization is applicable, a copy to the corporation or the
27 National Credit Union Administration.

28 (d) Make a summary report, to the membership at the
29 annual meeting, of any audits or examinations conducted during
30 the preceding year.

31

1 (4) The supervisory or audit committee shall notify
2 the board of directors, the office ~~department~~, and, as
3 applicable, either the corporation or the National Credit
4 Union Administration of any violation of this part, any
5 violation of the certificate of authorization or bylaws of the
6 credit union, or any practice of the credit union deemed by
7 the supervisory or audit committee to be unsafe, unsound, or
8 unauthorized.

9
10 For the purposes of this subsection, two-thirds of the members
11 of the supervisory or audit committee constitutes a quorum.

12 Section 1746. Subsections (3) and (6) of section
13 657.028, Florida Statutes, are amended to read:

14 657.028 Activities of directors, officers, committee
15 members, employees, and agents.--

16 (3) A person may not serve as an officer, director, or
17 committee member of a credit union if she or he:

18 (a) Has been convicted of a felony or of an offense
19 involving dishonesty, a breach of trust, a violation of this
20 chapter, or fraud, except with the prior approval of the
21 office ~~department~~ upon a showing of rehabilitation;

22 (b) Has been adjudicated bankrupt within the previous
23 7 years;

24 (c) Has been removed by any regulatory agency as a
25 director, officer, committee member, or employee of any
26 financial institution, except with the prior approval of the
27 office ~~department~~ upon a showing of rehabilitation and upon
28 showing of ability to be bondable;

29 (d) Has performed acts of fraud or dishonesty, or has
30 failed to perform duties, resulting in a loss which was
31 subject to a paid claim under a fidelity bond, except with the

1 prior approval of the office ~~department~~ upon a showing of
2 rehabilitation and upon showing of ability to be bondable; or
3 (e) Has been found guilty of a violation of s. 655.50,
4 relating to the Florida Control of Money Laundering in
5 Financial Institutions Act; chapter 896, relating to offenses
6 related to financial transactions; or any similar state or
7 federal law.

8 (6) Within 30 days after election or appointment, a
9 record of the names and addresses of the members of the board,
10 members of committees, and all officers of the credit union
11 shall be filed with the office ~~department~~ on forms prescribed
12 by the commission ~~department~~.

13 Section 1747. Subsections (19), (26), (27), and (29)
14 of section 657.031, Florida Statutes, are amended to read:

15 657.031 Powers.--A credit union shall have the power
16 to:

17 (19) Perform tasks and render any services requested
18 by the Federal Government or by this state or any agency,
19 political subdivision, or municipality thereof, if approved by
20 the office ~~department~~.

21 (26) Participate in systems which allow the transfer,
22 withdrawal, or deposit of funds of credit unions or credit
23 union members by automated or electronic means and hold
24 membership in entities established to promote and effectuate
25 these systems, provided such participation is not inconsistent
26 with those rules of the commission ~~department~~ adopted to
27 further service to the members and to protect members' funds
28 against unreasonable risks.

29 (27) Issue credit cards and debit cards to allow
30 members to obtain access to their shares, deposits, and
31 extensions of credit, provided such issuance is not

1 inconsistent with the rules of the commission ~~department~~. The
2 commission ~~department~~ may, by rule, allow the use of devices
3 similar to credit cards and debit cards to allow members to
4 obtain access to their shares, deposits, and extensions of
5 credit.

6 (29) Exercise such incidental powers as are necessary
7 or requisite to effectively carry out the purposes for which
8 it is organized, provided such exercise is approved by rule or
9 order of the commission or office ~~department~~.

10 Section 1748. Subsection (3) of section 657.033,
11 Florida Statutes, is amended to read:

12 657.033 Accounts.--

13 (3) A credit union may receive deposits from its
14 members and contract to pay interest thereon, subject to
15 conditions the board of directors establishes and subject to
16 rules of the commission ~~department~~.

17 Section 1749. Section 657.0335, Florida Statutes, is
18 amended to read:

19 657.0335 Additional power to restrict withdrawals.--In
20 extraordinary circumstances external to the operations of the
21 credit union which threaten the continued existence and
22 operation of the credit union, the office ~~department~~ may
23 restrict withdrawals for a period not to exceed 60 days.

24 Section 1750. Subsections (6) and (12) of section
25 657.038, Florida Statutes, are amended to read:

26 657.038 Loan powers.--

27 (6) Loans secured by mortgages on real property must
28 be made in accordance with written policies of the board of
29 directors and rules of the commission ~~department~~.

30
31

1 (12) The commission ~~department~~ may adopt rules to
2 provide for minimum documentation and safe lending procedures
3 necessary to protect the members' funds.

4 Section 1751. Paragraph (i) of subsection (1),
5 paragraph (a) of subsection (2), paragraph (b) of subsection
6 (5), and subsections (6) and (7) of section 657.042, Florida
7 Statutes, are amended to read:

8 657.042 Investment powers and limitations.--A credit
9 union may invest its funds subject to the following
10 definitions, restrictions, and limitations:

11 (1) INVESTMENTS NOT SUBJECT TO LIMITATIONS.--There is
12 no limitation with respect to the capital of the investing
13 credit union on the following investments:

14 (i) Stock of the Federal National Mortgage
15 Association, or any other similar entity designated by the
16 office ~~department~~, designed to promote investment in
17 residential mortgages, which may be purchased and retained as
18 required in connection with mortgage transactions with the
19 association or entity.

20 (2) INVESTMENTS SUBJECT TO LIMITATION OF 25 PERCENT OF
21 CAPITAL OF THE CREDIT UNION.--Up to 25 percent of the capital
22 of the credit union may be invested in:

23 (a) The shares or deposit accounts in any one
24 corporate credit union or other insured financial depository
25 institution. The credit union may exceed the 25-percent
26 investment limitation in the corporate credit union, subject
27 to the prior written approval of the office ~~department~~.

28 (5) INVESTMENTS IN REAL ESTATE AND EQUIPMENT FOR THE
29 CREDIT UNION.--

30 (b) The limitations provided by this subsection may be
31 exceeded with the prior written approval of the office

1 ~~department~~. The office ~~department~~ shall grant such approval if
2 it is satisfied that:

3 1. The proposed investment is necessary.

4 2. The amount thereof is commensurate with the size
5 and needs of the credit union.

6 3. The investment will be beneficial to the members.

7 (6) INVESTMENTS SUBJECT TO ~~DEPARTMENT~~ APPROVAL.--A
8 credit union may invest its funds in such other investments,
9 including the capital stock of other financial institutions,
10 as the commission or office ~~department~~ approves by rule or
11 order.

12 (7) SPECIAL PROVISIONS.--

13 (a) None of the bonds or other obligations described
14 in this section shall be eligible for investment by credit
15 unions in any amount unless current as to all payments of
16 principal and interest and unless rated in one of the four
17 highest classifications, or, in the case of commercial paper,
18 unless it is of prime quality and of the highest letter and
19 numerical rating, as established by a nationally recognized
20 investment rating service, or any comparable rating as
21 determined by the office ~~department~~.

22 (b) With prior approval of the office ~~department~~, any
23 investment permitted in this section may also be made
24 indirectly by investment in a trust or mutual, the investments
25 of which are limited as set forth in this section, provided
26 that the credit union must maintain a current file on each
27 investment which contains sufficient information to determine
28 whether the investment complies with the requirements of this
29 section. If the investment fails to comply with the
30 requirements of this section, the credit union must divest
31

1 itself of its investment, unless otherwise approved by the
2 office ~~department~~.

3 Section 1752. Subsections (1), (2), (3), (5), (6),
4 (7), and (8) of section 657.043, Florida Statutes, are amended
5 to read:

6 657.043 Reserves.--

7 (1) TRANSFERS TO REGULAR RESERVE.--Immediately before
8 paying each dividend, the total of all income for the period
9 shall be determined. From this amount, there shall be set
10 aside sums as a regular reserve in accordance with the
11 following schedule:

12 (a) A credit union shall set aside:

13 1. Five percent of the total of all income for the
14 period, until the regular reserve equals 6 percent of the risk
15 assets, then,

16 2. Two percent of the total of all income for the
17 period, until the regular reserve equals 8 percent of the risk
18 assets.

19 (b) Whenever the ratio of regular reserves to risk
20 assets falls below the stated percent, it shall be replenished
21 by regular contributions as provided in paragraph (a).

22 (c) The office ~~department~~ may decrease the reserve
23 requirements set forth in this subsection when in its opinion
24 such a decrease is necessary to preserve the fiscal soundness
25 of the credit union.

26 (2) ALLOWANCE FOR LOAN LOSSES ACCOUNT.--The credit
27 union shall maintain an account for loan losses. The amount
28 in the account must equal the board's estimate of losses in
29 the loan portfolio and be consistent with the rules of the
30 commission ~~department~~. The account must be provided for,
31 before paying a dividend, in the manner provided by rule. This

1 account constitutes part of the regular reserve for the
2 purpose of determining the ratio of regular reserves to risk
3 assets.

4 (3) USE OF REGULAR RESERVE.--The regular reserve shall
5 belong to the credit union and shall be used to meet losses.
6 In the event of a decrease, the office ~~department~~ may require
7 additional transfers to the regular reserve above the amount
8 required by subsection (1) until the decrease has been
9 restored. The regular reserve may not be decreased without the
10 prior written approval of the office ~~department~~ or as provided
11 by rule of the commission.

12 (5) ALLOWANCE FOR INVESTMENT LOSSES.--The credit union
13 may maintain a contra asset account to provide an allowance
14 for investment losses, which will not be included in the
15 determination of equity. The account must be maintained
16 consistent with the rules of the commission ~~department~~.

17 (6) SPECIAL RESERVES.--In addition to such regular
18 reserve, special reserves shall be established:

19 (a) To protect members against losses resulting from
20 credit extended or from risk assets when required by rule, or
21 when found by the office ~~department~~, in any special case, to
22 be necessary for that purpose; or

23 (b) As authorized by the board of directors.

24 (7) RESERVE FOR CONTINGENCIES.--The board of directors
25 may, after the regular reserve required by this section and
26 rules of the commission ~~department~~ has been set aside,
27 transfer a portion of undivided earnings to an auxiliary
28 reserve account to provide for additional possible losses and
29 expenses.

30 (8) RESERVES.--The ratio of equity to total assets for
31 each credit union must be maintained at not less than 5

1 percent. At the end of the calendar quarter when this ratio
2 is determined to be less than 5 percent, the credit union
3 shall, within 60 days thereafter, prepare and file with the
4 office ~~department~~ for approval a plan to achieve the minimum
5 ratio within 4 years, or such longer period of time approved
6 by the office ~~department~~. Once achieved, each credit union
7 must maintain a ratio of equity to total assets of not less
8 than 5 percent, unless otherwise authorized by the office
9 ~~department~~. The commission ~~department~~, by rule, shall
10 prescribe the information, types of restrictions and
11 limitations on operations, reporting requirements, and other
12 criteria that are required to be included in an acceptable
13 plan. An acceptable plan must recognize the unique
14 characteristics and risk differences for the individual credit
15 union.

16 Section 1753. Section 657.053, Florida Statutes, is
17 amended to read:

18 657.053 Assessments; state credit unions.--Each state
19 credit union shall pay to the office ~~department~~ a semiannual
20 assessment equal to \$500 plus 15 cents for each \$1,000 of
21 total assets. The amounts of all assessments provided for in
22 this section shall be deemed to be maximum amounts. The
23 commission ~~department~~ has the authority to establish, by rule,
24 and from time to time to change, assessments in amounts less
25 than the maximum amounts stated in this section.

26 Section 1754. Section 657.062, Florida Statutes, is
27 amended to read:

28 657.062 Assumption of control by guarantor or
29 insurer.--

30 (1) The office ~~department~~ may direct the corporation
31 or the National Credit Union Administration, whichever is

1 applicable, to assume control of the property, assets, and
2 business of its member credit union and to operate it subject
3 to the directions of the office ~~department~~:

4 (a) Whenever the office ~~department~~ finds that the
5 credit union:

6 1. Is engaging or has engaged in an unsafe or unsound
7 practice;

8 2. Is violating or has violated any provision of this
9 chapter; or

10 3. Is violating or has violated any commission
11 ~~department~~ rule, office ~~department~~ order, or written agreement
12 entered into with the office ~~department~~,
13

14 in such a manner that the credit union is threatened with
15 imminent insolvency.

16 (b) Whenever a majority of the members of the board of
17 directors of the credit union have been removed by the office
18 ~~department~~ or shall have resigned.

19 (2) Except when prohibited by federal or state law, in
20 the event of assumption of control, the guarantor or insurer
21 may elect the board of directors and the operating committees
22 and may, without penalty or liability, prepay any deposit
23 accounts; terminate any contracts or agreements with
24 employees, independent contractors, or consultants; terminate
25 any contract or agreement with any person to provide goods,
26 products, or services if the performance of such contract
27 would adversely affect the safety or soundness of the credit
28 unions or if such contract was entered into in violation of s.
29 657.0315(1); and terminate or assign any lease for property.
30 The authority of the guarantor or insurer to continue
31 operation of a credit union shall continue for a period not to

1 exceed 180 days, unless extended by the office ~~department~~ for
2 an additional period not to exceed 180 days at the request of
3 the guarantor or insurer, or unless involuntary liquidation
4 proceedings have been initiated by the office ~~department~~. In
5 the event that the guarantor or insurer does assume control
6 pursuant to the direction of the office ~~department~~, a meeting
7 of the credit union shall be called within 180 days, or within
8 the period of extension as approved by the office ~~department~~,
9 for the specific purpose of electing a new board of directors,
10 who shall take office when the guarantor or insurer surrenders
11 control, or considering such other recommendations as the
12 guarantor or insurer and the office ~~department~~ may make.

13 Section 1755. Section 657.063, Florida Statutes, is
14 amended to read:

15 657.063 Involuntary liquidation.--

16 (1) If the office ~~department~~ finds that any credit
17 union is bankrupt or insolvent, or is transacting its business
18 in an unsound, unsafe, or unauthorized manner such that it is
19 threatened with imminent insolvency, and liquidation is in the
20 best interest of the members, the office ~~department~~ may, in
21 its discretion, order the credit union placed in involuntary
22 liquidation and designate and appoint a liquidator to take
23 charge of the assets and affairs of the credit union. The
24 order shall set forth the specific findings and reasons for
25 the action taken.

26 (2) The liquidator must be appointed by the office
27 ~~department~~. The corporation or the National Credit Union
28 Administration, whichever is applicable, must be given the
29 right of first refusal. The office ~~department~~ may appoint
30 another entity if refused by the primary guarantor or insurer.

31

1 (3) Upon appointment and in accordance with the
2 directions of the office ~~department~~, the liquidator shall take
3 possession and charge of all of the assets, books, and records
4 of the credit union and shall take charge of the affairs,
5 business, and operations of the credit union and shall have
6 all of the powers of the board of directors, credit committee,
7 credit manager, and supervisory committee of the credit union.
8 The liquidator shall continue the business operation of the
9 credit union for a period not to exceed 180 days, subject to
10 the direction of the office ~~department~~. The liquidator shall
11 have full authority to make loans and investments and to
12 permit deposits to or withdrawals from accounts by members,
13 except that during the period of such operation by the
14 liquidator, no withdrawal from any account or accounts which
15 are not fully insured or guaranteed shall be permitted.
16 Except when prohibited by federal or state law, the liquidator
17 may, without penalty or liability, prepay any deposit
18 accounts; terminate any contracts or agreements with
19 employees, independent contractors, or consultants; terminate
20 any contract or agreement that was entered into in violation
21 of s. 657.0315(1) or s. 657.062(2); and terminate or assign
22 any lease for property. The liquidator shall proceed with a
23 liquidation of assets by sale or transfer of assets and
24 conversion of assets into cash or liquid investments in
25 preparation for distribution to members on account of shares
26 and deposits. The liquidator shall have specific authority to
27 sell loan assets. The liquidator may enter into agreements for
28 the sale or transfer of loans and other assets with the
29 assumption of outstanding share and deposit accounts, which
30 assumption constitutes full and complete distribution to
31 members on account of shares and deposits.

1 (4) On the completion of the liquidation and
2 certification by the liquidator that the distribution of the
3 assets of the credit union has been completed, the office
4 ~~department~~ shall cancel the certificate of authorization of
5 the credit union. The office ~~department~~ may designate a
6 custodian to maintain the books and records of the liquidated
7 credit union.

8 (5) When the liquidating agent of the credit union has
9 been appointed, the office ~~department~~ may waive or deem
10 inapplicable the fees required by this chapter and the
11 examination required by s. 655.045(1)(a), provided the
12 liquidating agent submits periodic reports to the office
13 ~~department~~ on the status of the liquidation.

14 Section 1756. Subsections (1), (5), (8), and (9) of
15 section 657.064, Florida Statutes, are amended to read:

16 657.064 Voluntary liquidation.--A credit union may
17 elect to dissolve voluntarily and liquidate its affairs in the
18 following manner:

19 (1) Before considering any resolution pertaining to
20 voluntary liquidation by the board of directors, the credit
21 union must inform the office ~~department~~ and the corporation or
22 the National Credit Union Administration, whichever is
23 applicable, of the time and place of the meeting of the board
24 of directors. The notification must be transmitted at least 5
25 days before the board of directors meets.

26 (5) The notice required by subsection (3) shall also
27 be mailed to the office ~~department~~ within 5 days after the
28 action of the board of directors. Within 10 days after the
29 meeting of the membership, the board of directors shall notify
30 the office ~~department~~ and the corporation or the National

31

1 Credit Union Administration, whichever is applicable, in
2 writing of the action taken by the members.

3 (8) When the liquidating agent of the credit union has
4 been appointed, the office ~~department~~ may waive or hold
5 inapplicable the fees required by this chapter and the
6 examination required by s. 655.045(1)(a), provided the
7 liquidating agent submits periodic reports to the office
8 ~~department~~ on the status of the liquidation.

9 (9) Whenever the board of directors or liquidator
10 determines that all assets from which there is a reasonable
11 expectancy of realization have been liquidated and distributed
12 to the members, a certificate of dissolution on forms
13 prescribed by the commission ~~department~~ shall be prepared and
14 filed with the office ~~department~~ together with all pertinent
15 books and records of the credit union, and thereupon the
16 credit union shall be dissolved and its certificate of
17 authorization canceled. The office ~~department~~ may designate a
18 custodian to maintain the books and records of the liquidated
19 credit union.

20 Section 1757. Subsections (2), (4), (5), (6), and (7)
21 of section 657.065, Florida Statutes, are amended to read:

22 657.065 Merger.--

23 (2) The office ~~department~~ shall approve a merger as
24 provided in this section if it finds upon the written and
25 verified application filed by each board of directors that:

26 (a) Notice of intent to merge was given to the members
27 of the surviving credit union;

28 (b) Notice of the meeting called to consider the
29 merger was given to the members entitled to vote upon the
30 question;

31

1 (c) Such notice disclosed the purpose of the meeting
2 and properly informed the membership of the merging credit
3 union that approval of a merger was under consideration;

4 (d) A majority of the votes cast upon the question by
5 the members of the merging credit union were in favor of the
6 merger; and

7 (e) The merger will not seriously impair the ongoing
8 viability of the surviving credit union.

9 (4) The plan of merger shall be transmitted to the
10 office ~~department~~ for its approval.

11 (5) A merger application shall be accompanied by a
12 nonrefundable fee of \$500. The fee may be waived by the
13 office ~~department~~ for a merger pursuant to subsection (6).

14 (6) Notwithstanding any other provisions of this
15 chapter or of chapter 120, a credit union may merge without a
16 vote of the membership when the office ~~department~~ determines
17 that the credit union is in danger of insolvency and that the
18 merger will enable the credit union to avoid liquidation.

19 (7) A merger with a resulting state credit union may
20 not take place or be effective unless the office ~~department~~
21 issues a certificate of merger. Upon consummation of the
22 merger, the certificate of authorization of the merged credit
23 union shall be returned to the proper authority to be
24 canceled. Also at consummation, all property and property
25 rights of, and members' interests in, the merged credit union
26 vest in the surviving credit union without deed, endorsement,
27 or other instrument of transfer, and all debts, obligations,
28 and liabilities of the merged credit union must be assumed by
29 the surviving credit union under the certificate of
30 authorization under which the merger was effected. All members
31 of the surviving credit union have the same rights,

1 privileges, and responsibilities after the merger is
2 completed. The certificate of merger must be recorded in the
3 public records of all counties in which the merging credit
4 union owned any real property at the effective date of the
5 merger.

6 Section 1758. Subsection (4) of section 657.066,
7 Florida Statutes, is amended to read:

8 657.066 Conversion from state credit union to federal
9 credit union and conversely.--Any credit union organized under
10 this part may convert into a federal credit union and any
11 federal credit union may convert into a credit union organized
12 pursuant to this part upon approval of the authority under the
13 supervision of which the converted credit union will operate
14 and upon compliance with applicable laws.

15 (4) Upon the written approval of the authority under
16 the supervision of which the converting credit union is to
17 operate, the converting credit union shall become a credit
18 union under this chapter or under the laws of the United
19 States, as the case may be, and thereupon all assets shall
20 become the property of the converted credit union, subject to
21 all existing liabilities against the credit union. All shares
22 and deposits shall remain intact. Any federal credit union
23 seeking to convert to a state-chartered credit union shall pay
24 a nonrefundable filing fee of \$500. The office ~~department~~ may
25 conduct an examination of any converting federal credit union
26 before approving the conversion and the converting credit
27 union shall pay a nonrefundable examination fee as provided in
28 s. 655.411(1)(b).

29 Section 1759. Subsection (2) of section 657.068,
30 Florida Statutes, is amended to read:

31 657.068 Central credit unions.--

- 1 (2) Membership in a central credit union shall be
2 limited to:
- 3 (a) Credit unions organized and operating under this
4 part or any other credit union act;
- 5 (b) Officers, directors, committee members, and
6 employees of such credit unions, and officials and employees
7 of any association of credit unions;
- 8 (c) Organizations and associations of those persons or
9 organizations set forth in paragraph (a) or paragraph (b);
- 10 (d) Residents of this state having a limited field of
11 membership who have applied to the office ~~department~~ to
12 organize a credit union and have been denied on grounds other
13 than those set forth in s. 657.005(6);
- 14 (e) Residents of this state having a limited field of
15 membership, if their application for membership is approved by
16 the board of directors of the central credit union and by the
17 office ~~department~~;
- 18 (f) Persons in the field of membership of liquidated
19 credit unions or of credit unions which have entered into or
20 are about to enter into voluntary or involuntary liquidation
21 proceedings; and
- 22 (g) Members of the immediate families of all members
23 qualified above.
- 24 Section 1760. Subsection (6) of section 658.12,
25 Florida Statutes, is amended to read:
- 26 658.12 Definitions.--Subject to other definitions
27 contained in the financial institutions codes and unless the
28 context otherwise requires:
- 29 (6) "Community" means an incorporated city, town, or
30 village or, where not within any of the foregoing or if the
31 office ~~department~~ determines that the area within the

1 corporate limits of any of the foregoing is inappropriate
2 under specific circumstances, such trade area or other area,
3 determined by the office ~~department~~ to be appropriate under
4 the circumstances, in which are located persons having
5 generally similar interests, including residential, social, or
6 business interests or combinations thereof.

7 Section 1761. Section 658.16, Florida Statutes, is
8 amended to read:

9 658.16 Creation of banking or trust corporation.--When
10 authorized by the office ~~department~~, as provided herein, a
11 corporation may be formed under the laws of this state for the
12 purpose of becoming a state bank or a state trust company and
13 conducting a general banking or trust business.

14 Section 1762. Section 658.165, Florida Statutes, is
15 amended to read:

16 658.165 Banker's banks; formation; applicability of
17 financial institutions codes; exceptions.--

18 (1) When authorized by the office ~~department~~, a
19 corporation may be formed under the laws of this state for the
20 purpose of becoming a banker's bank. An application for
21 authority to organize a banker's bank is subject to the
22 provisions of ss. 658.19, 658.20, and 658.21, except that the
23 provisions of ss. 658.20(1)(b) and (c) and 658.21(2) do not
24 apply.

25 (2) A banker's bank chartered pursuant to subsection
26 (1) shall be subject to the provisions of the financial
27 institutions codes and rules adopted thereunder; and, except
28 as otherwise specifically provided herein or by rule or order
29 of the commission or office ~~department~~, a banker's bank shall
30 be vested with or subject to the same rights, privileges,
31

1 duties, restrictions, penalties, liabilities, conditions, and
2 limitations that would apply to a state bank.

3 (3) Notwithstanding any other provision of this
4 chapter, a banker's bank may repurchase, for its own account,
5 shares of its own capital stock; however, the outstanding
6 capital stock may not be reduced below the minimum required by
7 this chapter without the prior approval of the office
8 ~~department~~.

9 (4) A banker's bank may provide services at the
10 request of financial institutions in organizations that have:

11 (a) Received conditional regulatory approval from the
12 office ~~department~~ in the case of a state bank or preliminary
13 approval from the Office of the Comptroller of the Currency in
14 the case of a national bank.

15 (b) Filed articles of incorporation pursuant to s.
16 658.23 in the case of a state bank, or filed acceptable
17 articles of incorporation and an organization certificate in
18 the case of a national bank.

19 (c) Received capital funds in an amount not less than
20 the minimum capitalization required in any notice of or order
21 granting conditional regulatory approval.

22 (5) A banker's bank may provide services to the
23 organizers of a proposed financial institution that has not
24 received conditional regulatory approval provided that such
25 services are limited to the financing of the expenses of
26 organizing such financial institution and expenses relating to
27 the acquisition or construction of the institution's proposed
28 operating facilities and associated fixtures and equipment.

29 (6) If the commission or office ~~department~~ finds that
30 any provision of this chapter is inconsistent with the purpose
31 for which a banker's bank is organized and that the welfare of

1 the public or any financial institution would not be
2 jeopardized thereby, the commission, it may by rule, or the
3 office, by order, may exempt a banker's bank from such
4 provision or limit the application thereof.

5 Section 1763. Section 658.19, Florida Statutes, is
6 amended to read:

7 658.19 Application for authority to organize a bank or
8 trust company.--

9 (1) A written application for authority to organize a
10 banking corporation or a trust company shall be filed with the
11 office ~~department~~ by the proposed directors and shall include:

12 (a) The name, residence, and occupation of each
13 proposed director.

14 (b) The proposed corporate name.

15 (c) The total initial capital, the number of shares of
16 each class of the capital stock to be authorized, and the par
17 value of the shares of each class.

18 (d) The community, including the street and number, if
19 available, or, if not available, the area within the
20 community, where the principal office of the proposed bank or
21 proposed trust company is to be located.

22 (e) If known, the name and residence of the proposed
23 president, the proposed chief executive officer if other than
24 the proposed president and, if the application is for
25 organization of a trust company or a bank with trust powers,
26 the name and address of the proposed trust officer.

27 (f) Such detailed financial, business, and
28 biographical information as the commission or office
29 ~~department~~ may reasonably require for each proposed director,
30 president, chief executive officer (if other than the
31 president), and trust officer (if applicable).

1 (g) A request for trust powers if desired in
2 connection with an application to organize a bank.

3 (2) The application shall be in such form as the
4 commission prescribes and contain such additional information
5 as the commission or office ~~department~~ may reasonably requires
6 ~~require~~ and shall be accompanied by the required fee, which
7 shall not be refundable.

8 (3) Notwithstanding chapter 120, an application may be
9 returned to the applicant, on a one-time basis, for correction
10 of substantial deficiencies and may be resubmitted without
11 payment of an additional fee if such resubmission takes place
12 within 60 days after the date the office ~~department~~ returns
13 the application.

14 Section 1764. Section 658.20, Florida Statutes, is
15 amended to read:

16 658.20 Investigation by office ~~department~~.--

17 (1) Upon the filing of an application, the office
18 ~~department~~ shall make an investigation of:

19 (a) The character, reputation, financial standing,
20 business experience, and business qualifications of the
21 proposed officers and directors.

22 (b) The need for bank or trust facilities or
23 additional bank or trust facilities, as the case may be, in
24 the primary service area where the proposed bank or trust
25 company is to be located.

26 (c) The ability of the primary service area to support
27 the proposed bank or trust company and all other existing bank
28 or trust facilities in the primary service area.

29 (2) The office ~~department~~ is authorized to obtain
30 criminal record information from the National Crime
31

1 Information Center or from the Department of Law Enforcement
2 as a part of its investigation pursuant to this section.

3 (3) The office ~~department~~ may accept an application
4 for prior approval of individuals who may become directors and
5 executive officers of a failing bank, association, or trust
6 company. Such applications are governed by the application
7 criteria set forth in paragraph (1)(a) and ss. 658.21(4) and
8 658.28. The application must be in the form prescribed by the
9 commission and must contain additional information prescribed
10 by the commission or office ~~department~~, and must be
11 accompanied by a nonrefundable, nontransferable filing fee of
12 \$7,500.

13 Section 1765. Section 658.21, Florida Statutes, is
14 amended to read:

15 658.21 Approval of application; findings
16 required.--The office ~~department~~ shall approve the application
17 if it finds that:

18 (1) Local conditions indicate reasonable promise of
19 successful operation for the proposed state bank or trust
20 company. In determining whether an applicant meets the
21 requirements of this subsection, the office ~~department~~ shall
22 consider all materially relevant factors, including:

23 (a) The purpose, objectives, and business philosophy
24 of the proposed state bank or trust company.

25 (b) The projected financial performance of the
26 proposed bank or trust company.

27 (c) The feasibility of the proposed bank or trust
28 company, as stated in the business plan, particularly with
29 respect to asset and liability growth and management.

30 (2) The proposed capitalization is in such amount as
31 the office ~~department~~ deems adequate, but in no case may the

1 total capital accounts at opening for a bank be less than \$6
2 million if the proposed bank is to be located in any county
3 which is included in a metropolitan statistical area, or \$4
4 million if the proposed bank is to be located in any other
5 county. The total capital accounts at opening for a trust
6 company may not be less than \$2 million. Of total capital
7 accounts at opening, as noted in the application or amendments
8 or changes to the application, at least 25 percent of the
9 capital shall be directly owned or controlled by the
10 organizing directors of the bank. Directors of banks owned by
11 single-bank holding companies shall have direct ownership or
12 control of at least 25 percent of the bank holding company's
13 capital accounts. The office ~~department~~ may disallow illegally
14 obtained currency, monetary instruments, funds, or other
15 financial resources from the capitalization requirements of
16 this section.

17 (3) The proposed capital structure is in such form as
18 the office ~~department~~ may require, but, at a minimum, every
19 state bank or trust company hereafter organized shall
20 establish paid-in capital equal in amount to not less than 50
21 percent of its total capital accounts and a paid-in surplus
22 equal in amount to not less than 20 percent of its paid-in
23 capital.

24 (4) The proposed officers have sufficient financial
25 institution experience, ability, standing, and reputation and
26 the proposed directors have sufficient business experience,
27 ability, standing, and reputation to indicate reasonable
28 promise of successful operation, and none of the proposed
29 officers or directors has been convicted of, or pled guilty or
30 nolo contendere to, any violation of s. 655.50, relating to
31 the Florida Control of Money Laundering in Financial

1 Institutions Act; chapter 896, relating to offenses related to
2 financial institutions; or any similar state or federal law.
3 At least two of the proposed directors who are not also
4 proposed officers shall have had at least 1 year direct
5 experience as an executive officer, regulator, or director of
6 a financial institution within 3 years of the date of the
7 application. However, if the applicant demonstrates that at
8 least one of the proposed directors has very substantial
9 experience as an executive officer, director, or regulator of
10 a financial institution more than 3 years before the date of
11 the application, the office ~~department~~ may modify the
12 requirement and allow only one director to have direct
13 financial institution experience within the last 3 years. The
14 proposed president or chief executive officer shall have had
15 at least 1 year of direct experience as an executive officer,
16 director, or regulator of a financial institution within the
17 last 3 years.

18 (5) The corporate name of the proposed state bank or
19 trust company is approved by the office ~~department~~.

20 (6) Provision has been made for suitable quarters at
21 the location in the application.

22 Section 1766. Section 658.22, Florida Statutes, is
23 amended to read:

24 658.22 Coordination with federal agencies.--Upon
25 approval by the office ~~department~~ of the application for
26 authority to organize a state bank, the office ~~department~~
27 shall forward a copy of its final order to the appropriate
28 federal regulatory agencies. The failure of an applicant to
29 apply for membership in the Federal Reserve System or apply
30 for the insurance of accounts by the Federal Deposit Insurance
31 Corporation within 3 months after approval by the office

1 ~~department~~ or a final order by the Federal Deposit Insurance
2 Corporation denying an applicant's application for insurance
3 of accounts, terminates and revokes the final order issued by
4 the office ~~department~~ approving the application.

5 Section 1767. Section 658.23, Florida Statutes, is
6 amended to read:

7 658.23 Submission of articles of incorporation;
8 contents; form; approval; filing; commencement of corporate
9 existence; bylaws.--

10 (1) Within 3 months after approval by the office
11 ~~department~~ and the appropriate federal regulatory agency, the
12 applicant shall submit its duly executed articles of
13 incorporation to the office ~~department~~, together with the
14 filing fee due the Department of State under s. 607.0122.

15 (2) The articles of incorporation shall contain:

16 (a) The name of the proposed bank or trust company.

17 (b) The general nature of the business to be
18 transacted or a statement that the corporation may engage in
19 any activity or business permitted by law. Such statement
20 shall authorize all such activities and business by the
21 corporation.

22 (c) The amount of capital stock authorized, showing
23 the maximum number of shares of par value common stock and of
24 preferred stock, and of every kind, class, or series of each,
25 together with the distinguishing characteristics and the par
26 value of all shares.

27 (d) The amount of capital with which the corporation
28 will begin business, which shall not be less than the amount
29 required by the office ~~department~~ pursuant to s. 658.21.

30
31

1 (e) A provision that the corporation is to have
2 perpetual existence unless existence is terminated pursuant to
3 the financial institutions codes.

4 (f) The initial street address of the main office of
5 the corporation, which shall be in this state.

6 (g) The number of directors, which shall be five or
7 more, and the names and street addresses of the members of the
8 initial board of directors.

9 (h) A provision for preemptive rights, if applicable.

10 (i) A provision authorizing the board of directors to
11 appoint additional directors, pursuant to s. 658.33, if
12 applicable.

13

14 The office department shall provide to the proposed directors
15 form articles of incorporation which shall include only those
16 provisions required by this section or by chapter 607. The
17 form articles shall be acknowledged by the proposed directors
18 and returned to the office department for filing with the
19 Department of State.

20 (3) Within 30 days of receipt of the executed articles
21 of incorporation in the form previously approved, and the
22 required filing fees, the office department shall place the
23 following legend upon the articles of incorporation and affix
24 the seal of the office ~~of the Comptroller of Florida~~ thereto.
25 The legend shall in substance read: "Approved by the Office
26 of Financial Regulation Department of Banking and Finance this
27 day of(herein the name and signature of the
28 director head of the office department)...." Thereafter, the
29 articles of incorporation shall be filed with the Department
30 of State.

31

1 (4) The corporate existence of a banking corporation
2 or a trust company corporation shall commence on the date the
3 approved articles of incorporation are filed with the
4 Department of State, unless otherwise provided in the articles
5 of incorporation pursuant to s. 607.0203. Thereafter, a
6 banking corporation or trust company corporation may perform
7 all acts necessary to perfect its organization, obtain and
8 equip a place of business, and otherwise prepare to conduct a
9 general banking business or trust business. However, no
10 banking corporation or trust company corporation shall become
11 a state bank or a state trust company or transact any banking
12 business or trust business until it has received a certificate
13 of authority to transact business as provided in s. 658.25.

14 (5) Unless the articles of incorporation provide
15 otherwise, the board of directors shall have authority to
16 adopt or amend bylaws that do not conflict with bylaws that
17 may have been adopted by the stockholders. The bylaws shall
18 be for the government of the bank or trust company,
19 subordinate only to the articles of incorporation and the laws
20 of the United States and of this state. A current copy of the
21 bylaws shall be filed with the office ~~department~~ at all times.

22 (6) A bank or trust company may not amend its articles
23 of incorporation without the prior written approval of the
24 office ~~department~~.

25 Section 1768. Section 658.235, Florida Statutes, is
26 amended to read:

27 658.235 Subscriptions for stock; approval of major
28 shareholders.--

29 (1) Within 6 months after commencement of corporate
30 existence, and at least 30 days prior to opening, the
31 directors shall have completed the stock offering and shall

1 file with the office ~~department~~ a final list of subscribers to
2 all of the capital stock of the proposed bank or trust company
3 showing the name and residence of each subscriber and the
4 amount of stock of every class subscribed for by each.

5 (2) The directors shall also provide such detailed
6 financial, business, and biographical information as the
7 commission or office ~~department~~ may reasonably require for
8 each person who, together with related interests, subscribes
9 to 10 percent or more of the voting stock or nonvoting stock
10 which is convertible into voting stock of the proposed bank or
11 trust company. The office ~~department~~ shall make an
12 investigation of the character, financial responsibility, and
13 financial standing of each such person in order to determine
14 whether he or she is likely to control the bank or trust
15 company in a manner which would jeopardize the interests of
16 the depositors and creditors of the bank or trust company, the
17 other stockholders, or the general public. This investigation
18 shall include a determination of whether any such person has
19 been convicted of, or pled guilty or nolo contendere to, a
20 violation of s. 655.50, relating to the Florida Control of
21 Money Laundering in Financial Institutions Act; chapter 896,
22 relating to offenses related to financial transactions; or any
23 similar state or federal law.

24 (3) At the time the shares are issued, the corporation
25 shall furnish to the office ~~department~~ a final list of
26 shareholders and an affidavit from the corporation that the
27 entire capital accounts have been fully and unconditionally
28 paid in cash and that valid assets representing such total
29 capital accounts are held by the bank, trust company, or
30 escrow agent.

31

1 Section 1769. Section 658.24, Florida Statutes, is
2 amended to read:

3 658.24 Organizational procedures.--After the corporate
4 existence of a bank or trust company corporation has commenced
5 and the stock has been issued, but no less than 30 days prior
6 to the intended opening date, a shareholders' meeting shall be
7 held to elect directors already approved by the office
8 ~~department~~, to approve organizational expenses, and to conduct
9 such other business relating to the corporation as may be
10 appropriate. Immediately after the board of directors has been
11 elected by the shareholders, the board shall meet to adopt
12 bylaws, elect officers, and conduct such other business
13 relating to the corporation as may be appropriate. Within 10
14 days after the shareholders' and directors' meetings, the
15 corporation shall file with the office ~~department~~ a copy of
16 the minutes of the meetings together with a copy of the bylaws
17 that were adopted, a list showing the names and residence
18 addresses of the officers elected and the title of each, and a
19 detailed accounting of the organization expenses approved by
20 the shareholders.

21 Section 1770. Subsections (2) and (3) of section
22 658.25, Florida Statutes, are amended to read:

23 658.25 Opening for business.--

24 (2) At least 30 days prior to its intended opening
25 date, the corporation shall notify the office ~~department~~ of
26 its proposed opening date and confirm its compliance with all
27 conditions imposed in the order or orders issued by the office
28 ~~department~~ relating to its organization.

29 (3) The office ~~department~~ shall perform a preopening
30 examination to verify good faith compliance with all the
31 requirements of law and that the bank or trust company

1 corporation is ready to engage in a general commercial bank or
2 trust business. If the office ~~department~~ finds that such
3 requirements have been met, it shall issue a certificate of
4 authorization to transact a general commercial bank or trust
5 business. Upon the issuance of the certificate of
6 authorization, the bank or trust company corporation shall
7 become a state bank or a state trust company and the
8 certificate shall constitute its charter.

9 Section 1771. Subsections (2), (3), and (4) of section
10 658.26, Florida Statutes, are amended to read:

11 658.26 Places of transacting business; branches;
12 facilities.--

13 (2)(a) In addition, with the approval of the office
14 ~~department~~ and upon such conditions as the commission or
15 office ~~department~~ prescribes, any bank or trust company may
16 establish branches within or outside the state. With the
17 approval of the office ~~department~~ upon a determination that
18 the resulting bank or trust company will be of sound financial
19 condition, any bank or trust company incorporated pursuant to
20 this chapter may establish branches by merger with any other
21 bank or trust company.

22 (b) An application for a branch by a bank that does
23 not meet the requirements for the branch notification process
24 shall be in writing in such form as the commission ~~department~~
25 prescribes and be supported by such information, data, and
26 records as the commission or office ~~department~~ may require to
27 make findings necessary for approval. Applications filed
28 pursuant to this subsection shall not be published in the
29 Florida Administrative Weekly but shall otherwise be subject
30 to the provisions of chapter 120. Upon the filing of an
31 application and a nonrefundable filing fee for the

1 establishment of any branch permitted by paragraph (a), the
2 office ~~department~~ shall make an investigation with respect to
3 compliance with the requirements of paragraph (a) and shall
4 investigate and consider all factors relevant to such
5 requirements, including the following:

6 1. The sufficiency of capital accounts in relation to
7 the deposit liabilities of the bank, or in relation to the
8 number and valuation of fiduciary accounts of the trust
9 company, including the proposed branch, and the additional
10 fixed assets, if any, which are proposed for the branch and
11 its operations, without undue risk to the bank or its
12 depositors, or undue risk to the trust company or its
13 fiduciary accounts;

14 2. The sufficiency of earnings and earning prospects
15 of the bank or trust company to support the anticipated
16 expenses and any anticipated operating losses of the branch
17 during its formative or initial years;

18 3. The sufficiency and quality of management available
19 to operate the branch;

20 4. The name of the proposed branch to determine if it
21 reasonably identifies the branch as a branch of the main
22 office and is not likely to unduly confuse the public; and

23 5. Substantial compliance by the applicants with
24 applicable law governing their operations.

25 (c) As provided by commission ~~departmental~~ rule, a
26 financial institution operating in a safe and sound manner may
27 establish a branch by filing a written notice with the office
28 ~~department~~ at least 30 days before opening that branch. In
29 such case, the financial institution need not file a branch
30 application or pay a branch application fee.

31

1 (3)(a) An office in this state may be relocated with
2 prior written approval of the office ~~department~~. An
3 application for relocation shall be in writing in such form as
4 the commission ~~department~~ prescribes and shall be supported by
5 such information, data, and records as the commission or
6 office ~~department~~ may require to make findings necessary for
7 approval.

8 (b) Applications filed pursuant to this subsection
9 shall not be published in the Florida Administrative Weekly
10 but shall otherwise be subject to the provisions of chapter
11 120. Upon the filing of a relocation application and a
12 nonrefundable filing fee, the office ~~department~~ shall
13 investigate to determine substantial compliance by the
14 financial institution with applicable law governing its
15 operations. Additional investments in land, buildings, leases,
16 and leasehold improvements resulting from such relocation
17 shall comply with the limitations imposed by s. 658.67(7)(a).
18 A main office may not be moved outside this state unless
19 expressly authorized by the financial institutions codes or by
20 federal law.

21 (c) A relocation application filed by a state bank or
22 trust company that is operating in a safe and sound manner
23 which is not denied within 10 working days after receipt shall
24 be deemed approved unless the office ~~department~~ notifies the
25 financial institution in writing that the application was not
26 complete.

27 (d) In addition to the application required by
28 paragraph (a), a financial institution whose main office in
29 this state has been in operation less than 24 months must
30 provide evidence that the criteria of s. 658.21(1) will be
31 met.

1 (e) A branch office may be closed with 30 days' prior
2 written notice to the office ~~department~~. The notice shall
3 include any information the commission prescribes ~~department~~
4 ~~may prescribe~~ by rule.

5 (4) With prior written notification to the office
6 ~~department~~, any bank may operate facilities which are not
7 physically connected to the main or branch office of the bank,
8 provided that the facilities are situated on the property of
9 the main or branch office or property contiguous thereto.
10 Property which is separated from the main or branch office of
11 a bank by only a street, and one or more walkways and
12 alleyways are determined to be, for purposes of this
13 subsection, contiguous to the property of the main or branch
14 office.

15 Section 1772. Subsections (1), (2), (4), and (5) of
16 section 658.27, Florida Statutes, are amended to read:

17 658.27 Control of bank or trust company; definitions
18 and related provisions.--

19 (1) In ss. 658.27-658.29, unless the context clearly
20 requires otherwise:

21 (a) "Bank holding company" means any business
22 organization which has or acquires control over any bank or
23 trust company or over any business organization that is or
24 becomes a bank holding company by virtue of ss. 658.27-658.29.

25 (b) "Business organization" means a corporation,
26 association, partnership, or business trust and includes any
27 similar organization (including a trust company and including
28 a bank, whether or not authorized to engage in trust business,
29 but only if such bank is, or by virtue of ss. 658.27-658.29
30 becomes, a bank holding company), whether created, organized,
31 or existing under the laws of the United States; this state or

1 any other state of the United States; or any other country,
2 government, or jurisdiction. "Business organization" does not
3 include any corporation the majority of the shares of which
4 are owned by the United States or by this state. "Business
5 organization" also includes any other trust, unless by its
6 terms it must terminate within 25 years or not later than 21
7 years and 10 months after the death of individuals living on
8 the effective date of the trust, unless the office ~~department~~
9 determines, after notice and opportunity for hearing, that a
10 purpose for the creation of such trust was the evasion of the
11 provisions of ss. 658.27-658.29.

12 (c) "Edge Act corporation" means a corporation
13 organized and existing under the provisions of s. 25(a) of the
14 Federal Reserve Act, 12 U.S.C. ss. 611-632.

15 (d) "Subsidiary," with respect to a specified bank,
16 trust company, or bank holding company, means:

17 1. Any business organization 25 percent or more of the
18 voting shares of which, excluding shares owned by the United
19 States or by any business organization wholly owned by the
20 United States, are directly or indirectly owned or controlled
21 by such bank, trust company, or bank holding company or are
22 held by such bank, trust company, or bank holding company with
23 power to vote;

24 2. Any business organization the election of a
25 majority of the directors of which is controlled in any manner
26 by such bank, trust company, or bank holding company; or

27 3. Any business organization with respect to the
28 management or policies of which such bank, trust company, or
29 bank holding company has the power, directly or indirectly, to
30 exercise a controlling influence, as determined by the office
31 ~~department~~ after notice and opportunity for hearing.

1 (e) "Successor," with respect to a specified bank
2 holding company, means any business organization which
3 acquires directly or indirectly from the bank holding company
4 shares of any bank or trust company, when and if the
5 relationship between such business organization and the bank
6 holding company is such that the transaction effects no
7 substantial change in the control of the bank or trust company
8 or beneficial ownership of such shares of such bank or trust
9 company. The commission ~~department~~ may, by rule, further
10 define the term "successor" to the extent necessary to prevent
11 evasion of the purposes of ss. 658.27-658.29. For the
12 purposes of ss. 658.27-658.29, any successor to a bank holding
13 company shall be deemed to have been a bank holding company
14 from the date on which the predecessor business organization
15 became a bank holding company.

16 (2) A business organization has control over a bank or
17 over any other business organization if:

18 (a) The business organization directly or indirectly
19 or acting through one or more other persons owns, controls, or
20 has power to vote 25 percent or more of any class of voting
21 securities of the bank or other business organization;

22 (b) The business organization controls in any manner
23 the election of a majority of the directors, trustees, or
24 other governing body of the bank or other business
25 organization;

26 (c) The business organization owns, controls, or has
27 power to vote 10 percent or more of any class of voting
28 securities of the bank or other business organization and
29 exercises a controlling influence over the management or
30 policies of the bank or other business organization; or
31

1 (d) The office ~~department~~ determines, after notice and
2 opportunity for hearing, that the business organization
3 directly or indirectly exercises a controlling influence over
4 the management or policies of the bank or other business
5 organization.

6 (4) Shares of any kind or class of voting securities,
7 and assets, of a bank or business organization which, after
8 March 28, 1972, the effective date of former s. 659.141(2)(g),
9 are transferred by any bank holding company, or by any bank or
10 any business organization which, but for such transfer, would
11 be a bank holding company, directly or indirectly to any
12 transferee that is indebted to the transferor, or has one or
13 more officers, directors, trustees, or beneficiaries in common
14 with or subject to control by the transferor, shall be deemed
15 to be indirectly owned or controlled by the transferor unless
16 the office ~~department~~, after opportunity for hearing,
17 determines that the transferor is not in fact capable of
18 controlling the transferee.

19 (5) Notwithstanding any other provision of this
20 section, no bank and no business organization shall be deemed
21 to own or control voting shares or assets of another bank or
22 another business organization if:

23 (a) The ownership or control of such shares or assets
24 is in a fiduciary capacity, except as provided in paragraph
25 (3)(b) and subsection (4). For the purposes of the preceding
26 sentence, shares of a bank or a business organization shall
27 not be deemed to have been acquired in a fiduciary capacity if
28 the acquiring bank or business organization has sole
29 discretionary authority to exercise voting rights with respect
30 thereto, except that this limitation is applicable in the case
31 of a bank or business organization acquiring such shares prior

1 to March 28, 1972, the effective date of former s.
2 659.141(3)(a), only if the bank or business organization has
3 the right, consistent with its obligations under the
4 instrument, agreement, or other arrangement establishing the
5 fiduciary relationship, to divest itself of such voting rights
6 and fails to exercise that right to divest within 1 year after
7 that date;

8 (b) The shares are acquired in connection with the
9 underwriting of securities by a business organization, in good
10 faith and without any intent or purpose to evade the purposes
11 of ss. 658.27-658.29, and if such shares are held only for
12 such period of time, not exceeding 3 months from date of
13 acquisition, as will permit the sale thereof on a reasonable
14 basis; however, upon application by the underwriting business
15 organization, and after notice and opportunity for hearing, if
16 the office ~~department~~ finds that the sale of such shares
17 within that period of time would create an unreasonable
18 hardship on the underwriting business organization, that there
19 is no intent or purpose to evade the purposes of ss.
20 658.27-658.29 by the continued ownership or control of such
21 shares by such underwriting business organization, and that an
22 extension of such period of time would not be detrimental to
23 the public interest, the office ~~department~~ is authorized to
24 extend, from time to time, for not more than 1 month at a
25 time, the 3-month period, but the aggregate of such extensions
26 shall not exceed 3 months;

27 (c) Control of voting rights of such shares is
28 acquired in good faith, and without any purpose or intent to
29 evade the purposes of ss. 658.27-658.29, in the course of
30 participating in a proxy solicitation by a business
31 organization formed in good faith, and without any purpose or

1 intent to evade the purposes of ss. 658.27-658.29, for the
2 sole purpose of participating in such proxy solicitation, and
3 such control of voting rights terminates immediately upon the
4 conclusion of the sole purpose for which such business
5 organization was formed; or
6 (d) The ownership or control of such shares or assets
7 is acquired in securing or collecting a debt previously
8 contracted in good faith, unless the office ~~department~~, after
9 notice and opportunity for hearing, finds that a purpose of
10 any part of any transaction was an evasion of the purposes of
11 ss. 658.27-658.29 and if the ownership or control of such
12 shares or assets is held only for such reasonable period of
13 time, not exceeding 2 years after the date of acquisition, as
14 will permit the divestiture thereof on a reasonable basis.
15 Upon application by the bank or business organization which
16 acquired such ownership or control in accordance with the
17 preceding provisions of this paragraph, and after notice and
18 opportunity for hearing, if the office ~~department~~ finds that
19 the bank or business organization has made reasonable and good
20 faith efforts to divest itself of such ownership or control on
21 a reasonable basis within the 2-year period but has been
22 unable to do so, that immediate divestiture of such ownership
23 or control would create an unreasonable hardship on such bank
24 or business organization, that continuation of such ownership
25 or control involves no purpose or intent to evade the purposes
26 of ss. 658.27-658.29, and that an extension of the 2-year
27 period would not be detrimental to the public interest, the
28 office ~~department~~ is authorized to extend, from time to time
29 and for not more than 1 year at a time, the 2-year period, but
30 the aggregate of all such extensions shall not exceed 3 years.
31

1 Section 1773. Subsections (1), (2), and (3) of section
2 658.28, Florida Statutes, are amended to read:

3 658.28 Acquisition of control of a bank or trust
4 company.--

5 (1) In any case in which a person or a group of
6 persons, directly or indirectly or acting by or through one or
7 more persons, proposes to purchase or acquire a controlling
8 interest in any state bank or state trust company, and thereby
9 to change the control of that bank or trust company, each
10 person or group of persons shall first make application to the
11 office ~~department~~ for a certificate of approval of such
12 proposed change of control of the bank or trust company. The
13 application shall contain the name and address, and such other
14 relevant information as the commission or office requires
15 ~~department may require~~, including information relating to
16 other and former addresses and the reputation, character,
17 responsibility, and business affiliations, of the proposed new
18 owner or each of the proposed new owners of the controlling
19 interest. The office ~~department~~ shall issue a certificate of
20 approval only after it has made an investigation and
21 determined that the proposed new owner or owners of the
22 interest are qualified by reputation, character, experience,
23 and financial responsibility to control and operate the bank
24 or trust company in a legal and proper manner and that the
25 interests of the other stockholders, if any, and the
26 depositors and creditors of the bank or trust company and the
27 interests of the public generally will not be jeopardized by
28 the proposed change in ownership, controlling interest, or
29 management. No person who has been convicted of, or pled
30 guilty or nolo contendere to, a violation of s. 655.50,
31 relating to the Florida Control of Money Laundering in

1 Financial Institutions Act; chapter 896, relating to offenses
2 related to financial transactions; or any similar state or
3 federal law shall be given a certificate of approval by the
4 office ~~department~~.

5 (2) For the purposes of this section, the standards,
6 criteria, and exceptions contained in s. 658.27(2), (3), (4),
7 and (5) relating to control by a business organization of a
8 bank or another business organization apply to the persons
9 mentioned in this section and constitute the standards,
10 criteria, and exceptions which determine whether any person or
11 group of persons shall be deemed to be purchasing or
12 acquiring, or to have purchased or acquired, directly or
13 indirectly a "controlling interest" in a state bank or a state
14 trust company; but the office ~~department~~ is not limited to
15 those standards or criteria in determining whether any such
16 person shall be deemed to be acting by or through one or more
17 other persons.

18 (3) In any case in which a proposed purchase or
19 acquisition of voting securities of a state bank or trust
20 company would give rise to the presumption created under s.
21 658.27(2)(c), the person or group of persons who propose to
22 purchase or acquire the voting securities shall first give
23 written notice of the proposal to the office ~~department~~. Such
24 notice may present information that the proposed purchase or
25 acquisition will not result in control. The office ~~department~~
26 shall afford the person seeking to rebut the presumption an
27 opportunity to present views in writing or orally before its
28 designated representatives at an informal conference. If the
29 office ~~department~~ determines, pursuant to the informal
30 conference, that the person or group of persons seeking to
31 rebut the presumption exercises a controlling influence over

1 the bank, an application for change of control must be filed
2 pursuant to this section.

3 Section 1774. Section 658.285, Florida Statutes, is
4 amended to read:

5 658.285 Acquisition or ownership of state banks by
6 international banking corporations.--An international banking
7 corporation may, with the approval of the office ~~department~~
8 pursuant to s. 658.28, acquire control over or organize a
9 state bank organized under the laws of this state. For the
10 purposes of this section, the word "bank" shall have the
11 meaning given in s. 2(c) of the Bank Holding Company Act of
12 1956, 12 U.S.C. s. 1841(c).

13 Section 1775. Subsections (2), (4), (5), (6), (7),
14 (9), and (10) of section 658.295, Florida Statutes, are
15 amended to read:

16 658.295 Interstate banking.--

17 (2) DEFINITIONS.--For purposes of this section, the
18 term:

19 (a) "Acquire," with respect to a company, means to:

20 1. Merge or consolidate with a bank holding company;
21 2. Assume direct or indirect ownership or control of:
22 a. More than 25 percent of any class of voting shares
23 of a bank holding company or a bank, if the acquiring company
24 was not a bank holding company prior to such acquisition;

25 b. More than 5 percent of any class of voting shares
26 of a bank holding company or a bank, if the acquiring company
27 was a bank holding company prior to such acquisition; or

28 c. All or substantially all of the assets of a bank
29 holding company or bank, if the acquiring company was a bank
30 holding company prior to such acquisition; or

31

1 3. Take any other action that results in the direct or
2 indirect acquisition of control by a company of a bank holding
3 company, if the acquiring company was a bank holding company
4 prior to such acquisition.

5 (b) "Affiliate" has the meaning set forth in s. 2(k)
6 of the Bank Holding Company Act.

7 (c) "Bank" means an institution as defined in s. 2(c)
8 of the Bank Holding Company Act.

9 (d) "Bank holding company" has the meaning set forth
10 in s. 2(a) of the Bank Holding Company Act, and unless the
11 context requires otherwise, includes any Florida bank holding
12 company, any out-of-state bank holding company, or any
13 international banking company.

14 (e) "Banking office" means any bank, branch of a bank,
15 or other office at which a bank accepts deposits, provided the
16 term does not include any:

17 1. Unmanned automatic teller machine, point-of-sale
18 terminal, or other similar unmanned electronic banking
19 facility at which deposits may be accepted;

20 2. Office located outside the United States; or

21 3. Loan production office, representative office, or
22 other office at which deposits are not accepted.

23 (f) "Bank Holding Company Act" means the federal Bank
24 Holding Company Act of 1956, as amended, 12 U.S.C. ss. 1841 et
25 seq.

26 (g) "Bank regulatory agency" means:

27 1. Any agency of another state with primary
28 responsibility for chartering and regulating banks;

29 2. The Office of the Comptroller of the Currency, the
30 Federal Deposit Insurance Corporation, the Board of Governors
31

1 of the Federal Reserve System, and any successor to these
2 agencies; or

3 3. An agency of a country other than the United States
4 with primary responsibility for chartering and regulating
5 banks and bank holding companies in such country.

6 (h) "Branch" has the meaning set forth in s. 658.12.

7 (i) "Company" has the meaning set forth in s. 2(b) of
8 the Bank Holding Company Act, and includes a bank holding
9 company.

10 (j) "Control" has the meaning set forth in s. 2(a)(2)
11 of the Bank Holding Company Act.

12 ~~(k) "Department" means the Department of Banking and~~
13 ~~Finance.~~

14 (k)~~(l)~~ "Deposits" means all demand, time, and savings
15 deposits of individuals, partnerships, corporations, the
16 United States, and states and political subdivisions in the
17 United States, as set forth in 12 U.S.C. s. 1813. However,
18 the term "deposits" does not include deposits of banks or
19 foreign governments or institutions or deposits held by
20 foreign banking offices or corporations organized pursuant to
21 s. 25 or s. 25(a) of the Federal Reserve Act, as amended, 12
22 U.S.C. ss. 601-604a or 12 U.S.C. ss. 611-631. Pursuant to
23 rules established by the commission ~~department~~, determinations
24 of deposits shall be made by reference to the most recently
25 available consolidated report of condition or similar reports
26 filed by banks with state or federal regulatory agencies.

27 (l)~~(m)~~ "Depository institution" means any institution
28 included for any purpose within the definitions of "insured
29 depository institution" as set forth in 12 U.S.C. s.
30 1813(c)(2) and (3).

31

1 (m)~~(n)~~ "Florida bank" means a bank whose home state is
2 this state.

3 (n)~~(o)~~ "Florida bank holding company" means a bank
4 holding company that:

5 1. Had its principal place of business in this state
6 on July 1, 1966, or the date on which it became a bank holding
7 company, whichever is later.

8 2. Is not controlled by an out-of-state bank holding
9 company.

10 (o)~~(p)~~ "Home state" means:

11 1. With respect to a state bank, the state by which
12 the bank is chartered.

13 2. With respect to a national bank, the state in which
14 the main office of the bank is located.

15 3. With respect to a foreign bank, the state
16 determined to be the home state of such foreign bank under 12
17 U.S.C. s. 3103(c).

18 (p)~~(q)~~ "Home state regulator" means, with respect to
19 an out-of-state bank holding company, the bank regulatory
20 agency of the state in which such company maintains its
21 principal place of business.

22 (q)~~(r)~~ "International banking corporation" means an
23 entity as defined in s. 663.01(6).

24 (r)~~(s)~~ "State bank" means a bank chartered under the
25 laws of this state.

26 (s)~~(t)~~ "Principal place of business," of a bank
27 holding company, means the state in which the total deposits
28 of its subsidiaries were the greatest on July 1, 1966, or on
29 the date on which the company became a bank holding company,
30 whichever is later.

31

1 (t)~~(u)~~ "Out-of-state bank holding company" means a
2 bank holding company that has its principal place of business
3 in a state other than this state or the District of Columbia
4 and, unless the context requires otherwise, includes an
5 international banking corporation.

6 (u)~~(v)~~ "State" means any state, territory, or other
7 possession of the United States, including the District of
8 Columbia.

9 (v)~~(w)~~ "Subsidiary" has the meaning set forth in s.
10 2(d) of the Bank Holding Company Act.

11 (4) APPLICABLE LAW.--Any out-of-state bank holding
12 company that controls a Florida bank or a Florida bank holding
13 company is subject to the laws of this state, and the rules of
14 the commission ~~department~~, relating to the acquisition,
15 ownership, and operation of banks and bank holding companies
16 located in this state which are applicable to Florida bank
17 holding companies.

18 (5) AUTHORITY TO ENTER INTO COOPERATIVE AGREEMENTS;
19 FEES.--In order to carry out the purposes of this section, the
20 office ~~department~~ may:

21 (a) Enter into cooperative, coordinating, or
22 information-sharing agreements with other bank regulatory
23 agencies or any organization affiliated with or representing
24 one or more bank regulatory agencies to facilitate the
25 regulation of banks and bank holding companies doing business
26 in this state.

27 (b) Accept reports of examinations or investigations
28 or other records from other bank regulatory agencies having
29 concurrent jurisdiction over a state bank or a bank holding
30 company that controls a state bank in lieu of conducting its
31 own examinations or investigations.

1 (c) Take any action jointly with other bank regulatory
2 agencies having concurrent jurisdiction over banks and bank
3 holding companies doing business in this state, or take such
4 action independently, to carry out its responsibilities.

5 (d) Assess supervisory fees that shall be payable by
6 Florida banks and Florida bank holding companies in connection
7 with the office's ~~department's~~ performance of its duties.
8 Such fees may be shared with other bank regulatory agencies or
9 any organizations affiliated with or representing one or more
10 bank regulatory agencies in accordance with agreements between
11 them and the office ~~department~~.

12 (6) PERMITTED ACQUISITIONS.--

13 (a) Except as otherwise expressly permitted by s. 1841
14 of the Bank Holding Company Act, no bank holding company may
15 acquire a Florida bank holding company or a Florida bank
16 without the prior approval of the office ~~department~~.

17 (b) Notwithstanding paragraph (a), prior office
18 ~~department~~ approval is not required and the standards for
19 approval in subsection (8) shall be waived by the office
20 ~~department~~ if the acquisition is made:

21 1. In a transaction arranged by the office ~~department~~
22 or another bank regulatory agency to prevent insolvency or the
23 appointment of a liquidator or receiver of the acquired bank;
24 or

25 2. In a transaction in which a bank forms its own bank
26 holding company, if the ownership rights of the former bank
27 shareholders are substantially similar to those of the
28 shareholders of the new bank holding company.

29 (c) The prohibition in paragraph (a) does not apply if
30 the acquisition is made solely for the purpose of facilitating
31

1 an acquisition of a successor institution as defined in s.
2 658.40(4).

3 (d) Notwithstanding paragraph (a), to the extent
4 prohibited or preempted by federal law, or to the extent the
5 determination of compliance with the conditions imposed in
6 subsection (8) duplicates a determination made or to be made
7 by the responsible federal regulatory agency as part of the
8 federal approval process, prior office ~~department~~ approval of
9 any application filed by an out-of-state bank or out-of-state
10 bank holding company to acquire a Florida bank or a Florida
11 bank holding company is not required when such Florida bank or
12 all bank subsidiaries of such Florida bank holding company are
13 national banks.

14 (7) REQUIRED APPLICATION.--

15 (a) A company that proposes to make an acquisition
16 under this section shall:

17 1. File with the office ~~department~~ a copy of the
18 application that such company has filed with the responsible
19 federal bank regulatory agency, together with such additional
20 information as the commission or office requires ~~department~~
21 ~~may prescribe~~.

22 2. Pay to the office ~~department~~ the required
23 application fee, pursuant to s. 658.73.

24 (b) To the extent consistent with the effective
25 discharge of the office's ~~department's~~ responsibilities, the
26 forms established under this section for application and
27 reporting shall conform to those established by the Board of
28 Governors of the Federal Reserve System under the Bank Holding
29 Company Act.

30 (c) In connection with an application received under
31 this section, the office ~~department~~ shall:

1 1. Require that prior notice of the application be
2 published once in a daily newspaper of general circulation in
3 the county in which the bank to be acquired has its principal
4 place of business or that a notice of intent have been mailed
5 via certified mail to each person owning stock in the bank to
6 be acquired and provide an opportunity for public comment.

7 2. Make the application available for public
8 inspection to the extent required or permitted under
9 applicable state or federal law.

10 (d) If the applicant is an out-of-state bank holding
11 company that is not incorporated under the laws of this state,
12 it shall submit with the application proof that the applicant
13 has complied with applicable requirements of chapter 607,
14 together with the filing fee due the Department of State under
15 s. 607.0122.

16 (9) REPORTS; EXAMINATIONS.--To the extent required
17 ~~prescribed~~ by the commission or office ~~department~~, each bank
18 holding company that directly or indirectly controls a state
19 bank shall submit to the office ~~department~~ financial reports
20 filed by such company with any bank regulatory agency
21 concerning state banks located in this state within 15 days
22 after the filing thereof with such agency. However, any report
23 prohibited by applicable federal or state law is not required
24 to be submitted to the office ~~department~~.

25 (10) PENALTIES.--The office ~~department~~ may enforce the
26 provisions of this section pursuant to the financial
27 institutions' codes. The office ~~department~~ shall promptly
28 give notice to the home state regulator of any enforcement
29 action initiated against an out-of-state bank holding company
30 and, to the extent practicable, shall consult and cooperate
31 with the home state regulator in pursuing and resolving said

1 enforcement action. In the case of an out-of-state holding
2 company, the office ~~department~~ shall recognize the exclusive
3 authority of the home state regulator over corporate
4 governance matters and the primary responsibility of the home
5 state regulator with respect to safety and soundness matters.

6 Section 1776. Paragraph (g) of subsection (3), and
7 subsections (4), (6), (8), (9), (11), (12), and (13) of
8 section 658.2953, Florida Statutes, are amended to read:

9 658.2953 Interstate branching.--

10 (3) LEGISLATIVE INTENT.--The Legislature finds it is
11 in the interest of the citizens of this state, and declares it
12 to be the intent of this section, to:

13 (g) Provide the commission and office ~~department~~
14 sufficient powers and responsibilities to carry out such
15 purposes.

16 (4) DEFINITIONS.--As used in this section, unless a
17 different meaning is required by the context:

18 (a) "Bank" has the meaning set forth in 12 U.S.C. s.
19 1813(h), provided the term "bank" does not include any
20 "foreign bank" as defined in 12 U.S.C. s. 3101(7), except such
21 term includes any foreign bank organized under the laws of a
22 territory of the United States, Puerto Rico, Guam, American
23 Samoa, or the Virgin Islands, the deposits of which are
24 insured by the Federal Deposit Insurance Corporation.

25 (b) "Bank holding company" has the meaning set forth
26 in 12 U.S.C. s. 1841(a)(1).

27 (c) "Bank regulatory agency" means:

28 1. Any agency of another state with primary
29 responsibility for chartering and regulating banks.

30 2. The Office of the Comptroller of the Currency, the
31 Federal Deposit Insurance Corporation, the Board of Governors

1 of the Federal Reserve System, and any successor to such
2 agencies.

3 (d) "Branch" has the meaning set forth in s. 658.12.

4 ~~(e) "Department" means the Department of Banking and~~
5 ~~Finance.~~

6 (e)~~(f)~~ "De novo branch" means a branch of a bank
7 located in a host state which:

8 1. Is originally established by the bank as a branch.
9 2. Does not become a branch of the bank as a result
10 of:

11 a. The acquisition of another bank or a branch of
12 another bank; or

13 b. The merger, consolidation, or conversion involving
14 any such bank or branch.

15 (f)~~(g)~~ "Control" shall be construed consistently with
16 the provisions of 12 U.S.C. s. 1841(a)(2).

17 (g)~~(h)~~ "Failing financial entity" means an
18 out-of-state state bank that has been determined by its home
19 state regulator or the appropriate federal regulatory agency
20 to be imminently insolvent or to require immediate action to
21 prevent its probable failure.

22 (h)~~(i)~~ "Home state" means:

23 1. With respect to a state bank, the state by which
24 the bank is chartered.

25 2. With respect to a national bank, the state in which
26 the main office of the bank is located.

27 3. With respect to a foreign bank, the state
28 determined to be the home state of such foreign bank under 12
29 U.S.C. s. 3103(c).

30
31

1 (i)~~(j)~~ "Home state regulator" means, with respect to
2 an out-of-state state bank, the bank's regulatory agency of
3 the state in which such bank is chartered.

4 (j)~~(k)~~ "Host state" means a state, other than the home
5 state of a bank, in which the bank maintains or seeks to
6 establish and maintain a branch.

7 (k)~~(l)~~ "Insured depository institution" has the
8 meaning set forth in 12 U.S.C. s. 1813(c)(2) and (3).

9 (l)~~(m)~~ "Interstate merger transaction" means the
10 merger or consolidation of banks with different home states,
11 and the conversion of branches of any bank involved in the
12 merger or consolidation into branches of the resulting bank.

13 (m)~~(n)~~ "Out-of-state bank" means a bank whose home
14 state is a state other than this state.

15 (n)~~(o)~~ "Out-of-state state bank" means a bank
16 chartered under the laws of any state other than this state.

17 (o)~~(p)~~ "Resulting bank" means a bank that has resulted
18 from an interstate merger transaction under this section.

19 (p)~~(q)~~ "State" means any state of the United States,
20 the District of Columbia, any territory of the United States,
21 Puerto Rico, Guam, American Samoa, the Trust Territory of the
22 Pacific Islands, the Virgin Islands, and the Northern Mariana
23 Marian Islands.

24 (q)~~(r)~~ "Florida bank" means a bank whose home state is
25 this state.

26 (r)~~(s)~~ "State bank" means a bank chartered under the
27 laws of this state.

28 (6) AUTHORITY OF STATE BANKS TO ESTABLISH INTERSTATE
29 BRANCHES BY MERGER.--~~Beginning May 31, 1997,~~With the prior
30 written approval of the office ~~department~~, a state bank may
31 establish, maintain, and operate one or more branches in a

1 state other than this state pursuant to an interstate merger
2 transaction in which the state bank is the resulting bank. No
3 later than the date on which the required application for the
4 interstate merger transaction is filed with the responsible
5 federal bank regulatory agency, the applicant state bank shall
6 file an application on a form prescribed by the commission
7 ~~department~~ accompanied by the required fee pursuant to s.
8 658.73. The applicant shall also comply with the provisions of
9 ss. 658.40-658.45.

10 (8) NOTICE AND FILING REQUIREMENTS.--Any out-of-state
11 bank that will be the resulting bank pursuant to an interstate
12 merger transaction involving a Florida bank shall notify the
13 office ~~department~~ of the proposed merger within 15 days after
14 the date on which it files an application for an interstate
15 merger transaction with the appropriate federal regulatory
16 agency.

17 (9) EXAMINATIONS; PERIODIC REPORTS; COOPERATIVE
18 AGREEMENTS; ASSESSMENT OF FEES.--

19 (a) The office ~~department~~ may examine any Florida
20 branch of an out-of-state state bank which the office
21 ~~department~~ deems necessary for the purpose of determining
22 whether the branch is being operated in compliance with the
23 laws of this state and in accordance with safe and sound
24 banking practices.

25 (b) The office ~~department~~ may enter into cooperative,
26 coordinating or information-sharing agreements with other bank
27 regulatory agencies or any organization affiliated with or
28 representing one or more bank regulatory agencies to
29 facilitate the regulation of out-of-state state branches doing
30 business in this state.

31

1 (c) The office ~~department~~ may accept reports of
2 examinations or investigations, or other records from other
3 regulatory agencies having concurrent jurisdiction over a
4 state bank or a bank holding company that controls
5 out-of-state state banks that operate branches in this state
6 in lieu of conducting its own examinations or investigations.

7 (d) The office ~~department~~ may assess supervisory and
8 examination fees that shall be payable by state banks and
9 out-of-state state bank holding companies doing business in
10 this state in connection with the office's ~~department's~~
11 performance of its duties under this section and as prescribed
12 by the commission ~~department~~. Such fees may be shared with
13 other bank regulatory agencies or any organizations affiliated
14 with or representing one or more bank regulatory agencies in
15 accordance with agreements between them and the office
16 ~~department~~.

17 (11) ENFORCEMENT.--

18 (a) If the office ~~department~~ determines that a branch
19 maintained by an out-of-state state bank in this state is
20 being operated in violation of any provision of law of this
21 state, or that such branch is being operated in an unsafe and
22 unsound manner, the office ~~department~~ may take all such
23 enforcement actions as it would be empowered to take if the
24 branch were a state bank, provided that the office ~~department~~
25 shall promptly give notice to the home state regulator of each
26 enforcement action taken against an out-of-state state bank
27 and, to the extent practicable, shall consult and cooperate
28 with the home state regulator in pursuing and resolving said
29 enforcement action.

30 (b) The office ~~department~~ may take any action jointly
31 with other regulatory agencies having concurrent jurisdiction

1 over out-of-state banks and bank holding companies that
2 operate branches in this state, or take such action
3 independently, to carry out its responsibilities.

4 (12) NOTICE OF SUBSEQUENT MERGER.--

5 (a) Each out-of-state state bank that has established
6 and maintains a branch in this state pursuant to this section
7 shall give at least 30 days' prior written notice to the
8 office ~~department~~ of any merger, consolidation, or other
9 transaction that would cause a change of control pursuant to
10 home state or federal law with respect to such bank or any
11 bank holding company that controls such bank.

12 (b) Notwithstanding any other provisions of the
13 financial institutions' codes or of chapter 120, in the case
14 of a failing financial entity, the office ~~department~~ shall
15 have the power, with the concurrence of the appropriate
16 regulatory agency, to issue an emergency order authorizing:

17 1. The merger or interstate merger transaction of any
18 such failing financial entity with a state bank or bank
19 holding company that controls a state bank;

20 2. Any bank to acquire assets and assume liabilities
21 of the Florida branches of any such failing financial entity;

22 3. The conversion of any such failing financial entity
23 into a state bank or trust company;

24 4. The chartering of a new state bank to acquire the
25 Florida branches of any such failing financial entity; or

26 5. The chartering of a new state trust company to
27 acquire assets and assume liabilities and rights, powers, and
28 responsibilities as fiduciary of such failing financial
29 entity.

30 (13) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.--

31

1 (a) With the prior approval of the office ~~department~~,
2 any state bank may establish and maintain a de novo branch or
3 acquire a branch in a state other than this state.

4 (b) A state bank desiring to establish and maintain a
5 branch in another state pursuant to s. 658.26 shall pay the
6 branch application fee set forth in s. 658.73. In acting on
7 the application, the office ~~department~~ shall consider the
8 views of the appropriate bank regulatory agencies.

9 Section 1777. Paragraph (d) of subsection (1) and
10 subsection (4) of section 658.296, Florida Statutes, are
11 amended to read:

12 658.296 Control of deposit-taking institutions.--

13 (1) As used in this section, unless the context
14 clearly requires otherwise:

15 (d) "Control" has the meaning set forth in s. 2(a)(2)
16 and (3) of the federal Bank Holding Company Act of 1956, as
17 amended, 12 U.S.C. s. 1841(a)(2) and (3), except that the
18 reference therein to "the Board" shall be deemed to refer to
19 the office ~~department~~.

20 (4) The office ~~department~~ shall have the power to
21 enforce the prohibitions of this section by seeking to enjoin
22 any violation, by issuing cease and desist orders, by imposing
23 administrative fines, or by any other remedies that are
24 provided by law.

25 Section 1778. Section 658.32, Florida Statutes, is
26 amended to read:

27 658.32 Annual meetings.--Unless otherwise approved by
28 the office ~~department~~, the annual meeting of stockholders of a
29 state bank or trust company shall be held on such day in the
30 first 4 months of each year as is specified therefor in the
31 articles of incorporation or in the bylaws of the corporation;

1 however, when the day fixed in the articles of incorporation
2 or in the bylaws for the regular annual meeting of the
3 stockholders falls on a legal holiday, the annual meeting of
4 stockholders shall be held on the next following day which is
5 not a legal holiday.

6 Section 1779. Subsections (3), (4), and (5) of section
7 658.33, Florida Statutes, are amended to read:

8 658.33 Directors, number, qualifications; officers.--

9 (3) Within 30 days following the annual meeting or any
10 other meeting at which directors or officers are elected, the
11 bank or trust company must submit to the office ~~department~~ the
12 names and residence addresses of those persons on a form
13 adopted by the commission and provided by the office
14 ~~department~~.

15 (4) Each director, upon assuming office, must
16 acknowledge that he or she is familiar with his or her
17 responsibilities as a director and that he or she will
18 diligently and honestly administer the affairs of the bank or
19 trust company and will not knowingly violate, or willfully
20 permit to be violated, any of the provisions of the financial
21 institutions codes or pertinent rules of the commission
22 ~~department~~. The signed copy of such oath must be filed with
23 the office ~~department~~ within 30 days after election.

24 (5) The president or chief executive officer of a bank
25 or trust company must have had at least 1 year of direct
26 experience as an executive officer, director, or regulator of
27 a financial institution within the last 3 years. This
28 requirement may be waived by the office ~~department~~ after
29 considering the overall experience and expertise of the
30 proposed officer.

31

1 Section 1780. Subsections (3) and (4) of section
2 658.34, Florida Statutes, are amended to read:

3 658.34 Shares of capital stock.--

4 (3) With the approval of the office ~~department~~, a bank
5 or trust company may issue preferred stock of one or more
6 classes in an amount and with a par value as approved by the
7 office ~~department~~.

8 (4) With the approval of the office ~~department~~, a bank
9 or trust company may issue less than all the number of shares
10 of any of its capital stock authorized by its articles of
11 incorporation. Such authorized but unissued shares may be
12 issued only for the following purposes:

13 (a) To provide for stock options as provided in s.
14 658.35.

15 (b) To declare or pay a stock dividend; however, any
16 such stock dividend must comply with the provisions of this
17 section and s. 658.37.

18 (c) To increase the capital of the bank or trust
19 company, with the approval of the office ~~department~~.

20 Section 1781. Subsection (1) of section 658.35,
21 Florida Statutes, is amended to read:

22 658.35 Share options; warrants.--

23 (1) After obtaining the approval of the majority of
24 the board of directors, the majority of the holders of common
25 stock of the bank, and the office ~~department~~ and after
26 complying with the provisions of s. 607.0624, any bank or
27 trust company may, for the purpose of providing share options
28 for or issuing warrants to one or more of its directors,
29 officers, or employees, hold authorized but unissued, or
30 purchase or otherwise acquire and hold, shares of its own
31

1 capital stock in an amount not to exceed 20 percent of the
2 total number of shares outstanding.

3 Section 1782. Section 658.36, Florida Statutes, is
4 amended to read:

5 658.36 Changes in capital.--

6 (1) No state bank or trust company shall reduce its
7 outstanding capital stock without first obtaining the approval
8 of the office department, and such approval shall be withheld
9 if the reduction will cause the outstanding capital stock to
10 be less than the minimum required pursuant to the financial
11 institutions codes.

12 (2) Any state bank or trust company may, with the
13 approval of the office department, provide for an increase in
14 its capital stock.

15 Section 1783. Section 658.37, Florida Statutes, is
16 amended to read:

17 658.37 Dividends and surplus.--The directors of any
18 bank or trust company, after charging off bad debts,
19 depreciation, and other worthless assets if any, and making
20 provision for reasonably anticipated future losses on loans
21 and other assets, may quarterly, semiannually, or annually
22 declare a dividend of so much of the aggregate of the net
23 profits of that period combined with its retained net profits
24 of the preceding 2 years as they shall judge expedient, and,
25 with the approval of the office department, any bank or trust
26 company may declare a dividend from retained net profits which
27 accrued prior to the preceding 2 years, but each bank or trust
28 company shall, before the declaration of a dividend on its
29 common stock, carry 20 percent of its net profits for such
30 preceding period as is covered by the dividend to its surplus
31 fund, until the same shall at least equal the amount of its

1 common and preferred stock then issued and outstanding. No
2 bank or trust company shall declare any dividend at any time
3 at which its net income from the current year combined with
4 the retained net income from the preceding 2 years is a loss
5 or which would cause the capital accounts of the bank or trust
6 company to fall below the minimum amount required by law,
7 regulation, order, or any written agreement with the office
8 ~~department~~ or a state or federal regulatory agency. A bank or
9 trust company may, however, split up or divide the issued
10 shares of capital stock into a greater number of shares
11 without increasing or decreasing the capital accounts of the
12 bank or trust company, and such shall not be construed to be a
13 dividend within the meaning of this section.

14 Section 1784. Section 658.39, Florida Statutes, is
15 amended to read:

16 658.39 Stockholders; examination of records.--No bank,
17 trust company, or financial institution-affiliated party shall
18 permit any stockholder, other than a qualified director,
19 officer, or employee thereof, to have access to, or to examine
20 or inspect, any of the books or records of such bank or trust
21 company other than its general statement of condition of its
22 general assets and liabilities, the quarterly reports of
23 condition and quarterly reports of income required to be
24 submitted to the office ~~department~~ pursuant to s. 655.045, and
25 a list of shareholders as provided in s. 655.057.

26 Section 1785. Subsection (4) of section 658.40,
27 Florida Statutes, is amended to read:

28 658.40 Definitions for merger and consolidation.--As
29 used in the provisions of this code relating to the merger and
30 consolidation of banks and trust companies, unless the context
31 requires otherwise:

1 (4) "Successor institution" means a banking
2 corporation or a trust company organized under the laws of
3 this state to which the office ~~department~~ has not issued a
4 certificate of authorization, as provided in s. 658.25, to
5 conduct a banking business or trust business, the sole purpose
6 of the organization of which is to facilitate a plan of
7 merger, reorganization, or consolidation.

8 Section 1786. Subsection (1) of section 658.41,
9 Florida Statutes, is amended to read:

10 658.41 Merger; resulting state or national bank.--

11 (1) Upon filing of an application with the office
12 ~~department~~ by the constituent banks or trust companies, and
13 upon approval by the office ~~department~~, banks and state trust
14 companies may be merged with a resulting state bank or state
15 trust company, as prescribed in this code, except that the
16 action by a constituent national bank shall be taken in the
17 manner prescribed by, and shall be subject to, any limitations
18 or requirements imposed by any law of the United States
19 applicable thereto, which shall also govern the rights of its
20 dissenting shareholders; and the terms and provisions of the
21 plan of merger and merger agreement required by s. 658.42, as
22 they relate to a constituent national bank, shall conform with
23 such federal laws. The application shall be accompanied by a
24 plan of merger and merger agreement as provided in s. 658.42.

25 Section 1787. Paragraphs (d) and (f) of subsection (1)
26 and subsection (2) of section 658.42, Florida Statutes, are
27 amended to read:

28 658.42 Plan of merger and merger agreement.--

29 (1) If the resulting bank or trust company will be a
30 state bank or a state trust company, the constituent banks or
31 trust companies shall adopt a plan of merger and merger

1 agreement stating the method, terms, and conditions of the
2 merger, including the rights of the stockholders of each
3 constituent bank or trust company and all agreements
4 concerning the merger. The board of directors of each
5 constituent bank or trust company shall, by a majority of the
6 entire board, approve the plan of merger and merger agreement
7 which shall contain:

8 (d) A statement that the plan and agreement are
9 subject to approval by the office ~~department~~ and by the
10 stockholders of each constituent bank or trust company.

11 (f) Such additional provisions not contrary to law as
12 may be agreed upon by the constituent banks and trust
13 companies and such other provisions as the office ~~department~~
14 requires to enable it to discharge its duties with respect to
15 the merger.

16 (2) In connection with the organization of a successor
17 institution, a showing and finding of public convenience and
18 advantage for the organization of a new state bank or state
19 trust company is not required; and the commission ~~department~~
20 shall adopt special rules relating to the formation,
21 organization, approval, and chartering of successor
22 institutions which omit or waive such of the provisions of ss.
23 658.16-658.26 as are not essential to safeguard the public
24 interest and the safety and soundness of state banks and state
25 trust companies, but no certificate of authorization to
26 conduct a banking business or trust business shall be issued
27 to a successor institution unless a certificate of merger, as
28 provided in s. 658.45, is issued pursuant to the plan of
29 merger and merger agreement. However, nothing in this
30 subsection shall be construed as waiving or otherwise
31 impairing the public-interest requirement in s. 658.43(3)(d).

1 Section 1788. Section 658.43, Florida Statutes, is
2 amended to read:

3 658.43 Approval by office ~~department~~; valuation of
4 assets; emergency action.--

5 (1) After approval by the board of directors of each
6 constituent bank or trust company, the plan of merger and
7 merger agreement shall be submitted to the office ~~department~~
8 for approval, together with a certified copy of the
9 authorizing resolutions of the board of directors of each
10 constituent state bank or state trust company showing approval
11 by a majority of the entire board of directors of each such
12 state bank or state trust company, and evidence of proper
13 action by the board of directors of any constituent national
14 bank.

15 (2) Without approval by the office ~~department~~, no
16 asset shall be carried on the books of the resulting state
17 bank or state trust company at a valuation higher than that on
18 the books of the constituent bank or trust company at the time
19 of the last examination by a state or national bank or trust
20 company examiner before the effective date of the merger.

21 (3) The office ~~department~~ shall approve the plan of
22 merger and merger agreement if it appears that:

23 (a) The resulting state bank or state trust company
24 meets all the requirements of state law as to the formation of
25 a new state bank or state trust company, except that this
26 provision shall not apply to the establishment of branches by
27 merger as provided in s. 658.26.

28 (b) The agreement provides an adequate capital
29 structure, including surplus, of the resulting state bank or
30 state trust company in relation to its activities which are to
31

1 continue or are to be undertaken, and also in relation to its
2 deposit liabilities in the case of a resulting state bank.

3 (c) The valuation is fair.

4 (d) The merger is not contrary to the public interest.

5
6 If the office ~~department~~ disapproves a plan of merger or
7 merger agreement, it shall state its objections and, the
8 provisions of chapter 120 notwithstanding, give an opportunity
9 to the constituent banks, trust companies, or banks and trust
10 companies to amend the plan of merger and merger agreement to
11 obviate such objections.

12 (4) If the resulting state bank is not to have trust
13 powers, the office ~~department~~ shall not approve a merger until
14 adequate provision has been made for successors to fiduciary
15 positions held by any constituent trust company or any
16 constituent bank.

17 (5) Approval by the office ~~department~~, by final order
18 or otherwise, of a plan of merger or merger agreement shall be
19 deemed subject to approval of the plan of merger and merger
20 agreement by the stockholders of each constituent bank or
21 trust company as provided in s. 658.44(1) and shall also be
22 deemed subject to approval of the merger and the plan of
23 merger and merger agreement by each appropriate federal
24 regulatory agency. Unless all such approvals have been
25 obtained and proper evidence thereof submitted to the office
26 ~~department~~ within 6 months after the approval by the office
27 ~~department~~, the approval by the office ~~department~~ of the plan
28 of merger and merger agreement shall be deemed to be revoked
29 and terminated; however, the office ~~department~~ on its own
30 motion, or at the request of the constituent banks or trust
31

1 companies for good cause shown, may extend the time for a
2 period not exceeding 6 months.

3 (6) No merger with a resulting state bank or trust
4 company shall take place or be effective without the issuance
5 by the office ~~department~~ of a certificate of merger.

6 (7) Notwithstanding any other provisions of the
7 financial institutions codes or of chapter 120, if the office
8 ~~department~~ or the appropriate federal regulatory agency finds
9 that immediate action is necessary in order to prevent the
10 probable failure of one or more banks, associations, or trust
11 companies, which in this subsection may be referred to as a
12 "failing financial entity," the office ~~department~~ shall have
13 the power, with the concurrence of the appropriate federal
14 regulatory agency in the case of any bank or association the
15 deposits of which are insured by the Federal Deposit Insurance
16 Corporation, to issue an emergency order authorizing:

17 (a) The merger of any such failing financial entity
18 with a state bank;

19 (b) The merger of any such failing financial entity
20 with a state trust company;

21 (c) Any state bank to acquire assets and assume
22 liabilities of any such failing financial entity, including
23 all rights, powers, and responsibilities as fiduciary in
24 instances where the failing financial institution is actively
25 engaged in the exercise of trust powers;

26 (d) Any state trust company to acquire assets and
27 assume liabilities of any such failing trust company and
28 rights, powers, and responsibilities as fiduciary of such
29 failing trust company;

30 (e) The conversion of any such failing financial
31 entity into a state bank or trust company;

1 (f) The chartering of a new state bank or state
2 association to acquire assets and assume liabilities of any
3 such failing financial entity and to assume rights, powers,
4 and responsibilities as fiduciary in cases where such failing
5 financial entity is engaged in the exercise of trust powers;
6 or

7 (g) The chartering of a new state trust company to
8 acquire assets and assume liabilities and rights, powers, and
9 responsibilities as fiduciary of such failing trust company.

10
11 Any such finding by the office ~~department~~ shall be based upon
12 reports furnished to it by a state bank, association, or trust
13 company examiner or by a federal bank or association examiner
14 or upon other evidence from which it is reasonable to conclude
15 that any such bank, association, or trust company is insolvent
16 or is threatened with imminent insolvency. The office
17 ~~department~~ may disallow illegally obtained currency, monetary
18 instruments, funds, or other financial resources from the
19 capitalization requirements of this section. The stockholders
20 of a failing bank, association, or trust company that is
21 acquired by another bank or trust company pursuant to this
22 subsection shall be entitled to the same procedural rights and
23 to compensation for the remaining value of their shares as is
24 provided for dissenters in s. 658.44, except that they shall
25 have no right to vote against the transaction. Any transaction
26 authorized by this subsection may be accomplished through the
27 organization of a successor institution.

28 Section 1789. Subsections (1), (5), and (9) of section
29 658.44, Florida Statutes, are amended to read:

30 658.44 Approval by stockholders; rights of dissenters;
31 preemptive rights.--

1 (1) The office ~~department~~ shall not issue a
2 certificate of merger to a resulting state bank or trust
3 company unless the plan of merger and merger agreement, as
4 adopted by a majority of the entire board of directors of each
5 constituent bank or trust company, and as approved by each
6 appropriate federal regulatory agency and by the office
7 ~~department~~, has been approved:

8 (a) By the stockholders of each constituent national
9 bank as provided by, and in accordance with the procedures
10 required by, the laws of the United States applicable thereto,
11 and

12 (b) After notice as hereinafter provided, by the
13 affirmative vote or written consent of the holders of at least
14 a majority of the shares entitled to vote thereon of each
15 constituent state bank or state trust company, unless any
16 class of shares of any constituent state bank or state trust
17 company is entitled to vote thereon as a class, in which event
18 as to such constituent state bank or state trust company the
19 plan of merger and merger agreement shall be approved by the
20 stockholders upon receiving the affirmative vote or written
21 consent of the holders of a majority of the shares of each
22 class of shares entitled to vote thereon as a class and of the
23 total shares entitled to vote thereon. Such vote of
24 stockholders of a constituent state bank or state trust
25 company shall be at an annual or special meeting of
26 stockholders or by written consent of the stockholders without
27 a meeting as provided in s. 607.0704.

28
29 Approval by the stockholders of a constituent bank or trust
30 company of a plan of merger and merger agreement shall
31 constitute the adoption by the stockholders of the articles of

1 incorporation of the resulting state bank or state trust
2 company as set forth in the plan of merger and merger
3 agreement.

4 (5) The value of dissenting shares of each constituent
5 state bank or state trust company, the owners of which have
6 not accepted an offer for such shares made pursuant to
7 subsection (3), shall be determined as of the effective date
8 of the merger by three appraisers, one to be selected by the
9 owners of at least two-thirds of such dissenting shares, one
10 to be selected by the board of directors of the resulting
11 state bank, and the third to be selected by the two so chosen.
12 The value agreed upon by any two of the appraisers shall
13 control and be final and binding on all parties. If, within
14 90 days from the effective date of the merger, for any reason
15 one or more of the appraisers is not selected as herein
16 provided, or the appraisers fail to determine the value of
17 such dissenting shares, the office ~~department~~ shall cause an
18 appraisal of such dissenting shares to be made which will be
19 final and binding on all parties. The expenses of appraisal
20 shall be paid by the resulting state bank or trust company.

21 (9) After approval of the plan of merger and merger
22 agreement by the stockholders as provided in subsection (1),
23 there shall be filed with the office ~~department~~, within 30
24 days after the time limit in s. 658.43(5), a fully executed
25 counterpart of the plan of merger and merger agreement as so
26 approved if it differs in any respect from any fully executed
27 counterpart thereof theretofore filed with the office
28 ~~department~~, and copies of the resolutions approving the same
29 by the stockholders of each constituent bank or trust company,
30 certified by the president, or chief executive officer if
31 other than the president, and the cashier or corporate

1 secretary of each constituent bank or trust company,
2 respectively, with the corporate seal impressed thereon.

3 Section 1790. Subsections (1) and (4) of section
4 658.45, Florida Statutes, are amended to read:

5 658.45 Certificate of merger and effective date;
6 effect on charters and powers.--

7 (1) Promptly upon compliance with the provisions of s.
8 658.44(9), the office ~~department~~ shall issue to the resulting
9 bank a certificate of merger setting forth the name of each
10 constituent bank and trust company, the name of the resulting
11 bank or trust company, and the effective date of the merger
12 which, unless the office ~~department~~ for good cause determines
13 otherwise, shall be the date requested by the resulting bank
14 if such request was made at the time of compliance with the
15 requirements of s. 658.44(9), but not later than 3 months
16 after the date of such compliance. On the effective date of
17 the merger, the charters and franchises of the constituent
18 banks and trust companies, other than the resulting bank or
19 trust company, shall be deemed terminated and surrendered. The
20 certificate of merger shall be conclusive evidence of the
21 merger and of the correctness of all proceedings therefor in
22 all courts and places and may be recorded in any office for
23 the recording of deeds.

24 (4)(a) If the resulting state bank is to have trust
25 powers and if one or more of the parties to the merger is a
26 state trust company or a bank having an existing trust
27 department operating pursuant to trust powers theretofore
28 granted by the office ~~department~~, in the case of a constituent
29 state bank, or by the appropriate federal regulatory
30 authority, in the case of a constituent national bank, such
31 trust powers shall pass to the resulting state bank; and it

1 shall have and may exercise trust powers in the same manner
2 and to the same extent as the constituent banks or trust
3 companies to which such trust powers were originally issued,
4 and no application to have or to continue to have or exercise
5 trust powers shall be required. However, if the name of the
6 resulting state bank differs from that of a constituent state
7 trust company or a constituent bank having trust powers, the
8 office ~~department~~ shall issue a certificate to the resulting
9 state bank showing its right to exercise the trust powers
10 theretofore granted to the constituent banks or trust
11 companies. All fiduciary relationships and capacities of all
12 the constituent banks and trust companies shall, by operation
13 of law, pass to and be assumed by the resulting bank having
14 trust powers, in the same manner and to the same extent as
15 such fiduciary capacities and relationships were held by any
16 constituent bank or trust company.

17 (b) Upon the merger of two or more state trust
18 companies, the resulting state trust company shall continue to
19 have and exercise the trust powers of the constituent trust
20 companies, and no application to have or to continue to
21 exercise trust powers shall be required. However, if the name
22 of the resulting state trust company differs from that of any
23 of the constituent trust companies, the office ~~department~~
24 shall issue a certificate to the resulting state trust company
25 showing its right to exercise the trust powers theretofore
26 granted to the constituent trust companies. All fiduciary
27 relationships and capacities of the constituent state trust
28 companies shall pass to and be assumed by the resulting state
29 trust company by operation of law.

30
31

1 Section 1791. Paragraph (b) of subsection (1),
2 paragraph (e) of subsection (5), and subsection (9) of section
3 658.48, Florida Statutes, are amended to read:

4 658.48 Loans.--A state bank may make loans and
5 extensions of credit, with or without security, subject to the
6 following limitations and provisions:

7 (1) LOANS; GENERAL LIMITATIONS.--

8 (b) The commission ~~department~~ may provide by rule for
9 securities margin requirements.

10 (5) SPECIAL PROVISIONS.--

11 (e) Loans based upon the security of real estate
12 mortgages shall be documented as first liens, except that
13 liens other than first liens may be taken:

14 1. To protect a loan previously made in good faith;

15 2. To further secure a loan otherwise amply and
16 entirely secured;

17 3. As additional security for Federal Housing
18 Administration Title 1 loans or loans made with participation
19 or guaranty by the Small Business Administration;

20 4. To secure a loan not in excess of 15 percent of the
21 capital accounts of the bank; or

22 5. As provided by rules of the commission ~~department~~.

23 (9) When a bank's capital has been diminished by
24 losses so that its ability to honor legally binding written
25 loan commitments is impaired, the office ~~department~~ may
26 approve limited expansion of the lending limitations set forth
27 in this section.

28 Section 1792. Subsection (2) and paragraph (i) of
29 subsection (3) of section 658.53, Florida Statutes, are
30 amended to read:

31 658.53 Borrowing; limits of indebtedness.--

1 (2) A state bank may at any time, pursuant to action
2 taken by its board of directors, and after obtaining the
3 written approval of the office department and the approval of
4 stockholders holding not less than two-thirds of the
5 outstanding stock of the bank entitled to vote, evidenced
6 either in a writing signed by the stockholders or by vote at a
7 legally called and held meeting of the stockholders, issue and
8 sell convertible and nonconvertible capital notes and
9 convertible and nonconvertible capital debentures having a
10 final maturity of not more than 25 years from the date of
11 issue, in such amounts and under such terms and conditions as
12 shall be approved by the office department. If deemed
13 necessary by the office department, reasonable provisions for
14 the amortization of the principal amount thereof may be
15 required. The principal amount of the capital notes and
16 capital debentures is subject to the limitations imposed by
17 this chapter on indebtedness of state banks and trust
18 companies. Capital notes and capital debentures issued
19 pursuant to the provisions of this subsection, and the claims
20 of holders thereof, shall be subordinate to the claims of
21 depositors and all other creditors of the issuing state bank,
22 regardless of whether the claims of, or the liability of the
23 issuing bank to, the depositors arose before or after the
24 issuance of such capital notes or debentures, but shall be
25 superior to the claims of shareholders for dividends, reserve
26 profits, or other claims on account of shares of capital stock
27 held by them. The holders of the capital notes and the
28 holders of the capital debentures shall not be held
29 individually responsible as such holders for any debts,
30 contracts, or engagements of the issuing state bank and shall
31 not be liable for assessments.

1 (3) No state bank or trust company shall at any time
2 be indebted, or in any way liable, to an amount exceeding the
3 amount of its unimpaired capital stock plus 50 percent of the
4 amount of its unimpaired surplus fund and unimpaired undivided
5 profits fund, except on account of demands of the nature
6 following:

7 (i) Liabilities incurred for moneys borrowed from a
8 bank when such borrowing is made with the express written
9 approval of the office ~~department~~.

10 Section 1793. Subsections (6), (7), and (8), paragraph
11 (c) of subsection (9), paragraph (a) of subsection (10), and
12 subsection (11) of section 658.67, Florida Statutes, are
13 amended to read:

14 658.67 Investment powers and limitations.--A bank may
15 invest its funds, and a trust company may invest its corporate
16 funds, subject to the following definitions, restrictions, and
17 limitations:

18 (6) INVESTMENTS IN CORPORATIONS.--Up to an aggregate
19 of 10 percent of the total assets of a bank may be invested in
20 the stock, obligations, or other securities of subsidiary
21 corporations or other corporations or entities, except that
22 during the first 3 years of existence of a bank, such
23 investments are limited to 5 percent of the total assets. Any
24 bank whose aggregate investment on June 30, 1992, exceeds the
25 limitation in this subsection has 5 years within which to
26 achieve compliance; additional time may be approved by the
27 office ~~department~~ if the office ~~department~~ finds that
28 compliance with this subsection will result in more than a
29 minimal loss to the bank. The commission ~~department~~ may, by
30 rule, further limit any type of investment made pursuant to
31

1 this subsection if it finds that such investment would
2 constitute an unsafe or unsound practice.

3 (7) INVESTMENTS IN REAL ESTATE AND EQUIPMENT.--A bank
4 or trust company may invest in real estate and equipment to
5 the extent hereinafter defined:

6 (a)1. Up to 60 percent of the capital accounts of the
7 bank or trust company may be invested in the direct ownership
8 of, or in leasehold interests in, land and buildings utilized
9 or to be utilized by the bank or trust company in the
10 transaction of its business. This limitation applies to
11 assets subject to a lease agreement which is required to be
12 capitalized under criteria issued by the Financial Accounting
13 Standards Board. In lieu of such investment in real estate,
14 with the prior written approval of the office ~~department~~, up
15 to 60 percent of the capital accounts of the bank or trust
16 company may be invested in the stock of a corporation which
17 owns the land and buildings within which the business of the
18 bank or trust company is or will be transacted.

19 2. The real estate investment limitations provided by
20 this subsection may not be exceeded except with the prior
21 written approval of the office ~~department~~.

22 (b) A bank or trust company may own or lease
23 furniture, fixtures, machinery, and equipment such as may be
24 necessary to the transaction of its business.

25 (8) INVESTMENTS IN PERSONAL PROPERTY.--A bank or trust
26 company may own or lease personal property acquired upon the
27 specific request and for the use of a customer and may incur
28 such additional obligations as may be incident to becoming an
29 owner and lessor of such property. In addition, a bank or
30 trust company may purchase leases as provided by rules of the
31 commission ~~department~~.

1 (9) ACQUISITIONS OF PROPERTY AS SECURITY.--A bank or
2 trust company may acquire property of any kind to secure,
3 protect, or satisfy a loan or investment previously made in
4 good faith, and such property shall be entered on the books of
5 the bank or trust company and held and disposed of subject to
6 the following conditions and limitations:

7 (c) Unless an extension of time is approved in writing
8 by the office ~~department~~, real estate shall be sold or charged
9 off within 5 years of the date of acquisition, and personal
10 property shall be sold or charged off within 6 months of the
11 date of acquisition.

12 (10) SPECIAL PROVISIONS.--

13 (a) None of the bonds or other obligations described
14 in this section shall be eligible for investment in any amount
15 unless current as to all payments of principal and interest
16 and unless rated in one of the four highest classifications,
17 or, in the case of commercial paper, unless it is of prime
18 quality and of the highest letter and numerical rating, as
19 established by a nationally recognized rating service or any
20 comparable rating as determined by the office ~~department~~.
21 Bonds or other obligations which are unrated shall not be
22 eligible for investment unless otherwise supported as to
23 investment quality and marketability by a credit rating file
24 compiled and maintained in current status by the purchasing
25 bank or trust company.

26 (11) OTHER INVESTMENTS; SUBJECT TO ~~DEPARTMENTAL~~
27 APPROVAL.--A bank or trust company may make such other
28 investments as the commission ~~department~~ approves by rule.

29 Section 1794. Section 658.68, Florida Statutes, is
30 amended to read:

31 658.68 Liquidity.--

1 (1) A state bank must maintain a daily liquidity
2 position equal to at least 15 percent of its total transaction
3 accounts and 8 percent of its total nontransaction accounts,
4 less those deposits of public funds for which security has
5 been pledged as provided by law. Bank assets eligible to meet
6 the liquidity requirement are cash on hand, demand deposits
7 due from correspondent banks, and other investments and
8 short-term marketable securities as determined by rule of the
9 commission ~~department~~.

10 (2) Whenever a state bank fails to demonstrate
11 compliance with subsection (1), the bank shall not further
12 diminish its liquidity by making any new loans or discounts
13 otherwise than by discounting or purchasing bills of exchange
14 payable at sight, nor by paying any dividends of its profits
15 until compliance with the liquidity requirement of either has
16 been met. The office ~~department~~ may notify any bank whose
17 liquidity is below the amount required to be maintained to
18 make good such liquidity, and if the bank fails within 30 days
19 thereafter to achieve its liquidity requirement, the office
20 ~~department~~ may determine the bank insolvent and may appoint a
21 liquidator to wind up the business as provided in ss.
22 658.79-658.96.

23 Section 1795. Section 658.73, Florida Statutes, is
24 amended to read:

25 658.73 Fees and assessments.--

26 (1) Each state bank and state trust company shall pay
27 to the office ~~department~~ examination fees and assessments as
28 follows:

29 (a) A semiannual fee of \$2,500; and

30 (b) A semiannual assessment, each in such amount as
31 may be determined by the commission ~~department~~, by rule, but

1 not exceeding 15 cents for each \$1,000 of total assets as
2 shown on the statement of condition of the bank or trust
3 company as of the last business day in June and the last
4 business day in December in each year. In its determination,
5 the commission ~~department~~ may consider examination fees and
6 application fees received from banks and trust companies in
7 setting the semiannual assessment for purposes of meeting the
8 cost of regulation of banks and trust companies subject to
9 this chapter.

10 (2) Applications filed with the office ~~department~~
11 shall be accompanied by payment of the following nonrefundable
12 fees:

13 (a) Fifteen thousand dollars for each application for
14 authority to organize a new state bank or state trust company.

15 (b) Two thousand five hundred dollars for each
16 application by an existing bank or association for trust
17 powers.

18 (c) Seven thousand five hundred dollars for each
19 application for authority to acquire a controlling interest in
20 a state bank or state trust company; however, if more than one
21 bank or trust company is being acquired in any such
22 application, the fee shall be increased by \$3,500 for each
23 additional bank or trust company. However, in no event shall
24 the fee exceed \$15,000.

25 (d) Seven thousand five hundred dollars for each
26 application for conversion of a national bank to a state bank.

27 (e) One thousand five hundred dollars for each
28 application to establish a branch by any other state bank or
29 state trust company that does not qualify for the branch
30 notification process.

31

1 (f) One thousand five hundred dollars for each
2 application for authority to establish a trust service office
3 of a state trust company or of a trust department of a state
4 bank or association, and a like amount for each application by
5 a bank or association with trust powers which is not a state
6 bank or state association for authority to establish a trust
7 service office at a state bank, state association, or state
8 credit union.

9 (g) Seven thousand five hundred dollars for each
10 application for a merger or consolidation; however, if three
11 or more banks or trust companies are involved in any such
12 application, the fee shall be \$3,500 for each involved
13 institution. However, in no event shall the fee exceed
14 \$15,000.

15 (h) Two thousand five hundred dollars to establish a
16 successor institution.

17 (i) Seven hundred fifty dollars for each application
18 by a state bank or trust company not operating in a safe and
19 sound manner for relocation of its main office.

20 (j) Two thousand five hundred dollars for each
21 application for the purchase of assets and the assumption of
22 liabilities.

23 (3) If, as a result of any application filed with the
24 office ~~department~~, the office ~~department~~ determines that an
25 examination is necessary to assess the financial condition of
26 any financial institution, the applying financial institution
27 shall pay to the office ~~department~~ a nonrefundable examination
28 fee, pursuant to s. 655.045(1).

29 (4) Each state bank and state trust company shall pay
30 to the office ~~department~~ \$25 for each "certificate of good
31 standing" certifying that a state-chartered financial

1 institution is licensed to conduct business in this state
2 under the financial institutions codes. All such requests
3 shall be in writing. The office ~~department~~ shall waive this
4 fee when the request is by a state or federal regulatory
5 agency or law enforcement agency.

6 (5) The amounts of all fees and assessments provided
7 for in this section shall be deemed to be maximum amounts; and
8 the commission ~~department~~ has the authority to establish, by
9 rule, and from time to time to change, fees and assessments in
10 amounts less than the maximum amounts stated in this section.

11 Section 1796. Section 658.79, Florida Statutes, is
12 amended to read:

13 658.79 Taking possession of insolvent state banks or
14 trust companies.--Whenever the office ~~department~~ has reason to
15 conclude, based upon the reports furnished to it by a state
16 bank or trust company examiner or upon other satisfactory
17 evidence, that any state bank or trust company:

- 18 (1) Is insolvent or imminently insolvent; or
19 (2) Is transacting its business in an unsound, unsafe,
20 or unauthorized manner such that it is threatened with
21 imminent insolvency,

22
23 the office ~~department~~ may, in its discretion, forthwith
24 designate and appoint a liquidator or receiver to take charge
25 of the assets and affairs of such bank or trust company and
26 require of him or her such bond and security as the office
27 ~~department~~ deems proper, not exceeding double the amount that
28 may come into his or her hands. The office ~~department~~ may
29 enlist the services of any state or local law enforcement
30 agency in taking possession and securing the assets of the
31 bank or trust company.

1 Section 1797. Section 658.80, Florida Statutes, is
2 amended to read:

3 658.80 Appointment of receiver or liquidator.--

4 (1) Upon taking possession of a state bank or trust
5 company pursuant to s. 658.79, the office ~~department~~ shall
6 appoint either a receiver to conserve the assets of the
7 institution or a liquidator to liquidate the assets of the
8 institution and wind up its affairs.

9 (2) The Federal Deposit Insurance Corporation or any
10 appropriate federal agency shall be appointed by the office
11 ~~department~~ as receiver or liquidator of any state bank, the
12 deposits of which are to any extent insured by the
13 corporation, and which shall have been closed by the office
14 ~~department~~. Upon appointment, the corporation may act without
15 bond as receiver or liquidator and shall have and possess all
16 the powers and privileges provided by the laws of this state
17 with respect to a receiver or liquidator, respectively, of
18 such institution, its depositors and other creditors. If the
19 corporation declines to accept the tendered appointment, the
20 office ~~department~~ may appoint and thereafter dismiss or
21 replace such other receiver or liquidator as deemed necessary
22 or advisable.

23 Section 1798. Section 658.81, Florida Statutes, is
24 amended to read:

25 658.81 Office ~~Department~~ action; notice and court
26 confirmation.--The office ~~department~~, immediately upon
27 appointing such liquidator or receiver, shall serve notice
28 upon any other person having the charge or management of any
29 such bank or trust company, informing him or her of its action
30 in appointing such liquidator or receiver and notifying him or
31 her that the office ~~department~~ will apply on a date named

1 therein, not to exceed 10 days from the date of service of
2 such notice, to a circuit judge in the court circuit in which
3 the principal office of such bank or trust company is located
4 for an order confirming its action. A copy of such
5 application together with a notice of hearing thereon shall be
6 served on the person receiving the above notice prior to the
7 time set for such hearing. Such proceedings shall be given
8 precedence over other cases pending in such court and shall in
9 every way be expedited. Upon the office's ~~department's~~
10 showing at the hearing on such application that such bank or
11 trust company is insolvent or threatened with imminent
12 insolvency, the court shall enter an order confirming the
13 action of the office ~~department~~ and the appointment of such
14 liquidator or receiver; otherwise, the court shall enter an
15 order dismissing the liquidator or receiver, and such
16 liquidator or receiver shall relinquish his or her control
17 over the assets and affairs of such bank or trust company.

18 Section 1799. Subsections (2) and (3) of section
19 658.82, Florida Statutes, are amended to read:

20 658.82 Receiver; powers and duties.--

21 (2) Any other receiver appointed pursuant to s. 658.80
22 shall be subject to the supervision of the office ~~department~~
23 and shall have the power to:

24 (a) Take possession of the books, records, and assets
25 of every description of the bank or trust company and sue for
26 and collect all debts, dues, and claims belonging to the bank
27 or trust company;

28 (b) Operate the business of the bank or trust company
29 pursuant to the authority granted by its articles of
30 incorporation and the laws of this state in an effort to
31 manage and conserve the assets of the bank or trust company

1 and place such bank or trust company in a sound, safe, and
2 solvent condition;

3 (c) Sue for and defend, compromise, and settle all
4 claims involving the bank or trust company;

5 (d) Subject to approval by the circuit court, sell any
6 or all real and personal property of the bank or trust company
7 and sell or compound all bad or doubtful debts;

8 (e) Pay all expenses of the receivership, which
9 expenses shall be a first charge against the assets of the
10 bank or trust company;

11 (f) Borrow such sum of money as may be necessary or
12 expedient to protect and conserve the assets and business of
13 the bank or trust company and, in connection therewith, to
14 secure such borrowings by the pledge, hypothecation, or
15 mortgage of the assets of the bank or trust company; and

16 (g) If necessary to pay the debts of such bank or
17 trust company, sue for and enforce the individual liability of
18 the stockholders.

19 (3) Within 30 days of her or his appointment, the
20 receiver shall file a statement of condition of the bank or
21 trust company with the office department, in addition to such
22 other interim reports as the office department may require.
23 Upon receipt of the report of condition, the office department
24 may:

25 (a) Upon a finding that the bank or trust company is
26 in a safe, sound, and solvent condition, surrender possession
27 of such bank or trust company bank to its directors for the
28 purpose of permitting the bank or trust company to resume
29 business on such terms and conditions as the office department
30 shall prescribe;

31

1 (b) Appoint a liquidator to immediately liquidate the
2 assets of the bank or trust company and wind up its affairs;

3 (c) Grant a further period of time to the receiver to
4 rehabilitate the affairs of the bank or trust company; or

5 (d) Appoint a new receiver.

6 Section 1800. Subsections (2) and (3) of section
7 658.83, Florida Statutes, are amended to read:

8 658.83 Liquidator; powers and duties.--

9 (2) Any other liquidator appointed pursuant to s.
10 658.80 shall, subject to the supervision of the office
11 ~~department~~, have the power to:

12 (a) Take possession of the books, records, and assets
13 of every description of the bank or trust company and sue for
14 and collect all debts, dues, and claims belonging to the bank
15 or trust company;

16 (b) Sue for and defend, compromise, and settle all
17 claims involving the bank or trust company;

18 (c) Subject to approval by the circuit court, sell any
19 or all of the real and personal property of the bank or trust
20 company and sell or compound all bad or doubtful debts;

21 (d) Pay all expenses incurred in the liquidation
22 process, which expenses shall be a first charge against the
23 assets of the bank or trust company and shall be fully paid
24 before any final distribution or payment of dividends to
25 creditors, shareholders, or stockholders;

26 (e) Borrow such sum of money as may be necessary or
27 expedient in aiding in the liquidation of the bank or trust
28 company and, in connection therewith, to secure such
29 borrowings by the pledge, hypothecation, or mortgage of the
30 assets of the bank or trust company; and

31

1 (f) If necessary to pay the debts of such bank or
2 trust company, sue for and enforce the individual liability of
3 the stockholders.

4 (3) Such liquidator shall pay all moneys received to
5 the Chief Financial Officer ~~Treasurer~~ to be held as a special
6 deposit for the use and benefit of the creditors subject to
7 the order of the office ~~department~~ and also shall make reports
8 quarterly, or when called upon, to the office ~~department~~ of
9 all her or his acts and proceedings.

10 Section 1801. Subsection (3) of section 658.84,
11 Florida Statutes, is amended to read:

12 658.84 Transfers by banks and other acts in
13 contemplation of insolvency.--

14 (3) Except in any action brought by the office
15 ~~department~~, no attachment, injunction, or execution shall be
16 enforced against such financial institution or any of its
17 property before final judgment in any suit, action, or
18 proceeding in any state or federal court.

19 Section 1802. Section 658.90, Florida Statutes, is
20 amended to read:

21 658.90 Receivers or liquidators under supervision of
22 office ~~department~~.--The provisions of ss. 658.79-658.96 shall
23 apply to all receivers or liquidators of any bank or trust
24 company heretofore appointed by the order of any circuit
25 court, and all such receivers or liquidators, both those
26 hereunder and those hereafter appointed by the circuit court,
27 shall at all times be under the supervision and control of the
28 office ~~department~~ and subject at all times to summary
29 discharge and dismissal by it. Any vacancy in such
30 receivership may be filled by the office ~~department~~ at any
31 time.

1 Section 1803. Section 658.94, Florida Statutes, is
2 amended to read:

3 658.94 Prima facie evidence.--The general ledger, list
4 of claimants, examiner's final report made at the time of the
5 failure of the bank or trust company, and such other records
6 of the office's ~~department's~~ office relating to any closed
7 bank or trust company, or any duly authenticated copy thereof,
8 shall be prima facie evidence of the subject matter therein
9 set forth.

10 Section 1804. Section 658.95, Florida Statutes, is
11 amended to read:

12 658.95 Voluntary liquidation.--Any bank or trust
13 company may go into liquidation and be closed by a vote of its
14 stockholders owning two-thirds of its stock. Whenever a vote
15 is taken to go into liquidation, the board of directors shall
16 cause this fact to be certified to the office ~~department~~ and
17 publication thereof to be made for a period of 2 months in a
18 newspaper of general circulation located in the county in
19 which the bank or trust company is closing up its affairs and
20 notifying its creditors to present their claims against the
21 bank or trust company for payment.

22 Section 1805. Section 658.96, Florida Statutes, is
23 amended to read:

24 658.96 Procedure in voluntary liquidation.--When a
25 bank or trust company decides to go into voluntary
26 liquidation, the president and cashier, or other appropriate
27 officers, shall, before beginning publication of the notice
28 required by law, furnish the office ~~department~~ with a full and
29 complete detailed statement of the affairs of the bank or
30 trust company and shall thereafter forward to the office
31 ~~department~~ on the first Monday in each month a like detailed

1 statement until all of the liabilities of the bank or trust
2 company shall have been settled in full, provided that, if the
3 ~~office department~~ is not satisfied with the report of any bank
4 or trust company intending to go into voluntary liquidation,
5 or if at any time it is not satisfied with the progress of
6 such liquidation, it shall have full authority to proceed
7 under s. 658.80, or otherwise, as the law directs.

8 Section 1806. Subsections (3), (5), and (6) of section
9 658.995, Florida Statutes, are amended to read:

10 658.995 Credit Card Bank Act.--

11 (3) Subject to the provisions of this section and to
12 the approval of the office department, any domestic lender,
13 foreign lender, or business organization may organize, own,
14 and control a credit card bank on the terms and conditions
15 provided in this section:

16 (a) If the credit card bank is to be organized under
17 the laws of this state, such bank shall be organized as
18 provided in this section;

19 (b) In connection with the application to organize or
20 to control a credit card bank, the applicant shall pay to the
21 ~~office department~~ a filing fee as provided in s. 658.73 for
22 the formation of a bank or trust company;

23 (c) The shares of a credit card bank shall be owned
24 solely by a domestic lender, a foreign lender, or a business
25 organization;

26 (d) The credit card bank shall accept deposits only at
27 a single location in this state;

28 (e) The credit card bank shall at all times maintain
29 capital stock and paid-in surplus as required by regulatory
30 policies of the commission and office department but in no
31 event less than \$4 million;

1 (f) The credit card bank may engage only in the
2 business of soliciting, processing, and making loans pursuant
3 to credit card accounts and conducting such other activities
4 as may be necessarily incident thereto;

5 (g) The credit card bank may not accept demand
6 deposits or deposits that the depositor has the ability to
7 withdraw by check or similar means for payment to third
8 parties or others;

9 (h) The credit card bank may accept savings or time
10 deposits of only \$100,000 or more;

11 (i) The credit card bank must, prior to opening,
12 obtain and thereafter maintain insurance of its deposits by
13 the Federal Deposit Insurance Corporation; and

14 (j) The credit card bank may not engage in the
15 business of making commercial loans.

16 (5) All credit card banks organized under the laws of
17 this state shall be subject to the supervision, regulation,
18 and examination of the office department, and the office
19 ~~department~~ shall have all enforcement powers with respect
20 thereto as are provided in the financial institutions codes.

21 (6) The commission may adopt ~~department shall have the~~
22 ~~power to promulgate rules and regulations~~ implementing the
23 provisions of this section.

24 Section 1807. Section 660.26, Florida Statutes, is
25 amended to read:

26 660.26 Trust department licensing.--

27 (1) When authorized by the office department as
28 provided in this section, a state bank or association may
29 establish a trust department for the purpose of conducting
30 trust business.

31

1 (2) A written application for trust powers shall be
2 filed with the office ~~department~~ in such form as the
3 commission prescribes and containing such information as the
4 commission and office ~~department may~~ reasonably require. The
5 application shall be accompanied by the required nonrefundable
6 fee.

7 (3) Upon the filing of an application, the office
8 ~~department~~ shall investigate and consider:

9 (a) The general character and management ability of
10 the principal executive officers of the applicant bank or
11 association.

12 (b) The quality of the supervision to be given to the
13 fiduciary activities, including the qualifications,
14 experience, and character of the proposed principal officers
15 of the trust department.

16 (c) The general condition of the applicant bank or
17 association, and the sufficiency of earnings and earning
18 prospects of the applicant bank or association, including the
19 proposed trust department, to support the anticipated expenses
20 and any anticipated operating losses of the trust department
21 during its formative or initial years.

22 (d) Any other matters relevant to the application and
23 the establishment and operation of the proposed trust
24 department.

25 (4) Expenses necessarily incurred by the office
26 ~~department~~ in the conduct of investigations required by this
27 section shall, in the case of applications which require
28 investigations by the office ~~department~~ outside the state, be
29 assessed against the applicant bank or association on an
30 actual-cost-incurred basis and shall be in addition to other
31 fees required by law. Failure to promptly reimburse the

1 ~~office department~~ upon its demand shall be grounds for denial
2 of such application or revocation of any approval thereof.

3 (5) The ~~office department~~ shall approve the
4 application if it finds that:

5 (a) The general condition of the applicant bank or
6 association is sufficient to support the proposed trust
7 department.

8 (b) The earnings and earning prospects of the
9 applicant bank or association, including the earning prospects
10 of the proposed trust department, are sufficient to support
11 the anticipated expenses and any anticipated operating losses
12 of the trust department during its formative or initial years.

13 (c) The capital structure of the bank or association
14 is adequate to support the trust department.

15 (d) The proposed trust officers have or will be
16 supplied with sufficient trust and related investment,
17 financial, and managerial experience, ability, and standing to
18 operate the trust department.

19 (e) Provision has been made for the trust department
20 to occupy suitable quarters at the location specified in the
21 application.

22 (6) If applicable federal law requires the approval of
23 a federal regulatory agency for the establishment of a trust
24 department by the applicant bank or association, approval by
25 the ~~office department~~, by final order or otherwise, shall be
26 deemed subject to approval by such federal regulatory agency,
27 and a final order of denial by such federal regulatory agency
28 will terminate and revoke the final or other order issued by
29 the ~~office department~~ approving the application.

30 (7) Upon approval of an application by the ~~office~~
31 ~~department~~ and such federal regulatory agency, if required,

1 the office department shall issue and deliver to the applicant
2 a certificate or other document granting trust powers to the
3 applicant and authorizing it to establish a trust department
4 and engage in trust business.

5 Section 1808. Section 660.265, Florida Statutes, is
6 amended to read:

7 660.265 Examination fees.--Each state trust company
8 and each state bank or association exercising trust powers
9 shall pay to the office department, within 30 days after an a
10 ~~departmental~~ examination pursuant to s. 655.045, a fee for the
11 costs of the examination by the office department pursuant to
12 s. 655.045. For the purposes of this section, the term
13 "costs" means the salary and travel expenses of field staff
14 which are directly attributable to its examination of the
15 financial institution and the travel expenses of any
16 supervisory or support staff required as a result of
17 examination findings.

18 Section 1809. Section 660.27, Florida Statutes, is
19 amended to read:

20 660.27 Deposit of securities with Chief Financial
21 Officer Treasurer.--

22 (1) Before transacting any trust business in this
23 state, every trust company and every state or national bank or
24 state or federal association having trust powers shall give
25 satisfactory security by the deposit or pledge of security of
26 the kind or type provided in this section having at all times
27 a market value in an amount equal to 25 percent of the issued
28 and outstanding capital stock of such trust company, bank, or
29 state or federal stock association or, in the case of a
30 federal mutual association, an equivalent amount determined by
31 the office department, or the sum of \$25,000, whichever is

1 greater. However, the value of the security deposited or
2 pledged pursuant to the provisions of this section shall not
3 be required to exceed \$500,000. Any notes, mortgages, bonds,
4 or other securities, other than shares of stock, eligible for
5 investment by a state bank, state association, or state trust
6 company, or eligible for investment by fiduciaries, shall be
7 accepted as satisfactory security for the purposes of this
8 section.

9 (2) The trust company, bank, or association shall
10 provide to the Chief Financial Officer ~~Treasurer~~ the
11 following:

12 (a) Written information which includes full legal
13 name; federal employer identification number; principal place
14 of business; amount of capital stock; and amount of required
15 collateral.

16 (b) The required information listed in paragraph (a)
17 shall be provided annually as of September 30 and shall be due
18 November 15.

19 (3) The Chief Financial Officer ~~Treasurer~~ shall
20 determine whether the security deposited or pledged pursuant
21 to this section, or tendered for such deposit or pledge, is of
22 the kind or type permitted, and has a market value in the
23 amount required, by subsection (1). The security required by
24 this section shall be deposited with or to the credit of, or
25 pledged to, the Chief Financial Officer ~~Treasurer~~ for the
26 account of each state or national bank, state or federal
27 association, or trust company depositing or pledging the same
28 and shall be used, if at all, by the liquidator of such bank,
29 association, or trust company with first priority being given
30 to claims on account of the trust business or fiduciary
31 functions of such bank, association, or trust company or,

1 prior to liquidation, for the payment of any judgment or
2 decree which may be rendered against such bank, association,
3 or trust company in connection with its trust business or its
4 fiduciary functions if such judgment or decree is not
5 otherwise paid by, or out of other assets of, such bank,
6 association, or trust company.

7 (4) Any security of any kind which has been deposited
8 or pledged as provided in this section may at any time, by or
9 upon the direction of such bank, association, or trust company
10 which deposited or pledged such security, be withdrawn and
11 released from such pledge provided that simultaneously
12 therewith satisfactory security as provided in this section,
13 in such amount, if any, as may be necessary in order to comply
14 with the requirements of this section, is substituted for the
15 security so withdrawn and released.

16 (5) With the approval of the Chief Financial Officer
17 ~~Treasurer~~, each trust company, bank, or association as pledgor
18 may deposit eligible collateral with a custodian. This
19 custodian shall not be affiliated or related to the trust
20 company, bank, or association. Collateral must be deposited
21 using the collateral agreements and provisions as set forth in
22 s. 280.041(2) and (3).

23 Section 1810. Section 660.28, Florida Statutes, is
24 amended to read:

25 660.28 Exemption from bond and other security as
26 fiduciary.--A trust company or trust department maintaining
27 security with the Chief Financial Officer ~~Treasurer~~ as
28 required by s. 660.27 shall not be required by the state or
29 any of its political subdivisions or by a court of this state
30 to furnish any bond or other security as a condition of, or in
31 connection with, acting in any fiduciary capacity which such

1 trust company or trust department is lawfully permitted to
2 accept or assume.

3 Section 1811. Section 660.33, Florida Statutes, is
4 amended to read:

5 660.33 Trust service offices.--

6 (1) In addition to its principal office and any branch
7 trust company authorized under s. 660.32, a trust company or a
8 trust department with its principal place of doing business in
9 this state may maintain one or more trust service offices at
10 the location of any bank, association, or credit union which
11 is organized under the laws of this state or under the laws of
12 the United States with its principal place of doing business
13 in this state. However, a trust service office may be
14 established only after the trust company or the trust
15 department has secured the consent of a majority of the
16 stockholders or members entitled to vote on such proposal at a
17 meeting of stockholders or members, and of a majority of the
18 board of directors, of the bank, association, or credit union
19 at which a trust service office is proposed to be maintained,
20 and after a certificate of authorization has been issued to
21 the trust company or the trust department by the office
22 ~~department~~.

23 (2)(a) An application for approval to establish a
24 trust service office shall be in such form as the commission
25 prescribes and contain such information as the commission or
26 office department ~~may~~ reasonably requires ~~require~~ and be
27 accompanied by the required nonrefundable fee.

28 (b) The office ~~department~~ shall issue a certificate
29 approving the establishment of a trust service office by a
30 trust company or a trust department if the office ~~department~~
31 determines that:

1 1. The trust company or trust department has complied
2 with the applicable capital requirements;

3 2. Provision has been made for suitable quarters and
4 staffing for the trust service office; and

5 3. If the trust service office is to be established at
6 a bank or association without existing trust powers or at a
7 credit union, the establishment of the proposed trust service
8 office will not unduly injure any existing trust companies or
9 trust departments in the community where the trust service
10 office is to be located.

11 (3) The trust company or trust department shall have
12 the power to conduct any trust business at a trust service
13 office which it is permitted to conduct at its principal
14 office unless limited by the provisions of any agreement
15 between the bank, association, or credit union and the trust
16 company or trust department.

17 (4)(a) Unless an election has been made pursuant to
18 paragraph (b), when a trust service office is established by a
19 trust company or a trust department at the location of a bank
20 or association which has trust powers, the bank or association
21 may retain and continue to exercise its trust powers following
22 the establishment of the trust service office.

23 (b) If the bank or association and the trust company
24 or trust department so elect in the application for approval
25 to establish a trust service office at the location of a bank
26 or association that has trust powers, and if the office
27 ~~department~~ is satisfied that the interests of beneficiaries of
28 the estates, trusts, and other fiduciary relationships being
29 serviced will be adequately protected, the office ~~department~~
30 shall issue an order authorizing the following:
31

1 1. The trust company or trust department, upon
2 complying with all applicable requirements of law, shall be
3 substituted for, succeed to, and replace the bank or
4 association as fiduciary. The trust company or trust
5 department, as the successor fiduciary, shall thereupon
6 succeed to all the powers, rights, duties, and privileges of
7 the bank or association as fiduciary of all such estates,
8 trusts, guardianships, and other fiduciary relationships in
9 which the bank or association is serving to which the trust
10 company or trust department shall have been lawfully
11 substituted.

12 2. During the time the trust company or trust
13 department maintains a trust service office at the location of
14 the bank or association, the trust company or trust department
15 shall be deemed to be named the fiduciary in all instruments
16 in which the bank or association is named the fiduciary, even
17 if the bank or association is not serving as fiduciary at the
18 time the trust service office is established, in the manner,
19 to the extent, and with the same effect as though there had
20 been a merger of the bank and the trust company or trust
21 department.

22 3. Upon complying with all requirements of law with
23 respect thereto, the bank or association shall be relieved
24 from all of its fiduciary duties in connection with all
25 fiduciary accounts and relationships with respect to which the
26 trust company or trust department has been substituted as
27 fiduciary or with respect to which it has resigned and been
28 relieved as provided by law, and, upon being so relieved of
29 all its fiduciary duties, the bank or association, although
30 retaining its trust powers in an inactive status unless it
31 surrenders them as provided by law, shall not thereafter

1 exercise its trust powers so long as there is a trust service
2 office transacting business at the bank or association. The
3 substitution of the trust company or trust department for the
4 bank or association as fiduciary shall occur and be effective
5 on the day the trust company or trust department opens the
6 trust service office for business, or on such later date as
7 may be specified by court order, or by any written consent or
8 agreement, which lawfully effectuates the designation, by
9 substitution or otherwise, of the trust company or trust
10 department as the fiduciary with respect to any particular
11 fiduciary account.

12 (c)1. Anything in this section or any other law to the
13 contrary notwithstanding and subject to compliance with this
14 subsection, an affiliated trust company or an affiliated
15 bank's trust department, if authorized to exercise trust
16 powers in this state, shall be deemed substituted as fiduciary
17 without further authorization where the successor has an
18 established trust service office in the predecessor's
19 principal place of business or any branch of the predecessor
20 located in this state. The successor may conduct therein any
21 trust business incidental thereto that it is otherwise
22 permitted to conduct in this state, but it may not accept
23 deposits at the offices of the predecessor bank except as
24 incidental to the trust business.

25 2. To effect the substitution referred to in
26 subparagraph 1., a predecessor shall enter into an agreement
27 with the successor that sets forth the fiduciary powers,
28 rights, privileges, duties, and liabilities of the parties
29 and, more specifically, those to which the successor will
30 succeed, including, but not limited to, those described in
31 subparagraph 7. The agreement will be approved by the boards

1 of directors of the predecessor, successor, and parent
2 corporations. The agreement shall then be filed with the
3 office ~~department~~. The effective date of the agreement shall
4 be the date on which the office ~~department~~ approves the
5 agreement under subparagraph 6. unless another, later date is
6 specified in the agreement, which other date shall be no later
7 than 75 days after the date on which the agreement is filed
8 with the office ~~department~~ under this subparagraph; however,
9 no such agreement may take effect without approval by the
10 office ~~department~~.

11 3.a. Not sooner than 30 days before or later than 30
12 days after the date on which the agreement is filed with the
13 office ~~department~~ under subparagraph 2., the predecessor and
14 successor shall cause notice of the filing of such agreement
15 with the office ~~department~~, along with the procedure for
16 objection thereto as hereinafter provided, to be published in
17 a newspaper of general circulation in the county in which the
18 predecessor's principal place of business is located and file
19 a copy of such written notice in any applicable
20 court-administered fiduciary proceeding, including, but not
21 limited to, probate and guardianship proceedings, and
22 additionally, they shall serve written notice upon the
23 following:

- 24 (I) Each cofiduciary that serves with the predecessor;
25 (II) Each surviving grantor of a revocable trust;
26 (III) Each person who alone or in conjunction with
27 others has the power to remove the predecessor;
28 (IV) Each principal for whom the predecessor serves as
29 agent or custodian;
30 (V) Each guardian of the person for whom the
31 predecessor serves as guardian of the property for their ward;

1 (VI) Each beneficiary or the beneficiary's legal or
2 natural guardian, when applicable, currently receiving or
3 entitled as a matter of right to receive a current mandatory
4 or discretionary distribution, as opposed to a remainder
5 distribution, of principal or income from a trust, estate, or
6 other fund with respect to which a substitution of fiduciary
7 under this subsection is to be effected. However, when
8 applicable and in lieu thereof, such service will be made upon
9 the sole holder or a majority of the coholders of a general or
10 limited power of appointment, including one in the form of a
11 power of amendment, or revocation, in which case they shall be
12 deemed to act for any beneficiary who may take by virtue of
13 the exercise or failure to exercise the power;

14 (VII) Upon any other person or entity required by the
15 court in any referenced court-administered fiduciary
16 proceeding; and

17 (VIII) In the case of a trust described in the
18 Internal Revenue Code of 1986 s. 401(a) as it may from time to
19 time hereafter be amended, upon the employer or employee
20 organization or both responsible for the maintenance of such
21 trust.

22 b. Service of such written notice will not be required
23 upon the persons or entities listed in sub-subparagraph a.
24 when the documents or other writings that created the
25 fiduciary relationship permit a substitution of fiduciaries.

26 c. Service of written notice shall be made upon the
27 persons or entities listed in sub-subparagraph a. in the
28 manner provided for the service of formal notice under the
29 applicable Florida Probate Rules. Service of written notice by
30 mail shall be completed upon receipt or refusal of the notice
31 by the persons or entities listed in sub-subparagraph a. If

1 such written notice is made by mail or delivery, proof of
2 mailing or delivery shall be by verified statement of the
3 person mailing or delivering the written notice, and there
4 shall be attached to the verified statement the signed
5 receipt, appropriate affidavit of delivery by the person
6 effecting such delivery, or other evidence satisfactory to the
7 office ~~department~~ or to a court of competent jurisdiction that
8 notice was given properly to or refused by the addressee or
9 agent of the addressee. The original of such proof shall be
10 filed with the office ~~department~~ with copies to the file or
11 the account maintained by the predecessor or successor and to
12 the court in any court-administered fiduciary administration.

13 4. Within 60 days after the date on which newspaper
14 notice is published under subparagraph 3., after any date of a
15 signed or refused receipt pertaining to the written notice by
16 mail under subparagraph 3., after any date of delivery as set
17 forth in the affidavit referenced in subparagraph 3., or after
18 the date on which service is otherwise accomplished, the
19 latest date being operative, but not thereafter, the persons
20 or entities listed in subparagraph 3. or the court in a
21 court-administered fiduciary proceeding on its own motion may
22 object to such substitution of fiduciaries by serving written
23 notice, executed by the persons, entities, or court, upon the
24 predecessor, successor, and office ~~department~~. Such notice
25 shall be served in the same manner as provided for service of
26 the original notice upon interested persons or entities in
27 subparagraph 3. Execution of such notice shall be in the same
28 manner as is required for the execution and recordation of
29 deeds to real property in this state except that notice by a
30 court may be signed by the judge. If such notice of objection
31 is executed by all of the cofiduciaries that serve with the

1 predecessor, by each surviving grantor of a revocable trust,
2 by all of the persons that have the power to remove the
3 predecessor as fiduciary, by all of the principals for whom
4 the predecessor serves as agent or custodian, by the guardian
5 of the person for whom the predecessor serves as guardian of
6 the property for their ward, by all of the beneficiaries
7 currently receiving or entitled as a matter of right to
8 receive a current mandatory or discretionary distribution, as
9 opposed to a remainder distribution, of principal or income,
10 or by the sole holder or a majority of the coholders of a
11 general or limited power of appointment including one in the
12 form of a power of amendment or revocation, the successor will
13 not be substituted for the predecessor and the predecessor
14 will remain or be reinstated as fiduciary but only as to the
15 fiduciary relationship that is the subject of such objection.
16 Reinstatement shall take effect immediately upon receipt of
17 such notice by the predecessor, successor, and office
18 ~~department~~. If the notice of objection is executed by less
19 than all of the persons or entities of any category specified
20 in this subparagraph, or if entered by the court of a
21 court-administered fiduciary proceeding on its own motion,
22 then, with regard to the fiduciary relationship that is the
23 subject of such notice of objection, the predecessor and
24 successor may elect to do either of the following:

25 a. File a subsequent agreement with the office
26 ~~department~~, with copies of such agreement to be mailed to all
27 of the specified persons or entities, which states that the
28 successor will not be substituted for the predecessor as to
29 that fiduciary relationship, and such agreement shall cause
30 the predecessor to remain or be reinstated, instanter, as
31 fiduciary in that fiduciary relationship. The filing of such

1 subsequent agreement with the office ~~department~~ does not
2 prejudice the predecessor or the successor from filing another
3 agreement that affects such fiduciary relationship under
4 subparagraph 2.; or

5 b. File a petition with the court having jurisdiction
6 of any court-administered fiduciary proceeding or commence a
7 civil action in a court of competent jurisdiction as to any
8 other applicable fiduciary relationship. The court shall then
9 determine whether such substitution is appropriate and whether
10 it is in the best interest of those specifically interested in
11 the premises. The court shall then enter judgment accordingly
12 and specify the party to serve thereafter as the fiduciary.
13 The predecessor, the successor, the office ~~department~~, and
14 those for whom the fiduciary relationship is the subject of
15 the civil action and upon whom service of written notice was
16 required under subparagraph 3. shall be necessary parties in
17 any civil action that concerns an objection to the
18 substitution. Any such petition or separate civil action must
19 be filed within 60 days after service of the notice of
20 objection. Failure to do so will be deemed to be an agreement
21 pursuant to sub-subparagraph a., and the alternative provided
22 in sub-subparagraph a. will be deemed to have been selected
23 automatically.

24 5. At any time while a civil action is pending
25 pursuant to sub-subparagraph 4.b., the predecessor and
26 successor may file a subsequent agreement with the office
27 ~~department~~ in the same manner set forth under alternative
28 sub-subparagraph 4.a. and file a copy of the same along with a
29 withdrawal of the petition or a voluntary dismissal with the
30 court in which the petition was filed or the civil action is
31 pending. Such filing will have the same force and effect as

1 set forth under sub-subparagraph 4.a.; however, it shall be
2 without prejudice to the right of the predecessor or successor
3 to file another agreement that affects such fiduciary
4 relationship under subparagraph 2.

5 6. Within 30 days after the date on which a fiduciary
6 agreement is filed with the office ~~department~~ under
7 subparagraph 2., the office ~~department~~ shall approve the
8 agreement if it finds both that the successor is:

9 a. Legally authorized to exercise trust powers in this
10 state; and

11 b. Has otherwise met the requirements for the
12 establishment of a trust service office at the predecessor's
13 principal place of business or branch.

14 7. Upon the effective date of an agreement filed under
15 subparagraph 2. and regardless of any petition filed or any
16 civil action pending pursuant to subparagraph 4., the
17 successor will be deemed substituted for the predecessor as
18 fiduciary without further authorization of any kind such that
19 the successor shall succeed to and be substituted for the
20 predecessor as to all fiduciary powers, rights, privileges,
21 duties, and liabilities of the predecessor in its capacity as
22 fiduciary for all estate, trust, guardianship, agency, and
23 custodial accounts and any other fiduciary relationship for
24 which the predecessor is then, or but for such agreement would
25 be, serving as fiduciary, except as may be otherwise specified
26 in such agreement and in any subsequent agreement filed with
27 the office ~~department~~ under subparagraph 4. or subparagraph 5.
28 The successor shall also be deemed the fiduciary in all
29 writings, including, but not limited to, wills, trusts, deeds,
30 policies of insurance, stock certificates, court orders, and
31 similar documents and instruments which name or have named the

1 predecessor as fiduciary and which were signed before or after
2 the effective date of such agreement except as may be
3 otherwise specified in such agreement and any subsequent
4 agreement filed with the office ~~department~~ under subparagraph
5 4. or subparagraph 5. This section does not absolve or
6 discharge any predecessor exercising trust powers from
7 liability arising out of any breach of its fiduciary duties or
8 obligations which occurred before the effective date of such
9 agreement.

10 8. As used herein:

11 a. Trust companies, banks, or associations are
12 "affiliated" if they are connected through stock ownership
13 with a common parent corporation that is a registered
14 multibank or multiassociation holding company and such parent
15 owns directly stock that possesses at least 80 percent of the
16 total voting power of the stock of such trust company, bank,
17 or association and has a value equal to at least 80 percent of
18 the total value of the stock of such trust company, bank, or
19 association.

20 b. The term "predecessor" refers to an affiliated
21 trust company or affiliated bank's or affiliated association's
22 trust department for the position of which in its trust
23 relations the successor is substituted.

24 c. The term "successor" refers to an affiliated trust
25 company or affiliated bank's or affiliated association's trust
26 department which is substituted for a predecessor in the
27 predecessor's trust relationships including all powers,
28 duties, and responsibilities associated therewith.

29 (d) When a trust service office is established at a
30 bank or association that has retained its trust powers in an
31 active status, the trust company or trust department may at

1 any time be substituted as fiduciary as provided in paragraph
2 (b) by filing an election with the office ~~department~~. The
3 election to substitute the trust company or trust department
4 for the bank or association as fiduciary must contain the
5 consent of a majority of the stockholders or members entitled
6 to vote on such proposal at a meeting of stockholders or
7 members and of a majority of the board of directors, of the
8 bank or association at which the trust service office has been
9 established.

10 (e) This subsection shall not affect any substitution
11 of fiduciaries made under former s. 659.061(6) prior to May
12 31, 1976.

13 (5) Nothing in the financial institutions codes shall
14 be construed to prohibit a person from serving in a dual
15 capacity as an officer or director of a bank, association, or
16 credit union at which a trust service office is located and an
17 officer or director of the trust company or trust department
18 which has a trust service office at that bank, association, or
19 credit union.

20 (6) A trust company or trust department may terminate
21 a trust service office only with the prior approval of the
22 office ~~department~~, which shall only grant its approval after
23 being satisfied that the interests of all beneficiaries of the
24 estates, trusts, and other fiduciary relationships being
25 serviced by the trust company or trust department as fiduciary
26 at that trust service office will be adequately protected.
27 Upon termination of the trust service office, the trust
28 company or trust department shall continue to exercise its
29 fiduciary powers, rights, duties, and privileges as fiduciary
30 of the estates, trusts, and other fiduciary relationships
31 which, at the time of such termination, were being serviced at

1 that trust service office and shall continue to be deemed the
2 named fiduciary of all instruments naming the bank or
3 association as fiduciary which became effective and operative
4 prior to the termination of the trust service office. However,
5 any beneficiary of an estate or trust being serviced at the
6 trust service office at the time of the termination of the
7 trust service office may petition the court of competent
8 jurisdiction in the county where, at the time of such
9 termination, the trust service office was located for removal
10 of the trust company or the trust department as fiduciary and
11 for appointment of a successor fiduciary. The court shall
12 grant the petition upon being satisfied that such action is in
13 the best interests of the beneficiaries of the trust or
14 estate.

15 (7) A trust service office as provided for in this
16 section is a special service facility and is not a branch or a
17 branch office of a trust company or a trust department.

18 Section 1812. Subsection (2) of section 660.40,
19 Florida Statutes, is amended to read:

20 660.40 Self dealing.--

21 (2) Assets of a fiduciary account held by a trust
22 company or a trust department shall not be sold or
23 transferred, by loan or otherwise, to the trust company or the
24 bank or association of which the trust department is a part or
25 to its directors, officers, or employees except:

26 (a) When lawfully authorized by the governing
27 instrument or by court order;

28 (b) As provided in ss. 660.42-660.45;

29 (c) With the approval of, or when required by, the
30 office ~~department~~ in order to prevent loss to a fiduciary
31 account in any case where the trust company or the trust

1 department has incurred a liability in the handling of the
2 assets of the fiduciary account.

3 Section 1813. Section 660.47, Florida Statutes, is
4 amended to read:

5 660.47 Surrender of fiduciary powers.--Any state bank
6 or association which has been granted trust powers and which
7 desires to surrender such rights shall file with the office
8 ~~department~~ a certified copy of the resolution of its board of
9 directors signifying such desire. Upon receipt of such
10 resolution, the office ~~department~~ shall make an investigation,
11 and when it is satisfied that the trust department has been
12 discharged from all fiduciary duties which it has undertaken,
13 it shall issue a certificate to such bank or association
14 certifying that it is no longer authorized to exercise trust
15 powers.

16 Section 1814. Subsection (1) of section 660.48,
17 Florida Statutes, is amended to read:

18 660.48 Receivership or voluntary liquidation.--

19 (1) If a liquidator or receiver is appointed for a
20 trust company or a state bank or association having a trust
21 department, the liquidator or receiver shall, pursuant to the
22 instructions of the office ~~department~~ and the orders of any
23 court and the federal regulatory agency having jurisdiction,
24 proceed to close such fiduciary accounts as can be closed
25 promptly and transfer all other fiduciary accounts to
26 substitute fiduciaries.

27 Section 1815. Subsection (1) of section 663.02,
28 Florida Statutes, is amended to read:

29 663.02 Applicability of state banking laws.--

30 (1) International banking corporations having offices
31 in this state shall be subject to all the provisions of the

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

25 Section 1816. Subsections (2), (3), and (4) of section
26 663.04, Florida Statutes, are amended to read:

27 663.04 Requirements for carrying on banking
28 business.--No international banking corporation shall transact
29 a banking business, or maintain in this state any office for
30 carrying on such business, or any part thereof, unless such
31 corporation has:

1 (2) Furnished to the office ~~department~~ such proof as
2 to the nature and character of its business and as to its
3 financial condition as the commission or office requires
4 ~~department may require~~.

5 (3) Filed with the office ~~department~~ a certified copy
6 of that information required to be supplied to the Department
7 of State by those provisions of chapter 607 which are
8 applicable to foreign corporations.

9 (4) Received a license duly issued to it by the office
10 ~~department~~.

11 Section 1817. Subsections (1), (2), (3), (4), (5),
12 (6), and (9) of section 663.05, Florida Statutes, are amended
13 to read:

14 663.05 Application for license; approval or
15 disapproval.--

16 (1) Every international banking corporation, before
17 being licensed by the office ~~department~~ to maintain any office
18 in this state, shall subscribe and acknowledge, and submit to
19 the office ~~department~~, an application which shall contain:

20 (a) The name of the international banking corporation.

21 (b) The proposed location by street and post office
22 address and county where its business is to be transacted in
23 this state and the name of the person who shall be in charge
24 of the business and affairs of the office.

25 (c) The location where its initial registered office
26 will be located in this state.

27 (d) The total amount of the capital accounts of the
28 international banking corporation.

29 (e) A complete and detailed statement of its financial
30 condition as of a date within 180 days prior to the date of
31 such application, except that the office ~~department~~ in its

1 discretion may, when necessary or expedient, accept such
2 statement of financial condition as of a date within 240 days
3 prior to the date of such application. The office ~~department~~
4 in its discretion may, when necessary or expedient, require an
5 independent opinion audit or the equivalent satisfactory to
6 the office ~~department~~.

7 (f) A listing of any occasion within the preceding
8 10-year period in which either the international banking
9 corporation or any of its directors, executive officers, or
10 principal shareholders has been convicted of, or pled guilty
11 or nolo contendere to, any offense with respect to which the
12 penalties include the possibility of imprisonment for 1 year
13 or more, or to any offense involving money laundering or
14 otherwise related to the operation of a financial institution.

15 (2) The office ~~department~~ shall disallow any illegally
16 obtained currency, monetary instruments, funds, or other
17 financial resources from the capitalization requirements of
18 this section, and the existence of such illegally obtained
19 resources shall be grounds for denial of the application for
20 license.

21 (3) At the time an application is submitted to the
22 office ~~department~~, the international banking corporation shall
23 also submit a duly authenticated copy of its articles of
24 incorporation and a copy of its bylaws, or an equivalent
25 thereof satisfactory to the office ~~department~~. Such
26 corporation shall also submit a certificate issued by the
27 banking or supervisory authority of the country in which the
28 international banking corporation is chartered stating that
29 the international banking corporation is duly organized and
30 licensed and lawfully existing in good standing and listing
31 any instance in which the international banking corporation

1 has been convicted of, or pled guilty or nolo contendere to, a
2 violation of any currency transaction reporting or money
3 laundering law which may exist in that country.

4 (4) Application shall be made on a form prescribed by
5 the commission ~~department~~ and shall contain such information
6 as the commission or office requires ~~department may require~~.

7 (5) The office ~~department~~ may, in its discretion,
8 approve or disapprove the application, but it shall not
9 approve the application unless, in its opinion, the applicant
10 meets each and every requirement of this part and any other
11 applicable provision of the financial institutions codes. The
12 office ~~department~~ shall approve the application only if it has
13 determined that the directors, executive officers, and
14 principal shareholders of the international banking
15 corporation are qualified by reason of their financial
16 ability, reputation, and integrity and have sufficient banking
17 and other business experience to indicate that they will
18 manage and direct the affairs of the international banking
19 corporation in a safe, sound, and lawful manner. In the
20 processing of applications, the time limitations under the
21 Administrative Procedure Act shall not apply as to approval or
22 disapproval of the application.

23 (6) The office ~~department~~ shall not issue a license to
24 an international banking corporation unless:

25 (a) It is chartered in a jurisdiction in which any
26 bank having its principal place of business in this state may
27 establish similar facilities or exercise similar powers; or

28 (b) Federal law permits the appropriate federal
29 regulatory authority to issue a comparable license to the
30 international banking corporation.

31

1 (9) The commission ~~department~~ shall establish, by
2 rule, the general principles which shall determine the
3 adequacy of supervision of an international banking
4 corporation's foreign establishments. These principles shall
5 be based upon the need for cooperative supervisory efforts and
6 consistent regulatory guidelines and shall address, at a
7 minimum, the capital adequacy, asset quality, management,
8 earnings, liquidity, internal controls, audits, and foreign
9 exchange operations and positions of the international banking
10 corporation. This subsection shall not require examination by
11 the home-country regulatory authorities of any office of an
12 international banking corporation in this state. The
13 commission ~~department~~ may also establish, by rule, other
14 standards for approval of an application for a license as
15 considered necessary to ensure the safe and sound operations
16 of the international bank office in this state.

17 Section 1818. Subsections (2), (3), and (4) of section
18 663.055, Florida Statutes, are amended to read:

19 663.055 Capital requirements.--

20 (2) Notwithstanding the provisions of paragraph
21 (1)(a), the office ~~department~~ may approve an application for a
22 license to establish an international bank agency, an
23 international branch, or an international administrative
24 office if:

25 (a) The international banking corporation is licensed
26 to receive deposits from the general public in the country
27 where it is organized and licensed and to engage in such other
28 activities as are usual in connection with the business of
29 banking in such country;

30 (b) The office ~~department~~ receives a certificate that
31 is issued by the banking or supervisory authority of the

1 country in which the international banking corporation is
2 organized and licensed and states that the international
3 banking corporation is duly organized and licensed and
4 lawfully existing in good standing, and is empowered to
5 conduct a banking business; and

6 (c) The international banking corporation has been in
7 the business of banking for at least 10 years and is ranked by
8 the banking or supervisory authority of the country in which
9 it is organized and licensed as one of the five largest banks
10 in that country in terms of domestic deposits, as of the date
11 of its most recent statement of financial condition. However,
12 in no event shall the office ~~department~~ approve an application
13 under this subsection for any international banking
14 corporation with capital accounts of less than \$10 million.

15 (3) The office ~~department~~ may specify such other
16 conditions as it determines appropriate, considering the
17 public interest, the need to maintain a sound and competitive
18 banking system, and the preservation of an environment
19 conducive to the conduct of an international banking business
20 in this state. In translating the capital accounts of an
21 international banking corporation, the office ~~department~~ may
22 consider monetary corrections accounts that reflect results
23 consistent with the requirements of generally accepted
24 accounting principles in the United States.

25 (4) For the purpose of this part, the capital accounts
26 of an international banking corporation shall be determined in
27 accordance with rules adopted by the commission ~~department~~.
28 In adopting such rules, the commission ~~department~~ shall
29 consider similar rules adopted by bank regulatory agencies in
30 the United States and the need to provide reasonably
31 consistent regulatory requirements for international banking

1 corporations which will maintain the safe and sound condition
2 of international banking corporations doing business in this
3 state.

4 Section 1819. Subsections (1), (2), (3), and (4) of
5 section 663.06, Florida Statutes, are amended to read:

6 663.06 Licenses; permissible activities.--

7 (1) An international banking corporation licensed to
8 operate an office in this state may engage in the business
9 authorized by this part at the office specified in such
10 license for an indefinite period. An international banking
11 corporation may operate more than one international bank
12 agency, international branch, or international representative
13 office, each at a different place of business, provided that
14 each office shall be separately licensed. No license to
15 operate an international bank office is transferable or
16 assignable. However, the location of an international bank
17 office may be changed after notification of the office
18 ~~department~~. Every such license shall be, at all times,
19 conspicuously displayed in the place of business specified
20 therein.

21 (2) An international banking corporation which
22 proposes to terminate the operations of its international bank
23 agency, international branch, international representative
24 office, or international administrative office shall surrender
25 its license to the office ~~department~~ and comply with such
26 procedures as the commission ~~department~~ may prescribe by rule.

27 (3) An international bank agency, international
28 branch, international representative office, or international
29 administrative office license may be suspended or revoked by
30 the office ~~department~~, with or without examination, upon its
31 determination that the international banking corporation does

1 not meet all requirements for original licensing. The
2 commission ~~department~~ may by rule prescribe additional
3 conditions or standards under which the license of an
4 international bank agency, international branch, international
5 representative office, or international administrative office
6 may be suspended or revoked.

7 (4) In the event any such license is surrendered by
8 the international banking corporation or is suspended or
9 revoked by the office ~~department~~, all rights and privileges of
10 the international banking corporation to transact the business
11 thus licensed shall cease. The commission ~~department~~ shall, by
12 rule, prescribe procedures for the surrender of a license and
13 for the orderly cessation of business by an international
14 banking corporation in a manner which is not harmful to the
15 interests of its customers or of the public.

16 Section 1820. Section 663.061, Florida Statutes, is
17 amended to read:

18 663.061 International bank agencies; permissible
19 activities.--

20 (1) An international bank agency licensed under this
21 part may make any loan, extension of credit, or investment
22 which it could make if incorporated and operating as a bank
23 organized under the laws of this state. An international bank
24 agency may act as custodian and may furnish investment
25 management, and investment advisory services authorized under
26 rules adopted by the commission ~~department~~, to nonresident
27 entities or persons whose principal places of business or
28 domicile are outside the United States and to resident
29 entities or persons with respect to international or foreign
30 investments. An international banking corporation which has
31 an international bank agency licensed under the terms of this

1 part shall be exempt from the registration requirements of s.
2 517.12.

3 (2) An international bank agency may not receive
4 deposits in this state except:

5 (a) Deposits from nonresident entities or persons
6 whose principal places of business or domicile are outside the
7 United States.

8 (b) Interbank deposits; interbank borrowing, or
9 similar interbank obligations.

10 (c) International banking facility deposits as defined
11 pursuant to s. 655.071. An international bank agency may
12 maintain in this state, for the account of others, credit
13 balances necessarily incidental to, or arising out of, the
14 exercise of its lawful powers. Such credit balances may be
15 disbursed by check or other draft; however, the commission
16 ~~department~~ shall, by rule, provide appropriate limitations
17 upon third-party disbursements to ensure that credit balances
18 are not functionally equivalent to demand deposits. In
19 establishing the limitations, the commission ~~department~~ may
20 provide that such disbursement may not exceed an average of 20
21 checks or drafts per day.

22 (3) Notwithstanding any provision of this chapter or
23 chapter 658 to the contrary, an international banking
24 corporation licensed under this part to operate an
25 international bank agency may, if authorized by rule of the
26 commission ~~department~~, make any loan or investment or exercise
27 any power which it could make or exercise if it were operating
28 in this state as a federal agency under federal law. The
29 commission ~~department~~ shall, when adopting ~~promulgating~~ such
30 rules, consider the public interest and convenience and the
31 need to maintain a sound and competitive state banking system.

1 Unless otherwise provided by statute, an international bank
2 agency may not exercise any powers that a federal agency is
3 not authorized to exercise.

4 (4) Notwithstanding the provisions of subsection (1),
5 any international banking corporation organized and existing
6 under the laws of any other state and licensed to operate an
7 international bank agency may engage only in those activities
8 permissible for an Edge Act corporation organized under s.
9 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. ss.
10 611-632.

11 (5) With the prior authorization of the office
12 ~~department~~ pursuant to s. 660.26, an international bank agency
13 may accept appointments as trustee by nonresident persons or
14 entities and may exercise trust powers with respect to such
15 fiduciary accounts. Except for the foregoing limitation, the
16 trust activities of an international bank agency shall be
17 subject to the same requirements and may be conducted in the
18 same manner as the trust business of a state trust company or
19 state bank with trust powers.

20 Section 1821. Section 663.064, Florida Statutes, is
21 amended to read:

22 663.064 International branches; permissible
23 activities; requirements.--An international banking
24 corporation that meets the requirements of ss. 663.04 and
25 663.05 may, with the approval of the office ~~department~~,
26 establish one or more branches in this state to the extent
27 permitted to banks from other states. An international branch
28 shall have the same rights and privileges as a federally
29 licensed international branch. The operations of an
30 international branch shall be conducted pursuant to
31 requirements ~~rules~~ determined by the office ~~department~~ as

1 necessary to ensure compliance with the provisions of the
2 financial institutions codes, including. ~~These rules shall~~
3 ~~include~~ requirements for the maintenance of accounts and
4 records separate from those of the international banking
5 corporation of which it is a branch. An application to
6 establish an international branch shall be made pursuant to s.
7 658.26.

8 Section 1822. Section 663.065, Florida Statutes, is
9 amended to read:

10 663.065 State-chartered investment companies;
11 formation; permissible activities; restrictions.--

12 (1) With the approval of the office ~~department~~, a
13 Florida corporation may be formed for the purpose of engaging
14 in international banking, lending, and other financial
15 activities. A state-chartered investment company established
16 pursuant to this section shall engage directly in only those
17 activities permissible for an Edge Act corporation organized
18 under s. 25(a) of the Federal Reserve Act, as amended.

19 (2) Subject to the prior approval of the office
20 ~~department~~ and to such limitations as the commission
21 prescribes ~~department shall prescribe~~ by rule, a
22 state-chartered investment company may invest in the shares of
23 and may own or control an Edge Act corporation or an
24 international banking corporation and may establish and
25 operate branches, representative offices, and similar banking
26 facilities in foreign countries.

27 (3) An application for approval to organize a
28 state-chartered investment company shall be subject to the
29 provisions of chapter 655 relating to the organization of de
30 novo financial institutions and to rules adopted by the
31 commission ~~department~~ as necessary to ensure that the proposed

1 state-chartered investment company will be operated in a safe
2 and lawful manner, except that the applicant is not required
3 to become a member of the Federal Reserve System or the
4 Federal Deposit Insurance Corporation. State-chartered
5 investment companies shall be subject to the examination and
6 supervision of the office ~~department~~ and are subject to the
7 financial institutions codes to the same extent as
8 international banking corporations pursuant to s. 663.02.

9 Section 1823. Section 663.07, Florida Statutes, is
10 amended to read:

11 663.07 Asset maintenance or capital equivalency.--

12 (1) Each international bank agency and international
13 branch shall:

14 (a) Maintain with one or more banks in this state, in
15 such amounts as the office ~~department~~ specifies, evidence of
16 dollar deposits or investment securities of the type that may
17 be held by a state bank for its own account pursuant to s.
18 658.67. The aggregate amount of dollar deposits and
19 investment securities for an international bank agency or
20 international branch shall, at a minimum, equal the greater
21 of:

22 1. Four million dollars; or

23 2. Seven percent of the total liabilities of the
24 international bank agency or international branch excluding
25 accrued expenses and amounts due and other liabilities to
26 affiliated branches, offices, agencies, or entities; or

27 (b) Maintain other appropriate reserves, taking into
28 consideration the nature of the business being conducted by
29 the international bank agency or international branch.

30
31

1 The commission ~~department~~ shall prescribe, by rule, the
2 deposit, safekeeping, pledge, withdrawal, recordkeeping, and
3 other arrangements for funds and securities maintained under
4 this subsection. The deposits and securities used to satisfy
5 the capital equivalency requirements of this subsection shall
6 be held, to the extent feasible, in one or more state or
7 national banks located in this state or in a federal reserve
8 bank.

9 (2) If on the last business day of any month, the
10 monthly average capital equivalency ratio is less than 7
11 percent, the international bank agency or international branch
12 shall increase its deposits or investment securities with a
13 depository bank within 7 days of the end of the month in which
14 the deficiency occurred.

15 (3) In lieu of the requirements of subsection (1), the
16 commission ~~department~~ may, by rule, permit an international
17 bank agency or international branch to hold, in this state,
18 assets which bear such relationships as the commission
19 ~~department shall~~ by rule prescribes ~~prescribe~~ to the aggregate
20 liabilities of the international bank agency or international
21 branch payable in this state or resulting from its operations.
22 The amount of such assets shall be equal to at least \$4
23 million or 107 percent of the amount of such liabilities,
24 whichever is greater; however, the office ~~department~~ by order
25 may reduce the required amount of assets to not less than 100
26 percent of the amount of such liabilities. When issuing any
27 such order, the office ~~department~~ shall take into account the
28 objective of maintaining a sound banking system in this state.
29 The assets shall be maintained as cash on hand; as deposits or
30 placements with other banks, including the total amount of any
31 reserves deposited at a federal reserve bank; as cash items in

1 process of collection; as earning assets such as federal funds
2 sold, bonds, notes, debentures, drafts, bills of exchange,
3 acceptances, loan participation certificates, or other
4 evidences of indebtedness payable in the United States or in
5 United States funds or in funds freely convertible into United
6 States funds; in such other form as the commission specifies
7 ~~department may specify~~ by rule; or in any combination of the
8 foregoing.

9 (4) If on the last business day of any month, the
10 monthly average asset maintenance ratio is less than 107
11 percent, the international bank agency or international branch
12 shall correct the deficiency by accumulating within the first
13 7 business days of the end of the month sufficient eligible
14 assets to increase the average eligible assets to 107 percent
15 of the average liabilities requiring cover.

16 (5) The term "assets" as used in this section excludes
17 accrued income and amounts due from other offices or branches
18 of, and wholly owned, except for a nominal number of
19 directors' shares, subsidiaries of the international banking
20 corporation in question. The term "liabilities" as used in
21 this section excludes accrued expenses and amounts due and
22 other liabilities to branches, offices, agencies, and wholly
23 owned, except for a nominal number of directors' shares,
24 subsidiaries of the international banking corporation in
25 question, and such other liabilities as the commission
26 specifies ~~department may specify~~ by rule. International
27 banking facility deposits, borrowings, and extensions of
28 credit are excluded from the total liabilities and total
29 assets of an international bank agency or international branch
30 unless the office ~~department~~ determines that inclusion of
31 international banking facility deposits, borrowings, and

1 extensions of credit is necessary to ensure the maintenance of
2 a sound financial condition, protect depositors, creditors,
3 and the public interest, and maintain public confidence in the
4 business of the international bank agency or international
5 branch.

6 (6) For the purposes of this section, the office
7 ~~department~~ shall value marketable securities at book value;
8 shall have the right to determine the value of any
9 nonmarketable bond, note, debenture, draft, bill of exchange,
10 or other evidence of indebtedness or of any other obligation
11 held by or owed to the international banking corporation in
12 this state; and, in determining the amount of assets for the
13 purpose of computing the above ratio of assets to liabilities,
14 shall have the power to exclude any particular assets.

15 (7) Notwithstanding the limitations of s. 658.67, the
16 commission ~~department~~ may by rule authorize, and may specify
17 conditions and limits on, the use of securities issued by
18 foreign governments or government-sponsored entities, or by an
19 international banking corporation for the purpose of
20 satisfying the capital equivalency or asset maintenance
21 requirements of this section. However, any such securities
22 shall be payable in funds freely convertible into United
23 States funds, and the amount of such securities deposited or
24 held for the purposes of this section shall not exceed 25
25 percent of the required amount.

26 (8) Regardless of whether an international bank agency
27 or international branch complies with the requirements of this
28 section pursuant to subsection (1) or subsection (3), if, by
29 reason of the existence, or the potential occurrence, of
30 unusual or extraordinary circumstances, the office ~~department~~
31 finds it necessary or desirable for maintaining a sound

1 financial condition, protecting creditors and the public
2 interest, and maintaining public confidence in the business of
3 the international bank agency or international branch it may
4 by order require such international bank agency or
5 international branch to deposit cash or eligible securities
6 with a bank or trust company located in this state, or to hold
7 in this state assets acceptable to the office ~~department~~ in an
8 aggregate amount that bears such relationship as the office
9 ~~department~~ prescribes to the aggregate liabilities of the
10 international bank agency or international branch.

11 (9) Each international bank agency shall file such
12 reports with the office ~~department~~ as the commission
13 ~~department~~, by rule, requires to determine compliance with the
14 provisions of this section.

15 Section 1824. Section 663.08, Florida Statutes, is
16 amended to read:

17 663.08 Certification of capital accounts.--Before
18 opening an office in this state, and annually thereafter so
19 long as a bank office is maintained in this state, an
20 international banking corporation licensed pursuant to ss.
21 663.01-663.14 shall certify to the office ~~department~~ the
22 amount of its capital accounts, expressed in the currency of
23 the jurisdiction of its incorporation. The dollar equivalent
24 of these amounts, as determined by the office ~~department~~,
25 shall be deemed to be the amount of its capital accounts.

26 Section 1825. Subsections (1) and (3) of section
27 663.083, Florida Statutes, are amended to read:

28 663.083 Lending limits.--

29 (1) The commission ~~department~~ shall by rule prescribe
30 the limits of drafts or bills of exchange which an
31 international bank agency or branch may accept relative to the

1 capital accounts of the international banking corporation.
2 These limits shall take into account all transactions which
3 are included and excluded in computing the lending limit for
4 acceptances of a federal agency in the case of an
5 international bank agency, or a federal branch in the case of
6 an international branch, licensed under federal banking law.

7 (3) Any limitation in this section based on the
8 capital accounts of an international banking corporation shall
9 refer, with respect to an international bank agency or
10 international branch in this state, to the dollar equivalent
11 of the capital accounts of the international banking
12 corporation, as determined by the office ~~department~~. If the
13 international banking corporation has more than one
14 international bank agency or international branch in this
15 state, the business transacted by all such agencies or
16 branches shall be aggregated in determining compliance with a
17 limitation or restriction in this section.

18 Section 1826. Section 663.09, Florida Statutes, is
19 amended to read:

20 663.09 Reports; records.--

21 (1) Every international banking corporation doing
22 business in this state shall, at such times and in such form
23 as the commission prescribes ~~department shall prescribe~~, make
24 written reports in the English language to the office
25 ~~department~~, under the oath of one of its officers, managers,
26 or agents transacting business in this state, showing the
27 amount of its assets and liabilities and containing such other
28 matters as the commission or office requires ~~department shall~~
29 ~~prescribe~~. An international banking corporation that
30 maintains two or more offices may consolidate such information
31 in one report unless the office ~~department~~ otherwise requires

1 for purposes of its supervision of the condition and
2 operations of each such office. The late filing of such
3 reports shall be subject to the imposition of the
4 administrative fine prescribed by s. 655.045(2)(b). If any
5 such international banking corporation shall fail to make any
6 such report, as directed by the office ~~department~~, or if any
7 such report shall contain any false statement knowingly made,
8 the same shall be grounds for revocation of the license of the
9 international banking corporation.

10 (2) The international banking corporation of each
11 state-licensed international bank agency or international
12 branch shall perform or cause to be performed an audit of such
13 international bank agency or international branch. The
14 commission ~~department~~ shall, by rule, prescribe the minimum
15 audit procedures including the audit reporting requirements
16 which would satisfy the provisions of this subsection.

17 (3) Each international banking corporation which
18 operates an office licensed under this part shall cause to be
19 kept, at a location accepted by the office ~~department~~:

20 (a) Correct and complete books and records of account
21 of the business operations transacted by such office. All
22 policies and procedures governing the operations of such
23 office, as well as any existing general ledger or subsidiary
24 accounts, shall be maintained in the English language. The
25 office ~~department~~ may require that any other document not
26 written in the English language which the office ~~department~~
27 deems necessary for the purposes of its regulatory and
28 supervisory functions be translated into English at the
29 expense of the international banking corporation.

30 (b) Current copies of the charter and bylaws of the
31 international banking corporation, relative to the operations

1 of the office, and minutes of the proceedings of its
2 directors, officers, or committees relative to the business of
3 the office. Such records shall be kept pursuant to s. 655.91
4 and shall be made available to the office ~~department~~, upon
5 request, at any time during regular business hours of the
6 office. Any failure to keep such records as aforesaid or any
7 refusal to produce such records upon request by the office
8 ~~department~~ shall be grounds for suspension or revocation of
9 any license issued under this part.

10 (4) In addition to any other reports it may be
11 required to make, an international banking corporation which
12 maintains an international bank agency or international branch
13 in this state shall make reports to the office ~~department~~ in
14 such form and at such times as the commission ~~department~~
15 prescribes by rule concerning the management, asset quality,
16 capital adequacy, and liquidity of the international banking
17 corporation.

18 Section 1827. Subsections (1), (2), and (3) of section
19 663.10, Florida Statutes, are amended to read:

20 663.10 Conversion of license.--

21 (1) An international banking corporation desiring to
22 convert its existing federal agency or federal branch or Edge
23 Act corporation into an international bank agency or
24 international branch, or an Edge Act corporation which desires
25 to convert to a state-chartered investment company shall
26 submit to the office ~~department~~ an application, on a form
27 adopted by the commission and provided by the office ~~the~~
28 ~~department shall provide~~, accompanied by a filing fee as
29 prescribed by s. 663.12. An examination and investigation may
30 be conducted to the extent determined necessary by the office
31

1 ~~department~~. The cost of any such examination shall be paid by
2 the applicant.

3 (2) Nothing in the laws of this state shall restrict
4 the right of a state-licensed international branch agency,
5 international branch, or international representative office
6 or a state-chartered investment company to convert to a
7 federal license or charter upon compliance with the laws of
8 the United States. Upon completion of any such conversion, the
9 state license shall be surrendered to the office ~~department~~.

10 (3) An international banking corporation desiring to
11 convert any existing international banking office to an
12 international banking office of a different type shall submit
13 to the office ~~department~~ an application on a form adopted by
14 the commission and provided by the office ~~the department shall~~
15 ~~provide~~ which shall be accompanied by all of the information
16 and documents that are required of applicants for a license of
17 the type being sought together with the filing fee required by
18 s. 663.12.

19 Section 1828. Section 663.11, Florida Statutes, is
20 amended to read:

21 663.11 Dissolution.--In the event an international
22 banking corporation which is licensed to maintain an office in
23 this state is dissolved, or its authority or existence is
24 otherwise terminated or canceled in the jurisdiction of its
25 incorporation, a certificate of the official who is
26 responsible for records of banking corporations of the
27 jurisdiction of incorporation of such international banking
28 corporation, attesting to the occurrence of any such event, or
29 a certified copy of an order or decree of a court of such
30 jurisdiction, directing the dissolution of such international
31 banking corporation, the termination of its existence, or the

1 cancellation of its authority, shall be delivered by the
2 corporation or its surviving officers and directors to the
3 office ~~department~~. The filing of the certificate, order, or
4 decree shall have the same effect as the revocation of the
5 license of such international banking corporation as provided
6 in s. 663.06.

7 Section 1829. Section 663.12, Florida Statutes, is
8 amended to read:

9 663.12 Fees; assessments; fines.--

10 (1) Each application for a license under the
11 provisions of this part shall be accompanied by a
12 nonrefundable filing fee payable to the office ~~department~~ in
13 the following amount:

14 (a) Ten thousand dollars for establishing a
15 state-chartered investment company.

16 (b) Ten thousand dollars for establishing an
17 international bank agency or branch.

18 (c) Five thousand dollars for establishing an
19 international administrative office.

20 (d) Five thousand dollars for establishing an
21 international representative office.

22 (e) Two thousand dollars annually for operating an
23 international representative office or international
24 administrative office.

25 (f) An amount equal to the initial filing fee for an
26 application to convert from one type of license to another.
27 The commission ~~department~~ may increase the filing fee for any
28 type of license to an amount established by rule and
29 calculated in a manner so as to cover the direct and indirect
30 cost of processing such applications.

31

1 (2) Each international bank agency, international
2 branch, and state-chartered investment company shall pay to
3 the office ~~department~~ a semiannual assessment, payable on or
4 before January 31 and July 31 of each year, in an amount
5 determined by rule by the commission ~~department~~ and calculated
6 in a manner so as to recover the costs of the office
7 ~~department~~ incurred in connection with the supervision of
8 international banking activities licensed under this part.
9 These rules shall provide for uniform rates of assessment for
10 all licenses of the same type, shall provide for declining
11 rates of assessment in relation to the total assets of the
12 licensee held in the state, but shall not, in any event,
13 provide for rates of assessment which exceed the rate
14 applicable to state banks pursuant to s. 658.73, unless the
15 rate of assessment would result in a semiannual assessment of
16 less than \$1,000. For the purposes of this subsection, the
17 total assets of an international bank agency, international
18 branch, or state-chartered investment company shall include
19 amounts due the agency or branch or state investment company
20 from other offices, branches, or subsidiaries of the
21 international banking corporations or other corporations of
22 which the agency, branch, or state-chartered investment
23 company is a part or from entities related to that
24 international banking corporation.

25 (3) Each international banking corporation which
26 maintains an office licensed under the provisions of this part
27 and each state-chartered investment company shall pay to the
28 office ~~department~~ examination fees which shall be determined
29 by the commission ~~department~~ by rule and calculated in a
30 manner so as to be equal to the actual cost of each examiner's
31 participation in the examination, as measured by the

1 examiner's pay scale, plus any other expenses directly
2 incurred in the examination, but in no event shall such fee be
3 less than \$200 per day for each examiner participating in the
4 examination.

5 (4) An international bank agency or international
6 branch shall pay to the office ~~department~~ a fine if the agency
7 or branch fails to correct any asset maintenance or capital
8 equivalency deficiency within 7 days following the end of the
9 month in which the deficiency occurs. The fine shall be equal
10 to the amount of the asset maintenance or capital equivalency
11 deficiency at the end of the month in which the deficiency
12 occurs, multiplied by 500 basis points above the Federal
13 Reserve Board's daily discount rate at the end of the month in
14 which the deficiency occurred, for each day of the deficiency.
15 The minimum fine shall be \$1,000.

16 Section 1830. Section 663.13, Florida Statutes, is
17 amended to read:

18 663.13 Rules; exemption from statement of estimated
19 regulatory costs requirements.--In addition to any other
20 rulemaking authority it has under the financial institutions
21 codes, the commission may adopt ~~department is authorized to~~
22 ~~promulgate~~ reasonable rules that ~~which~~ it deems advisable for
23 the administration of international banking corporations under
24 this part, in the interest of protecting depositors,
25 creditors, borrowers, or the public interest and in the
26 interest of maintaining a sound banking system in this state.
27 Because of the difficulty in obtaining economic data with
28 regard to such banks, no statement of estimated regulatory
29 costs shall be required in connection with these rules.

30 Section 1831. Section 663.14, Florida Statutes, is
31 amended to read:

1 663.14 Foreign travel expenses.--If domestic or
2 foreign travel is deemed necessary by the office ~~department~~ to
3 effectuate the purposes of this part, representatives of the
4 office ~~department~~ shall be reimbursed for actual, reasonable,
5 and necessary expenses incurred in such domestic or foreign
6 travel.

7 Section 1832. Subsections (2), (7), and (8) of section
8 663.16, Florida Statutes, are amended to read:

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

11 (2) "Claims" means debts, obligations, deposits, and
12 other similar items that the office ~~department~~ takes
13 possession of pursuant to s. 663.17(1).

14 (7) "Control" means any person or group of persons
15 acting in concert, directly or indirectly, owning,
16 controlling, or holding the power to vote more than 50 percent
17 of the voting stock of a company, or having the ability in any
18 manner to elect a majority of directors of a corporation, or
19 otherwise exercising a controlling influence over the
20 management and policies of a corporation as determined by the
21 office ~~department~~.

22 (8) "Qualified financial contract" means any
23 securities contract, commodity contract, forward contract,
24 including spot and forward foreign exchange, repurchase
25 agreement, swap agreement, or any similar agreement, any
26 option to enter into any such agreement, including any
27 combination of the foregoing, and any master agreement for
28 such agreements. Such master agreement, together with all
29 supplements thereto, shall be treated as one qualified
30 financial contract, provided that such contract, option, or
31 agreement, or combination of contracts, options, or agreements

1 is reflected in the books, accounts, or records of the
2 international banking corporation or a party provides evidence
3 of such agreement. The commission ~~department~~ may define, by
4 rule, securities contract, commodity contract, forward
5 contract, repurchase agreement, or swap agreement, and the
6 commission, by rule, or the office, by order,~~may, by rule or~~
7 ~~order,~~determine any other agreement to be a qualified
8 financial contract for the purpose of this subsection. The
9 commission ~~department~~ may prescribe such rules relating to
10 qualified financial contracts and netting thereof as the
11 commission ~~department~~ deems appropriate.

12 Section 1833. Section 663.17, Florida Statutes, is
13 amended to read:

14 663.17 Liquidation; possession of business and
15 property; inventory of assets; wages; depositing collected
16 assets; appointing agents; appointment of judges.--

17 (1) The office ~~department~~ may, at its discretion, take
18 possession of the business and property in this state of any
19 international banking corporation that has been licensed to
20 operate in this state upon finding that the corporation's
21 international bank agency operating in this state has violated
22 any law, has neglected or refused to comply with the terms of
23 a duly issued order of the office ~~department~~, is insolvent or
24 imminently insolvent, or is transacting business in an
25 unsound, unsafe, or unauthorized manner such that the
26 corporation is threatened with imminent insolvency, or that
27 the corporation is in liquidation at its domicile or
28 elsewhere. Title to such business and property shall vest by
29 operation of law in the office ~~department~~ upon taking
30 possession. Thereafter, the office ~~department~~ shall liquidate
31 or otherwise deal with such business and property in

1 accordance with the provisions of this part, chapter 658, and
2 any other provision relating to the liquidation of banking
3 corporations. The office ~~department~~ may deal with such
4 business and property and prosecute and defend any and all
5 actions relating to the liquidation. Only the claims of
6 creditors of the international banking corporation arising out
7 of transactions those creditors had with the international
8 banking corporation's international bank agency or agencies
9 located in this state shall be accepted by the office
10 ~~department~~ for payment out of the business and property which
11 it has taken possession of in this state. Acceptance or
12 rejection of such claims by the office ~~department~~ shall not
13 prejudice any creditor's rights to otherwise share in other
14 assets of the international banking corporation. The following
15 claims shall not be accepted by the office ~~department~~ for
16 payment out of the business and property in the office's
17 ~~department's~~ possession in this state:

18 (a) Claims which would not represent an enforceable
19 legal obligation against an international bank agency if such
20 agency were a separate and independent legal entity.

21 (b) Amounts due and other liabilities to other
22 offices, agencies, and branches of and affiliates of such
23 international banking corporation.

24 (2) Whenever all accepted claims, together with
25 interest on such claims, and the expenses of the liquidation
26 have been paid in full or properly provided for, the office
27 ~~department~~, upon the order of a court of competent
28 jurisdiction, shall transfer the remaining assets to the
29 principal office of such international banking corporation, or
30 to the duly appointed domiciliary liquidator or receiver of
31 such corporation. Dividends and other amounts that remain

1 unclaimed or unpaid and are in the possession of the office
2 ~~department~~ for 6 months after such transfer shall be deposited
3 by the office ~~department~~ as provided by law.

4 (3) When the office ~~department~~ takes possession of the
5 property and business of any international banking
6 corporation, the office ~~department~~ shall:

7 (a) Give notice of such fact to all corporations,
8 unincorporated associations, partnerships, governmental
9 entities, and other entities and individuals known by the
10 office ~~department~~ to hold any assets of such corporation. No
11 corporation, unincorporated association, partnership,
12 governmental entity, or other entity or individual having
13 notice or knowledge that the office ~~department~~ has taken
14 possession of such corporation shall have a lien or charge for
15 any payment, advance, or clearance thereafter made against any
16 of the assets of such corporation for liability thereafter
17 incurred.

18 (b) Upon written demand of the office ~~department~~, any
19 corporation, unincorporated association, partnership,
20 governmental entity, or other entity or individual holding
21 assets of such corporation shall deliver such assets to the
22 office ~~department~~ and shall be discharged from liability with
23 respect to any claim upon such assets; provided, such demand
24 shall not affect the right of a secured creditor with a
25 perfected security interest, or other valid lien or security
26 interest enforceable against third parties, to retain
27 collateral, including any right of such secured creditor under
28 any security agreement related to a qualified financial
29 contract to retain collateral and apply such collateral in
30 accordance with the provisions of the financial institutions
31 codes.

1 (c) Nothing in paragraphs (a) and (b) shall affect any
2 right of setoff permitted under applicable law; provided, in
3 connection with the liquidation of an international bank
4 agency of any other international banking corporation pursuant
5 to this part, no entity or individual may set off the business
6 and property in this state of an international banking
7 corporation being liquidated under this subsection, against
8 the liabilities of such corporation other than those that
9 arise out of transactions engaged in by such entity or
10 individual with such international bank agency. For purposes
11 of this paragraph, liabilities shall be deemed to include, in
12 the case of qualified financial contracts, the lesser of the
13 two amounts calculated with respect to any such qualified
14 financial contract pursuant to s. 663.172(3), and this
15 paragraph shall not be deemed to authorize setoff except as
16 otherwise permissible under applicable law.

17 (4) Any international banking corporation of which the
18 office department has taken possession or which is operating
19 under restrictions imposed by duly constituted authority may
20 be permitted to resume business subject to the office's
21 ~~department's~~ discretion and any conditions that ~~which~~ the
22 office department may impose.

23 (5) After the office department takes possession of
24 and determines to liquidate the property and business of any
25 international banking corporation, the office department shall
26 make an inventory, in duplicate, of the assets of such
27 corporation. One copy of such inventory shall be filed with
28 the in an office of the department and one copy shall be filed
29 with a court of competent jurisdiction in the county in which
30 the principal office of such corporation is located.

31

1 (6) Notwithstanding s. 658.84, all wages actually
2 owing to the employees of an international banking corporation
3 for services rendered within 3 months prior to the date
4 possession was taken by the office department, and not
5 exceeding \$2,000 to each employee, shall be paid prior to the
6 payment of any other debt or claim, and, in the discretion of
7 the office department, may be paid as soon as practicable
8 after taking possession, except that at all times the office
9 ~~department~~ shall reserve such funds as will, in the office's
10 ~~department's~~ opinion, be sufficient for the expenses of
11 administration.

12 (7) The office department is authorized, upon taking
13 possession of any international banking corporation, to
14 liquidate the affairs of such corporation and to do all acts
15 and to make such expenditures as in the office's ~~department's~~
16 judgment are necessary to conserve the assets and business of
17 the corporation. The office department shall proceed to
18 collect the debts due to the corporation. The office
19 ~~department~~ may, upon an order of a court of competent
20 jurisdiction, sell, assign, compromise, or otherwise dispose
21 of all bad or doubtful debts held by, and compromise claims
22 against, such corporation, other than deposit claims,
23 provided, whenever the principal amount of any such debt or
24 claim owed by or owing to such corporation does not exceed
25 \$50,000, the office department may sell, assign, compromise,
26 or otherwise dispose of such debt or claim upon such terms as
27 the office department may deem to be in the best interests of
28 such corporation wherever situated. When the real property of
29 an international banking corporation, to be disposed of
30 pursuant to this subsection, is located in a county in this
31 state other than a county in which an application to the court

1 for leave to dispose is made, the office ~~department~~ shall file
2 a certified copy of the order of such court authorizing such
3 disposal in the office of the clerk of the county in which
4 such real property is located.

5 (8) Moneys collected by the office ~~department~~ in
6 liquidating an international banking corporation shall be:

7 (a) Deposited on demand, time or otherwise, in one or
8 more banks, associations, or trust companies organized under
9 the laws of this state and, in the case of insolvency or
10 voluntary or involuntary liquidation of the depository, such
11 deposits shall be entitled to priority of payment equally with
12 any other priority given under the financial institutions
13 codes;

14 (b) Deposited on demand, time or otherwise, in one or
15 more national banks with a principal office located in this
16 state and with total assets exceeding \$1 billion; or

17 (c) Invested in obligations of the United States, or
18 obligation for which the full faith and credit of the United
19 States is pledged to provide for the payment of interest and
20 principal.

21 (9) The office ~~department~~ may appoint one or more
22 persons as agent or agents to assist in the liquidation of the
23 business and affairs of any international banking corporation
24 in the office's ~~department's~~ possession. The office ~~department~~
25 shall file a certificate of such appointment in the
26 headquarters of the office ~~one of the department's offices~~ and
27 shall file a certified copy of such certificate with a court
28 of competent jurisdiction in the county in which the principal
29 office of such corporation is located in this state. The
30 office ~~department~~ may employ such counsel and expert
31 assistants under such titles that the office ~~department~~ shall

1 assign to them, and may retain such officers or employees of
2 such corporation as the office department deems necessary in
3 the liquidation and distribution of the corporation's assets.
4 The office department may require such security as it may deem
5 proper from the agents and assistants appointed pursuant to
6 the provisions of this subsection.

7 (10) When the office department has taken possession
8 of and is liquidating the business and property in this state
9 of any international banking corporation under the provisions
10 of this part, the office department shall be entitled to the
11 appointment of a single judge to supervise the liquidation in
12 the judicial circuit in which the principal office of such
13 corporation is located. Such judge shall have the power to
14 order expedited or simplified procedures or order a reference
15 whenever necessary to resolve a matter in such liquidation.

16 (11) The compensation of agents and any other
17 employees appointed by the office department to assist in the
18 liquidation of an international bank agency, the distribution
19 of its assets, or the expenses of supervision, shall be paid
20 out of the assets of the agency in the hands of the office
21 department. Expenses of liquidation and approved claims for
22 fees and assessments due the office department shall be given
23 first priority among unsecured creditors.

24 Section 1834. Section 663.171, Florida Statutes, is
25 amended to read:

26 663.171 Liquidation; repudiation of contracts.--

27 (1) Except as otherwise provided in this section, when
28 the office department has taken possession of the business and
29 property in this state of an international banking
30 corporation, the office department may assume or repudiate any
31 contract, including an unexpired lease, of the corporation:

1 (a) To which such corporation is a party.

2 (b) The performance of which the office ~~department~~, in
3 its discretion, determines to be burdensome.

4 (c) The repudiation of which the office ~~department~~, in
5 its discretion, determines will promote the orderly
6 administration of the corporation's affairs.

7 (2) After the expiration of 90 days after the date the
8 office ~~department~~ takes possession of an international banking
9 corporation, any party to a contract with such corporation may
10 demand in writing that the office ~~department~~ assume or
11 repudiate such contract. If the office ~~department~~ has not
12 assumed or repudiated the contract within 15 calendar days
13 after the date of receipt of such demand, the affected party
14 may bring an action in a court of competent jurisdiction in
15 the county in which the principal office of the corporation is
16 located to obtain an order requiring the office ~~department~~ to
17 assume or repudiate the contract. If the office ~~department~~ has
18 not assumed or repudiated the contract by at least 1 month
19 before the last date for filing claims against the
20 corporation, such contract shall be deemed repudiated.

21 (3) Notwithstanding subsection (2), with respect to an
22 unexpired lease of the corporation for rental of real property
23 under which the corporation was a lessee, if the office
24 ~~department~~ remains in possession of the leasehold, the office
25 ~~department~~ shall not be required to assume or repudiate such
26 lease and may continue in possession of such leasehold for the
27 remainder of the term of the lease in accordance with the
28 terms of the lease; provided, if the office ~~department~~ later
29 repudiates the lease before the end of the lease term, any
30 amounts that may be due the lessor with respect to such lease
31 shall be calculated as provided by law.

1 (4) Notwithstanding any other provision of this
2 section relating to liquidating an international banking
3 corporation, the office ~~department~~ shall not assume or
4 repudiate any qualified financial contract that the
5 international bank agency entered into which is subject to a
6 multibranch or multiagency netting agreement or arrangement
7 that provides for netting present or future payment
8 obligations or payment entitlements, including termination or
9 closeout values relating to the obligations or entitlements,
10 among the parties to the contract and agreement or arrangement
11 and the office ~~department~~ may, but shall not be required to,
12 assume or repudiate any other qualified financial contract an
13 international bank agency entered into; provided, upon the
14 repudiation of any qualified financial contract or the
15 termination or liquidation of any qualified financial contract
16 in accordance with its terms, the liability of the office
17 ~~department~~ under such qualified financial contract shall be
18 determined in accordance with s. 663.172.

19 Section 1835. Section 663.172, Florida Statutes, is
20 amended to read:

21 663.172 Liability on repudiation or termination of
22 contracts.--

23 (1) Except as otherwise provided in this section, upon
24 the repudiation or termination of any contract pursuant to s.
25 663.171, the liability of the office ~~department~~ shall be
26 limited to the actual direct compensatory damages of the
27 parties to the contract, determined as of the date the office
28 ~~department~~ took possession of the international banking
29 corporation. The office ~~department~~ shall not be liable for any
30 future wages other than severance payments, to the extent such
31 payments are reasonable standards, or for payments for future

1 service, costs of cover, or any consequential, punitive, or
2 exemplary damages, damages for lost profits or lost
3 opportunity, or damages for pain and suffering.

4 (2) Except as otherwise provided in this section, the
5 liability of the office ~~department~~, upon the repudiation of
6 any qualified financial contract or in connection with the
7 termination or liquidation of any qualified financial contract
8 in accordance with the terms of such contract, shall be
9 limited as provided in subsection (1), except compensatory
10 damages shall be deemed to include normal and reasonable costs
11 of cover or other reasonable measures of damages used among
12 participants in the market for qualified financial contract
13 claims, calculated as of the date of repudiation or the date
14 of the termination of such qualified financial contract in
15 accordance with the terms of the contract. Upon the
16 repudiation of any qualified financial contract or in
17 connection with the termination or liquidation of any
18 qualified financial contract in accordance with the terms of
19 such contract, the office ~~department~~ shall be entitled to
20 damages and such damages shall be paid to the office
21 ~~department~~ upon written demand from the office ~~department~~ to
22 the other party or parties to the contract.

23 (3) In the case of the liquidation of an international
24 bank agency of an international banking corporation by the
25 office ~~department~~, with respect to qualified financial
26 contracts subject to netting agreements or arrangements that
27 provide for netting present or future payment obligations or
28 payment entitlements, including termination or closeout values
29 relating to the obligations or entitlements, among the parties
30 to the contracts and agreements or arrangements, the liability
31 of the office ~~department~~ to any party to any such qualified

1 financial contract upon the repudiation or in any connection
2 with the termination or liquidation of such qualified
3 financial contract in accordance with the terms of such
4 contract shall be limited to the lesser of:

5 (a) The global net payment obligation; or
6 (b) The branch-to-agency or agency-to-agency net
7 payment obligation.

8 (4) The liability of the office ~~department~~ to a party
9 under this section shall be reduced by any amount otherwise
10 paid or received by the party with respect to the global net
11 payment obligation pursuant to such qualified financial
12 contract which, if added to the liability of the office
13 ~~department~~ under subsection (1), would exceed the global net
14 payment obligation. The liability of the office ~~department~~
15 under this section to a party to a qualified financial
16 contract also shall be reduced by the fair market value or the
17 amount of any proceeds of collateral that secures and has been
18 applied to satisfy the obligations of the international
19 banking corporation to the party pursuant to such qualified
20 financial contract. If netting under the applicable netting
21 agreement or arrangement results in a branch-to-agency net
22 payment entitlement, notwithstanding any provision in any such
23 contract that purports to effect a forfeiture of such
24 entitlement, the office ~~department~~ may make written demand for
25 and shall be entitled to receive from the party to such
26 contract an amount not to exceed the lesser of the global net
27 payment entitlement or the branch-to-agency net payment
28 entitlement.

29 (5) The liability of a party under this section shall
30 be reduced by any amount otherwise paid to or received by the
31 office ~~department~~ or any other liquidator or receiver of the

1 international banking corporation with respect to the global
2 net payment entitlement pursuant to such qualified financial
3 contract which, if added to the liability of the party under
4 this section, would exceed the global net payments
5 entitlement. The liability of a party under this section to
6 the office ~~department~~ pursuant to such qualified financial
7 contract also shall be reduced by the fair market value of the
8 amount of any proceeds of the collateral that secures and has
9 been applied to satisfy the obligations of the party to the
10 international banking corporation pursuant to such qualified
11 financial contract.

12 Section 1836. Section 663.173, Florida Statutes, is
13 amended to read:

14 663.173 Qualified financial contract; net obligation
15 and net entitlement.--A party to a qualified financial
16 contract with an international banking corporation, possession
17 of which has been taken by the office ~~department~~ pursuant to
18 s. 663.17, which party has a perfected security interest in
19 collateral or other valid lien or security interest in
20 collateral enforceable against third parties pursuant to a
21 security arrangement related to such qualified financial
22 contract, may retain all such collateral and, upon repudiation
23 or termination of such qualified financial contract in
24 accordance with the terms of the contract, may apply such
25 collateral in satisfaction of any claims secured by the
26 collateral provided the total amount so applied to such claims
27 shall in no event exceed the global net payment obligation, if
28 any.

29 Section 1837. Section 663.174, Florida Statutes, is
30 amended to read:

31

1 663.174 Repudiation; lease, lessee, or lessor; real or
2 personal property.--

3 (1) If the office ~~department~~ repudiates a lease of an
4 international banking corporation, the real or personal
5 property under which the corporation was a lessee, the lessor
6 under such lease shall be entitled to file a claim with the
7 office ~~department~~ for the lesser of:

8 (a) The amount designated as liquidated damages
9 contained in the lease between the corporation and the lessor;

10 (b) The amount equal to 1 year's rent under the terms
11 of the repudiated lease; or

12 (c) An amount equal to the rent for the remaining term
13 of the lease.

14 (2) If the office ~~department~~ repudiates the lease of
15 an international banking corporation for the rental of real
16 property under which the corporation was the lessor and the
17 lease was not in default at the time of the repudiation, the
18 lessee under such lease may:

19 (a) Treat the lease as terminated by such repudiation
20 and vacate the premises; or

21 (b) Remain in possession of the leasehold interest for
22 the balance of the term of the lease, and for any renewal or
23 extension of such term that is enforceable by such lessee
24 under applicable noninsolvency law, unless the lessee defaults
25 under the terms of the lease after the date of such
26 repudiation. If the lessee remains in possession of the
27 leasehold interest, the lessee shall continue to pay to the
28 office ~~department~~ the contractual rent pursuant to the terms
29 of the lease after the date of the repudiation of such lease
30 and may offset against such rent payment any damages which may
31

1 accrue due to nonperformance of any obligation of the
2 corporation under the lease after the date of repudiation.

3
4 The office ~~department~~ shall not be liable to the lessee for
5 any damages arising after such date as a result of the
6 repudiation other than the amount of any offset allowed under
7 this paragraph. Nothing in this subsection prohibits the
8 office ~~department~~ from entering into a new contract with the
9 lessee for the rental of the leasehold which was the subject
10 of the repudiated lease.

11 (3) Except as otherwise provided, notwithstanding any
12 provision in an unexpired lease or other contract or in
13 applicable law, a contract or unexpired lease of an
14 international banking corporation may not be terminated or
15 modified by any party other than the office ~~department~~ without
16 the concurrence of the office ~~department~~, and any right or
17 obligation under such contract or lease may not be terminated
18 or modified, at any time after the office ~~department~~ has taken
19 possession, solely pursuant to a provision in such contract or
20 lease purporting to allow termination or modification upon the
21 office's ~~department's~~ taking possession or upon the insolvency
22 or liquidation or deterioration of the financial condition of
23 the corporation.

24 (4) Nothing in this section affects the right of a
25 party to contract with an international banking corporation to
26 seek performance of such contract or damages under such
27 contract in any other jurisdiction; provided, the office
28 ~~department~~ shall not be liable for the performance of such
29 contract or damages under such contract in any other
30 jurisdiction.

31

1 (5) The rights granted in this section are in addition
2 to any other rights available to the office ~~department~~ under
3 common law or any other law.

4 Section 1838. Section 663.175, Florida Statutes, is
5 amended to read:

6 663.175 Liquidation; continuation, stay, and
7 injunction.--

8 (1) Except as provided in this section, the office's
9 ~~department's~~ taking of possession of any international banking
10 corporation and the liquidation of the corporation shall
11 operate as a stay of and as an injunction against, as of the
12 date the office ~~department~~ takes possession of the corporation
13 and applicable to all persons or entities:

14 (a) The commencement or continuation, including the
15 issuance or employment of process, of a judicial,
16 administrative, or other action or proceeding against the
17 corporation that was or could have been commenced before the
18 taking of possession, or to cover a claim against the
19 corporation that arose before the taking of possession.

20 (b) The enforcement against the corporation, or the
21 business and property of the corporation in this state, of a
22 judgment obtained before the taking of possession.

23 (c) Any act to obtain possession of property of the
24 corporation or of property from the corporation or to exercise
25 control over property of the corporation.

26 (d) Any act to create, perfect, or enforce any lien
27 against property of the corporation.

28 (e) Any act to create, perfect, or enforce against
29 property of the corporation any lien to the extent that such
30 lien secures a claim that arose before the taking of
31 possession.

1 (f) Any act to collect, assess, or recover a claim
2 against the corporation and the liquidation of the corporation
3 does not operate as a stay of or as an injunction against the
4 claim.

5 (2) The office's ~~department's~~ taking of possession of
6 an international banking corporation and the liquidation of
7 the corporation does not operate as a stay of or as an
8 injunction against:

9 (a)1. The filing of a claim in the liquidation of the
10 corporation;

11 2. The making of a demand upon the office ~~department~~
12 to assume or repudiate a contract of the corporation;

13 3. The exercise of any setoff otherwise permissible
14 under applicable law except limited by s. 663.17;

15 4. The right of any secured creditor with a perfected
16 security interest or other valid lien or security interest
17 enforceable against third parties to retain collateral,
18 including any right of such secured creditor under any
19 security agreement related to a qualified financial contract
20 as defined in s. 663.17 to retain collateral and to apply such
21 collateral in accordance with s. 663.173;

22 5. Any automatic termination in accordance with the
23 terms of any qualified financial contract or any right to
24 cause the termination or liquidation of any qualified
25 financial contract, as defined in this part in accordance with
26 the terms of such contract;

27 6. Any right to offset or net out any termination
28 value, payment amount, or other transfer obligation arising
29 under or in connection with one or more such qualified
30 financial contracts; or
31

1 7. The commencement of an action under s. 663.181 or
2 any other action relating to the liquidation of the
3 corporation before the court of competent jurisdiction
4 overseeing the liquidation of the corporation.

5 (b) The commencement or continuation of a criminal
6 action or proceeding against the corporation.

7 (c) The commencement or continuation of an action or
8 proceeding pursuant to a governmental unit's police or
9 regulatory power.

10 (d) The enforcement of a judgment, other than money
11 judgment, obtained in an action or proceeding by a
12 governmental unit to enforce such governmental unit's police
13 or regulatory power.

14 (e) The issuance to the corporation by a governmental
15 unit of a notice of tax deficiency.

16 (f) The commencement or continuation of a judicial
17 action or proceeding by a secured creditor with a perfected
18 security interest, or other valid lien or security interest
19 enforceable against third parties, including any right of such
20 secured creditor under any security arrangement related to a
21 qualified financial contract to enforce such interest or lien.

22 (3) Except as otherwise provided in this section:

23 (a) The staying or enjoining of an act against
24 property of an international banking corporation under this
25 section shall continue until such property is no longer the
26 property of the office ~~department~~ in possession of the
27 corporation.

28 (b) The staying or enjoining of any other act under
29 this section shall continue until the office ~~department~~ has
30 concluded liquidating the corporation.

31

1 (4) For good cause shown, on request of a party in
2 interest and after notice and hearing, a court of competent
3 jurisdiction overseeing the liquidation of an international
4 banking corporation may grant relief from a stay or injunction
5 provided under this section, including, but not limited to,
6 terminating, annulling, modifying, or conditioning such stay
7 or injunction.

8 (5) In the case of any willful violation of a stay or
9 injunction provided in this section by any person who has
10 knowledge of the office's ~~department's~~ taking of possession of
11 an international banking corporation that is the subject of
12 the stay or injunction, the office ~~department~~ shall recover
13 actual damages, including costs and fees and, in appropriate
14 circumstances, may recover punitive damages.

15 Section 1839. Section 663.176, Florida Statutes, is
16 amended to read:

17 663.176 Liquidation; notice of possession.--When the
18 office ~~department~~ has taken possession of an international
19 banking corporation and has determined to liquidate the
20 corporation's affairs, the office ~~department~~ shall notify all
21 persons who may have claims against the corporation to present
22 such claims to the office ~~department~~ and make proper proof of
23 such claims within 4 months after the date of such notice and
24 at a place specified in the notice; provided, if the office
25 ~~department~~ finds that a shorter period than 4 months will
26 afford a reasonable time for presenting claims and making
27 proof of such claims, the office ~~department~~ may specify such
28 shorter period which shall in no event be less than 30 days.
29 In any event, the office ~~department~~ shall specify in such
30 notice the last day for processing claims and for making proof
31 of such claims. The office ~~department~~ shall cause such notice

1 to be mailed to all persons whose names appear as creditors
2 upon the books of the corporation. Such notice to persons
3 appearing as depositors shall be mailed to the address
4 appearing upon the deposit records or ledger of the
5 corporation. The office ~~department~~ shall also cause such
6 notice to be published biweekly in such newspaper or
7 newspapers as the office ~~department~~ may direct in the county
8 where the principal office of the corporation in the state is
9 located and, in the office's ~~department's~~ discretion,
10 elsewhere for publication 3 consecutive months, the first to
11 be published more than 90 days before the last day fixed in
12 such notice for presenting proof of claims. However, if the
13 notice requires claims to be presented within less than 4
14 months, the office ~~department~~ shall cause such notice to be
15 published weekly in such newspaper or newspapers as the office
16 ~~department~~ may direct for 3 consecutive weeks, the first
17 publication to be published more than 21 days before the last
18 day fixed in such notice for presenting claims. Such notice
19 shall specify that all persons having claims for priority of
20 payment shall make demand in writing for priority in the proof
21 of their claims. The office ~~department~~ shall have no power to
22 accept any claim presented after the date specified in such
23 notice as the last date for presenting claims.

24 Section 1840. Section 663.177, Florida Statutes, is
25 amended to read:

26 663.177 Disposition of property held as bailee or
27 depository; opening of safe-deposit boxes; disposal of
28 contents.--

29 (1) The office ~~department~~ may, after it has taken
30 possession of the business and property of an international
31 banking corporation, send a written notice by registered mail

1 to each person claiming, or appearing upon the books of the
2 corporation, to be:

3 (a) The owner of any personal property in the custody
4 or possession of the corporation, as bailee or depositary for
5 hire or otherwise, including the contents of any safe, vault,
6 or box opened after taking possession of such property for
7 nonpayment of any rent; or

8 (b) The lessee of any safe, vault, or box, to such
9 person's last address appearing on the books of the
10 international banking corporation or the last known address if
11 no address appears on such books, notifying such person to
12 remove all such property or the contents of any such safe,
13 vault, or box, within a period stated in such notice which
14 period shall be not less than 60 days after the date of such
15 notice. The contract of bailment or of deposit for hire, or
16 lease of safe, vault, or box, if any, between the person to
17 whom such notice is mailed and the corporation shall cease
18 upon the date for removal fixed in such notice. Such persons
19 shall have a claim against the corporation for the amount of
20 unearned rent or charges, if any, paid by such person from the
21 date fixed in such notice, if the property or contents are
22 removed on or before such date, or from the date of actual
23 removal, if the property or contents are removed after such
24 date.

25 (2) If such property or contents are not removed, and
26 all rent or storage and other charges accrued up to that time,
27 if any, are not paid, within the time fixed by such notice,
28 the office ~~department~~ may cause such property to be
29 inventoried, or such safe, vault, or box, or any package,
30 parcel, or receptacle in the custody or possession of the
31 corporation as bailee or depositary for hire or otherwise, to

1 be opened and the contents, if any, to be removed and
2 inventoried. Such property or contents shall be sealed by a
3 notary public in a package distinctly marked by the office
4 ~~department~~ with the name of the person in whose name such
5 property or such safe, vault, box, package, parcel, or
6 receptacle is recorded upon the books of the corporation, and
7 a copy of such inventory shall be certified and attached to
8 such package by such notary public. The package shall be kept
9 in a place that the office ~~department~~ determines at the
10 expense and risk of the person in whose name it is recorded
11 until delivered to such person or until sold, destroyed, or
12 otherwise disposed of. Such package may, pending final
13 disposition of its contents, be opened by the office
14 ~~department~~ for inspection or appraisal or to enable the office
15 ~~department~~ to exercise any powers conferred or duties imposed
16 by this part. Whenever such package is opened, the office
17 ~~department~~ shall endorse on the outside of the package the
18 date of opening and resealing and shall prepare an affidavit
19 which shall be attached to the package showing the reason for
20 opening and the articles, if any, removed from the package or
21 placed or replaced in the package.

22 (3) At any time prior to the sale, destruction, or
23 other disposition of the contents of the package, the person
24 in whose name the package is recorded may require the delivery
25 of the package upon the payment of all rental or storage
26 charges accrued, and all other charges or expenses paid or
27 incurred to the date of delivery with respect to such package
28 or contents of the package including the cost of inventorying
29 or of opening and inventorying, the fees of the notary public,
30 the cost of preparing and mailing the notice, and advertising,
31 if any.

1 (4) After the expiration of 1 year after the mailing
2 of the notice required in subsection (1), the office
3 ~~department~~ may apply to a court of competent jurisdiction for
4 an order authorizing the office ~~department~~ to sell, destroy,
5 or otherwise dispose of the contents of such package.
6 Whenever, pursuant to the provisions of this subsection, the
7 office ~~department~~ is given the power to sell the contents of
8 any package, such power to sell shall be deemed a power to
9 sell in satisfaction of a lien for nonpayment of rental or
10 storage charges accrued, and all other charges and expenses
11 paid or incurred to the date of sale with respect to such
12 package and the contents of the package, including charges and
13 expenses described in subsection (3).

14 (5) The provisions of this section do not affect or
15 preclude any other remedy, by action or otherwise, for the
16 enforcement of claims or rights of the office ~~department~~, or
17 of an international banking corporation of which the office
18 ~~department~~ is in possession, against the person in whose name
19 any property or any safe, vault, box, package, parcel, or
20 receptacle is recorded, or affect or bar the right of the
21 office ~~department~~ or the corporation to recover, before sale,
22 any debt or claim due to the office ~~department~~ or the
23 corporation, or, after sale, so much of the debt or claim as
24 is not paid by the proceeds of the sale.

25 Section 1841. Section 663.178, Florida Statutes, is
26 amended to read:

27 663.178 Claims; valuation; priority; listing; filing;
28 objection; endorsement; adverse interest.--

29 (1) Proof of claim shall consist of a written
30 statement under oath signed by the claimant or his or her
31

1 attorney in fact and shall be in such form as the office
2 ~~department~~ requires.

3 (2) The office ~~department~~ shall not accept a claim
4 based on an agreement with an international banking
5 corporation unless the agreement is reflected on the accounts,
6 books, or records of the corporation or a creditor provides
7 documentary evidence of such agreement. The commission
8 ~~department~~ may adopt any rules determined necessary to
9 implement this section.

10 (3) No claim or account of any secured claimant or
11 creditor shall be accepted at a sum greater than the
12 difference between the face value of the claim or account and
13 the value of the security itself as of the commencement of the
14 liquidation unless the claimant or creditor, prior to the
15 expiration of the time fixed by the office ~~department~~ for the
16 presentation of claims, surrenders his or her security to the
17 office ~~department~~, in which event the claim or account may be
18 accepted in its full face amount.

19 (4) The office ~~department~~ shall not determine
20 priorities in accepting or rejecting claims and the acceptance
21 by the office ~~department~~ of a claim in which priority of
22 payment is demanded shall not entitle the claimant to
23 priority. Accepted claims in which priority of payment is
24 demanded shall be presented to a court of competent
25 jurisdiction on notice to the claimant for determination as to
26 the priority of payment of such claims. Except as otherwise
27 provided in ss. 663.17-663.181, all claims entitled to
28 priority of payment shall be paid ratably and proportionately.

29 (5) The office ~~department~~ shall prepare in duplicate a
30 complete list of all claims presented, specifying the name of
31 the claimant, the nature of the claim, and the amount of such

1 claim. Such list shall also contain a statement of accounts
2 payable as shown by the books and records of the corporation
3 and as to which no claims have been presented, specifying the
4 name of each person to whom such account appears to be
5 payable, the nature of the debt, and the amount of such claim.
6 Within 60 days after the last date fixed in the notice to
7 creditors to present and make proof of claims, the office
8 ~~department~~ shall file one copy of such list in one of its
9 offices for public inspection and shall file one copy with a
10 court of competent jurisdiction in the county in which the
11 principal office of the corporation is located.

12 (6) Within 40 days after the office ~~department~~ has
13 filed in its headquarters ~~office~~ a copy of the list of claims
14 required by subsection (5), objections to any claim presented
15 or to any account appearing on such list may be made by any
16 party interested by filing such objections with the office
17 ~~department~~, in writing, signed by the objector, and verified.
18 Unless the office ~~department~~ rejects any claim or accounts to
19 which objections have been filed with it, the office
20 ~~department~~ shall, within 60 days after the time to file such
21 objections has expired, apply to a court of competent
22 jurisdiction, upon notice to the objector, for an order
23 directing the office ~~department~~ as to the disposition of such
24 claim or account. The court may then dispose of such
25 objections or may order a reference for that purpose.

26 (7) The office ~~department~~ shall, not later than 60
27 days after the time has expired to file objections to claims
28 presented, accept or reject, in whole or in part, every filed
29 claim, except claims as to which objections are still pending
30 before a court, and shall accept or reject, in whole or in
31 part, every account payable as shown by the books and records

1 and as to which no claim has been presented, except accounts
2 as to which objections are still pending before a court.
3 Whenever the office ~~department~~ accepts a portion of a claim or
4 account and rejects the remainder, the portion accepted and
5 the portion rejected shall, for the purpose of this section,
6 each be deemed separate claims or accounts.

7 (8) Every claim or account payable accepted by the
8 office ~~department~~ shall be endorsed as "accepted" and be filed
9 so endorsed. If the office ~~department~~ is unable, from the
10 books, accounts, or records of an international banking
11 corporation, to determine the ownership of a claim or account
12 payable or if for any other reason the office ~~department~~
13 doubts the validity of any claim or account payable, the
14 office ~~department~~ shall reject such claim or account payable
15 and shall endorse the claim or account payable as "rejected"
16 and file it as so endorsed. The office ~~department~~ shall mail
17 notice of such acceptance or rejection within 14 calendar days
18 after the office ~~department~~ has accepted or rejected all
19 claims filed. If a proof of claim has been filed, such notice
20 need be mailed only to the address appearing on such claim
21 and, if no proof of claim has been filed, the notice need be
22 mailed only to the address appearing upon the books of the
23 corporation. If the office ~~department~~ is unable from the proof
24 of claim or the books and records of the corporation to
25 identify a name or address, such notice of rejection need not
26 be given.

27 (9) Within 30 days after the office ~~department~~ has
28 accepted or rejected all claims filed, and all accounts
29 payable as shown by the books and records as to which no
30 claims have been presented, the office ~~department~~ shall make a
31 list of all such claims and accounts accepted or rejected by

1 the office ~~department~~ for public inspection and file one copy
2 of such list with the ~~in an office of the department~~ and one
3 copy with a court of competent jurisdiction in the county in
4 which the principal Florida office of such corporation is
5 located.

6 (10) When the office ~~department~~ has accepted a filed
7 claim and has filed such claim, endorsed as "accepted," the
8 claimant, unless priority of payment has been demanded and
9 such claim is entitled by law to priority of payment, shall be
10 entitled to share ratably with other general creditors in the
11 distribution of the proceeds of the liquidation of the assets
12 of the international banking corporation; provided, any
13 accepted claim or claims for taxes owed to any taxing
14 authority shall be paid in full, to the extent that assets of
15 the corporation are available, prior to the payment of any
16 other accepted claim pursuant to this section. If the claimant
17 has demanded priority of payment, the receipt and acceptance
18 of ratable dividends shall be without prejudice to the right
19 of such priority of payment.

20 (11) Any person who fails to demand in writing
21 priority of payment as specified in the notice to file claims
22 shall be deemed to have waived and abandoned any right to such
23 priority of payment. Any person who fails to demand in writing
24 priority of payment as provided in this section is not
25 entitled to maintain any action or proceeding for any priority
26 of payment. In any action or proceeding for priority of
27 payment, the claimant shall allege and prove that the claim
28 upon which the action is instituted was filed and demand for
29 priority of payment was made in writing.

30 (12) Within 6 months after the date the office
31 ~~department~~ files the list of claims and accounts payable which

1 are accepted or rejected by the office ~~department~~, a claimant
2 whose claim has been filed and has not been accepted by the
3 office ~~department~~, or any person whose account payable as
4 shown by the books and records as to which no claim has been
5 presented, has not been accepted by the office ~~department~~, may
6 institute and maintain an action against the international
7 banking corporation. Such action may be maintained only in a
8 court of competent jurisdiction in the county in which the
9 principal Florida office of such international banking
10 corporation is located.

11 (13) A lien shall not attach to any property or assets
12 of an international banking corporation as a result of any
13 judicial process after the office ~~department~~ has taken
14 possession of the assets of the corporation.

15 (14) No action shall be maintained against an
16 international banking corporation while the office ~~department~~
17 is in possession of the affairs and business of the
18 corporation unless brought within the period of limitation
19 specified in s. 663.17. In any action instituted against such
20 corporation while the office ~~department~~ is in possession of
21 the corporation's property and business, the plaintiff shall
22 be required to allege and prove that the claim upon which the
23 action is instituted was filed and that such claim has not
24 been accepted or, in the case of an action upon an account as
25 to which no claim has been presented, the plaintiff shall be
26 required to allege and prove that such account appeared upon
27 the books and records and that such account has not been
28 accepted.

29 (15) Notice to the office ~~department~~ of an adverse
30 interest in a claim or account payable accepted by the office
31 ~~department~~ to the credit of any person shall not require the

1 ~~office department~~ to recognize such adverse claimant unless
2 the adverse claimant also:

3 (a) Procures a restraining order, injunction, or other
4 appropriate process against the ~~office department~~ from a court
5 of competent jurisdiction in a cause instituted by the office
6 ~~department~~ in which the person to whose credit such claim or
7 account payable was accepted or his or her executor or
8 administrator is made a party and served with summons; or
9 (b) Executes to the office department, in a form and
10 with sureties acceptable to the ~~office department~~, a bond
11 indemnifying the office department from any and all liability,
12 loss, damage, cost, and expenses for and on account of the
13 payment of dividends.

14 (16) In any action or proceeding against the office
15 ~~department~~ to recover dividends accepted, if there is any
16 person who is not a party to the action who makes such a
17 claim, the court in which the action or proceeding is pending
18 may, on the motion of the office department, make an order
19 amending the proceedings making such person a party to such
20 action or proceeding and the court shall thereafter proceed to
21 determine the rights and interests of the parties to such
22 funds. The remedy provided in this section is in addition to
23 and not exclusive of that provided in any other interpleader.

24 Section 1842. Section 663.18, Florida Statutes, is
25 amended to read:

26 663.18 Fees.--The office department is not required to
27 pay any fee to any clerk, sheriff, register, or other public
28 officer for entering, filing, docketing, registering,
29 recording, executing, or issuing a copy, transcript, extract,
30 or certificate of, or authenticating or exemplifying, any
31 paper, record, or instrument pertaining to the exercise by the

1 ~~office department~~ of any powers conferred or duties imposed
2 upon the ~~office department~~ by the provisions of this part,
3 whether or not such paper, record, or instrument is executed
4 by the ~~office department~~ and whether or not it is connected
5 with an action. The term "action" is construed as including a
6 special proceeding in any action.

7 Section 1843. Section 663.181, Florida Statutes, is
8 amended to read:

9 663.181 Manner and time within which taking possession
10 may be tested.--At any time within 10 days after the office
11 ~~department~~ has taken possession of the property and business
12 of an international banking corporation, such corporation may
13 apply to a court of competent jurisdiction in the county in
14 which its principal office is located in this state for an
15 order requiring the ~~office department~~ to show cause why the
16 office department should not be enjoined from continuing such
17 possession. The court may, upon good cause shown, direct the
18 ~~office department~~ to refrain from such proceedings and to
19 surrender such possession.

20 Section 1844. Paragraph (c) of subsection (1) of
21 section 663.301, Florida Statutes, is amended to read:

22 663.301 Definitions.--

23 (1) As used in this part:

24 (c) "Regional development bank" means a for-profit
25 banking institution:

26 1. Which is listed in the International Monetary
27 Fund's Directory of Regional Economic Organizations and
28 Intergovernmental Commodity and Development Organizations;

29 2. Which is otherwise afforded special privileges,
30 including favorable tax treatment, under the laws of the
31 jurisdiction in which it is organized;

1 3. Which has as its principal objective the extending
2 of credit for international development purposes including
3 short-term financial transactions; and

4 4. Which has at least 50 percent of its shares of
5 voting stock owned by central banks or other government-owned
6 financial institutions from at least five foreign countries
7 and one or more financing affiliates of the International Bank
8 for Reconstruction and Development, or which satisfies such
9 other ownership requirements as the commission ~~department~~ may
10 specify by rule. When adopting any such rule, the commission
11 ~~department~~ shall take into account the objective of ensuring
12 the multinational control of international development banks.

13 Section 1845. Paragraph (a) of subsection (1) of
14 section 663.302, Florida Statutes, is amended to read:

15 663.302 Applicability of state banking laws.--

16 (1)(a) International development banks shall be
17 subject to the following provisions of chapter 655 as though
18 such international development banks were state banks:

19 1. Section 655.005, relating to definitions.

20 2. Section 655.012, relating to general supervisory
21 powers of the office ~~department~~.

22 3. Section 655.016, relating to liability.

23 4. Section 655.031, relating to administrative
24 enforcement guidelines.

25 5. Section 655.032, relating to investigations; etc.

26 6. Section 655.0321, relating to hearings and
27 proceedings.

28 7. Section 655.033, relating to cease and desist
29 orders.

30 8. Section 655.034, relating to injunctions.

31

1 9. Section 655.037, relating to removal of financial
2 institution-affiliated party.

3 10. Section 655.041, relating to administrative fines.

4 11. Section 655.043, relating to articles of
5 incorporation.

6 12. Section 655.044, relating to accounting practices.

7 13. Section 655.045, relating to examinations,
8 reports, and internal audits.

9 14. Section 655.049, relating to deposit of fees and
10 assessments.

11 15. Section 655.057, relating to records.

12 16. Section 655.071, relating to international banking
13 facilities.

14 17. Section 655.50, relating to reports of
15 transactions involving currency.

16 Section 1846. Section 663.303, Florida Statutes, is
17 amended to read:

18 663.303 Creation of an international development
19 bank.--When authorized by the office ~~department~~ as provided
20 herein, a corporation may be formed under the laws of this
21 state for the purpose of becoming an international development
22 bank and engaging in activities authorized by this part.

23 Section 1847. Section 663.304, Florida Statutes, is
24 amended to read:

25 663.304 Application for authority to organize an
26 international development bank.--

27 (1) A written application for authority to organize an
28 international development bank shall be filed with the office
29 ~~department~~ by the proposed incorporator and shall include:

30 (a) The name, residence, and occupation of each
31 incorporator and proposed director.

1 (b) The proposed corporate name and evidence of
2 reservation of the proposed corporate name with the Department
3 of State.

4 (c) The total initial capital and the number of shares
5 of capital stock to be authorized.

6 (d) The location, by street and post-office address
7 and county, of the principal office of the proposed
8 international development bank.

9 (e) If known, the name and residence of the proposed
10 president and the proposed chief executive officer, if other
11 than the proposed president.

12 (f) Such detailed financial, business, and
13 biographical information as the commission or office
14 ~~department~~ may reasonably require for each proposed director
15 and for the proposed president and the proposed chief
16 executive officer, if other than the president.

17 (2) The application shall be in such form as adopted
18 by the commission and shall contain such additional
19 information as the commission or office ~~department~~ may require
20 and shall be accompanied by a nonrefundable filing fee of
21 \$2,500.

22 Section 1848. Section 663.305, Florida Statutes, is
23 amended to read:

24 663.305 Investigation by the office ~~department~~.--Upon
25 the filing of an application, the office ~~department~~ shall make
26 an investigation of such matters as it may deem appropriate,
27 including the character, reputation, financial standing,
28 business experience, and business qualifications of the
29 proposed officers and directors.

30 Section 1849. Section 663.306, Florida Statutes, is
31 amended to read:

1 663.306 Decision by office ~~department~~.--The office
2 ~~department~~ may, in its discretion, approve or disapprove the
3 application, but it shall not approve the application unless
4 it finds that:

5 (1) International business in this state will be
6 promoted by the establishment of the proposed international
7 development bank.

8 (2) The proposed capital structure is adequate, but in
9 no case may the paid-in capital stock be:

10 (a) Less than \$400,000 in the case of an international
11 development bank organized under chapter 617 as a corporation
12 not for profit; or

13 (b) The amount required for a state bank in the case
14 of an international development bank organized under chapter
15 607 as a corporation for profit.

16
17 The office ~~department~~ may disallow any illegally obtained
18 currency, monetary instruments, funds, or other financial
19 resources from the capitalization requirements of this
20 section.

21 (3) The proposed officers and directors have
22 sufficient experience, ability, standing, and reputation to
23 indicate reasonable promise of successful operation and none
24 of the proposed officers or directors have been convicted of,
25 or pled guilty or nolo contendere to, a violation of s.
26 655.50, relating to the Florida Control of Money Laundering in
27 Financial Institutions Act; chapter 896, relating to offenses
28 related to financial transactions; or any similar state or
29 federal law.

30 (4) Provision has been made for suitable quarters at
31 the location designated in the application.

1 Section 1850. Subsection (2) of section 663.308,
2 Florida Statutes, is amended to read:

3 663.308 Place of transacting business; branches.--

4 (2) An international development bank may establish
5 branches in foreign countries with the approval of the
6 appropriate governmental authorities in such foreign
7 countries. An international development bank shall give the
8 office ~~department~~ written notice of its intention to establish
9 a branch in a foreign country at least 30 days prior to the
10 establishment of such branch.

11 Section 1851. Subsection (1) of section 663.309,
12 Florida Statutes, is amended to read:

13 663.309 Permissible activities; prohibited
14 activities.--

15 (1) An international development bank shall have the
16 authority:

17 (a) To make loans or otherwise extend credit to
18 foreign business enterprises and foreign governments and to
19 issue and confirm letters of credit, create bankers
20 acceptances, and provide guarantees for the purpose of
21 providing financing to foreign business enterprises and
22 foreign governments;

23 (b) To provide financing in connection with
24 import-export transactions to the extent permissible for an
25 Edge Act corporation organized under s. 25(a) of the Federal
26 Reserve Act, as amended, 12 U.S.C. ss. 611-632;

27 (c) To invest funds as provided in s. 663.315;

28 (d) To borrow funds as provided in s. 663.316;

29 (e) To take deposits from financial institutions,
30 foreign not-for-profit foundations, foreign business
31 enterprises, and organizations which qualify under s. 501(c)

1 of the Internal Revenue Code and which had at the end of their
2 last fiscal year no less than \$10 million in assets;

3 (f) To maintain for the account of others credit
4 balances necessarily incidental to, or arising out of, the
5 exercise of its lawful powers. Such credit balances may be
6 disbursed by check or draft; however, the commission
7 ~~department~~ shall by rule provide appropriate limitations upon
8 such disbursements to ensure that credit balances are not
9 functionally equivalent to demand deposits;

10 (g) To exercise such other incidental powers as shall
11 be reasonably necessary to carry out the authority granted in
12 this part.

13 Section 1852. Subsection (3) of section 663.311,
14 Florida Statutes, is amended to read:

15 663.311 Shares of stock.--

16 (3) With the approval of the office ~~department~~, an
17 international development bank may issue less than all of the
18 number of shares of capital stock authorized by its articles
19 of incorporation; provided that such authorized but unissued
20 shares may be issued only to increase the capital of the
21 international development bank with the approval of the office
22 ~~department~~.

23 Section 1853. Section 663.312, Florida Statutes, is
24 amended to read:

25 663.312 Changes in capital.--

26 (1) No international development bank shall reduce its
27 outstanding capital stock without first obtaining the approval
28 of the office ~~department~~, and such approval shall be withheld
29 if the reduction would cause the outstanding capital stock to
30 be less than the minimum required pursuant to s. 663.306(2) or
31 if the reduction would cause the international development

1 bank's capital accounts to be less than the minimum required
2 by s. 663.316(2).

3 (2) An international development bank may, with the
4 approval of the office ~~department~~, provide for an increase in
5 its capital.

6 Section 1854. Subsection (2) of section 663.316,
7 Florida Statutes, is amended to read:

8 663.316 Borrowing; capital accounts.--

9 (2) An international development bank shall have
10 capital accounts in an amount equal to not less than 8 percent
11 of its aggregate deposits. However, the commission ~~department~~
12 by rule may increase the required amount of capital accounts
13 to not more than 10 percent of such aggregate deposits. When
14 adopting ~~promulgating~~ any such rule, the commission ~~department~~
15 shall take into account the objective of protecting the
16 interests of depositors and of maintaining a sound banking
17 system in this state.

18 Section 1855. Section 663.319, Florida Statutes. is
19 amended to read:

20 663.319 Rules; exemption from statement of estimated
21 regulatory costs requirements.--In addition to any other
22 rulemaking authority it has under the financial institutions
23 codes, the commission may adopt ~~department is authorized to~~
24 ~~promulgate~~ rules for the administration of regional
25 development banks. Because of the difficulty in obtaining
26 economic data with regard to such banks, no statement of
27 estimated regulatory costs shall be required in connection
28 with these rules.

29 Section 1856. Subsection (6) of section 665.012,
30 Florida Statutes, is amended to read:

31

1 665.012 Definitions.--When used in this chapter, the
2 following words and phrases have the following meanings,
3 except to the extent that any such word or phrase specifically
4 is qualified by its context:

5 (6) "Liquid assets" means:

6 (a) Cash on hand;

7 (b) Cash on deposit in federal home loan banks,
8 federal reserve banks, state banks performing similar reserve
9 functions, or financial depository institutions, which is
10 withdrawable upon not more than 30 days' notice and which is
11 not pledged as security for indebtedness, except that any
12 deposits in a financial depository institution under the
13 control or in the possession of any supervisory authority
14 shall not be considered as liquid assets;

15 (c) Obligations of, or obligations which are fully
16 guaranteed as to principal and interest by, the United States
17 or this state; and

18 (d) Such other assets as may be approved by the office
19 ~~department~~ which are accepted as liquid assets for federally
20 insured associations by the appropriate federal regulatory
21 agency.

22 Section 1857. Subsections (4), (24), (35), (38), and
23 (42) of section 665.013, Florida Statutes, are amended to
24 read:

25 665.013 Applicability of chapter 658.--The following
26 sections of chapter 658, relating to banks and trust
27 companies, are applicable to an association to the same extent
28 as if the association were a "bank" operating thereunder:

29 (4) Section 658.20, relating to investigation by
30 office ~~department~~.

31

1 (24) Section 658.43, relating to approval by office
2 ~~department~~, valuation of assets; emergency action.

3 (35) Section 658.73, relating to fees and assessments.
4 The commission ~~department~~ shall, by rule, adopt a separate
5 semiannual fee and semiannual assessment for associations. In
6 its determination, the commission ~~department~~ shall consider
7 the housing finance role of such associations in addition to
8 the cost of regulation of associations and the collection of
9 fees from such associations.

10 (38) Section 658.81, relating to office ~~department~~
11 action; notice and court confirmation.

12 (42) Section 658.90, relating to receivers or
13 liquidators under supervision of office ~~department~~.

14 Section 1858. Subsections (1) and (2) of section
15 665.0315, Florida Statutes, are amended to read:

16 665.0315 Reorganization, merger, or consolidation with
17 a foreign association.--

18 (1) An association shall have power to reorganize or
19 merge or consolidate with a foreign association, as defined in
20 s. 665.1001, subject to the approval of the office ~~department~~.

21 (2) If the resulting or surviving association is to be
22 a foreign association, the office ~~department~~ shall not approve
23 the proposed transaction unless:

24 (a) The laws of the state in which the foreign
25 association has its principal place of business permit
26 associations in that state to reorganize, merge, or
27 consolidate with Florida associations in transactions in which
28 the resulting or surviving association is a Florida
29 association; and

30 (b) The constituent Florida association has been in
31 existence and continuously operating for more than 2 years.

1 Section 1859. Subsections (1), (2), (3), and (5), of
2 section 665.033, Florida Statutes, are amended to read:

3 665.033 Conversion of state or federal mutual
4 association to capital stock association.--

5 (1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.--Any
6 state or federal mutual association may apply to the office
7 ~~department~~ for permission to convert itself into an
8 association operated under the provisions of this chapter in
9 accordance with the following procedures:

10 (a) The board of directors shall approve a plan of
11 conversion by resolution adopted by a majority vote of all the
12 directors. The plan shall include, among other terms:

13 1. Financial statements of the association as of the
14 last day of the month preceding adoption of the plan.

15 2. Such financial data as may be required to determine
16 compliance with applicable regulatory requirements respecting
17 financial condition.

18 3. A provision that each savings account holder of the
19 mutual association will receive a withdrawable account in the
20 capital stock association equal in amount to his or her
21 withdrawable account in the mutual association.

22 4. A provision that each member of record will be
23 entitled to receive rights to purchase voting common stock.

24 5. Pro forma financial statements of the association
25 as a capital stock association, which shall include data
26 required to determine compliance with applicable regulatory
27 requirements respecting financial condition.

28 6. With particularity, the business purpose to be
29 accomplished by the conversion.

30 7. Such other information as the commission requires
31 ~~department may, by rule, require.~~

1 (b) The plan of conversion shall be executed by a
2 majority of the board of directors and submitted to the office
3 ~~department~~ for approval prior to any vote on conversion by the
4 members.

5 (c) The office ~~department~~ may approve or disapprove
6 the plan in its discretion, but it shall not approve the plan
7 unless it finds that the association will comply sufficiently
8 with the requirements of the financial institutions codes
9 after conversion to entitle it to become an association
10 operating under the financial institutions codes and the rules
11 of the commission ~~department~~. The office ~~department~~ may deny
12 any application from any federal association that is subject
13 to any cease and desist order or other supervisory restriction
14 or order imposed by any state or the federal supervisory
15 authority, or insurer, or guarantor or that has been convicted
16 of, or pled guilty or nolo contendere to, a violation of s.
17 655.50, relating to the Florida Control of Money Laundering in
18 Financial Institutions Act; chapter 896, relating to offenses
19 related to financial transactions; or any similar state or
20 federal law.

21 (d) If the office ~~department~~ approves the plan of
22 conversion, the question of such conversion may be submitted
23 to the members at a meeting of voting members called to
24 consider such action. A vote of 51 percent or more of the
25 total number of votes eligible to be cast, unless federal law
26 permits a lesser percentage of votes for a federal mutual
27 association to convert, in which case that percentage shall
28 control, shall be required for approval. Notice of the
29 meeting, giving the time, place, and purpose thereof, together
30 with a proxy statement and proxy form covering all matters to
31 be brought before the meeting, shall be mailed at least 30

1 days prior thereto to the office ~~department~~ for review and to
2 each voting member at his or her last address as shown on the
3 books of the association.

4 (2) MINUTES OF MEETING.--Copies of the minutes of the
5 meeting of members, verified by the affidavit of the secretary
6 or assistant secretary of the association, shall be filed with
7 the office ~~department~~ and with the appropriate federal
8 regulatory agency, within a reasonable time after the meeting.
9 When so filed, the verified copies of the minutes are
10 presumptive evidence of the holding of the meeting and of the
11 action taken.

12 (3) FILING OF ARTICLES OF INCORPORATION AND COMMITMENT
13 FOR INSURANCE OF ACCOUNTS.--The directors of the association
14 shall have executed and filed with the office ~~department~~
15 proposed articles of incorporation as provided for in s.
16 658.23, together with the application for conversion and a
17 firm commitment for, or evidence of, insurance of deposits and
18 other accounts of a withdrawable type. The articles shall
19 contain a statement that the association resulted from the
20 conversion of a state or federal mutual association to a
21 capital stock association. Approval by the office ~~department~~
22 shall be affixed to the articles of incorporation. An
23 authenticated copy of the articles of incorporation shall be
24 filed with the Department of State and one copy of the
25 articles of incorporation and the certificate of incorporation
26 shall be returned to the association. The association shall
27 cease to be a mutual association at the time and on the date
28 specified in the approved articles of incorporation.

29 (5) FEE.--The application for conversion from a state
30 or federal mutual to a state capital stock association shall
31 be accompanied by a nonrefundable filing fee of \$7,500.

1 Additionally, the office ~~department~~ is authorized to assess
2 any association, applying to convert pursuant to this section,
3 a nonrefundable examination fee to cover the actual costs of
4 any examination required as part of the application process.

5 Section 1860. Section 665.0335, Florida Statutes, is
6 amended to read:

7 665.0335 Supervisory case; emergency conversion,
8 reorganization, merger; consolidation; acquisition of
9 assets.--

10 (1) The office ~~department~~ may determine that a state
11 or federal association is a supervisory case if it finds that:

12 (a) The association is in an impaired condition; or

13 (b) The association is in imminent danger of being in
14 an impaired condition.

15

16 Any such finding by the office ~~department~~ shall be based upon
17 reports furnished to it by a state or federal savings and loan
18 association examiner or upon other evidence from which it is
19 reasonable to conclude that the association is a supervisory
20 case.

21 (2) Notwithstanding any other provision of this
22 chapter or chapter 120, if the office ~~department~~ finds that
23 immediate action is necessary to protect the interests of
24 depositors and reduce the potential for claims against the
25 insurance fund, or in order to prevent the probable failure of
26 a state or federal association which is a supervisory case,
27 the office may ~~department shall have the power~~, with the
28 concurrence of the appropriate federal regulatory agency in
29 the case of any association the deposits of which are
30 federally insured, ~~to~~ issue an emergency order authorizing:

31

1 (a) The conversion of such association from a state to
2 a federal charter, or vice versa, without change of business
3 form;

4 (b) The reorganization, merger, or consolidation of
5 such state or federal association with another state or
6 federal association;

7 (c) The conversion of such state or federal
8 association into a state or federal capital stock association;
9 or

10 (d) Any state or federal association to acquire the
11 assets of, and assume the liabilities of, such failing
12 association.

13 Section 1861. Paragraphs (a) and (b) of subsection
14 (1), subsection (2), paragraph (e) of subsection (4), and
15 paragraphs (a) and (c) of subsection (5) of section 665.034,
16 Florida Statutes, are amended to read:

17 665.034 Acquisition of assets of or control over an
18 association.--

19 (1)(a) In any case in which a person or group of
20 persons propose to purchase or acquire voting common stock of
21 any capital stock association, which purchase or acquisition
22 would cause such person or group of persons to have control,
23 as defined herein, of that association, such person or group
24 of persons must first make application to the office
25 ~~department~~ for a certificate of approval of such purchase or
26 acquisition.

27 (b) An application for control shall be in such form
28 and request such information as the commission requires
29 ~~department may, by rule, require~~.

30
31

1 (2) The office ~~department~~ shall issue the certificate
2 of approval only after it has made an investigation and
3 determined that:

4 (a) The proposed new owner or owners of voting capital
5 stock are qualified by character, experience, and financial
6 responsibility to control the association in a legal and
7 proper manner and none of the proposed new owners have been
8 convicted of, or pled guilty or nolo contendere to, a
9 violation of s. 655.50, relating to the Florida Control of
10 Money Laundering in Financial Institutions Act; chapter 896,
11 relating to offenses related to financial transactions; or any
12 similar state or federal law.

13 (b) The interests of the public generally will not be
14 jeopardized by the proposed purchase or acquisition of voting
15 capital stock.

16 (4) For purposes of this section, a person or group of
17 persons shall be deemed to have control of an association if
18 such person or group of persons:

19 (e) In any case in which a proposed purchase or
20 acquisition of voting securities of an association would give
21 rise to the presumption created under paragraph (d), the
22 person or group of persons who propose to purchase or acquire
23 the voting securities shall first give written notice of the
24 proposal to the office ~~department~~. Such notice may present
25 information that the proposed purchase or acquisition will not
26 result in control. The office ~~department~~ shall afford the
27 person seeking to rebut the presumption an opportunity to
28 present views in writing or orally before its designated
29 representatives at an informal conference.

30 (5)(a) A foreign association, as defined in s.
31 665.1001, whether controlled directly or indirectly by another

1 business organization, may acquire a Florida association,
2 subject to approval by the office ~~department~~. The office
3 ~~department~~ shall not approve the proposed acquisition unless:

4 1. The laws of the state in which the foreign
5 association has its principal place of business permit
6 associations in that state to be acquired by Florida
7 associations; and

8 2. The Florida association which is to be acquired has
9 been in existence and continuously operating for more than 2
10 years.

11 (c) A foreign association which has a subsidiary
12 association in Florida is authorized to acquire a Florida
13 association upon approval by the office ~~department~~ pursuant to
14 the laws and rules which are applicable to the acquisition of
15 a Florida association by an association having its principal
16 place of business in this state, but such acquired association
17 shall not be considered a Florida association for purposes of
18 this subsection or s. 665.0315.

19 Section 1862. Section 665.0345, Florida Statutes, is
20 amended to read:

21 665.0345 Regulatory supervision of foreign
22 associations.--The office ~~may department~~ is authorized to
23 enter into cooperative agreements with other regulatory
24 agencies to facilitate the regulation of foreign associations
25 doing business in this state. The office ~~department~~ may accept
26 reports of examinations and other records from such other
27 agencies in lieu of conducting its own examinations of foreign
28 associations. The office ~~department~~ may take any action
29 jointly with other regulatory agencies having concurrent
30 jurisdiction over associations doing business in this state or
31

1 may take such actions independently in order to carry out its
2 responsibilities.

3 Section 1863. Section 665.0711, Florida Statutes, is
4 amended to read:

5 665.0711 Loans.--As an annual average, based on
6 monthly computations, at least 50 percent of assets other than
7 liquid assets of an association shall be invested in either
8 real estate loans or interests therein on home property or
9 primarily residential property for terms not in excess of 40
10 years or for such additional terms as may be provided by rule.
11 Recognizing that associations are chartered to serve the
12 convenience and needs of the communities in which they are
13 chartered to do business, that the convenience and needs of
14 communities include the need for credit services as well as
15 deposit services, and that associations have a continuing and
16 affirmative obligation to help meet the credit needs of the
17 local communities in which they are chartered, at least 40
18 percent of the assets required to be invested by this section
19 shall be secured by property within this state, unless a lower
20 percentage is established by the commission or office
21 ~~department~~ pursuant to s. 655.061, except that loans insured
22 or guaranteed in whole or in part by the United States are not
23 subject to this restriction.

24 Section 1864. Subsection (3) and paragraph (a) of
25 subsection (4) of section 665.1001, Florida Statutes, are
26 amended to read:

27 665.1001 Foreign associations.--

28 (3) ACTION BY OFFICE ~~DEPARTMENT~~.--The office
29 ~~department~~ is authorized, empowered, and directed to obtain an
30 injunction or to take any other action necessary to prevent
31

1 any foreign association from doing any business of an
2 association in this state.

3 (4) ACTIVITIES NOT CONSIDERED "DOING BUSINESS."--For
4 the purposes of this section and any other law of this state
5 prohibiting, limiting, or regulating the doing of business in
6 this state by foreign associations or foreign corporations of
7 any type, any federal association, the principal office of
8 which is located outside this state, and any foreign
9 association which is subject to state or federal supervision,
10 or both, which by law are subject to periodic examination by
11 such supervisory authority and to a requirement of periodic
12 audit, shall not be considered to be doing business in this
13 state by reason of engaging in any of the following
14 activities:

15 (a) The purchase, acquisition, holding, sale,
16 assignment, transfer, collecting, and enforcement of
17 obligations or any interest therein secured by real estate
18 mortgages or other instruments in the nature of a mortgage,
19 covering real property located in this state, or the
20 foreclosure of such instruments, or the acquisition of title
21 to such property by foreclosure, or otherwise, as a result of
22 default under such instruments, or the holding, protection,
23 rental, maintenance, and operation of the property so
24 acquired, or the disposition thereof; provided such
25 associations shall not hold, own, or operate such property for
26 a period exceeding 5 years without securing the approval of
27 the office ~~department~~.

28 Section 1865. Paragraph (d) of subsection (5) of
29 section 667.002, Florida Statutes, is amended to read:

30 667.002 Definitions.--Except to the extent
31 specifically qualified by context, when used in this chapter:

1 (5) "Liquid assets" means:

2 (d) Such other assets as ~~may be~~ approved by the office
3 ~~department~~ which are accepted as liquid assets for federally
4 insured savings banks by the appropriate federal regulatory
5 agency.

6 Section 1866. Subsections (4), (26), (40), and (44) of
7 section 667.003, Florida Statutes, are amended to read:

8 667.003 Applicability of chapter 658.--Any state
9 savings bank is subject to all the provisions, and entitled to
10 all the privileges, of the financial institutions codes except
11 where it appears, from the context or otherwise, that such
12 provisions clearly apply only to banks or trust companies
13 organized under the laws of this state or the United States.
14 Without limiting the foregoing general provisions, it is the
15 intent of the Legislature that the following provisions apply
16 to a savings bank to the same extent as if the savings bank
17 were a "bank" operating under such provisions:

18 (4) Section 658.20, relating to investigation by
19 office ~~department~~.

20 (26) Section 658.43, relating to approval by office
21 ~~department~~; valuation of assets; emergency action.

22 (40) Section 658.81, relating to office ~~department~~
23 action; notice and court confirmation.

24 (44) Section 658.90, relating to receivers or
25 liquidators under supervision of office ~~department~~.

26 Section 1867. Subsections (1) and (2) of section
27 667.005, Florida Statutes, are amended to read:

28 667.005 Reorganization, merger, or consolidation with
29 a foreign savings bank.--

30 (1) A savings bank shall have the power to reorganize,
31 merge, or consolidate with a foreign savings bank, as defined

1 in s. 667.013, subject to the approval of the office
2 ~~department~~.

3 (2) If the resulting or surviving savings bank is to
4 be a foreign savings bank, the office ~~department~~ shall not
5 approve the proposed transaction unless:

6 (a) The laws of the state in which the foreign savings
7 bank has its principal place of business permit savings banks
8 in that state to reorganize, merge, or consolidate with
9 Florida savings banks in transactions in which the resulting
10 or surviving savings bank is a Florida savings bank.

11 (b) The constituent Florida savings bank has been in
12 existence and continuously operating for more than 2 years.

13 Section 1868. Subsections (1), (2), (3), and (5) of
14 section 667.006, Florida Statutes, are amended to read:

15 667.006 Conversion of state or federal mutual savings
16 bank or state or federal mutual association to capital stock
17 savings bank.--

18 (1) CONVERSION INTO CAPITAL STOCK SAVINGS BANK.--Any
19 state or federal mutual savings bank or state or federal
20 mutual association may apply to the office ~~department~~ for
21 permission to convert itself into a capital stock savings bank
22 operated under the provisions of this chapter in accordance
23 with the following procedures:

24 (a) The board of directors shall approve a plan of
25 conversion by resolution adopted by a majority vote of all the
26 directors. The plan shall include, but not be limited to:

27 1. Financial statements of the savings bank as of the
28 last day of the month preceding adoption of the plan.

29 2. Such financial data as may be required to determine
30 compliance with applicable regulatory requirements respecting
31 financial condition.

1 3. A provision that each savings account holder of the
2 mutual savings bank will receive a withdrawable account in the
3 capital stock savings bank equal in amount to his or her
4 withdrawable account in the mutual savings bank.

5 4. A provision that each member of record will be
6 entitled to receive rights to purchase voting common stock.

7 5. Pro forma financial statements of the savings bank
8 as a capital stock savings bank, which shall include data
9 required to determine compliance with applicable regulatory
10 requirements respecting financial condition.

11 6. With particularity, the business purpose to be
12 accomplished by the conversion.

13 7. Such other information as the commission requires
14 ~~department may require~~ by rule.

15 (b) The plan of conversion shall be executed by a
16 majority of the board of directors and submitted to the office
17 ~~department~~ for approval prior to any vote on conversion by the
18 members.

19 (c) The office ~~department~~ may approve or disapprove
20 the plan in its discretion, but it shall not approve the plan
21 unless it finds that the savings bank will comply sufficiently
22 with the requirements of the financial institutions codes
23 after conversion to entitle it to become a savings bank
24 operating under the financial institutions codes and the rules
25 of the commission ~~department~~. The office ~~department~~ may deny
26 any application from any federal savings bank that is subject
27 to any cease and desist order or other supervisory restriction
28 or order imposed by any state or the federal supervisory
29 authority, or insurer, or guarantor or that has been convicted
30 of, or pled guilty or nolo contendere to, a violation of s.
31 655.50, relating to the Florida Control of Money Laundering in

1 Financial Institutions Act; chapter 896, relating to offenses
2 related to financial transactions; or any similar state or
3 federal law.

4 (d) If the office ~~department~~ approves the plan of
5 conversion, the question of such conversion may be submitted
6 to the members at a meeting of voting members called to
7 consider such action. A vote of 51 percent or more of the
8 total number of votes eligible to be cast shall be required
9 for approval, unless federal law permits a lesser percentage
10 of votes for a federal mutual savings bank to convert, in
11 which case that percentage shall control. Notice of the
12 meeting, giving the time, place, and purpose thereof, together
13 with a proxy statement and proxy form covering all matters to
14 be brought before the meeting, shall be mailed at least 30
15 days prior to the meeting to the office ~~department~~ for review
16 and to each voting member at his or her last address as shown
17 on the books of the savings bank.

18 (2) MINUTES OF MEETING.--Copies of the minutes of the
19 meeting of members, verified by the affidavit of the secretary
20 or assistant secretary of the savings bank, shall be filed
21 with the office ~~department~~ and with the appropriate federal
22 regulatory agency, within a reasonable time after the meeting.
23 When so filed, the verified copies of the minutes are
24 presumptive evidence of the holding of the meeting and of the
25 action taken.

26 (3) FILING OF ARTICLES OF INCORPORATION AND COMMITMENT
27 FOR INSURANCE OF ACCOUNTS.--The directors of the savings bank
28 shall have executed and filed with the office ~~department~~
29 proposed articles of incorporation as provided in s. 658.23,
30 together with the application for conversion and a firm
31 commitment for, or evidence of, insurance of deposits and

1 other accounts of a withdrawable type. The articles shall
2 contain a statement that the savings bank resulted from the
3 conversion of a state or federal mutual savings bank to a
4 capital stock savings bank. Approval by the office ~~department~~
5 shall be affixed to the articles of incorporation. A copy of
6 the articles of incorporation shall be filed with the
7 Department of State, and one copy of the articles of
8 incorporation and the certificate of incorporation shall be
9 returned to the savings bank. The savings bank shall cease to
10 be a mutual savings bank at the time and on the date specified
11 in the approved articles of incorporation.

12 (5) FEE.--The application for conversion from a state
13 or federal mutual to a state capital stock savings bank shall
14 be accompanied by a nonrefundable filing fee of \$7,500.
15 Additionally, the office ~~may department is authorized to~~
16 assess any savings bank applying to convert pursuant to this
17 section a nonrefundable examination fee to cover the actual
18 costs of any examination required as part of the application
19 process.

20 Section 1869. Section 667.007, Florida Statutes, is
21 amended to read:

22 667.007 Supervisory case; emergency conversion,
23 reorganization, merger; consolidation; acquisition of
24 assets.--

25 (1) The office ~~department~~ may determine that a state
26 or federal savings bank is a supervisory case if it finds
27 that:

- 28 (a) The savings bank is insolvent; or
29 (b) The savings bank is imminently insolvent.

30
31

1 Any such finding by the office ~~department~~ shall be based upon
2 reports furnished to it by a state or federal regulatory
3 agency or upon other evidence from which it is reasonable to
4 conclude that the savings bank is a supervisory case.

5 (2) Notwithstanding any other provision of this
6 chapter or chapter 120, if the office ~~department~~ finds that
7 immediate action is necessary to protect the interests of
8 depositors and reduce the potential for claims against the
9 insurance fund, or in order to prevent the probable failure of
10 a state or federal savings bank which is a supervisory case,
11 the office may ~~department shall have the power~~, with the
12 concurrence of the appropriate federal regulatory agency in
13 the case of any savings bank the deposits of which are
14 federally insured, ~~to~~ issue an emergency order authorizing:

15 (a) The conversion of such savings bank from a state
16 to a federal charter, or vice versa, without change of
17 business form;

18 (b) The reorganization, merger, or consolidation of
19 such state or federal savings bank with another state or
20 federal savings bank;

21 (c) The conversion of such state or federal savings
22 bank into a state or federal capital stock savings bank; or

23 (d) Any state or federal savings bank to acquire the
24 assets of, and assume the liabilities of, such failing savings
25 bank.

26 Section 1870. Subsections (1) and (2), paragraph (d)
27 of subsection (4), and paragraph (a) of subsection (5) of
28 section 667.008, Florida Statutes, are amended to read:

29 667.008 Acquisition of assets of or control over a
30 savings bank.--

31

1 (1)(a) In any case in which a person or group of
2 persons proposes to purchase or acquire voting common stock of
3 any capital stock savings bank, which purchase or acquisition
4 would cause such person or group of persons to have control,
5 as defined herein, of that savings bank, such person or group
6 of persons must first make application to the office
7 ~~department~~ for a certificate of approval of such purchase or
8 acquisition.

9 (b) An application for control shall be in such form
10 and request such information as the commission requires
11 ~~department may require~~ by rule.

12 (c) The application for control shall be accompanied
13 by a nonrefundable filing fee of \$7,500; however, if more than
14 one savings bank is being acquired in any such application,
15 the fee shall be increased by \$3,000 for each additional
16 savings bank.

17 (2) The office ~~department~~ shall issue the certificate
18 of approval only after it has made an investigation and
19 determined that:

20 (a) The proposed new owner or owners of voting capital
21 stock are qualified by character, experience, and financial
22 responsibility to control the savings bank in a legal and
23 proper manner and none of the proposed new owners have been
24 convicted of, or pled guilty or nolo contendere to, a
25 violation of s. 655.50, relating to the Florida Control of
26 Money Laundering in Financial Institutions Act; chapter 896,
27 relating to offenses related to financial transactions; or any
28 similar state or federal law.

29 (b) The interests of the public generally will not be
30 jeopardized by the proposed purchase or acquisition of voting
31 capital stock.

1 (4) For purposes of this section, a person or group of
2 persons shall be deemed to have control of a savings bank if
3 such person or group of persons:

4 (d) Owns, controls, or has power to vote 10 percent or
5 more of any class of voting securities of the savings bank, if
6 no other person or group of persons owns, controls, or has
7 power to vote a greater proportion of that class of voting
8 securities. In any case in which a proposed purchase or
9 acquisition of voting securities of a savings bank would give
10 rise to the presumption created under this paragraph, the
11 person or group of persons who proposes to purchase or acquire
12 the voting securities shall first give written notice of the
13 proposal to the office ~~department~~. Such notice may present
14 information that the proposed purchase or acquisition will not
15 result in control. The office ~~department~~ shall afford the
16 person seeking to rebut the presumption an opportunity to
17 present views in writing or orally before its designated
18 representatives at an informal conference.

19 (5)(a) A foreign savings bank, as defined in s.
20 667.013, whether controlled directly or indirectly by another
21 business organization, may acquire a Florida savings bank,
22 subject to approval by the office ~~department~~. The office
23 ~~department~~ shall not approve the proposed acquisition unless:

24 1. The laws of the state in which the foreign savings
25 bank has its principal place of business permit savings banks
26 in that state to be acquired by Florida savings banks.

27 2. The Florida savings bank which is to be acquired
28 has been in existence and continuously operating for more than
29 2 years.

30
31

1 Section 1871. Subsection (2) and paragraph (a) of
2 subsection (3) of section 667.013, Florida Statutes, are
3 amended to read:

4 667.013 Foreign savings banks.--

5 (2) ACTION BY OFFICE ~~DEPARTMENT~~.--The office
6 ~~department~~ is authorized, empowered, and directed to obtain an
7 injunction or to take any other action necessary to prevent
8 any foreign savings bank from unlawfully doing any business of
9 a savings bank in this state.

10 (3) ACTIVITIES NOT CONSIDERED "DOING BUSINESS."--For
11 the purposes of this section and any other law of this state
12 prohibiting, limiting, or regulating the doing of business in
13 this state by foreign savings banks or foreign corporations of
14 any type, any federal savings bank, the principal office of
15 which is located outside this state, and any foreign savings
16 bank which is subject to state or federal supervision, or
17 both, which by law are subject to periodic examination by such
18 supervisory authority and to a requirement of periodic audit,
19 shall not be considered to be doing business in this state by
20 reason of engaging in any of the following activities:

21 (a) The purchase, acquisition, holding, sale,
22 assignment, transfer, collecting, and enforcement of
23 obligations or any interest therein secured by real estate
24 mortgages or other instruments in the nature of a mortgage,
25 covering real property located in this state, or the
26 foreclosure of such instruments, or the acquisition of title
27 to such property by foreclosure, or otherwise, as a result of
28 default under such instruments, or the holding, protection,
29 rental, maintenance, and operation of the property so
30 acquired, or the disposition thereof, provided such savings
31 banks shall not hold, own, or operate such property for a

1 period exceeding 5 years without securing the approval of the
2 office department.

3 Section 1872. Subsection (2) of section 687.13,
4 Florida Statutes, is amended to read:

5 687.13 International transactions.--

6 (2) The provisions of this chapter shall not apply to
7 any international banking facility "deposit," "borrowing," or
8 "extension of credit," as those terms are defined by the
9 commission ~~Department of Banking and Finance~~ pursuant to s.
10 655.071.

11 Section 1873. Subsection (3) of section 687.14,
12 Florida Statutes, is amended, and subsection (6) is added to
13 that section, to read:

14 687.14 Definitions.--As used in this act, unless the
15 context otherwise requires:

16 (3) "Commission" means the Financial Services
17 Commission ~~"Department"~~ ~~means the Department of Banking and~~
18 ~~Finance~~.

19 (6) "Office" means the Office of Financial Regulation
20 of the commission.

21 Section 1874. Subsection (3) of section 687.141,
22 Florida Statutes, is amended to read:

23 687.141 Loan brokers; prohibited acts.--No loan broker
24 shall:

25 (3) Make or use any false or deceptive representation
26 in its business dealings or to the office department or
27 conceal a material fact from the office department.

28 Section 1875. Section 687.143, Florida Statutes, is
29 amended to read:

30 687.143 Loan brokers; investigations; cease and desist
31 orders; administrative fines.--

1 (1) The office ~~department~~ may investigate the actions
2 of any person for compliance with this act.

3 (2) The office ~~department~~ may order a loan broker to
4 cease and desist whenever the office ~~department~~ determines
5 that the loan broker has violated or is violating or will
6 violate any provision of this act, any rule of the commission,
7 ~~or order of promulgated by the office department,~~ or any
8 written agreement entered into with the office ~~department~~.

9 (3) The office ~~department~~ may impose and collect an
10 administrative fine against any person found to have violated
11 any provision of this act, any rule of the commission, ~~or~~
12 ~~order of promulgated by the office department,~~ or any written
13 agreement entered into with the office ~~department~~ in any
14 amount not to exceed \$5,000 for each such violation. All
15 fines collected hereunder shall be deposited in the Bureau
16 ~~Division~~ of Financial Investigations Administrative Trust
17 Fund.

18 Section 1876. Section 687.144, Florida Statutes, is
19 amended to read:

20 687.144 Investigations; examinations; subpoenas;
21 hearings; witnesses.--

22 (1) The office ~~department~~ may make investigations and
23 examinations upon reasonable suspicion within or outside of
24 this state as it deems necessary to determine whether a person
25 has violated or is about to violate any provision of this act
26 or any rule or order promulgated thereunder.

27 (2) The office ~~department~~ may gather evidence in the
28 matter. The office ~~department~~ may administer oaths, examine
29 witnesses, and issue subpoenas.

30 (3) Subpoenas for witnesses whose evidence is deemed
31 material to any investigation or examination may be issued by

1 the office ~~department~~ under the seal of the office ~~department~~
2 commanding such witnesses to be or appear before the office
3 ~~department~~ at a time and place to be therein named and to
4 bring such books, records, and documents as may be specified
5 or to submit such books, records, and documents to inspection.
6 Such subpoenas may be served by an authorized representative
7 of the office ~~department~~.

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

31

1 (b) When it shall appear to the office ~~department~~ that
2 the compliance with a subpoena or subpoena duces tecum issued
3 by the office ~~department~~ is essential to an investigation or
4 examination, the office ~~department~~, in addition to the other
5 remedies provided for in this act, may, by verified petition
6 setting forth the facts, apply to the circuit court of the
7 county in which the subpoenaed person resides or has its
8 principal place of business for a writ of ne exeat. The court
9 may thereupon direct the issuance of the writ against the
10 subpoenaed person requiring sufficient bond conditioned on
11 compliance with the subpoena or subpoena duces tecum. The
12 court shall cause to be endorsed on the writ a suitable amount
13 of bond on payment of which the person named in the writ shall
14 be freed, having a due regard to the nature of the case.

15 (5) Witnesses shall be entitled to the same fees and
16 mileage as they may be entitled by law for attending as
17 witnesses in the circuit court, except where such examination
18 or investigation is held at the place of business or residence
19 of the witness.

20 (6) The material compiled by the office ~~department~~ in
21 an investigation or examination under this act is confidential
22 until the investigation or examination is complete. The
23 investigation or examination is not deemed complete if the
24 office ~~department~~ has submitted the material or any part of it
25 to any law enforcement agency or other regulatory agency for
26 further investigation or for the filing of a criminal or civil
27 prosecution and such investigation and prosecution has not
28 been completed or becomes inactive.

29 Section 1877. Section 687.145, Florida Statutes, is
30 amended to read:

31 687.145 Injunction to restrain violations.--

1 (1) Whenever the office ~~department~~ determines, from
2 evidence satisfactory to it, that any person has engaged, is
3 engaged, or is about to engage in an act or practice
4 constituting a violation of this act or a rule or order
5 promulgated thereunder, the office ~~department~~ may bring action
6 in the name and on behalf of the state against such person and
7 any other person concerned in or in any way participating in
8 or about to participate in such practice or engaging therein
9 or doing any act or acts in furtherance thereof or in
10 violation of this act to enjoin the person or persons from
11 continuing the violation or acts in furtherance thereof. In
12 such court proceedings, the office ~~department~~ may apply for
13 and on due showing be entitled to have issued, the court's
14 subpoena requiring the appearance of any defendant and his or
15 her employees or agents, and the production of documents,
16 books, and records that may appear necessary for the hearing
17 of such petition, to testify or give evidence concerning the
18 acts or conduct or things complained of in such application
19 for injunction.

20 (2) In addition to all other means provided by law for
21 the enforcement of any temporary restraining order, temporary
22 injunction, or permanent injunction issued in such court
23 proceedings, the court shall have the power and jurisdiction,
24 upon application of the office ~~department~~, to impound and to
25 appoint a receiver or administrator for the property, assets,
26 and business of the defendant, including, but not limited to,
27 the books, records, documents, and papers appertaining
28 thereto. Such receiver or administrator, when appointed and
29 qualified, shall have all powers and duties as to custody,
30 collection, administration, winding up, and liquidation of
31 said property and business as shall from time to time be

1 conferred upon him or her by the court. In such action, the
2 court may issue orders and decrees staying all pending suits
3 and enjoining any further suits affecting the receiver's or
4 administrator's custody or possession of the said property,
5 assets, and business or, in its discretion, may, with the
6 consent of the presiding judge of the circuit, require that
7 all such suits be assigned to the circuit court judge
8 appointing the said receiver or administrator.

9 (3) In addition to any other remedies provided by this
10 act, the office ~~department~~ may apply to the court hearing this
11 matter for an order of restitution whereby the defendants in
12 such action shall be ordered to make restitution of those sums
13 shown by the office ~~department~~ to have been obtained by them
14 in violation of any of the provisions of this act. Such
15 restitution shall, at the option of the court, be payable to
16 the administrator or receiver appointed pursuant to this
17 section or directly to the persons whose assets were obtained
18 in violation of this act.

19 Section 1878. Section 687.148, Florida Statutes, is
20 amended to read:

21 687.148 Duties and powers of the commission and office
22 ~~department~~.--

23 (1) The office ~~is department~~ shall be responsible for
24 the administration and enforcement of this act.

25 (2) The commission ~~department~~ may adopt such rules as
26 it may deem necessary in the administration of this act and
27 not inconsistent therewith.

28 Section 1879. Subsection (4) of section 697.05,
29 Florida Statutes, is amended to read:

30
31

1 697.05 Balloon mortgages; scope of law; definition;
2 requirements as to contents; penalties for violations;
3 exemptions.--

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

5 (a) Any mortgage in effect prior to January 1, 1960;

6 (b) Any first mortgage, excluding a mortgage in favor
7 of a home improvement contractor defined in s. 520.61(13) ~~s.~~
8 ~~520.61(12)~~the execution of which is required solely by the
9 terms of a home improvement contract which is governed by the
10 provisions of ss. 520.60-520.98;

11 (c) Any mortgage created for a term of 5 years or
12 more, excluding a mortgage in favor of a home improvement
13 contractor defined in s. 520.61(13) ~~s. 520.61(12)~~the
14 execution of which is required solely by the terms of a home
15 improvement contract which is governed by the provisions of
16 ss. 520.60-520.98;

17 (d) Any mortgage, the periodic payments on which are
18 to consist of interest payments only, with the entire original
19 principal sum to be payable upon maturity;

20 (e) Any mortgage securing an extension of credit in
21 excess of \$500,000;

22 (f) Any mortgage granted in a transaction covered by
23 the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.,
24 in which each mortgagor thereunder is furnished a Truth in
25 Lending Disclosure Statement that satisfies the requirements
26 of the federal Truth in Lending Act; or

27 (g) Any mortgage granted by a purchaser to a seller
28 pursuant to a written agreement to buy and sell real property
29 which provides that the final payment of said mortgage debt
30 will exceed the periodic payments thereon.

31

1 Section 1880. Paragraph (c) of subsection (3) of
2 section 713.596, Florida Statutes, is amended to read:

3 713.596 Molder's liens.--

4 (3) SALE.--

5 (c)1. The proceeds of the sale must be paid first to
6 any holder of a security interest perfected in this state. Any
7 excess must be paid to the molder holding the lien created by
8 this section. Any remaining amount is to be paid to the
9 customer, if the customer's address is known, or to the Chief
10 Financial Officer ~~State Treasurer~~ for deposit in the General
11 Revenue Fund if the customer's address is unknown to the
12 molder at the time of the sale.

13 2. A sale may not be made under this section if it
14 would be in violation of any right of a customer under federal
15 patent or copyright law.

16 Section 1881. Subsection (4) of section 716.02,
17 Florida Statutes, is amended to read:

18 716.02 Escheat of funds in the possession of federal
19 agencies.--All property within the provisions of subsections
20 (1), (2), (3), (4) and (5), are declared to have escheated, or
21 to escheat, including all principal and interest accruing
22 thereon, and to have become the property of the state.

23 (4) In the event any money is due to any resident of
24 this state as a refund, rebate or tax rebate from the United
25 States Commissioner of Internal Revenue, the United States
26 Treasurer, or other governmental agency or department, which
27 said resident will, or is likely to have her or his rights to
28 apply for and secure such refund or rebate barred by any
29 statute of limitations or, in any event, has failed for a
30 period of 1 year after said resident could have filed a claim
31 for said refund or rebate, the Department of Financial

1 Services ~~Banking and Finance~~ is hereby appointed agent of such
2 resident to demand, file and apply for said refund or rebate,
3 and is hereby appointed to do any act which a natural person
4 could do to recover such ~~said~~ money, and it is hereby declared
5 that when the department files such ~~said~~ application or any
6 other proceeding to secure such ~~said~~ refund or rebate, its
7 agency is coupled with an interest in the money sought and
8 money recovered.

9 Section 1882. Section 716.03, Florida Statutes, is
10 amended to read:

11 716.03 Department to institute proceedings to recover
12 escheated property.--When there exists, or may exist,
13 escheated funds or property under this chapter, the Department
14 of Financial Services ~~Banking and Finance~~ shall demand or
15 institute proceedings in the name of the state for an
16 adjudication that an escheat to the state of such funds or
17 property has occurred; and shall take appropriate action to
18 recover such funds or property.

19 Section 1883. Section 716.04, Florida Statutes, is
20 amended to read:

21 716.04 Jurisdiction.--Whenever the Department of
22 Financial Services ~~Banking and Finance~~ is of the opinion an
23 escheat has occurred, or shall occur, of any money or other
24 property deposited in the custody of, or under the control of,
25 any court of the United States, in and for any district within
26 the state, or in the custody of any depository, registry or
27 clerk or other officer of such court, or the treasury of the
28 United States, it shall cause to be filed a complaint in the
29 Circuit Court of Leon County, or in any other court of
30 competent jurisdiction, to ascertain if any escheat has
31 occurred, and to cause said court to enter a judgment or

1 decree of escheat in favor of the state, with costs,
2 disbursements, and attorney fee.

3 Section 1884. Section 716.05, Florida Statutes, is
4 amended to read:

5 716.05 Money recovered to be paid into State
6 Treasury.--When any funds or property which has escheated
7 within the meaning of this chapter has been recovered by the
8 Department of Financial Services ~~Banking and Finance~~, the
9 department shall first pay all costs incident to the
10 collection and recovery of such funds or property and shall
11 promptly deposit the remaining balance of such funds or
12 property with the Chief Financial Officer ~~Treasurer of the~~
13 ~~state~~, to be distributed in accordance with law.

14 Section 1885. Section 716.06, Florida Statutes, is
15 amended to read:

16 716.06 Public records.--All records in the office of
17 the Chief Financial Officer ~~State Treasurer~~ or the Department
18 of Financial Services ~~Banking and Finance~~ relating to federal
19 funds, pursuant to this chapter, shall be public records.

20 Section 1886. Section 716.07, Florida Statutes, is
21 amended to read:

22 716.07 Recovery of escheated property by claimant.--

23 (1) Any person who claims any property, funds, or
24 money delivered to the ~~State~~ Treasurer or Chief Financial
25 Officer under this chapter, shall, within 5 years from the
26 date of receipt of such ~~said~~ property, funds, or money, file a
27 verified claim with the Chief Financial Officer ~~State~~
28 ~~Treasurer~~, setting forth the facts upon which such ~~said~~ party
29 claims to be entitled to recover such ~~said~~ money or property.
30 ~~The State Treasurer, within 5 days after receipt of such~~
31 ~~claim, shall submit said verified claim or a verified copy~~

1 ~~thereof, to the Department of Banking and Finance.~~All claims
2 made for recovery of property, funds, or money, not filed
3 within 5 years from the date that such ~~said~~ property, funds,
4 or money is received by the Chief Financial Officer ~~State~~
5 ~~Treasurer~~, shall be forever barred, and the Chief Financial
6 Officer ~~Treasurer of the state~~ shall be without power to
7 consider or determine any claims so made by any claimant after
8 5 years from the date that the property, funds, or money was
9 received by the Chief Financial Officer ~~State Treasurer~~.

10 (2) The Chief Financial Officer ~~Comptroller~~ shall
11 approve or disapprove the claim. If the claim is approved,
12 the funds, money, or property of the claimant, less any
13 expenses and costs which shall have been incurred by the state
14 in securing the possession of said property, as provided by
15 this chapter, shall be delivered to the claimant by the Chief
16 Financial Officer ~~State Treasurer~~ upon warrant issued
17 according to law and her or his receipt taken therefor. If
18 the court finds, upon any judicial review, that the claimant
19 is entitled to the property, money, or funds claimed, and
20 shall render judgment in her or his or its favor, declaring
21 that the claimant is entitled to such ~~said~~ property, funds, or
22 money, then upon presentation of said judgment or a certified
23 copy thereof to the Chief Financial Officer ~~State Comptroller~~,
24 the Chief Financial Officer ~~said Comptroller~~ shall draw her or
25 his warrant for the amount of money stated in such ~~said~~
26 judgment, without interest or cost to the state, less any sum
27 paid by the state as costs or expenses in securing possession
28 of such ~~said~~ property, funds, or money. When payment has been
29 made to any claimant, no action thereafter shall be maintained
30 by any other claimant against the state or any officer

31

1 thereof, for or on account of such ~~said~~ money, property, or
2 funds.

3 Section 1887. Subsection (6) of section 717.101,
4 Florida Statutes, is amended to read:

5 717.101 Definitions.--As used in this chapter, unless
6 the context otherwise requires:

7 (6) "Department" means the Department of Financial
8 Services ~~Banking and Finance~~.

9 Section 1888. Subsection (8) of section 717.117,
10 Florida Statutes, is amended to read:

11 717.117 Report of unclaimed property.--

12 (8) Social security numbers and financial account
13 numbers contained in reports required under this section, held
14 by the department of ~~Banking and Finance~~, are confidential and
15 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
16 Constitution. Notwithstanding this exemption, social security
17 numbers shall be released, for the limited purpose of locating
18 owners of abandoned or unclaimed property, to an attorney,
19 Florida-certified public accountant, private investigator who
20 is duly licensed in this state, or a private investigative
21 agency licensed under chapter 493 and registered with the
22 department of ~~Banking and Finance~~ under this chapter. This
23 exemption applies to social security numbers and financial
24 account numbers held by the department of ~~Banking and Finance~~
25 before, on, or after the effective date of this exemption.
26 This subsection is subject to the Open Government Sunset
27 Review Act of 1995 in accordance with s. 119.15, and shall
28 stand repealed October 2, 2007, unless reviewed and saved from
29 repeal through reenactment by the Legislature.

30 Section 1889. Subsection (1) of section 717.135,
31 Florida Statutes, is amended to read:

1 717.135 Agreement to locate reported property.--

2 (1) All agreements between an owner's representative
3 and an owner for compensation to recover or assist in the
4 recovery of property reported to the department under s.
5 717.117 shall either:

6 (a) Limit the fees for services for each owner
7 contract to \$25 for all contracts relating to unclaimed
8 property with a dollar value below \$250. For all contracts
9 relating to unclaimed property with a dollar value of \$250 and
10 above, fees shall be limited to 15 percent on property held by
11 the department for 24 months or less and 25 percent on
12 property held by the department for more than 24 months. Fees
13 for cash accounts shall be based on the value of the property
14 at the time the agreement for recovery is signed by the
15 apparent owner. Fees for accounts containing securities or
16 other intangible ownership interests, which securities or
17 interests are not converted to cash, shall be based on the
18 purchase price of the security as quoted on a national
19 exchange or other market on which the ownership interest is
20 regularly traded at the time the securities or other ownership
21 interest is remitted to the owner or the owner's
22 representative. Fees for tangible property or safe-deposit box
23 accounts shall be based on the value of the tangible property
24 or contents of the safe-deposit box at the time the ownership
25 interest is transferred or remitted to the owner or the
26 owner's representative; or

27 (b) Disclose that the property is held by the
28 Department of Financial Services ~~Banking and Finance~~ pursuant
29 to this chapter, the person or name of the entity that held
30 the property prior to the property becoming unclaimed, the
31 date of the holder's last contact with the owner, if known,

1 and the approximate value of the property, and identify which
2 of the following categories of unclaimed property the owner's
3 representative is seeking to recover:

- 4 1. Cash accounts.
- 5 2. Stale dated checks.
- 6 3. Life insurance or annuity contract assets.
- 7 4. Utility deposits.
- 8 5. Securities or other interests in business
9 associations.
- 10 6. Wages.
- 11 7. Accounts receivable.
- 12 8. Contents of safe-deposit boxes.

13
14 However, this section shall not apply to contracts made in
15 connection with guardianship proceedings or the probate of an
16 estate.

17 Section 1890. Section 717.138, Florida Statutes, is
18 amended to read:

19 717.138 Rulemaking authority.--The department ~~of~~
20 ~~Banking and Finance~~ shall administer and provide for the
21 enforcement of this chapter. The department has authority to
22 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
23 the provisions of this chapter. The department may adopt rules
24 to allow for electronic filing of fees, forms, and reports
25 required by this chapter.

26 Section 1891. Paragraph (d) of subsection (1) of
27 section 718.501, Florida Statutes, is amended to read:

28 718.501 Powers and duties of Division of Florida Land
29 Sales, Condominiums, and Mobile Homes.--

30 (1) The Division of Florida Land Sales, Condominiums,
31 and Mobile Homes of the Department of Business and

1 Professional Regulation, referred to as the "division" in this
2 part, in addition to other powers and duties prescribed by
3 chapter 498, has the power to enforce and ensure compliance
4 with the provisions of this chapter and rules promulgated
5 pursuant hereto relating to the development, construction,
6 sale, lease, ownership, operation, and management of
7 residential condominium units. In performing its duties, the
8 division has the following powers and duties:

9 (d) Notwithstanding any remedies available to unit
10 owners and associations, if the division has reasonable cause
11 to believe that a violation of any provision of this chapter
12 or rule promulgated pursuant hereto has occurred, the division
13 may institute enforcement proceedings in its own name against
14 any developer, association, officer, or member of the board of
15 administration, or its assignees or agents, as follows:

16 1. The division may permit a person whose conduct or
17 actions may be under investigation to waive formal proceedings
18 and enter into a consent proceeding whereby orders, rules, or
19 letters of censure or warning, whether formal or informal, may
20 be entered against the person.

21 2. The division may issue an order requiring the
22 developer, association, officer, or member of the board of
23 administration, or its assignees or agents, to cease and
24 desist from the unlawful practice and take such affirmative
25 action as in the judgment of the division will carry out the
26 purposes of this chapter. Such affirmative action may include,
27 but is not limited to, an order requiring a developer to pay
28 moneys determined to be owed to a condominium association.

29 3. The division may bring an action in circuit court
30 on behalf of a class of unit owners, lessees, or purchasers
31 for declaratory relief, injunctive relief, or restitution.

1 4. The division may impose a civil penalty against a
2 developer or association, or its assignee or agent, for any
3 violation of this chapter or a rule promulgated pursuant
4 hereto. The division may impose a civil penalty individually
5 against any officer or board member who willfully and
6 knowingly violates a provision of this chapter, a rule adopted
7 pursuant hereto, or a final order of the division. The term
8 "willfully and knowingly" means that the division informed the
9 officer or board member that his or her action or intended
10 action violates this chapter, a rule adopted under this
11 chapter, or a final order of the division and that the officer
12 or board member refused to comply with the requirements of
13 this chapter, a rule adopted under this chapter, or a final
14 order of the division. The division, prior to initiating
15 formal agency action under chapter 120, shall afford the
16 officer or board member an opportunity to voluntarily comply
17 with this chapter, a rule adopted under this chapter, or a
18 final order of the division. An officer or board member who
19 complies within 10 days is not subject to a civil penalty. A
20 penalty may be imposed on the basis of each day of continuing
21 violation, but in no event shall the penalty for any offense
22 exceed \$5,000. By January 1, 1998, the division shall adopt,
23 by rule, penalty guidelines applicable to possible violations
24 or to categories of violations of this chapter or rules
25 adopted by the division. The guidelines must specify a
26 meaningful range of civil penalties for each such violation of
27 the statute and rules and must be based upon the harm caused
28 by the violation, the repetition of the violation, and upon
29 such other factors deemed relevant by the division. For
30 example, the division may consider whether the violations were
31 committed by a developer or owner-controlled association, the

1 size of the association, and other factors. The guidelines
2 must designate the possible mitigating or aggravating
3 circumstances that justify a departure from the range of
4 penalties provided by the rules. It is the legislative intent
5 that minor violations be distinguished from those which
6 endanger the health, safety, or welfare of the condominium
7 residents or other persons and that such guidelines provide
8 reasonable and meaningful notice to the public of likely
9 penalties that may be imposed for proscribed conduct. This
10 subsection does not limit the ability of the division to
11 informally dispose of administrative actions or complaints by
12 stipulation, agreed settlement, or consent order. All amounts
13 collected shall be deposited with the Chief Financial Officer
14 ~~Treasurer~~ to the credit of the Division of Florida Land Sales,
15 Condominiums, and Mobile Homes Trust Fund. If a developer
16 fails to pay the civil penalty, the division shall thereupon
17 issue an order directing that such developer cease and desist
18 from further operation until such time as the civil penalty is
19 paid or may pursue enforcement of the penalty in a court of
20 competent jurisdiction. If an association fails to pay the
21 civil penalty, the division shall thereupon pursue enforcement
22 in a court of competent jurisdiction, and the order imposing
23 the civil penalty or the cease and desist order will not
24 become effective until 20 days after the date of such order.
25 Any action commenced by the division shall be brought in the
26 county in which the division has its executive offices or in
27 the county where the violation occurred.

28 Section 1892. Paragraph (d) of subsection (1) of
29 section 719.501, Florida Statutes, is amended to read:

30 719.501 Powers and duties of Division of Florida Land
31 Sales, Condominiums, and Mobile Homes.--

1 (1) The Division of Florida Land Sales, Condominiums,
2 and Mobile Homes of the Department of Business and
3 Professional Regulation, referred to as the "division" in this
4 part, in addition to other powers and duties prescribed by
5 chapter 498, has the power to enforce and ensure compliance
6 with the provisions of this chapter and rules promulgated
7 pursuant hereto relating to the development, construction,
8 sale, lease, ownership, operation, and management of
9 residential cooperative units. In performing its duties, the
10 division shall have the following powers and duties:

11 (d) Notwithstanding any remedies available to unit
12 owners and associations, if the division has reasonable cause
13 to believe that a violation of any provision of this chapter
14 or rule promulgated pursuant hereto has occurred, the division
15 may institute enforcement proceedings in its own name against
16 a developer, association, officer, or member of the board, or
17 its assignees or agents, as follows:

18 1. The division may permit a person whose conduct or
19 actions may be under investigation to waive formal proceedings
20 and enter into a consent proceeding whereby orders, rules, or
21 letters of censure or warning, whether formal or informal, may
22 be entered against the person.

23 2. The division may issue an order requiring the
24 developer, association, officer, or member of the board, or
25 its assignees or agents, to cease and desist from the unlawful
26 practice and take such affirmative action as in the judgment
27 of the division will carry out the purposes of this chapter.
28 Such affirmative action may include, but is not limited to, an
29 order requiring a developer to pay moneys determined to be
30 owed to a condominium association.

31

1 3. The division may bring an action in circuit court
2 on behalf of a class of unit owners, lessees, or purchasers
3 for declaratory relief, injunctive relief, or restitution.

4 4. The division may impose a civil penalty against a
5 developer or association, or its assignees or agents, for any
6 violation of this chapter or a rule promulgated pursuant
7 hereto. The division may impose a civil penalty individually
8 against any officer or board member who willfully and
9 knowingly violates a provision of this chapter, a rule adopted
10 pursuant to this chapter, or a final order of the division.
11 The term "willfully and knowingly" means that the division
12 informed the officer or board member that his or her action or
13 intended action violates this chapter, a rule adopted under
14 this chapter, or a final order of the division, and that the
15 officer or board member refused to comply with the
16 requirements of this chapter, a rule adopted under this
17 chapter, or a final order of the division. The division, prior
18 to initiating formal agency action under chapter 120, shall
19 afford the officer or board member an opportunity to
20 voluntarily comply with this chapter, a rule adopted under
21 this chapter, or a final order of the division. An officer or
22 board member who complies within 10 days is not subject to a
23 civil penalty. A penalty may be imposed on the basis of each
24 day of continuing violation, but in no event shall the penalty
25 for any offense exceed \$5,000. By January 1, 1998, the
26 division shall adopt, by rule, penalty guidelines applicable
27 to possible violations or to categories of violations of this
28 chapter or rules adopted by the division. The guidelines must
29 specify a meaningful range of civil penalties for each such
30 violation of the statute and rules and must be based upon the
31 harm caused by the violation, the repetition of the violation,

1 and upon such other factors deemed relevant by the division.
2 For example, the division may consider whether the violations
3 were committed by a developer or owner-controlled association,
4 the size of the association, and other factors. The guidelines
5 must designate the possible mitigating or aggravating
6 circumstances that justify a departure from the range of
7 penalties provided by the rules. It is the legislative intent
8 that minor violations be distinguished from those which
9 endanger the health, safety, or welfare of the cooperative
10 residents or other persons and that such guidelines provide
11 reasonable and meaningful notice to the public of likely
12 penalties that may be imposed for proscribed conduct. This
13 subsection does not limit the ability of the division to
14 informally dispose of administrative actions or complaints by
15 stipulation, agreed settlement, or consent order. All amounts
16 collected shall be deposited with the Chief Financial Officer
17 ~~Treasurer~~ to the credit of the Division of Florida Land Sales,
18 Condominiums, and Mobile Homes Trust Fund. If a developer
19 fails to pay the civil penalty, the division shall thereupon
20 issue an order directing that such developer cease and desist
21 from further operation until such time as the civil penalty is
22 paid or may pursue enforcement of the penalty in a court of
23 competent jurisdiction. If an association fails to pay the
24 civil penalty, the division shall thereupon pursue enforcement
25 in a court of competent jurisdiction, and the order imposing
26 the civil penalty or the cease and desist order shall not
27 become effective until 20 days after the date of such order.
28 Any action commenced by the division shall be brought in the
29 county in which the division has its executive offices or in
30 the county where the violation occurred.
31

1 Section 1893. Subsection (3) of section 721.24,
2 Florida Statutes, is amended to read:

3 721.24 Firesafety.--

4 (3) The Division of State Fire Marshal of the
5 Department of Financial Services ~~Insurance~~ may prescribe
6 uniform standards for firesafety equipment for timeshare units
7 of timeshare plans for which the construction contracts were
8 let before October 1, 1983. An entire building shall be
9 equipped as outlined, except that the approved sprinkler
10 system may be delayed by the Division of State Fire Marshal
11 until October 1, 1991, on a schedule for complete compliance
12 in accordance with rules adopted by the Division of State Fire
13 Marshal, which schedule shall include a provision for a 1-year
14 extension which may be granted not more than three times for
15 any individual requesting an extension. The entire system
16 must be installed and operational by October 1, 1994. The
17 Division of State Fire Marshal shall not grant an extension
18 for the approved sprinkler system unless a written request for
19 the extension and a construction work schedule is submitted.
20 The Division of State Fire Marshal may grant an extension upon
21 demonstration that compliance with this section by the date
22 required would impose an extreme hardship and a
23 disproportionate financial impact. Any establishment that has
24 been granted an extension by the Division of State Fire
25 Marshal shall post, in a conspicuous place on the premises, a
26 public notice stating that the establishment has not yet
27 installed the approved sprinkler system required by law.

28 Section 1894. Paragraph (e) of subsection (5) of
29 section 721.26, Florida Statutes, is amended to read:

30 721.26 Regulation by division.--The division has the
31 power to enforce and ensure compliance with the provisions of

1 this chapter, except for parts III and IV, using the powers
2 provided in this chapter, as well as the powers prescribed in
3 chapters 498, 718, and 719. In performing its duties, the
4 division shall have the following powers and duties:

5 (5) Notwithstanding any remedies available to
6 purchasers, if the division has reasonable cause to believe
7 that a violation of this chapter, or of any division rule or
8 order promulgated or issued pursuant to this chapter, has
9 occurred, the division may institute enforcement proceedings
10 in its own name against any regulated party, as such term is
11 defined in this subsection:

12 (e)1. The division may impose a penalty against any
13 regulated party for a violation of this chapter or any rule
14 adopted thereunder. A penalty may be imposed on the basis of
15 each day of continuing violation, but in no event may the
16 penalty for any offense exceed \$10,000. All accounts
17 collected shall be deposited with the Chief Financial Officer
18 ~~Treasurer~~ to the credit of the Division of Florida Land Sales,
19 Condominiums, and Mobile Homes Trust Fund.

20 2.a. If a regulated party fails to pay a penalty, the
21 division shall thereupon issue an order directing that such
22 regulated party cease and desist from further operation until
23 such time as the penalty is paid; or the division may pursue
24 enforcement of the penalty in a court of competent
25 jurisdiction.

26 b. If an association or managing entity fails to pay a
27 civil penalty, the division may pursue enforcement in a court
28 of competent jurisdiction.

29 Section 1895. Paragraph (e) of subsection (5) of
30 section 723.006, Florida Statutes, is amended to read:

31

1 723.006 Powers and duties of division.--In performing
2 its duties, the division has the following powers and duties:

3 (5) Notwithstanding any remedies available to mobile
4 home owners, mobile home park owners, and homeowners'
5 associations, if the division has reasonable cause to believe
6 that a violation of any provision of this chapter or any rule
7 promulgated pursuant hereto has occurred, the division may
8 institute enforcement proceedings in its own name against a
9 developer, mobile home park owner, or homeowners' association,
10 or its assignee or agent, as follows:

11 (e)1. The division may impose a civil penalty against
12 a mobile home park owner or homeowners' association, or its
13 assignee or agent, for any violation of this chapter, a
14 properly promulgated park rule or regulation, or a rule or
15 regulation promulgated pursuant hereto. A penalty may be
16 imposed on the basis of each separate violation and, if the
17 violation is a continuing one, for each day of continuing
18 violation, but in no event may the penalty for each separate
19 violation or for each day of continuing violation exceed
20 \$5,000. All amounts collected shall be deposited with the
21 Chief Financial Officer ~~Treasurer~~ to the credit of the
22 Division of Florida Land Sales, Condominiums, and Mobile Homes
23 Trust Fund.

24 2. If a violator fails to pay the civil penalty, the
25 division shall thereupon issue an order directing that such
26 violator cease and desist from further violation until such
27 time as the civil penalty is paid or may pursue enforcement of
28 the penalty in a court of competent jurisdiction. If a
29 homeowners' association fails to pay the civil penalty, the
30 division shall thereupon pursue enforcement in a court of
31 competent jurisdiction, and the order imposing the civil

1 penalty or the cease and desist order shall not become
2 effective until 20 days after the date of such order. Any
3 action commenced by the division shall be brought in the
4 county in which the division has its executive offices or in
5 which the violation occurred.

6 Section 1896. Subsections (2) and (3) and paragraph
7 (a) of subsection (5) of section 732.107, Florida Statutes,
8 are amended to read:

9 732.107 Escheat.--

10 (2) Property that escheats shall be sold as provided
11 in the Florida Probate Rules and the proceeds paid to the
12 Chief Financial Officer ~~Treasurer~~ of the state and deposited
13 in the State School Fund.

14 (3) At any time within 10 years after the payment to
15 the Chief Financial Officer ~~Treasurer~~, a person claiming to be
16 entitled to the proceeds may reopen the administration to
17 assert entitlement to the proceeds. If no claim is timely
18 asserted, the state's rights to the proceeds shall become
19 absolute.

20 (5)(a) If a person entitled to the proceeds assigns
21 the rights to receive payment to an attorney,
22 Florida-certified public accountant, or private investigative
23 agency which is duly licensed to do business in this state
24 pursuant to a written agreement with that person, the
25 Department of Financial Services ~~Banking and Finance~~ is
26 authorized to make distribution in accordance with the
27 assignment.

28 Section 1897. Subsections (1), (2), and (3) and
29 paragraph (a) of subsection (5) of section 733.816, Florida
30 Statutes, are amended to read:

31

1 733.816 Disposition of unclaimed property held by
2 personal representatives.--

3 (1) In all cases in which there is unclaimed property
4 in the hands of a personal representative that cannot be
5 distributed or paid because of the inability to find the
6 lawful owner or because no lawful owner is known or because
7 the lawful owner refuses to accept the property after a
8 reasonable attempt to distribute it and after notice to that
9 lawful owner, the court shall order the personal
10 representative to sell the property and deposit the proceeds
11 and cash already in hand, after retaining those amounts
12 provided for in subsection (4), with the clerk and receive a
13 receipt, and the clerk shall deposit the funds in the registry
14 of the court to be disposed of as follows:

15 (a) If the value of the funds is \$500 or less, the
16 clerk shall post a notice for 30 days at the courthouse door
17 giving the amount involved, the name of the personal
18 representative, and the other pertinent information that will
19 put interested persons on notice.

20 (b) If the value of the funds is over \$500, the clerk
21 shall publish the notice once a month for 2 consecutive months
22 in a newspaper of general circulation in the county.

23

24 After the expiration of 6 months from the posting or first
25 publication, the clerk shall deposit the funds with the Chief
26 Financial Officer ~~State Treasurer~~ after deducting the clerk's
27 fees and the costs of publication.

28 (2) Upon receipt of the funds, the Chief Financial
29 Officer ~~State Treasurer~~ shall deposit them to the credit of
30 the State School Fund, to become a part of the school fund.
31 All interest and all income that may accrue from the money

1 while so deposited shall belong to the fund. The funds so
2 deposited shall constitute and be a permanent appropriation
3 for payments by the Chief Financial Officer ~~State Treasurer~~ in
4 obedience to court orders entered as provided by subsection
5 (3).

6 (3) Within 10 years from the date of deposit with the
7 Chief Financial Officer ~~State Treasurer~~, on written petition
8 to the court that directed the deposit of the funds and
9 informal notice to the Department of Legal Affairs, and after
10 proof of entitlement, any person entitled to the funds before
11 or after payment to the Chief Financial Officer ~~State~~
12 ~~Treasurer~~ and deposit as provided by subsection (1) may obtain
13 a court order directing the payment of the funds to that
14 person. All funds deposited with the Chief Financial Officer
15 ~~State Treasurer~~ and not claimed within 10 years from the date
16 of deposit shall escheat to the state for the benefit of the
17 State School Fund.

18 (5)(a) If a person entitled to the funds assigns the
19 right to receive payment or part payment to an attorney or
20 private investigative agency which is duly licensed to do
21 business in this state pursuant to a written agreement with
22 that person, the Department of Financial Services ~~Banking and~~
23 ~~Finance~~ is authorized to make distribution in accordance with
24 the assignment.

25 Section 1898. Paragraphs (a), (b), and (c) of
26 subsection (2) of section 744.534, Florida Statutes, are
27 amended to read:

28 744.534 Disposition of unclaimed funds held by
29 guardian.--

30 (2)(a) In those cases in which it is appropriate for
31 the guardianship to terminate pursuant to s. 744.521 and in

1 which property in the hands of a guardian cannot be
2 distributed to the ward or the ward's estate solely because
3 the guardian is unable to locate the ward through diligent
4 search, the court shall order the guardian of the property to
5 sell the property of the ward and deposit the proceeds and
6 cash already on hand after retaining those amounts provided
7 for in paragraph (e) with the clerk of the court exercising
8 jurisdiction over the guardianship and receive a receipt. The
9 clerk shall deposit the funds in the registry of the court, to
10 be disposed of as follows:

11 1. If the value of the funds is \$50 or less, the clerk
12 shall post a notice for 30 days at the courthouse door giving
13 the amount involved, the name of the ward, and other pertinent
14 information that will put interested persons on notice.

15 2. If the value of the funds is over \$50, the clerk
16 shall publish the notice once a month for 2 consecutive months
17 in a newspaper of general circulation in the county.

18 3. After the expiration of 6 months from the posting
19 or first publication, the clerk shall deposit the funds with
20 the Chief Financial Officer ~~State Treasurer~~ after deducting
21 his or her fees and the costs of publication.

22 (b) Upon receipt of the funds, the Chief Financial
23 Officer ~~State Treasurer~~ shall deposit them to the credit of
24 public guardianship. All interest and all income that may
25 accrue from the money while so deposited shall belong to the
26 fund. The funds so deposited shall constitute and be a
27 permanent appropriation for payments by the Chief Financial
28 Officer ~~State Treasurer~~ in obedience to court orders entered
29 as provided by paragraph (c).

30 (c) Within 5 years from the date of deposit with the
31 Chief Financial Officer ~~State Treasurer~~, on written petition

1 to the court that directed the deposit of the funds and
2 informal notice to the Department of Legal Affairs, and after
3 proof of his or her right to them, any person entitled to the
4 funds, before or after payment to the Chief Financial Officer
5 ~~State Treasurer~~ and deposit as provided for in paragraph (a),
6 may obtain a court order directing the payment of the funds to
7 him or her. All funds deposited with the Chief Financial
8 Officer ~~State Treasurer~~ and not claimed within 5 years from
9 the date of deposit shall escheat to the state to be deposited
10 in the Department of Elderly Affairs Administrative Trust Fund
11 to be used solely for the benefit of public guardianship as
12 determined by the Statewide Public Guardianship Office
13 established in part IX of this chapter.

14 Section 1899. Paragraphs (b), (c), (d), (e), and (g)
15 of subsection (3) of section 766.105, Florida Statutes, are
16 amended to read:

17 766.105 Florida Patient's Compensation Fund.--

18 (3) THE FUND.--

19 (b) Fund administration and operation.--

20 1. The fund shall operate subject to the supervision
21 and approval of a board of governors consisting of a
22 representative of the insurance industry appointed by the
23 Chief Financial Officer ~~Insurance Commissioner~~, an attorney
24 appointed by The Florida Bar, a representative of physicians
25 appointed by the Florida Medical Association, a representative
26 of physicians' insurance appointed by the Chief Financial
27 Officer ~~Insurance Commissioner~~, a representative of
28 physicians' self-insurance appointed by the Chief Financial
29 Officer ~~Insurance Commissioner~~, two representatives of
30 hospitals appointed by the Florida Hospital Association, a
31 representative of hospital insurance appointed by the Chief

1 Financial Officer ~~Insurance Commissioner~~, a representative of
2 hospital self-insurance appointed by the Chief Financial
3 Officer ~~Insurance Commissioner~~, a representative of the
4 osteopathic physicians' or podiatric physicians' insurance or
5 self-insurance appointed by the Chief Financial Officer
6 ~~Insurance Commissioner~~, and a representative of the general
7 public appointed by the Chief Financial Officer ~~Insurance~~
8 ~~Commissioner~~. The board of governors shall, during the first
9 meeting after June 30 of each year, choose one of its members
10 to serve as chair of the board and another member to serve as
11 vice chair of the board. The members of the board shall be
12 appointed to serve terms of 4 years, except that the initial
13 appointments of a representative of the general public by the
14 Chief Financial Officer ~~Insurance Commissioner~~, an attorney by
15 The Florida Bar, a representative of physicians by the Florida
16 Medical Association, and one of the two representatives of the
17 Florida Hospital Association shall be for terms of 3 years;
18 thereafter, such representatives shall be appointed for terms
19 of 4 years. Subsequent to initial appointments for 4-year
20 terms, the representative of the osteopathic physicians' or
21 podiatric physicians' insurance or self-insurance appointed by
22 the Chief Financial Officer ~~Insurance Commissioner~~ and the
23 representative of hospital self-insurance appointed by the
24 Chief Financial Officer ~~Insurance Commissioner~~ shall be
25 appointed for 2-year terms; thereafter, such representatives
26 shall be appointed for terms of 4 years. Each appointed member
27 may designate in writing to the chair an alternate to act in
28 the member's absence or incapacity. A member of the board, or
29 the member's alternate, may be reimbursed from the assets of
30 the fund for expenses incurred by him or her as a member, or
31 alternate member, of the board and for committee work, but he

1 or she may not otherwise be compensated by the fund for his or
2 her service as a board member or alternate.

3 2. There shall be no liability on the part of, and no
4 cause of action of any nature shall arise against, the fund or
5 its agents or employees, professional advisers or consultants,
6 members of the board of governors or their alternates, or the
7 Department of Financial Services or the Office of Insurance
8 Regulation of the Financial Services Commission ~~Insurance~~ or
9 their ~~its~~ representatives for any action taken by them in the
10 performance of their powers and duties pursuant to this
11 section.

12 (c) Powers of the fund.--The fund has the power to:

13 1. Sue and be sued, and appear and defend, in all
14 actions and proceedings in its name to the same extent as a
15 natural person.

16 2. Adopt, change, amend, and repeal a plan of
17 operation, not inconsistent with law, for the regulation and
18 administration of the affairs of the fund. The plan and any
19 changes thereto shall be filed with the Office of Insurance
20 Regulation of the Financial Services Commission ~~Insurance~~
21 ~~Commissioner~~ and are all subject to its ~~his or her~~ approval
22 before implementation by the fund. All fund members, board
23 members, and employees shall comply with the plan of
24 operation.

25 3. Have and exercise all powers necessary or
26 convenient to effect any or all of the purposes for which the
27 fund is created.

28 4. Enter into such contracts as are necessary or
29 proper to carry out the provisions and purposes of this
30 section.

31

1 5. Employ or retain such persons as are necessary to
2 perform the administrative and financial transactions and
3 responsibilities of the fund and to perform other necessary or
4 proper functions unless prohibited by law.

5 6. Take such legal action as may be necessary to avoid
6 payment of improper claims.

7 7. Indemnify any employee, agent, member of the board
8 of governors or his or her alternate, or person acting on
9 behalf of the fund in an official capacity, for expenses,
10 including attorney's fees, judgments, fines, and amounts paid
11 in settlement actually and reasonably incurred by him or her
12 in connection with any action, suit, or proceeding, including
13 any appeal thereof, arising out of his or her capacity in
14 acting on behalf of the fund, if he or she acted in good faith
15 and in a manner he or she reasonably believed to be in, or not
16 opposed to, the best interests of the fund and, with respect
17 to any criminal action or proceeding, he or she had reasonable
18 cause to believe his or her conduct was lawful.

19 (d) Fees and assessments.--Each health care provider,
20 as set forth in subsection (2), electing to comply with
21 paragraph (2)(b) for a given fiscal year shall pay the fees
22 and any assessments established under this section relative to
23 such fiscal year, for deposit into the fund. Those entering
24 the fund after the fiscal year has begun shall pay a prorated
25 share of the yearly fees for a prorated membership.
26 Actuarially sound membership fees payable annually,
27 semiannually, or quarterly with appropriate service charges
28 shall be established by the fund before January 1 of each
29 fiscal year, based on the following considerations:
30
31

1 1. Past and prospective loss and expense experience in
2 different types of practice and in different geographical
3 areas within the state;

4 2. The prior claims experience of the members covered
5 under the fund; and

6 3. Risk factors for persons who are retired,
7 semiretired, or part-time professionals.

8
9 Such fees shall be based on not more than three geographical
10 areas, not necessarily contiguous, with five categories of
11 practice and with categories which contemplate separate risk
12 ratings for hospitals, for health maintenance organizations,
13 for ambulatory surgical facilities, and for other medical
14 facilities. The fund is authorized to adjust the fees of an
15 individual member to reflect the claims experience of such
16 member. Each fiscal year of the fund shall operate
17 independently of preceding fiscal years. Participants shall
18 only be liable for assessments for claims from years during
19 which they were members of the fund; in cases in which a
20 participant is a member of the fund for less than the total
21 fiscal year, a member shall be subject to assessments for that
22 year on a pro rata basis determined by the percentage of
23 participation for the year. The fund shall submit to the
24 Office of Insurance Regulation ~~Insurance Commissioner~~ the
25 classifications and membership fees to be charged, and the
26 Office of Insurance Regulation ~~Insurance Commissioner~~ shall
27 review such fees and shall approve them if they comply with
28 all the requirements of this section and fairly reflect the
29 considerations provided for in this section. If the
30 classifications or membership fees do not comply with this
31 section, the Office of Insurance Regulation ~~Insurance~~

1 ~~Commissioner~~ shall set classifications or membership fees
2 which do comply and which give due recognition to all
3 considerations provided for in this section. Nothing
4 contained herein shall be construed as imposing liability for
5 payment of any part of a fund deficit on the Joint
6 Underwriting Association authorized by s. 627.351(4) or its
7 member insurers. If the fund determines that the amount of
8 money in an account for a given fiscal year is in excess of or
9 not sufficient to satisfy the claims made against the account,
10 the fund shall certify the amount of the projected excess or
11 insufficiency to the Office of Insurance Regulation ~~Insurance~~
12 ~~Commissioner~~ and request the office ~~Insurance Commissioner~~ to
13 levy an assessment against or refund to all participants in
14 the fund for that fiscal year, prorated, based on the number
15 of days of participation during the year in question. The
16 Office of Insurance Regulation ~~Insurance Commissioner~~ shall
17 approve the request of the fund to refund to, or levy any
18 assessment against, the participants, provided the refund or
19 assessment fairly reflects the same considerations and
20 classifications upon which the membership fees were based. The
21 assessment shall be in an amount sufficient to satisfy reserve
22 requirements for known claims, including expenses to satisfy
23 the claims, made against the account for a given fiscal year.
24 In any proceeding to challenge the amount of the refund or
25 assessment, it is to be presumed that the amount of refund or
26 assessment requested by the fund is correct, if the fund
27 demonstrates that it has used reasonable claims handling and
28 reserving procedures. Additional assessments may be certified
29 and levied in accordance with this paragraph as necessary for
30 any fiscal year. If a fund member objects to his or her
31 assessment, he or she shall, as a condition precedent to

1 bringing legal action contesting the assessment, pay the
2 assessment, under protest, to the fund. The fund may borrow
3 money needed for current operations, if necessary to pay
4 claims and related expenses, fees, and costs timely for a
5 given fiscal year, from an account for another fiscal year
6 until such time as sufficient funds have been obtained through
7 the assessment process. Any such money, together with
8 interest at the mean interest rate earned on the investment
9 portfolio of the fund, shall be repaid from the next
10 assessment for the given fiscal year. If any assessments are
11 levied in accordance with this subsection as a result of
12 claims in excess of \$500,000 per occurrence, and such
13 assessments are a result of the liability of certain
14 individuals and entities specified in paragraph (2)(e), only
15 hospitals shall be subject to such assessments. Before
16 approving the request of the fund to charge membership fees,
17 issue refunds, or levy assessments, the Office of Insurance
18 Regulation ~~Insurance Commissioner~~ shall publish notice of the
19 request in the Florida Administrative Weekly. Pursuant to
20 chapter 120, any party substantially affected may request an
21 appropriate proceeding. Any petition for such a proceeding
22 shall be filed with the Office of Insurance Regulation
23 ~~Department of Insurance~~ within 21 days after the date of
24 publication of the notice in the Florida Administrative
25 Weekly.

26 (e) Fund accounting and audit.--

27 1. Money shall be withdrawn from the fund only upon a
28 voucher as authorized by the board of governors.

29 2. All books, records, and audits of the fund shall be
30 open for reasonable inspection to the general public, except
31 that a claim file in possession of the fund, fund members, and

1 their insurers is confidential and exempt from the provisions
2 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
3 until termination of litigation or settlement of the claim,
4 although medical records and other portions of the claim file
5 may remain confidential and exempt as otherwise provided by
6 law. Any book, record, document, audit, or asset acquired by,
7 prepared for, or paid for by the fund is subject to the
8 authority of the board of governors, which shall be
9 responsible therefor.

10 3. Persons authorized to receive deposits, issue
11 vouchers, or withdraw or otherwise disburse any fund moneys
12 shall post a blanket fidelity bond in an amount reasonably
13 sufficient to protect fund assets. The cost of such bond shall
14 be paid from the fund.

15 4. Annually, the fund shall furnish, upon request,
16 audited financial reports to any fund participant and to the
17 Office of Insurance Regulation ~~Department of Insurance~~ and the
18 Joint Legislative Auditing Committee. The reports shall be
19 prepared in accordance with accepted accounting procedures and
20 shall include income and such other information as may be
21 required by the Office of Insurance Regulation ~~Department of~~
22 ~~Insurance~~ or the Joint Legislative Auditing Committee.

23 5. Any money held in the fund shall be invested in
24 interest-bearing investments by the board of governors of the
25 fund as administrator. However, in no case may any such money
26 be invested in the stock of any insurer participating in the
27 Joint Underwriting Association authorized by s. 627.351(4) or
28 in the parent company of, or company owning a controlling
29 interest in, such insurer. All income derived from such
30 investments shall be credited to the fund.

31

1 6. Any health care provider participating in the fund
2 may withdraw from such participation only at the end of a
3 fiscal year; however, such health care provider shall remain
4 subject to any assessment or any refund pertaining to any year
5 in which such member participated in the fund.

6 (g) Risk management program.--The fund shall establish
7 a risk management program as part of its administrative
8 functions. All health care providers, as defined in
9 subparagraphs (1)(b)1., 5., 6., and 7., participating in the
10 fund shall comply with the provisions of the risk management
11 program established by the fund. The risk management program
12 shall include the following components:

13 1. The investigation and analysis of the frequency and
14 causes of general categories and specific types of adverse
15 incidents causing injury to patients;

16 2. The development of appropriate measures to minimize
17 the risk of injuries and adverse incidents to patients;

18 3. The analysis of patient grievances which relate to
19 patient care and the quality of medical services;

20 4. The development and implementation of an incident
21 reporting system based upon the affirmative duty of all health
22 care providers and all agents and employees of health care
23 providers and health care facilities to report injuries and
24 incidents; and

25 5. Auditing of participating health care providers to
26 assure compliance with the provisions of the risk management
27 program.

28
29 The fund shall establish a schedule of fee surcharges which it
30 shall levy upon participating health care providers found to
31 be in violation of the provisions of the risk management

1 program. Such schedule shall be subject to approval by the
2 Office of Insurance Regulation ~~department~~ and shall provide an
3 escalating scale of surcharges based upon the frequency and
4 severity of the incidents in violation of the risk management
5 program. No health care provider shall be required to pay a
6 surcharge if it has corrected all violations of the provisions
7 of the risk management program and established an affirmative
8 program to remain in compliance by the time its next fee or
9 assessment is due.

10 Section 1900. Subsection (7) of section 766.1115,
11 Florida Statutes, is amended to read:

12 766.1115 Health care providers; creation of agency
13 relationship with governmental contractors.--

14 (7) RISK MANAGEMENT REPORT.--The Division of Risk
15 Management of the Department of Financial Services ~~Insurance~~
16 shall annually compile a report of all claims statistics for
17 all entities participating in the risk management program
18 administered by the division, which shall include the number
19 and total of all claims pending and paid, and defense and
20 handling costs associated with all claims brought against
21 contract providers under this section. This report shall be
22 forwarded to the department and included in the annual report
23 submitted to the Legislature pursuant to this section.

24 Section 1901. Subsections (2) and (5), paragraph (a)
25 of subsection (6), subsection (7), and paragraph (c) of
26 subsection (9) of section 766.314, Florida Statutes, are
27 amended to read:

28 766.314 Assessments; plan of operation.--

29 (2) The assessments and appropriations dedicated to
30 the plan shall be administered by the Florida Birth-Related
31

1 Neurological Injury Compensation Association established in s.
2 766.315, in accordance with the following requirements:

3 (a) On or before July 1, 1988, the directors of the
4 association shall submit to the Department of Insurance for
5 review a plan of operation which shall provide for the
6 efficient administration of the plan and for prompt processing
7 of claims against and awards made on behalf of the plan. The
8 plan of operation shall include provision for:

- 9 1. Establishment of necessary facilities;
- 10 2. Management of the funds collected on behalf of the
11 plan;
- 12 3. Processing of claims against the plan;
- 13 4. Assessment of the persons and entities listed in
14 subsections (4) and (5) to pay awards and expenses, which
15 assessments shall be on an actuarially sound basis subject to
16 the limits set forth in subsections (4) and (5); and
- 17 5. Any other matters necessary for the efficient
18 operation of the birth-related neurological injury
19 compensation plan.

20 ~~(b) The plan of operation shall be subject to approval~~
21 ~~by the Department of Insurance after consultation with~~
22 ~~representatives of state agencies which collect revenue~~
23 ~~pursuant to this section and interested individuals and~~
24 ~~organizations. If the Department of Insurance disapproves all~~
25 ~~or any part of the plan of operation, the directors shall~~
26 ~~within 30 days submit for review an appropriate revised plan~~
27 ~~of operation. If the directors fail to do so, the Department~~
28 ~~of Insurance shall promulgate a plan of operation. The plan~~
29 ~~of operation approved or promulgated by the Department of~~
30 ~~Insurance shall become effective and operational upon order of~~
31 ~~the Department of Insurance.~~

1 **(b)**~~(c)~~ Amendments to the plan of operation may be made
2 by the directors of the plan, subject to the approval of the
3 Office of Insurance Regulation of the Financial Services
4 Commission ~~Department of Insurance~~.

5 (5)(a) Beginning January 1, 1990, the persons and
6 entities listed in paragraphs (4)(b) and (c), except those
7 persons or entities who are specifically excluded from said
8 provisions, as of the date determined in accordance with the
9 plan of operation, taking into account persons licensed
10 subsequent to the payment of the initial assessment, shall pay
11 an annual assessment in the amount equal to the initial
12 assessments provided in paragraphs (4)(b) and (c). On January
13 1, 1991, and on each January 1 thereafter, the association
14 shall determine the amount of additional assessments necessary
15 pursuant to subsection (7), in the manner required by the plan
16 of operation, subject to any increase determined to be
17 necessary by the Office of Insurance Regulation ~~Department of~~
18 ~~Insurance~~ pursuant to paragraph (7)(b). On July 1, 1991, and
19 on each July 1 thereafter, the persons and entities listed in
20 paragraphs (4)(b) and (c), except those persons or entities
21 who are specifically excluded from said provisions, shall pay
22 the additional assessments which were determined on January 1.
23 Beginning January 1, 1990, the entities listed in paragraph
24 (4)(a), including those licensed on or after October 1, 1988,
25 shall pay an annual assessment of \$50 per infant delivered
26 during the prior calendar year. The additional assessments
27 which were determined on January 1, 1991, pursuant to the
28 provisions of subsection (7) shall not be due and payable by
29 the entities listed in paragraph (4)(a) until July 1.

30 (b) If the assessments collected pursuant to
31 subsection (4) and the appropriation of funds provided by s.

1 76, chapter 88-1, Laws of Florida, as amended by s. 41,
2 chapter 88-277, Laws of Florida, to the plan from the
3 Insurance ~~Commissioner's~~ Regulatory Trust Fund are
4 insufficient to maintain the plan on an actuarially sound
5 basis, there is hereby appropriated for transfer to the
6 association from the Insurance ~~Commissioner's~~ Regulatory Trust
7 Fund an additional amount of up to \$20 million.

8 (c)1. Taking into account the assessments collected
9 pursuant to subsection (4) and appropriations from the
10 Insurance ~~Commissioner's~~ Regulatory Trust Fund, if required to
11 maintain the plan on an actuarially sound basis, the Office of
12 Insurance Regulation ~~Department of Insurance~~ shall require
13 each entity licensed to issue casualty insurance as defined in
14 s. 624.605(1)(b), (k), and (q) to pay into the association an
15 annual assessment in an amount determined by the office
16 ~~department~~ pursuant to paragraph (7)(a), in the manner
17 required by the plan of operation.

18 2. All annual assessments shall be made on the basis
19 of net direct premiums written for the business activity which
20 forms the basis for each such entity's inclusion as a funding
21 source for the plan in the state during the prior year ending
22 December 31, as reported to the Office of Insurance Regulation
23 ~~Department of Insurance~~, and shall be in the proportion that
24 the net direct premiums written by each carrier on account of
25 the business activity forming the basis for its inclusion in
26 the plan bears to the aggregate net direct premiums for all
27 such business activity written in this state by all such
28 entities.

29 3. No entity listed in this paragraph shall be
30 individually liable for an annual assessment in excess of 0.25
31 percent of that entity's net direct premiums written.

1 4. Casualty insurance carriers shall be entitled to
2 recover their initial and annual assessments through a
3 surcharge on future policies, a rate increase applicable
4 prospectively, or a combination of the two.

5 (6)(a) The association shall make all assessments
6 required by this section, except initial assessments of
7 physicians licensed on or after October 1, 1988, which
8 assessments will be made by the Department of Business and
9 Professional Regulation, and except assessments of casualty
10 insurers pursuant to subparagraph (5)(c)1., which assessments
11 will be made by the Office of Insurance Regulation ~~Department~~
12 ~~of Insurance~~. Beginning October 1, 1989, for any physician
13 licensed between October 1 and December 31 of any year, the
14 Department of Business and Professional Regulation shall make
15 the initial assessment plus the assessment for the following
16 calendar year. The Department of Business and Professional
17 Regulation shall provide the association, with such frequency
18 as determined to be necessary, a listing, in a
19 computer-readable form, of the names and addresses of all
20 physicians licensed under chapter 458 or chapter 459.

21 (7)(a) The Office of Insurance Regulation ~~Department~~
22 ~~of Insurance~~ shall undertake an actuarial investigation of the
23 requirements of the plan based on the plan's experience in the
24 first year of operation and any additional relevant
25 information, including without limitation the assets and
26 liabilities of the plan. Pursuant to such investigation, the
27 Office of Insurance Regulation ~~Department of Insurance~~ shall
28 establish the rate of contribution of the entities listed in
29 paragraph (5)(c) for the tax year beginning January 1, 1990.
30 Following the initial valuation, the Office of Insurance
31 Regulation ~~Department of Insurance~~ shall cause an actuarial

1 valuation to be made of the assets and liabilities of the plan
2 no less frequently than biennially. Pursuant to the results of
3 such valuations, the Office of Insurance Regulation ~~Department~~
4 ~~of Insurance~~ shall prepare a statement as to the contribution
5 rate applicable to the entities listed in paragraph (5)(c).
6 However, at no time shall the rate be greater than 0.25
7 percent of net direct premiums written.

8 (b) If the Office of Insurance Regulation ~~Department~~
9 ~~of Insurance~~ finds that the plan cannot be maintained on an
10 actuarially sound basis based on the assessments and
11 appropriations listed in subsections (4) and (5), the office
12 ~~department~~ shall increase the assessments specified in
13 subsection (4) on a proportional basis as needed.

14 (9)

15 (c) In the event the total of all current estimates
16 equals 80 percent of the funds on hand and the funds that will
17 become available to the association within the next 12 months
18 from all sources described in subsections (4) and (5) and
19 paragraph (7)(a), the association shall not accept any new
20 claims without express authority from the Legislature. Nothing
21 herein shall preclude the association from accepting any claim
22 if the injury occurred 18 months or more prior to the
23 effective date of this suspension. Within 30 days of the
24 effective date of this suspension, the association shall
25 notify the Governor, the Speaker of the House of
26 Representatives, the President of the Senate, the Office of
27 Insurance Regulation ~~Department of Insurance~~, the Agency for
28 Health Care Administration, the Department of Health, and the
29 Department of Business and Professional Regulation of this
30 suspension.

31

1 Section 1902. Paragraph (c) of subsection (1),
2 subsection (2), and paragraph (d) of subsection (5) of section
3 766.315, Florida Statutes, are amended to read:

4 766.315 Florida Birth-Related Neurological Injury
5 Compensation Association; board of directors.--

6 (1)

7 (c) The directors shall be appointed by the Chief
8 Financial Officer ~~Insurance Commissioner~~ as follows:

- 9 1. One citizen representative.
- 10 2. One representative of participating physicians.
- 11 3. One representative of hospitals.
- 12 4. One representative of casualty insurers.
- 13 5. One representative of physicians other than
14 participating physicians.

15 (2)(a) The Chief Financial Officer ~~Insurance~~
16 ~~Commissioner~~ may select the representative of the
17 participating physicians from a list of at least three names
18 to be recommended by the Florida Obstetric and Gynecologic
19 Society; the representative of hospitals from a list of at
20 least three names to be recommended by the Florida Hospital
21 Association; the representative of casualty insurers from a
22 list of at least three names, one of which is recommended by
23 the American Insurance Association, one by the Alliance of
24 American Insurers, and one by the National Association of
25 Independent Insurers; and the representative of physicians
26 other than participating physicians from a list of three names
27 to be recommended by the Florida Medical Association and a
28 list of three names to be recommended by the Florida
29 Osteopathic Medical Association. In no case shall the Chief
30 Financial Officer ~~Insurance Commissioner~~ be bound to make any
31

1 appointment from among the nominees of such respective
2 associations.

3 (b) The Chief Financial Officer ~~Insurance Commissioner~~
4 shall promptly notify the appropriate medical association upon
5 the occurrence of any vacancy, and like nominations may be
6 made for the filling of the vacancy.

7 (5)

8 (d) Annually, the association shall furnish audited
9 financial reports to any plan participant upon request, to the
10 Office of Insurance Regulation of the Financial Services
11 Commission ~~Department of Insurance~~, and to the Joint
12 Legislative Auditing Committee. The reports must be prepared
13 in accordance with accepted accounting procedures and must
14 include such information as may be required by the Office of
15 Insurance Regulation ~~Department of Insurance~~ or the Joint
16 Legislative Auditing Committee. At any time determined to be
17 necessary, the Office of Insurance Regulation ~~Department of~~
18 ~~Insurance~~ or the Joint Legislative Auditing Committee may
19 conduct an audit of the plan.

20 Section 1903. Subsection (3), paragraphs (a) and (d)
21 of subsection (6), and subsection (7) of section 768.28,
22 Florida Statutes, are amended to read:

23 768.28 Waiver of sovereign immunity in tort actions;
24 recovery limits; limitation on attorney fees; statute of
25 limitations; exclusions; indemnification; risk management
26 programs.--

27 (3) Except for a municipality and the Florida Space
28 Authority, the affected agency or subdivision may, at its
29 discretion, request the assistance of the Department of
30 Financial Services ~~Insurance~~ in the consideration, adjustment,
31 and settlement of any claim under this act.

1 (6)(a) An action may not be instituted on a claim
2 against the state or one of its agencies or subdivisions
3 unless the claimant presents the claim in writing to the
4 appropriate agency, and also, except as to any claim against a
5 municipality or the Florida Space Authority, presents such
6 claim in writing to the Department of Financial Services
7 ~~Insurance~~, within 3 years after such claim accrues and the
8 Department of Financial Services ~~Insurance~~ or the appropriate
9 agency denies the claim in writing; except that, if such claim
10 is for contribution pursuant to s. 768.31, it must be so
11 presented within 6 months after the judgment against the
12 tortfeasor seeking contribution has become final by lapse of
13 time for appeal or after appellate review or, if there is no
14 such judgment, within 6 months after the tortfeasor seeking
15 contribution has either discharged the common liability by
16 payment or agreed, while the action is pending against her or
17 him, to discharge the common liability.

18 (d) For purposes of this section, complete, accurate,
19 and timely compliance with the requirements of paragraph (c)
20 shall occur prior to settlement payment, close of discovery or
21 commencement of trial, whichever is sooner; provided the
22 ability to plead setoff is not precluded by the delay. This
23 setoff shall apply only against that part of the settlement or
24 judgment payable to the claimant, minus claimant's reasonable
25 attorney's fees and costs. Incomplete or inaccurate
26 disclosure of unpaid adjudicated claims due the state, its
27 agency, officer, or subdivision, may be excused by the court
28 upon a showing by the preponderance of the evidence of the
29 claimant's lack of knowledge of an adjudicated claim and
30 reasonable inquiry by, or on behalf of, the claimant to obtain
31 the information from public records. Unless the appropriate

1 agency had actual notice of the information required to be
2 disclosed by paragraph (c) in time to assert a setoff, an
3 unexcused failure to disclose shall, upon hearing and order of
4 court, cause the claimant to be liable for double the original
5 undisclosed judgment and, upon further motion, the court shall
6 enter judgment for the agency in that amount. The failure of
7 the Department of Financial Services Insurance or the
8 appropriate agency to make final disposition of a claim within
9 6 months after it is filed shall be deemed a final denial of
10 the claim for purposes of this section. For purposes of this
11 subsection, in medical malpractice actions, the failure of the
12 Department of Financial Services Insurance or the appropriate
13 agency to make final disposition of a claim within 90 days
14 after it is filed shall be deemed a final denial of the claim.
15 The provisions of this subsection do not apply to such claims
16 as may be asserted by counterclaim pursuant to s. 768.14.

17 (7) In actions brought pursuant to this section,
18 process shall be served upon the head of the agency concerned
19 and also, except as to a defendant municipality or the Florida
20 Space Authority, upon the Department of Financial Services
21 ~~Insurance~~; and the department or the agency concerned shall
22 have 30 days within which to plead thereto.

23 Section 1904. Subsection (5) of section 790.001,
24 Florida Statutes, is amended to read:

25 790.001 Definitions.--As used in this chapter, except
26 where the context otherwise requires:

27 (5) "Explosive" means any chemical compound or mixture
28 that has the property of yielding readily to combustion or
29 oxidation upon application of heat, flame, or shock, including
30 but not limited to dynamite, nitroglycerin, trinitrotoluene,
31 or ammonium nitrate when combined with other ingredients to

1 form an explosive mixture, blasting caps, and detonators; but
2 not including:

3 (a) Shotgun shells, cartridges, or ammunition for
4 firearms;

5 (b) Fireworks as defined in s. 791.01;

6 (c) Smokeless propellant powder or small arms
7 ammunition primers, if possessed, purchased, sold,
8 transported, or used in compliance with s. 552.241;

9 (d) Black powder in quantities not to exceed that
10 authorized by chapter 552, or by any rules adopted ~~or~~
11 ~~regulations promulgated~~ thereunder by the Department of
12 Financial Services Insurance, when used for, or intended to be
13 used for, the manufacture of target and sporting ammunition or
14 for use in muzzle-loading flint or percussion weapons.

15

16 The exclusions contained in paragraphs (a)-(d) do not apply to
17 the term "explosive" as used in the definition of "firearm" in
18 subsection (6).

19 Section 1905. Section 790.1612, Florida Statutes, is
20 amended to read:

21 790.1612 Authorization for governmental manufacture,
22 possession, and use of destructive devices.--The governing
23 body of any municipality or county and the Division of State
24 Fire Marshal of the Department of Financial Services Insurance
25 have the power to authorize the manufacture, possession, and
26 use of destructive devices as defined in s. 790.001(4).

27 Section 1906. Subsection (2) of section 791.01,
28 Florida Statutes, is amended to read:

29 791.01 Definitions.--As used in this chapter, the
30 term:

31

1 (2) "Division" means the Division of the State Fire
2 Marshal of the Department of Financial Services ~~Insurance~~.

3 Section 1907. Paragraph (b) of subsection (3) of
4 section 791.015, Florida Statutes, is amended to read:

5 791.015 Registration of manufacturers, distributors,
6 wholesalers, and retailers of sparklers.--

7 (3) FEES.--

8 (b) Revenue from registration fee payments shall be
9 deposited in the Insurance ~~Commissioner's~~ Regulatory Trust
10 Fund for the purposes of implementing the registration and
11 testing provisions of this chapter.

12 Section 1908. Section 817.16, Florida Statutes, is
13 amended to read:

14 817.16 False reports, etc., by officers of banks,
15 trust companies, etc., ~~under supervision of Department of~~
16 ~~Banking and Finance~~ with intent to defraud.--Any officer,
17 director, agent or clerk of any bank, trust company, building
18 and loan association, small loan licensee, credit union, or
19 other corporation under the supervision of the Office of
20 Financial Regulation of the Financial Services Commission or
21 formerly the Department of Banking and Finance, who willfully
22 and knowingly subscribes or exhibits any false paper with
23 intent to deceive any person authorized to examine as to the
24 records of such bank, trust company, building and loan
25 association, small loan licensee, credit union, or other
26 corporation under the supervision of the Office of Financial
27 Regulation or formerly the Department of Banking and Finance,
28 or willfully and knowingly subscribes to or makes any false
29 reports to the Office of Financial Regulation or subscribed to
30 or made any such false report to the Department of Banking and
31 Finance or causes to be published any false report, shall be

1 guilty of a felony of the third degree, punishable as provided
2 s. 775.082 or s. 775.083.

3 Section 1909. Paragraph (b) of subsection (1),
4 paragraph (b) of subsection (2), and subsection (10) of
5 section 817.234, Florida Statutes, are amended to read:

6 817.234 False and fraudulent insurance claims.--

7 (1)

8 (b) All claims and application forms shall contain a
9 statement that is approved by the Office of Insurance
10 Regulation of the Financial Services Commission which
11 ~~Department of Insurance that~~ clearly states in substance the
12 following: "Any person who knowingly and with intent to
13 injure, defraud, or deceive any insurer files a statement of
14 claim or an application containing any false, incomplete, or
15 misleading information is guilty of a felony of the third
16 degree." This paragraph shall not apply to reinsurance
17 contracts, reinsurance agreements, or reinsurance claims
18 transactions.

19 (2)

20 (b) In addition to any other provision of law,
21 systematic upcoding by a provider, as defined in s. 641.19(14)
22 ~~s. 641.19(15)~~, with the intent to obtain reimbursement
23 otherwise not due from an insurer is punishable as provided in
24 s. 641.52(5).

25 (10) As used in this section, the term "insurer" means
26 any insurer, health maintenance organization, self-insurer,
27 self-insurance fund, or other similar entity or person
28 regulated under chapter 440 or chapter 641 or by the Office of
29 Insurance Regulation ~~Department of Insurance~~ under the Florida
30 Insurance Code.

31

1 Section 1910. Section 817.2341, Florida Statutes, is
2 amended to read:

3 817.2341 False or misleading statements or supporting
4 documents; penalty.--

5 (1) Any person who willfully files with the department
6 or office, or who willfully signs for filing with the
7 department or office, a materially false or materially
8 misleading financial statement or document in support of such
9 statement required by law or rule, with intent to deceive and
10 with knowledge that the statement or document is materially
11 false or materially misleading, commits a felony of the third
12 degree, punishable as provided in s. 775.082, s. 775.083, or
13 s. 775.084.

14 (2)(a) Any person who makes a false entry of a
15 material fact in any book, report, or statement relating to a
16 transaction of an insurer or entity organized pursuant to
17 chapter 624 or chapter 641, intending to deceive any person
18 about the financial condition or solvency of the insurer or
19 entity, commits a felony of the third degree, punishable as
20 provided in s. 775.082, s. 775.083, or s. 775.084.

21 (b) If the false entry of a material fact is made with
22 the intent to deceive any person as to the impairment of
23 capital, as defined in s. 631.011(12), of the insurer or
24 entity or is the significant cause of the insurer or entity
25 being placed in conservation, rehabilitation, or liquidation
26 by a court, the person commits a felony of the first degree,
27 punishable as provided in s. 775.082, s. 775.083, or s.
28 775.084.

29 (3)(a) Any person who knowingly makes a material false
30 statement or report to the department or office or any agent
31 of the department or office, or knowingly and materially

1 overvalues any property in any document or report prepared to
2 be presented to the department or office or any agent of the
3 department or office, commits a felony of the third degree,
4 punishable as provided in s. 775.082, s. 775.083, or s.
5 775.084.

6 (b) If the material false statement or report or the
7 material overvaluation is made with the intent to deceive any
8 person as to the impairment of capital, as defined in s.
9 631.011(12), of an insurer or entity organized pursuant to
10 chapter 624 or chapter 641, or is the significant cause of the
11 insurer or entity being placed in receivership by a court, the
12 person commits a felony of the first degree, punishable as
13 provided in s. 775.082, s. 775.083, or s. 775.084.

14 (4) As used in this section, the term:

15 (a) "Department" means the Department of Financial
16 Services.

17 (b) "Office" means the Office of Insurance Regulation
18 of the Financial Services Commission.

19 Section 1911. Subsection (1) of section 817.50,
20 Florida Statutes, is amended to read:

21 817.50 Fraudulently obtaining goods, services, etc.,
22 from a health care provider.--

23 (1) Whoever shall, willfully and with intent to
24 defraud, obtain or attempt to obtain goods, products,
25 merchandise, or services from any health care provider in this
26 state, as defined in s. 641.19(14)~~s. 641.19(15)~~, commits a
27 misdemeanor of the second degree, punishable as provided in s.
28 775.082 or s. 775.083.

29 Section 1912. Section 839.06, Florida Statutes, is
30 amended to read:

31

1 839.06 Collectors not to deal in warrants, etc.;
2 removal.--No tax collector of any county shall, either
3 directly or indirectly, purchase or receive in exchange any
4 Chief Financial Officer's or the former Comptroller's
5 warrants, county orders, jurors' certificates or school
6 district orders for a less amount than expressed on the face
7 of such orders or demand, and any such person so offending
8 shall, for each offense, be deemed guilty of a misdemeanor of
9 the first degree, punishable as provided in s. 775.083, and be
10 removed from office.

11 Section 1913. Paragraph (d) of subsection (5) and
12 paragraph (c) of subsection (13) of section 849.086, Florida
13 Statutes, are amended to read:

14 849.086 Cardrooms authorized.--

15 (5) LICENSE REQUIRED; APPLICATION; FEES.--No person
16 may operate a cardroom in this state unless such person holds
17 a valid cardroom license issued pursuant to this section.

18 (d) The annual cardroom license fee shall be \$1,000
19 for the first table and \$500 for each additional table to be
20 operated at the cardroom. This license fee shall be deposited
21 by the division with the Chief Financial Officer ~~Treasurer~~ to
22 the credit of the Pari-mutuel Wagering Trust Fund.

23 (13) TAXES AND OTHER PAYMENTS.--

24 (c) Payment of the admission tax and gross receipts
25 tax imposed by this section shall be paid to the division. The
26 division shall deposit these sums with the Chief Financial
27 Officer ~~Treasurer~~, one-half being credited to the Pari-mutuel
28 Wagering Trust Fund and one-half being credited to the General
29 Revenue Fund. The cardroom licensee shall remit to the
30 division payment for the admission tax, the gross receipts
31 tax, and the licensee fees. Such payments shall be remitted

1 to the division on the fifth day of each calendar month for
2 taxes and fees imposed for the preceding month's cardroom
3 activities. Licensees shall file a report under oath by the
4 fifth day of each calendar month for all taxes remitted during
5 the preceding calendar month. Such report shall, under oath,
6 indicate the total of all admissions, the cardroom activities
7 for the preceding calendar month, and such other information
8 as may be prescribed by the division.

9 Section 1914. Section 849.33, Florida Statutes, is
10 amended to read:

11 849.33 Judgment and collection of money;
12 execution.--Any judgment recovered in such a suit shall
13 adjudge separately the amounts recovered for the use of the
14 state, and the plaintiff shall not have execution therefor,
15 and such amounts shall not be paid to the plaintiff, but shall
16 be payable to the state attorney, who shall promptly transmit
17 the sums collected by him or her to the Chief Financial
18 Officer ~~State Treasurer~~. The state attorney shall diligently
19 seek the collection of such amounts and may cause a separate
20 execution to issue for the collection thereof.

21 Section 1915. Subsection (1) of section 860.154,
22 Florida Statutes, is amended to read:

23 860.154 Florida Motor Vehicle Theft Prevention
24 Authority.--

25 (1) There is ~~hereby~~ established within the Department
26 of Legal Affairs the Florida Motor Vehicle Theft Prevention
27 Authority, which shall exercise its powers, duties, and
28 responsibilities independently of the department. The
29 purposes, powers, and duties of the authority shall be vested
30 in and exercised by a board of directors. There shall be nine
31 members of the board, consisting of the Chief Financial

1 ~~Officer~~ commissioner of the Department of Insurance or his or
2 her ~~the commissioner's~~ designee; the executive director of the
3 Department of Highway Safety and Motor Vehicles; the executive
4 director of the Department of Law Enforcement; six additional
5 members, each of whom shall be appointed by the Attorney
6 General: a state attorney or city or county executive, a chief
7 executive law enforcement official, a sheriff, one
8 representative of companies authorized to sell motor vehicle
9 insurance, one representative of insurers authorized to write
10 motor vehicle insurance in this state, and one representative
11 of purchasers of motor vehicle insurance in this state who is
12 not employed by or connected with the business of insurance.

13 Section 1916. Subsection (7) of section 860.157,
14 Florida Statutes, is amended to read:

15 860.157 Powers and duties of the authority.--The
16 authority shall have the following powers, duties, and
17 responsibilities:

18 (7) To report annually, on or before January 1, to the
19 Governor, Attorney General, Chief Financial Officer ~~Insurance~~
20 ~~Commissioner~~, President of the Senate, Speaker of the House of
21 Representatives, Minority Leader of the House of
22 Representatives, Minority Leader of the Senate, and
23 appropriate committee chairs in the House of Representatives
24 and the Senate, and, upon request, to members of the general
25 public on the authority's activities in the preceding year.

26 Section 1917. Subsections (1) and (2) of section
27 896.102, Florida Statutes, are amended to read:

28 896.102 Currency more than \$10,000 received in trade
29 or business; report required; noncompliance penalties.--

30 (1) All persons engaged in a trade or business, except
31 for those financial institutions that report to the Office of

1 Financial Regulation ~~Comptroller~~ pursuant to s. 655.50, who
2 receive more than \$10,000 in currency, including foreign
3 currency, in one transaction, or who receive this amount
4 through two or more related transactions, must complete and
5 file with the Department of Revenue the information required
6 pursuant to 26 U.S.C. s. 6050I., concerning returns relating
7 to currency received in trade or business. Any person who
8 willfully fails to comply with the reporting requirements of
9 this subsection is guilty of a misdemeanor of the first
10 degree, punishable as provided in s. 775.082, or by a fine not
11 exceeding \$250,000 or twice the value of the amount of the
12 currency transaction involved, whichever is greater, or by
13 both such imprisonment and fine. For a second or subsequent
14 conviction of a violation of the provisions of this
15 subsection, the maximum fine that may be imposed is \$500,000
16 or quintuple the value of the amount of the currency
17 transaction involved, whichever is greater.

18 (2) The Department of Revenue shall enforce compliance
19 with the provisions of subsection (1) and is to be the
20 custodian of all information and documents filed pursuant to
21 subsection (1). Such information and documents are
22 confidential and exempt from the provisions of s. 119.07(1)
23 and s. 24(a), Art. I of the State Constitution; however, the
24 department must provide any report filed under this section,
25 or information contained therein, to federal, state, and local
26 law enforcement and prosecutorial agencies, ~~and~~ to the
27 Department of Financial Services, and to the Office of
28 Financial Regulation ~~Banking and Finance~~, and the information
29 is subject to disclosure pursuant to subpoena as provided in
30 s. 213.053(8).

31

1 Section 1918. Subsection (5) of section 896.104,
2 Florida Statutes, is amended to read:

3 896.104 Structuring transactions to evade reporting or
4 registration requirements prohibited.--

5 (5) INFERENCE.--Proof that a person engaged for
6 monetary consideration in the business of a funds transmitter
7 as defined in s. 560.103(10)~~s. 560.103(9)~~and who is
8 transporting more than \$10,000 in currency, or foreign
9 equivalent, without being registered as a money transmitter or
10 designated as an authorized vendor under the provisions of
11 chapter 560, gives rise to an inference that the
12 transportation was done with knowledge of the registration
13 requirements of chapter 560 and the reporting requirements of
14 this chapter.

15 Section 1919. Subsection (2) of section 903.09,
16 Florida Statutes, is amended to read:

17 903.09 Justification of sureties.--

18 (2) A bond agent, as defined in s. 648.25(2) ~~s.~~
19 ~~648.25(1)~~, shall justify her or his suretyship by attaching a
20 copy of the power of attorney issued by the company to the
21 bond or by attaching to the bond United States currency, a
22 United States postal money order, or a cashier's check in the
23 amount of the bond; but the United States currency, United
24 States postal money order, or cashier's check cannot be used
25 to secure more than one bond. Nothing herein shall prohibit
26 two or more qualified sureties from each posting any portion
27 of a bond amount, and being liable for only that amount, so
28 long as the total posted by all cosureties is equal to the
29 amount of bond required.

30 Section 1920. Section 903.101, Florida Statutes, is
31 amended to read:

1 903.101 Sureties; licensed persons; to have equal
2 access.--Subject to rules adopted ~~regulations promulgated~~ by
3 the Department of Financial Services and by the Financial
4 Services Commission ~~Insurance~~, every surety who meets the
5 requirements of ss. 903.05, 903.06, 903.08, and 903.09, and
6 every person who is currently licensed by the Department of
7 Financial Services ~~Insurance~~ and registered as required by s.
8 648.42 shall have equal access to the jails of this state for
9 the purpose of making bonds.

10 Section 1921. Subsection (1) of section 903.27,
11 Florida Statutes, is amended to read:

12 903.27 Forfeiture to judgment.--

13 (1) If the forfeiture is not paid or discharged by
14 order of a court of competent jurisdiction within 60 days and
15 the bond is secured other than by money and bonds authorized
16 in s. 903.16, the clerk of the circuit court for the county
17 where the order was made shall enter a judgment against the
18 surety for the amount of the penalty and issue execution.
19 Within 10 days, the clerk shall furnish the Department of
20 Financial Services and the Office of Insurance Regulation of
21 the Financial Services Commission ~~Insurance~~ with a certified
22 copy of the judgment docket and shall furnish the surety
23 company at its home office a copy of the judgment, which shall
24 include the power of attorney number of the bond and the name
25 of the executing agent. If the judgment is not paid within 35
26 days, the clerk shall furnish the Department of Financial
27 Services, the Office of Insurance Regulation, ~~Insurance~~ and
28 the sheriff of the county in which the bond was executed, or
29 the official responsible for operation of the county jail, if
30 other than the sheriff, two copies of the judgment and a
31 certificate stating that the judgment remains unsatisfied.

1 When and if the judgment is properly paid or an order to
2 vacate the judgment has been entered by a court of competent
3 jurisdiction, the clerk shall immediately notify the sheriff,
4 or the official responsible for the operation of the county
5 jail, if other than the sheriff, and the Department of
6 Financial Services and the Office of Insurance Regulation
7 ~~Insurance~~, if the department and office had been previously
8 notified of nonpayment, of such payment or order to vacate the
9 judgment. The clerk shall also immediately prepare and record
10 in the public records a satisfaction of the judgment or record
11 the order to vacate judgment. If the defendant is returned to
12 the county of jurisdiction of the court, whenever a motion to
13 set aside the judgment is filed, the operation of this section
14 is tolled until the court makes a disposition of the motion.

15 Section 1922. Paragraph (a) and (b) of subsection (5)
16 of section 925.037, Florida Statutes, are amended to read:

17 925.037 Reimbursement of counties for fees paid to
18 appointed counsel; circuit conflict committees.--

19 (5)(a) The clerk of the circuit court in each county
20 shall submit to the Justice Administrative Commission a
21 statement of conflict counsel fees at least annually. Such
22 statement shall identify total expenditures incurred by the
23 county on fees of counsel appointed by the court pursuant to
24 this section where such fees are taxed against the county by
25 judgment of the court. On the basis of such statement of
26 expenditures, the Justice Administrative Commission shall pay
27 state conflict case appropriations to the county. The
28 statement of conflict counsel fees shall be on a form
29 prescribed by the Justice Administrative Commission in
30 consultation with the Legislative Committee on
31 Intergovernmental Relations and the Chief Financial Officer

1 ~~Comptroller~~. Such form also shall provide for the separate
2 reporting of total expenditures made by the county on attorney
3 fees in cases in which other counsel were appointed by the
4 court where the public defender was unable to accept the case
5 as a result of a stated lack of resources. To facilitate such
6 expenditure identification and reporting, the public defender,
7 within 7 days of the appointment of such counsel by the court,
8 shall report to the clerk of circuit court case-related
9 information sufficient to permit the clerk to identify
10 separately county expenditures on fees of such counsel. No
11 county shall be required to submit any additional information
12 to the commission on an annual or other basis in order to
13 document or otherwise verify the expenditure information
14 provided on the statement of conflict counsel fees form,
15 except as provided in paragraph (c).

16 (b) Before September 30 of each year, the clerk of the
17 circuit court in each county shall submit to the Justice
18 Administrative Commission a report of conflict counsel
19 expenses and costs for the previous local government fiscal
20 year. Such report shall identify expenditures incurred by the
21 county on expenses and costs of counsel appointed by the court
22 pursuant to this section where such expenses and costs are
23 taxed against the county by judgment of the court. Such report
24 of expenditures shall be on a form prescribed by the
25 commission in consultation with the Legislative Committee on
26 Intergovernmental Relations and the Chief Financial Officer
27 ~~Comptroller~~, provided that such form shall at a minimum
28 separately identify total county expenditures for witness fees
29 and expenses, court reporter fees and costs, and defense
30 counsel travel and per diem. Such form also shall provide for
31 the separate reporting of total county expenditures on

1 attorney expenses and costs in cases in which other counsel
2 were appointed by the court where the public defender was
3 unable to accept the case as a result of a stated lack of
4 resources. To facilitate such expenditure identification and
5 reporting, the public defender, within 7 days of the
6 appointment of such counsel by the court, shall report to the
7 clerk of the circuit court case-related information sufficient
8 to permit the clerk to identify separately county expenditures
9 on expenses and costs of such counsel. No county shall be
10 required to submit any additional information to the Justice
11 Administrative Commission on an annual or other basis in order
12 to document or otherwise verify the expenditure information
13 provided on the report of conflict counsel expenses and costs
14 form, except as provided in paragraph (c).

15 Section 1923. Paragraph (b) of subsection (8) of
16 section 932.7055, Florida Statutes, is amended to read:

17 932.7055 Disposition of liens and forfeited
18 property.--

19 (8)

20 (b) The Department of Law Enforcement shall submit an
21 annual report to the criminal justice committees of the House
22 of Representatives and of the Senate compiling the information
23 and data related in the semiannual reports submitted by the
24 law enforcement agencies. The annual report shall also
25 contain a list of law enforcement agencies which have failed
26 to meet the reporting requirements and a summary of any action
27 which has been taken against the noncomplying agency by the
28 Office of the Chief Financial Officer ~~Comptroller~~.

29 Section 1924. Section 932.707, Florida Statutes, is
30 amended to read:

31

1 932.707 Penalty for noncompliance with reporting
2 requirements.--Any seizing agency which fails to comply with
3 the reporting requirements as described in s. 932.7055(8)(a),
4 is subject to a civil fine of \$5,000 payable to the General
5 Revenue Fund. However, such agency will not be subject to the
6 fine if, within 60 days of receipt of written notification
7 from the Department of Law Enforcement of the noncompliance
8 with the reporting requirements of the Florida Contraband
9 Forfeiture Act, the agency substantially complies with said
10 requirements. The Department of Law Enforcement shall submit
11 any substantial noncompliance to the Office of the Chief
12 Financial Officer ~~Comptroller~~, which shall be responsible for
13 the enforcement of this section.

14 Section 1925. Subsection (1) of section 938.27,
15 Florida Statutes, is amended to read:

16 938.27 Judgment for costs on conviction.--

17 (1) In all criminal cases the costs of prosecution,
18 including investigative costs incurred by law enforcement
19 agencies, by fire departments for arson investigations, and by
20 investigations of the ~~Division of Financial Investigations of~~
21 ~~the~~ Department of Financial Services or the Office of
22 Financial Regulation of the Financial Services Commission
23 ~~Banking and Finance~~, if requested and documented by such
24 agencies, shall be included and entered in the judgment
25 rendered against the convicted person.

26 Section 1926. Section 939.13, Florida Statutes, is
27 amended to read:

28 939.13 Power of Chief Financial Officer
29 ~~Comptroller~~.--The Chief Financial Officer ~~Comptroller~~ may
30 audit and approve or disapprove any claim or any item thereof
31 against the state for costs, fees or expenses of criminal

1 cases prosecuted in the name of the state, and for which the
2 state is liable, if the Chief Financial Officer ~~Comptroller~~ is
3 satisfied that the same is legal, just, necessary and correct
4 or otherwise, and may prescribe forms and methods for the
5 same. The Chief Financial Officer ~~Comptroller~~ shall not
6 dispense with any of the requirements of law relative to the
7 auditing and payment of such accounts, but may prescribe
8 additional requirements.

9 Section 1927. Paragraph (h) of subsection (1) of
10 section 943.031, Florida Statutes, is amended to read:

11 943.031 Florida Violent Crime and Drug Control
12 Council.--The Legislature finds that there is a need to
13 develop and implement a statewide strategy to address violent
14 criminal activity and drug control efforts by state and local
15 law enforcement agencies, including investigations of illicit
16 money laundering. In recognition of this need, the Florida
17 Violent Crime and Drug Control Council is created within the
18 department. The council shall serve in an advisory capacity to
19 the department.

20 (1) MEMBERSHIP.--The council shall consist of 14
21 members, as follows:

22 (h) The Chief Financial Officer ~~Comptroller~~, or a
23 designate.

24

25 The Governor, when making appointments under this subsection,
26 must take into consideration representation by geography,
27 population, ethnicity, and other relevant factors to ensure
28 that the membership of the council is representative of the
29 state at large. Designates appearing on behalf of a council
30 member who is unable to attend a meeting of the council are

31

1 empowered to vote on issues before the council to the same
2 extent the designating council member is so empowered.

3 Section 1928. Subsection (2) of section 943.032,
4 Florida Statutes, is amended to read:

5 943.032 Financial Crime Analysis Center and Financial
6 Transaction Database.--

7 (2) The department shall compile information and data
8 available from financial transaction reports required to be
9 submitted by state or federal law that are provided to the
10 Department of Financial Services, to the Office of Financial
11 Regulation of the Financial Services Commission ~~Banking and~~
12 ~~Finance~~, to the Department of Revenue, or to which the
13 department otherwise has access. Information and data so
14 received shall be utilized by the department in the Financial
15 Transaction Database. The department shall implement a system
16 utilizing the database that allows data review and processing
17 to reveal patterns, trends, and correlations that are
18 indicative of money laundering or other financial transactions
19 indicative of criminal activity. The department shall, in
20 consultation with the Department of Financial Services, the
21 Office of Financial Regulation of the Financial Services
22 Commission, ~~Banking and Finance~~ and the Department of Revenue,
23 establish the methods and parameters by which information and
24 data received by such agencies ~~the Department of Banking and~~
25 ~~Finance or the Department of Revenue~~ are transferred to the
26 department for inclusion in the database. Information
27 developed in or through the use of the database shall be made
28 available to law enforcement agencies and prosecutors in this
29 state in a manner defined by the department and as allowed by
30 state or federal law or regulation. All information contained
31 in the database shall be considered "active criminal

1 intelligence" or "active criminal investigative information"
2 as defined in s. 119.011.

3 Section 1929. Subsections (3) and (4) of section
4 944.516, Florida Statutes, are amended to read:

5 944.516 Money or other property received for personal
6 use or benefit of inmate; deposit; disposition of unclaimed
7 trust funds.--The Department of Corrections shall protect the
8 financial interest of the state with respect to claims which
9 the state may have against inmates in state institutions under
10 its supervision and control and shall administer money and
11 other property received for the personal benefit of such
12 inmates. In carrying out the provisions of this section, the
13 department may delegate any of its enumerated powers and
14 duties affecting inmates of an institution to the warden or
15 regional director who shall personally, or through designated
16 employees of his or her personal staff under his or her direct
17 supervision, exercise such powers or perform such duties.

18 (3) Moneys received by the department in payment of
19 claims of the state against inmates shall be transmitted to
20 the Chief Financial Officer ~~Treasurer~~ for deposit into the
21 General Revenue Fund.

22 (4) Upon the death of any inmate in an institution
23 affected by the provisions of this section, any unclaimed
24 money held for the inmate in trust by the department or by the
25 Chief Financial Officer ~~Treasurer~~ shall be applied first to
26 the payment of any unpaid state claim against the inmate, and
27 any balance remaining unclaimed for a period of 1 year shall
28 escheat to the state as unclaimed funds held by fiduciaries.

29 Section 1930. Section 946.33, Florida Statutes, is
30 amended to read:

31

1 946.33 Disbursements from fund.--The funds in the
2 Correctional Work Program Trust Fund shall be deposited in the
3 State Treasury and paid out only on warrants drawn by the
4 Chief Financial Officer ~~Comptroller~~, duly approved by the
5 Department of Corrections. The department shall maintain all
6 necessary records and accounts relative to such funds.

7 Section 1931. Subsection (2) of section 946.509,
8 Florida Statutes, is amended to read:

9 946.509 Insurance of property leased or acquired by
10 the corporation.--

11 (2) Coverage under the State Risk Management Trust
12 Fund of property leased to or otherwise acquired by the
13 corporation shall be secured and maintained through the
14 existing policy and account of the Department of Corrections
15 with the Division of Risk Management of the Department of
16 Financial Services ~~Insurance~~. All matters, including premium
17 calculations, assessments and payments, retrospective premium
18 adjustments, reporting requirements, and other requirements,
19 concerning coverage of such property under the State Risk
20 Management Trust Fund shall be conducted as if all such
21 property were owned solely by the department. Except as
22 required by chapter 284, if the corporation finds that it is
23 more economical to do so, the corporation may secure private
24 insurance coverage on all or a portion of the activities of or
25 properties used by the corporation. If coverage through the
26 State Risk Management Trust Fund is not secured, the
27 corporation must present documentation of insurance coverage
28 to the Division of Risk Management equal to the coverage that
29 could otherwise be provided by the State Risk Management Trust
30 Fund.

31

1 Section 1932. Section 946.5095, Florida Statutes, is
2 amended to read:

3 946.5095 Elimination of hazardous
4 conditions.--Pursuant to the applicable provisions of part I
5 of chapter 284, whenever state-insured property leased to or
6 otherwise held by the corporation is inspected by the Division
7 of Risk Management of the Department of Financial Services and
8 any condition is found to exist which, in the opinion of the
9 division, is hazardous from the standpoint of destruction by
10 fire or other insurable causes, the corporation shall either
11 promptly repair the property to eliminate any observed hazard
12 or otherwise promptly remove the hazardous condition at its
13 own expense.

14 Section 1933. Section 946.510, Florida Statutes, is
15 amended to read:

16 946.510 Insurance by Division of Risk
17 Management.--Pursuant to the applicable provisions of chapter
18 284, the Division of Risk Management of the Department of
19 Financial Services ~~Insurance~~ is authorized to insure the
20 corporation under the same general terms and conditions as the
21 Department of Corrections was insured by the division prior to
22 the corporation leasing the correctional work programs as
23 authorized by this chapter.

24 Section 1934. Section 946.517, Florida Statutes, is
25 amended to read:

26 946.517 Corporation records.--Corporation records are
27 public records; however, proprietary confidential business
28 information shall be confidential and exempt from the
29 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
30 Constitution. However, the Legislature, the Chief Financial
31 Officer ~~Comptroller~~, and the Governor, pursuant to their

1 oversight and auditing functions, shall have access to all
2 proprietary confidential business information upon request and
3 without subpoena and shall retain the confidentiality of
4 information so received. "Proprietary confidential business
5 information" means information regardless of form or
6 characteristics, that is owned or controlled by the
7 corporation; is intended to be and is treated by the
8 corporation as private and the disclosure of the information
9 would cause harm to the corporation's business operations; has
10 not been disclosed unless disclosed pursuant to a statutory
11 provision, an order of a court or administrative body, a
12 legislative proceeding pursuant to s. 5, Art. III of the State
13 Constitution, or a private agreement that provides that the
14 information may be released to the public; and, which is
15 information regarding:

16 (1) Internal auditing controls and reports of internal
17 auditors.

18 (2) Matters reasonably encompassed in privileged
19 attorney-client communications.

20 (3) Security measures, systems, or procedures.

21 (4) Information concerning bids or other contractual
22 data, banking records, and credit agreements, the disclosure
23 of which would impair the efforts of the corporation to
24 contract for goods or services on favorable terms.

25 (5) Information relating to private contractual data,
26 the disclosure of which would impair the competitive interest
27 of the provider of the information.

28 (6) Corporate officer, employee personnel, or inmate
29 worker information unrelated to compensation, duties,
30 qualifications, or responsibilities.

31

1 Section 1935. Subsections (1) and (2) of section
2 946.522, Florida Statutes, are amended to read:

3 946.522 Prison Industries Trust Fund.--

4 (1) The Prison Industries Trust Fund is created, to be
5 administered by the Department of Financial Services ~~Banking~~
6 ~~and Finance~~. The trust fund shall consist of moneys authorized
7 to be deducted pursuant to 18 U.S.C. s. 1761(c) and the
8 applicable federal guidelines, to be appropriated by the
9 Legislature, and moneys deposited by the corporation
10 authorized under this part to manage and operate correctional
11 work programs. The appropriated funds shall be used by the
12 corporation for purposes of construction or renovation of its
13 facilities or for the expansion or establishment of
14 correctional work programs as described in this part or for
15 prison industries enhancement (PIE) programs as authorized
16 under s. 946.523.

17 (2) The funds must be deposited in the State Treasury
18 and may be paid out only on warrants drawn by the Chief
19 Financial Officer ~~Comptroller~~ upon receipt of a corporate
20 resolution that has been duly authorized by the board of
21 directors of the corporation authorized under this part to
22 manage and operate correctional work programs. The corporation
23 shall maintain all necessary records and accounts relative to
24 such funds.

25 Section 1936. Paragraph (f) of subsection (3) of
26 section 946.525, Florida Statutes, is amended to read:

27 946.525 Participation by the corporation in the state
28 group health insurance and prescription drug programs.--

29 (3) If the Department of Management Services
30 determines that the corporation is eligible to enroll, the
31 corporation must agree to the following terms and conditions:

1 (f) If the corporation fails to make the payments
2 required by this section to fully reimburse the state, the
3 Department of Revenue or the Department of Financial Services
4 ~~Banking and Finance~~ shall, upon the request of the Department
5 of Management Services, deduct the amount owed by the employer
6 from any funds to be distributed by it to the corporation. The
7 amounts so deducted shall be transferred to the Department of
8 Management Services for further distribution to the trust
9 funds in accordance with this chapter.

10 Section 1937. Subsection (1) of section 947.12,
11 Florida Statutes, is amended to read:

12 947.12 Members, employees, expenses.--

13 (1) The members of the commission and its employees
14 shall be reimbursed for travel expenses as provided in s.
15 112.061. All bills for expenses shall be properly receipted,
16 audited, and approved and forwarded to the Chief Financial
17 Officer ~~Comptroller~~ and shall be paid in a manner and form as
18 the bills for the expenses of the several departments of the
19 state government are paid. All expenses, including salaries
20 and other compensation, shall be paid from the General Revenue
21 Fund and within the appropriation as fixed therefor by the
22 Legislature. Such expenses shall be paid by the Chief
23 Financial Officer ~~Treasurer~~ upon proper warrants ~~issued by the~~
24 ~~Comptroller of the state~~, drawn upon vouchers and requisitions
25 approved by the commission, ~~and signed by the Comptroller.~~

26 Section 1938. Subsection (8) of section 950.002,
27 Florida Statutes, is amended to read:

28 950.002 County work camps.--

29 (8) Pursuant to the applicable provisions of chapter
30 284, the Division of Risk Management of the Department of
31 Financial Services ~~Insurance~~ is authorized to insure any

1 county work camp facility established pursuant to this act
2 under the same general terms and conditions as the Department
3 of Corrections is insured by the division for any of its
4 comparable work camps.

5 Section 1939. Paragraph (b) of subsection (1) of
6 section 957.04, Florida Statutes, is amended to read:

7 957.04 Contract requirements.--

8 (1) A contract entered into under this chapter for the
9 operation of private correctional facilities shall maximize
10 the cost savings of such facilities and shall:

11 (b) Indemnify the state and the department, including
12 their officials and agents, against any and all liability,
13 including, but not limited to, civil rights liability. Proof
14 of satisfactory insurance is required in an amount to be
15 determined by the commission, following consultation with the
16 Division of Risk Management of the Department of Financial
17 Services ~~insurance~~. Not less than 30 days prior to the
18 release of each request for proposals by the commission, the
19 commission shall request the written recommendation of the
20 division regarding indemnification of the state and the
21 department under this paragraph. Within 15 days after such
22 request, the division shall provide a written recommendation
23 to the commission regarding the amount and manner of such
24 indemnification. The commission shall adopt the division's
25 recommendation unless, based on substantial competent
26 evidence, the commission determines a different amount and
27 manner of indemnification is sufficient.

28 Section 1940. Paragraph (a) of subsection (6) and
29 subsection (8) of section 985.406, Florida Statutes, are
30 amended to read:

31

1 985.406 Juvenile justice training academies
2 established; Juvenile Justice Standards and Training
3 Commission created; Juvenile Justice Training Trust Fund
4 created.--

5 (6) SCHOLARSHIPS AND STIPENDS.--

6 (a) By rule, the commission shall establish criteria
7 to award scholarships or stipends to qualified juvenile
8 justice personnel who are residents of the state who want to
9 pursue a bachelor's or associate in arts degree in juvenile
10 justice or a related field. The department shall handle the
11 administration of the scholarship or stipend. The Department
12 of Education shall handle the notes issued for the payment of
13 the scholarships or stipends. All scholarship and stipend
14 awards shall be paid from the Juvenile Justice Training Trust
15 Fund upon vouchers approved by the Department of Education and
16 properly certified by the Chief Financial Officer ~~Comptroller~~.
17 Prior to the award of a scholarship or stipend, the juvenile
18 justice employee must agree in writing to practice her or his
19 profession in juvenile justice or a related field for 1 month
20 for each month of grant or to repay the full amount of the
21 scholarship or stipend together with interest at the rate of 5
22 percent per annum over a period not to exceed 10 years.
23 Repayment shall be made payable to the state for deposit into
24 the Juvenile Justice Training Trust Fund.

25 (8) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE
26 RISK MANAGEMENT TRUST FUND.--Pursuant to s. 284.30, the
27 Division of Risk Management of the Department of Financial
28 Services ~~Insurance~~ is authorized to insure a private agency,
29 individual, or corporation operating a state-owned training
30 school under a contract to carry out the purposes and
31 responsibilities of any program of the department. The

1 coverage authorized herein shall be under the same general
2 terms and conditions as the department is insured for its
3 responsibilities under chapter 284.

4 Section 1941. Section 985.409, Florida Statutes, is
5 amended to read:

6 985.409 Participation of certain programs in the State
7 Risk Management Trust Fund.--Pursuant to s. 284.30, the
8 Division of Risk Management of the Department of Financial
9 Services ~~Insurance~~ is authorized to insure a private agency,
10 individual, or corporation operating a state-owned training
11 school under a contract to carry out the purposes and
12 responsibilities of any program of the department. The
13 coverage authorized herein shall be under the same general
14 terms and conditions as the department is insured for its
15 responsibilities under chapter 284.

16 Section 1942. Paragraph (g) of subsection (6) of
17 section 1000.05, Florida Statutes, is amended to read:

18 1000.05 Discrimination against students and employees
19 in the Florida K-20 public education system prohibited;
20 equality of access required.--

21 (6) The functions of the Office of Equal Educational
22 Opportunity of the Department of Education shall include, but
23 are not limited to:

24 (g) Reporting to the Commissioner of Education any
25 district school board, community college board of trustees, or
26 state university board of trustees found to be out of
27 compliance with rules of the State Board of Education adopted
28 as required by paragraph (f) or paragraph (3)(d). To penalize
29 the board, the State Board of Education shall:

30 1. Declare the educational agency ineligible for
31 competitive state grants.

1 2. Notwithstanding the provisions of s. 216.192,
2 direct the Chief Financial Officer ~~Comptroller~~ to withhold
3 general revenue funds sufficient to obtain compliance from the
4 educational agency.

5
6 The educational agency shall remain ineligible and the funds
7 shall not be paid until the agency comes into compliance or
8 the State Board of Education approves a plan for compliance.

9 Section 1943. Paragraph (b) of subsection (4) of
10 section 1001.23, Florida Statutes, is amended to read:

11 1001.23 Specific powers and duties of the Department
12 of Education.--In addition to all other duties assigned to it
13 by law or by rule of the State Board of Education, the
14 department shall:

15 (4) After complying with the provisions of s. 257.37,
16 the Department of Education may:

17 (b) Destroy general correspondence that is over 3
18 years old; records of bills, accounts, vouchers, and
19 requisitions that are over 5 years old and copies of which
20 have been filed with the Chief Financial Officer ~~Comptroller~~;
21 and other records, papers, and documents over 3 years old that
22 do not serve as part of an agreement or understanding and do
23 not have value as permanent records.

24 Section 1944. Paragraph (b) of subsection (4) of
25 section 1002.36, Florida Statutes, is amended to read:

26 1002.36 Florida School for the Deaf and the Blind.--

27 (4) BOARD OF TRUSTEES.--

28 (b) The board of trustees shall elect a chair
29 annually. The trustees shall be reimbursed for travel expenses
30 as provided in s. 112.061, the accounts of which shall be paid
31

1 by the Chief Financial Officer ~~Treasurer~~ upon itemized
2 vouchers duly approved by the chair.

3 Section 1945. Paragraph (g) of subsection (6) of
4 section 1002.38, Florida Statutes, is amended to read:

5 1002.38 Opportunity Scholarship Program.--

6 (6) OPPORTUNITY SCHOLARSHIP FUNDING AND PAYMENT.--

7 (g) Upon proper documentation reviewed and approved by
8 the Department of Education, the Chief Financial Officer
9 ~~Comptroller~~ shall make opportunity scholarship payments in
10 four equal amounts no later than September 1, November 1,
11 February 1, and April 1 of each academic year in which the
12 opportunity scholarship is in force. The initial payment shall
13 be made after Department of Education verification of
14 admission acceptance, and subsequent payments shall be made
15 upon verification of continued enrollment and attendance at
16 the private school. Payment must be by individual warrant made
17 payable to the student's parent and mailed by the Department
18 of Education to the private school of the parent's choice, and
19 the parent shall restrictively endorse the warrant to the
20 private school.

21 Section 1946. Paragraph (f) of subsection (6) of
22 section 1002.39, Florida Statutes, is amended to read:

23 1002.39 The John M. McKay Scholarships for Students
24 with Disabilities Program.--There is established a program
25 that is separate and distinct from the Opportunity Scholarship
26 Program and is named the John M. McKay Scholarships for
27 Students with Disabilities Program, pursuant to this section.

28 (6) SCHOLARSHIP FUNDING AND PAYMENT.--

29 (f) Upon proper documentation reviewed and approved by
30 the Department of Education, the Chief Financial Officer
31 ~~Comptroller~~ shall make scholarship payments in four equal

1 amounts no later than September 1, November 1, February 1, and
2 April 15 of each academic year in which the scholarship is in
3 force. The initial payment shall be made after Department of
4 Education verification of admission acceptance, and subsequent
5 payments shall be made upon verification of continued
6 enrollment and attendance at the private school. Payment must
7 be by individual warrant made payable to the student's parent
8 and mailed by the Department of Education to the private
9 school of the parent's choice, and the parent shall
10 restrictively endorse the warrant to the private school for
11 deposit into the account of the private school.

12 Section 1947. Paragraph (b) of subsection (3) of
13 section 1003.48, Florida Statutes, is amended to read:

14 1003.48 Instruction in operation of motor vehicles.--
15 (3)

16 (b) For the purpose of financing the Driver Education
17 Program in the secondary schools, there shall be levied an
18 additional 50 cents per year to the driver's license fee
19 required by s. 322.21. The additional fee shall be promptly
20 remitted to the Department of Highway Safety and Motor
21 Vehicles, which shall transmit the fee to the Chief Financial
22 Officer ~~Treasurer~~ to be deposited in the General Revenue Fund.

23 Section 1948. Subsection (1) of section 1004.30,
24 Florida Statutes, is amended to read:

25 1004.30 University health services support
26 organization; confidentiality of information.--

27 (1) All meetings of a governing board of a university
28 health services support organization and all university health
29 services support organization records shall be open and
30 available to the public in accordance with s. 286.011 and s.
31 24(b), Art. I of the State Constitution and chapter 119 and s.

1 24(a), Art. I of the State Constitution, respectively, unless
2 made confidential or exempt by law. Records required by the
3 Department of Financial Services or the Office of Insurance
4 Regulation of the Financial Services Commission ~~insurance~~ to
5 discharge their ~~its~~ duties shall be made available to the
6 department upon request.

7 Section 1949. Subsection (1) of section 1004.725,
8 Florida Statutes, is amended to read:

9 1004.725 Expenditures for self-insurance services;
10 special account.--

11 (1) The community college boards of trustees, singly
12 or collectively, are authorized to contract with an
13 administrator or service company approved ~~by the Department of~~
14 ~~insurance~~ pursuant to chapter 626 to provide self-insurance
15 services, including, but not limited to, the evaluation,
16 settlement, and payment of self-insurance claims on behalf of
17 the board of trustees or a consortium of boards of trustees.

18 Section 1950. Paragraph (c) of subsection (2) of
19 section 1006.29, Florida Statutes, is amended to read:

20 1006.29 State instructional materials committees.--

21 (2)

22 (c) The district school board shall be reimbursed for
23 the actual cost of substitute teachers for each workday that a
24 member of its instructional staff is absent from his or her
25 assigned duties for the purpose of rendering service to the
26 state instructional materials committee. In addition,
27 committee members shall be reimbursed for travel expenses and
28 per diem in accordance with s. 112.061 for actual service in
29 meetings of committees called by the commissioner. Payment of
30 such travel expenses shall be made ~~by the Treasurer~~ from the
31 appropriation for the administration of the instructional

1 materials program, on warrants to be drawn by the Chief
2 Financial Officer ~~Comptroller~~ upon requisition approved by the
3 commissioner.

4 Section 1951. Subsection (3) of section 1006.33,
5 Florida Statutes, is amended to read:

6 1006.33 Bids or proposals; advertisement and its
7 contents.--

8 (3) The department shall require each publisher or
9 manufacturer of instructional materials who submits a bid
10 under this part to deposit with the department such sum of
11 money or certified check as may be determined by the
12 department, the amount to be not less than \$500 and not more
13 than \$2,500, according to the number of instructional
14 materials covered by the bid, which deposit shall be forfeited
15 to the state and placed in the General Revenue Fund if the
16 bidder making the deposit fails or refuses to execute the
17 contract and bond within 30 days after receipt of the contract
18 in case his or her bid or proposal is accepted. The
19 commissioner shall, upon determining that the deposit is
20 correct and proper, transmit the deposit to the Chief
21 Financial Officer ~~Treasurer~~, who shall deposit the funds for
22 credit to the Textbook Bid Trust Fund and issue his or her
23 official receipt.

24 Section 1952. Subsections (5) and (6) of section
25 1006.34, Florida Statutes, are amended to read:

26 1006.34 Powers and duties of the commissioner and the
27 department in selecting and adopting instructional
28 materials.--

29 (5) RETURN OF DEPOSITS.--

30 (a) The successful bidder shall be notified by
31 registered mail of the award of contract and shall, within 30

1 days after receipt of the contract, execute the proper
2 contract and post the required bond. When the bond and
3 contract have been executed, the department shall notify the
4 Chief Financial Officer ~~Comptroller~~ and request that a warrant
5 be issued against the Textbook Bid Trust Fund payable to the
6 successful bidder in the amount deposited pursuant to this
7 part. The Chief Financial Officer ~~Comptroller~~ shall issue and
8 forward the warrant to the department for distribution to the
9 bidder.

10 (b) At the same time or prior thereto, the department
11 shall inform the Chief Financial Officer ~~Comptroller~~ of the
12 names of the unsuccessful bidders. Upon receipt of such
13 notice, the Chief Financial Officer ~~Comptroller~~ shall issue
14 warrants against the Textbook Bid Trust Fund payable to the
15 unsuccessful bidders in the amounts deposited pursuant to this
16 part and shall forward the warrants to the department for
17 distribution to the unsuccessful bidders.

18 (c) One copy of each contract and an original of each
19 bid, whether accepted or rejected, shall be preserved with the
20 department for at least 3 years after the termination of the
21 contract.

22 (6) DEPOSITS FORFEITED.--If any successful bidder
23 fails or refuses to execute contract and bond within 30 days
24 after receipt of the contract, the cash deposit shall be
25 forfeited to the state and placed by the Chief Financial
26 Officer ~~Treasurer~~ in the General Revenue Fund.

27 Section 1953. Subsection (3) of section 1006.39,
28 Florida Statutes, is amended to read:

29 1006.39 Production and dissemination of educational
30 materials and products by department.--

31

1 (3) All proceeds from the sale of educational
2 materials and products shall be remitted to the Chief
3 Financial Officer ~~Treasurer~~ and shall be kept in a separate
4 fund to be known as the "Educational Media and Technology
5 Trust Fund" and, when properly budgeted as approved by the
6 Legislature and the Executive Office of the Governor, used to
7 pay the cost of producing and disseminating educational
8 materials and products.

9 Section 1954. Subsection (4) of section 1008.33,
10 Florida Statutes, is amended to read:

11 1008.33 Authority to enforce public school
12 improvement.--It is the intent of the Legislature that all
13 public schools be held accountable for students performing at
14 acceptable levels. A system of school improvement and
15 accountability that assesses student performance by school,
16 identifies schools in which students are not making adequate
17 progress toward state standards, institutes appropriate
18 measures for enforcing improvement, and provides rewards and
19 sanctions based on performance shall be the responsibility of
20 the State Board of Education.

21 (4) The State Board of Education may require the
22 Department of Education or Chief Financial Officer ~~Comptroller~~
23 to withhold any transfer of state funds to the school district
24 if, within the timeframe specified in state board action, the
25 school district has failed to comply with the action ordered
26 to improve the district's low-performing schools. Withholding
27 the transfer of funds shall occur only after all other
28 recommended actions for school improvement have failed to
29 improve performance. The State Board of Education may impose
30 the same penalty on any district school board that fails to
31

1 develop and implement a plan for assistance and intervention
2 for low-performing schools as specified in s. 1001.42(16)(c).

3 Section 1955. Subsection (2) of section 1009.265,
4 Florida Statutes, is amended to read:

5 1009.265 State employee fee waivers.--

6 (2) The Chief Financial Officer ~~Comptroller~~, in
7 cooperation with the community colleges and state
8 universities, shall identify and implement ways to ease the
9 administrative burden to community colleges and state
10 universities, including, but not limited to, providing easier
11 access to verify state employment.

12 Section 1956. Section 1009.54, Florida Statutes, is
13 amended to read:

14 1009.54 Critical Teacher Shortage Program.--There is
15 created the Critical Teacher Shortage Program. Funds
16 appropriated by the Legislature for the program shall be
17 deposited in the State Student Financial Assistance Trust
18 Fund. The Chief Financial Officer ~~Comptroller~~ shall authorize
19 expenditures from the trust fund upon receipt of vouchers
20 approved by the Department of Education for the critical
21 teacher shortage programs established in s. 1009.57, s.
22 1009.58, or s. 1009.59. The Chief Financial Officer
23 ~~Comptroller~~ shall also authorize expenditures from the trust
24 fund for the "Chappie" James Most Promising Teacher
25 Scholarship Loan Program and the Critical Teacher Shortage
26 Scholarship Loan Program recipients who participated in these
27 programs prior to July 1, 1993, provided that such students
28 continue to meet the renewal eligibility requirements that
29 were in effect at the time that their original awards were
30 made. Students who participated in the "Chappie" James Most
31 Promising Teacher Scholarship Loan Program prior to July 1,

1 1993, shall not have their awards reduced as a result of the
2 addition of new students to the program. All scholarship loan
3 repayments pursuant to s. 1009.57 shall be deposited into the
4 State Student Financial Assistance Trust Fund. Any remaining
5 balance at the end of any fiscal year that has been allocated
6 to the program shall remain in the trust fund and be available
7 for the individual programs in future years.

8 Section 1957. Subsection (4) of section 1009.56,
9 Florida Statutes, is amended to read:

10 1009.56 Seminole and Miccosukee Indian Scholarships.--

11 (4) The amount of the scholarship shall be determined
12 by the Seminole Tribe of Florida or the Miccosukee Tribe of
13 Indians of Florida, for its respective applicants, within the
14 amount of funds appropriated for this purpose. The amount
15 shall be prorated accordingly for part-time students. At the
16 beginning of each semester or quarter, the department shall
17 certify the name of each scholarship holder eligible to
18 receive funds for that registration period to the Chief
19 Financial Officer ~~Comptroller~~, who shall draw a warrant in
20 favor of each scholarship recipient. Each recipient shall be
21 eligible to have the scholarship renewed from year to year,
22 provided all academic and other requirements of the college or
23 university and rules established by the State Board of
24 Education are met.

25 Section 1958. Subsection (5) of section 1009.66,
26 Florida Statutes, is amended to read:

27 1009.66 Nursing Student Loan Forgiveness Program.--

28 (5) There is created the Nursing Student Loan
29 Forgiveness Trust Fund to be administered by the Department of
30 Health pursuant to this section and s. 1009.67 and department
31 rules. The Chief Financial Officer ~~Comptroller~~ shall authorize

1 expenditures from the trust fund upon receipt of vouchers
2 approved by the Department of Health. All moneys collected
3 from the private health care industry and other private
4 sources for the purposes of this section shall be deposited
5 into the Nursing Student Loan Forgiveness Trust Fund. Any
6 balance in the trust fund at the end of any fiscal year shall
7 remain therein and shall be available for carrying out the
8 purposes of this section and s. 1009.67.

9 Section 1959. Effective July 1, 2003, subsection (7)
10 of section 1009.66, Florida Statutes, as amended by chapters
11 2002-400 and 2002-402, Laws of Florida, is amended to read:

12 1009.66 Nursing Student Loan Forgiveness Program.--

13 (7)(a) Funds contained in the Nursing Student Loan
14 Forgiveness Trust Fund which are to be used for loan
15 forgiveness for those nurses employed by hospitals, birth
16 centers, and nursing homes must be matched on a
17 dollar-for-dollar basis by contributions from the employing
18 institutions, except that this provision shall not apply to
19 state-operated medical and health care facilities, public
20 schools, county health departments, federally sponsored
21 community health centers, teaching hospitals as defined in s.
22 408.07, family practice teaching hospitals as defined in s.
23 395.805, or specialty hospitals for children as used in s.
24 409.9119. An estimate of the annual trust fund dollars shall
25 be made at the beginning of the fiscal year based on historic
26 expenditures from the trust fund. Applicant requests shall be
27 reviewed on a quarterly basis, and applicant awards shall be
28 based on the following priority of employer until all such
29 estimated trust funds are awarded: state-operated medical and
30 health care facilities; public schools; county health
31 departments; federally sponsored community health centers;

1 teaching hospitals as defined in s. 408.07; family practice
2 teaching hospitals as defined in s. 395.805; specialty
3 hospitals for children as used in s. 409.9119; and other
4 hospitals, birth centers, and nursing homes.

5 (b) All Nursing Student Loan Forgiveness Trust Fund
6 moneys shall be invested pursuant to s. 17.61 ~~s. 18.125~~.
7 Interest income accruing to that portion of the trust fund not
8 matched shall increase the total funds available for loan
9 forgiveness and scholarships. Pledged contributions shall not
10 be eligible for matching prior to the actual collection of the
11 total private contribution for the year.

12 Section 1960. Subsections (2) and (3) of section
13 1009.72, Florida Statutes, are amended to read:

14 1009.72 Jose Marti Scholarship Challenge Grant
15 Program.--

16 (2) Funds appropriated by the Legislature for the
17 program shall be deposited in the State Student Financial
18 Assistance Trust Fund. The Chief Financial Officer ~~Comptroller~~
19 shall authorize expenditures from the trust fund upon receipt
20 of vouchers approved by the Department of Education. All
21 moneys collected from private sources for the purposes of this
22 section shall be deposited into the trust fund. Any balance in
23 the trust fund at the end of any fiscal year that has been
24 allocated to the program shall remain therein and shall be
25 available for carrying out the purposes of the program.

26 (3) The Legislature shall designate funds to be
27 transferred to the trust fund for the program from the General
28 Revenue Fund. Such funds shall be divided into challenge
29 grants to be administered by the Department of Education. All
30 appropriated funds deposited into the trust fund for the
31 program shall be invested pursuant to the provisions of s.

1 17.61 ~~s. 18.125~~. Interest income accruing to that portion of
2 the funds that are allocated to the program in the trust fund
3 and not matched shall increase the total funds available for
4 the program.

5 Section 1961. Subsections (2) and (3) of section
6 1009.73, Florida Statutes, are amended to read:

7 1009.73 Mary McLeod Bethune Scholarship Program.--

8 (2) Funds appropriated by the Legislature for the
9 program shall be deposited in the State Student Financial
10 Assistance Trust Fund. The Chief Financial Officer ~~Comptroller~~
11 shall authorize expenditures from the trust fund upon receipt
12 of vouchers approved by the Department of Education. The
13 Department of Education shall receive all moneys collected
14 from private sources for the purposes of this section and
15 shall deposit such moneys into the trust fund. Notwithstanding
16 the provisions of s. 216.301 and pursuant to s. 216.351, any
17 balance in the trust fund at the end of any fiscal year that
18 has been allocated to the program shall remain in the trust
19 fund and shall be available for carrying out the purposes of
20 the program.

21 (3) The Legislature shall appropriate moneys to the
22 trust fund for the program from the General Revenue Fund. Such
23 moneys shall be applied to scholarships to be administered by
24 the Department of Education. All moneys deposited into the
25 trust fund for the program shall be invested pursuant to the
26 provisions of s. 17.61 ~~s. 18.125~~. Interest income accruing to
27 the program shall be expended to increase the total moneys
28 available for scholarships.

29 Section 1962. Section 1009.765, Florida Statutes, is
30 amended to read:

31

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 1009.765 Ethics in Business scholarships for community
2 colleges and independent postsecondary educational
3 institutions.--When the Department of Insurance or the Office
4 of Insurance Regulation of the Financial Services Commission
5 receives a \$6 million settlement as specified in the Consent
6 Order of the Treasurer and Insurance Commissioner, case number
7 18900-96-c, that portion of the \$6 million not used to satisfy
8 the requirements of section 18 of the Consent Order must be
9 transferred from the Insurance ~~Commissioner's~~ Regulatory Trust
10 Fund to the State Student Financial Assistance Trust Fund is
11 appropriated from the State Student Financial Assistance Trust
12 Fund to provide Ethics in Business scholarships to students
13 enrolled in public community colleges and independent
14 postsecondary educational institutions eligible to participate
15 in the William L. Boyd, IV, Florida Resident Access Grant
16 Program under s. 1009.89. The funds shall be allocated to
17 institutions for scholarships in the following ratio:
18 Two-thirds for community colleges and one-third for eligible
19 independent institutions. The Department of Education shall
20 administer the scholarship program for students attending
21 community colleges and independent institutions. These funds
22 must be allocated to institutions that provide an equal amount
23 of matching funds generated by private donors for the purpose
24 of providing Ethics in Business scholarships. Public funds may
25 not be used to provide the match, nor may funds collected for
26 other purposes. Notwithstanding any other provision of law,
27 the State Board of Administration shall have the authority to
28 invest the funds appropriated under this section. The
29 Department of Education may adopt rules for administration of
30 the program.
31

1 Section 1963. Subsection (8) of section 1009.77,
2 Florida Statutes, is amended to read:

3 1009.77 Florida Work Experience Program.--

4 (8) Funds appropriated by the Legislature for the
5 Florida Work Experience Program shall be deposited in the
6 State Student Financial Assistance Trust Fund. The Chief
7 Financial Officer ~~Comptroller~~ shall authorize expenditures
8 from the trust fund upon receipt of vouchers approved by the
9 Department of Education. Any balance therein at the end of any
10 fiscal year that has been allocated to the program shall
11 remain therein and shall be available for carrying out the
12 purposes of the program.

13 Section 1964. Paragraph (d) of subsection (5) of
14 section 1009.971, Florida Statutes, is amended to read:

15 1009.971 Florida Prepaid College Board.--

16 (5) FLORIDA PREPAID COLLEGE BOARD; CONTRACTUAL
17 SERVICES.--The board shall solicit proposals and contract,
18 pursuant to s. 287.057, for:

19 (d) Investment managers to provide investment
20 portfolios for the prepaid program or the savings program.
21 Investment managers shall be limited to authorized insurers as
22 defined in s. 624.09, banks as defined in s. 658.12,
23 associations as defined in s. 665.012, authorized Securities
24 and Exchange Commission investment advisers, and investment
25 companies as defined in the Investment Company Act of 1940.
26 All investment managers shall have their principal place of
27 business and corporate charter located and registered in the
28 United States. In addition, each investment manager shall
29 agree to meet the obligations of the board to qualified
30 beneficiaries if moneys in the fund fail to offset the
31 obligations of the board as a result of imprudent investing by

1 such provider. Each authorized insurer shall evidence superior
2 performance overall on an acceptable level of surety in
3 meeting its obligations to its policyholders and other
4 contractual obligations. Only qualified public depositories
5 approved by the Chief Financial Officer ~~Insurance Commissioner~~
6 ~~and Treasurer~~ shall be eligible for board consideration. Each
7 investment company shall provide investment plans as specified
8 within the request for proposals.

9
10 The goals of the board in procuring such services shall be to
11 provide all purchasers and benefactors with the most secure,
12 well-diversified, and beneficially administered prepaid
13 program or savings program possible, to allow all qualified
14 firms interested in providing such services equal
15 consideration, and to provide such services to the state at no
16 cost and to the purchasers and benefactors at the lowest cost
17 possible. Evaluations of proposals submitted pursuant to this
18 subsection shall include, but not be limited to, fees and
19 other costs that are charged to purchasers or benefactors that
20 affect account values, or that impact the operational costs of
21 the prepaid program or the savings program; past experience
22 and past performance in providing the required services;
23 financial history and current financial strength and capital
24 adequacy to provide the required services; and capabilities
25 and experience of the proposed personnel that will provide the
26 required services.

27 Section 1965. Subsection (4) of section 1009.972,
28 Florida Statutes, is amended to read:

29 1009.972 Florida Prepaid College Trust Fund.--

30 (4) Any balance contained within the trust fund, and
31 within each fund in the trust fund, at the end of a fiscal

1 year shall remain therein and shall be available for carrying
2 out the purposes of each respective program and the
3 direct-support organization established pursuant to s.
4 1009.983. Moneys contained within the trust fund shall be
5 exempt from the investment requirements of s. 17.57 ~~s. 18.10~~.
6 All funds deposited in the prepaid fund may be invested
7 pursuant to s. 215.47. Any funds of a direct-support
8 organization created pursuant to s. 1009.983 shall be exempt
9 from the provisions of this section.

10 Section 1966. Subsection (4) of section 1010.56,
11 Florida Statutes, is amended to read:

12 1010.56 Board of Administration to act as fiscal agent
13 in issuance and sale of motor vehicle anticipation
14 certificates.--

15 (4) The proceeds of any sale of original bonds or
16 original certificates shall be deposited in the State Treasury
17 to the credit of the particular construction account for which
18 the original bonds or original certificates were issued and
19 shall be under the direct control and supervision of the State
20 Board of Education, and withdrawals from such construction
21 accounts shall be made only upon warrants signed by the Chief
22 Financial Officer ~~Comptroller and drawn upon the Treasurer~~.
23 Such warrants shall be issued by the Chief Financial Officer
24 ~~Comptroller~~ only when the vouchers requesting such warrants
25 are accompanied by the certificates of the State Board of
26 Education to the effect that such withdrawals are proper
27 expenditures for the cost of the particular construction
28 account against which the requested warrants are to be drawn.

29 Section 1967. Section 1010.74, Florida Statutes, is
30 amended to read:

31

1 1010.74 Educational Certification and Services Trust
2 Fund.--The proceeds from the collection of certification fees,
3 fines, penalties, and costs levied pursuant to s. 1012.59
4 shall be remitted by the Department of Education to the Chief
5 Financial Officer ~~Treasurer~~ for deposit into and disbursed
6 from the "Educational Certification and Services Trust Fund"
7 as re-created by chapter 99-31, Laws of Florida.

8 Section 1968. Section 1010.75, Florida Statutes, is
9 amended to read:

10 1010.75 Teacher Certification Examination Trust
11 Fund.--The proceeds for the certification examination fee
12 levied pursuant to s. 1012.59 shall be remitted by the
13 Department of Education to the Chief Financial Officer
14 ~~Treasurer~~ for deposit into and disbursed for the "Teacher
15 Certification Examination Trust Fund" as re-created by chapter
16 99-28, Laws of Florida.

17 Section 1969. Subsection (2) of section 1011.10,
18 Florida Statutes, is amended to read:

19 1011.10 Penalty.--

20 (2) Each member of any district school board voting to
21 incur an indebtedness against the district school funds in
22 excess of the expenditure allowed by law, or in excess of any
23 appropriation as adopted in the original official budget or
24 amendments thereto, or to approve or pay any illegal charge
25 against the funds, and any chair of a district school board or
26 district school superintendent who signs a warrant for payment
27 of any such claim or bill of indebtedness against any of the
28 funds shall be personally liable for the amount, and shall be
29 guilty of malfeasance in office and subject to removal by the
30 Governor. It shall be the duty of the Auditor General, other
31 state officials, or independent certified public accountants

1 charged by law with the responsibility for auditing school
2 accounts, upon discovering any such illegal expenditure or
3 expenditures in excess of the appropriations in the budget as
4 officially amended, to certify such fact to the Department of
5 Financial Services ~~Banking and Finance~~, which thereupon shall
6 verify such fact and it shall be the duty of the Department of
7 Financial Services ~~Banking and Finance~~ to advise the
8 Department of Legal Affairs thereof, and it shall be the duty
9 of the Department of Legal Affairs to cause to be instituted
10 and prosecuted, either through its office or through any state
11 attorney, proceedings at law or in equity against such member
12 or members of a district school board or district school
13 superintendent. If either of the officers does not institute
14 proceedings within 90 days after the audit has been certified
15 to them by the Department of Financial Services ~~Banking and~~
16 ~~Finance~~, any taxpayer may institute suit in his or her own
17 name on behalf of the district.

18 Section 1970. Section 1011.17, Florida Statutes, is
19 amended to read:

20 1011.17 School funds to be paid to Chief Financial
21 Officer ~~Treasurer~~ or into depository.--

22 (1) Every tax collector or other person having moneys
23 which by law go to any district school fund shall at least
24 once each month pay the same over to the depository or
25 depositories designated by the district school board for such
26 purpose, and shall provide said board with confirmation of the
27 deposit. Every officer having moneys which by law go to any
28 state school fund shall pay the same to the Chief Financial
29 Officer ~~Treasurer~~ of the state, and the Chief Financial
30 Officer ~~Treasurer~~ shall see that these moneys are deposited to
31 the credit of the proper state school fund.

1 (2) The district school board shall have the authority
2 to designate that funds due it be placed for investment for
3 its account with the State Board of Administration rather than
4 be deposited, and said board may direct those persons having
5 moneys due it or due any state school fund to pay out such
6 funds to the State Board of Administration to make authorized
7 investments for its account.

8 Section 1971. Paragraph (b) of subsection (6) of
9 section 1011.18, Florida Statutes, is amended to read:

10 1011.18 School depositories; payments into and
11 withdrawals from depositories.--

12 (6) EXEMPTION FOR SELF-INSURANCE PROGRAMS AND
13 THIRD-PARTY ADMINISTERED EMPLOYEES' FRINGE BENEFIT PROGRAMS.--

14 (b) The district school board may contract with an
15 insurance company or professional administrator who holds a
16 valid certificate of authority issued by the Office of
17 Insurance Regulation of the Financial Services Commission
18 ~~Department of Insurance~~ to provide any or all services that a
19 third-party administrator is authorized by law to perform.
20 Pursuant to such contract, the district school board may
21 advance or remit money to the administrator to be deposited in
22 a designated special checking account for paying claims
23 against the district school board under its self-insurance
24 programs, and remitting premiums to the providers of insured
25 benefits on behalf of the district school board and the
26 participants in such programs, and otherwise fulfilling the
27 obligations imposed upon the administrator by law and the
28 contractual agreements between the district school board and
29 the administrator. The special checking account shall be
30 maintained in a designated district school depository. The
31 district school board may replenish such account as often as

1 necessary upon the presentation by the service organization of
2 documentation for claims or premiums due paid equal to the
3 amount of the requested reimbursement. Such replenishment
4 shall be made by a warrant signed by the chair of the district
5 school board and countersigned by the district school
6 superintendent. Such replenishment may be made by electronic,
7 telephonic, or other medium, and each transfer shall be
8 confirmed in writing and signed by the district school
9 superintendent or his or her designee. The provisions of
10 strict accountability of all funds and an annual audit by an
11 independent certified public accountant as provided in s.
12 1001.42(10)(k) shall apply to this subsection.

13 Section 1972. Section 1011.4105, Florida Statutes, is
14 amended to read:

15 1011.4105 Transition from state accounting system
16 (FLAIR) to university accounting system.--

17 (1) Universities and colleges under the supervision of
18 the State Board of Education shall use the state accounting
19 system (FLAIR) for fiscal year 2002-2003. The universities
20 shall not be required to provide funds to the Department of
21 Financial Services ~~Banking and Finance~~ for the utilization of
22 FLAIR.

23 (2) Beginning with the 2003-2004 fiscal year, any
24 university may transition from FLAIR to the university's
25 accounting system.

26 (3) To accomplish the transition from FLAIR to a
27 university's accounting system, the university board of
28 trustees must submit to the State Board of Education a plan
29 developed in cooperation with the ~~State Comptroller~~ (Chief
30 Financial Officer). The plan must contain the actions the
31 university will take, or has taken, to implement this

1 transition. The plan must provide time lines for completion of
2 actions and the target date the university will have
3 implemented and tested parallel systems with appropriate audit
4 and internal controls in place that will enable the university
5 to satisfactorily and timely perform all accounting and
6 reporting functions required by state and federal law and
7 rules of the State Board of Education.

8 (4) When a university is ready to transition from
9 FLAIR to its own system, the State Board of Education shall
10 verify that the system the university has implemented and
11 tested is adequate for the university, the university has
12 appropriate audit and internal controls in place, the
13 university has the resources required to operate and maintain
14 the system, and that the university and the ~~State Comptroller~~
15 ~~(Chief Financial Officer)~~ are prepared to implement the
16 transition. The State Board of Education shall submit to the
17 Executive Office of the Governor and the chairs of the
18 appropriations committees of the Senate and House of
19 Representatives confirmation of this verification and the date
20 the transition will be effective. Transition for any
21 university shall not take place until after the State Board of
22 Education has submitted this confirmation.

23 (5) The State Board of Education in cooperation with
24 each university and the Department of Financial Services
25 ~~Banking and Finance~~ shall develop a plan and establish the
26 deadline for all universities to have completed the transition
27 from FLAIR. The board shall submit a copy of this plan to the
28 Executive Office of the Governor and the chairs of the
29 appropriations committees of the Senate and House of
30 Representatives.

31

1 Section 1973. Subsection (2) of section 1011.57,
2 Florida Statutes, is amended to read:

3 1011.57 Florida School for the Deaf and the Blind;
4 board of trustees; management flexibility.--

5 (2) Notwithstanding the provisions of s. 216.181 and
6 pursuant to the provisions of s. 216.351, but subject to any
7 requirements imposed in the General Appropriations Act, no
8 lump-sum plan is required to implement the special categories,
9 program categories, or lump-sum appropriations. Upon release
10 of the special categories, program categories, or lump-sum
11 appropriations to the board of trustees, the Chief Financial
12 Officer ~~Comptroller~~, upon the request of the board of
13 trustees, shall transfer or reallocate funds to or among
14 accounts established for disbursement purposes. The board of
15 trustees shall maintain records to account for the original
16 appropriation.

17 Section 1974. Subsection (1) of section 1011.94,
18 Florida Statutes, is amended to read:

19 1011.94 Trust Fund for University Major Gifts.--

20 (1) There is established a Trust Fund for University
21 Major Gifts. The purpose of the trust fund is to enable each
22 university and New College to provide donors with an incentive
23 in the form of matching grants for donations for the
24 establishment of permanent endowments and sales tax exemption
25 matching funds received pursuant to s. 212.08(5)(j), which
26 must be invested, with the proceeds of the investment used to
27 support libraries and instruction and research programs, as
28 defined by the State Board of Education. All funds
29 appropriated for the challenge grants, new donors, major
30 gifts, sales tax exemption matching funds pursuant to s.
31 212.08(5)(j), or eminent scholars program must be deposited

1 into the trust fund and invested pursuant to s. 17.61 ~~s.~~
2 ~~18.125~~ until the State Board of Education allocates the funds
3 to universities to match private donations. Notwithstanding s.
4 216.301 and pursuant to s. 216.351, any undisbursed balance
5 remaining in the trust fund and interest income accruing to
6 the portion of the trust fund which is not matched and
7 distributed to universities must remain in the trust fund and
8 be used to increase the total funds available for challenge
9 grants. Funds deposited in the trust fund for the sales tax
10 exemption matching program authorized in s. 212.08(5)(j), and
11 interest earnings thereon, shall be maintained in a separate
12 account within the Trust Fund for University Major Gifts, and
13 may be used only to match qualified sales tax exemptions that
14 a certified business designates for use by state universities
15 and community colleges to support research and development
16 projects requested by the certified business. The State Board
17 of Education may authorize any university to encumber the
18 state matching portion of a challenge grant from funds
19 available under s. 1011.45.

20 Section 1975. Subsection (2) of section 1012.59,
21 Florida Statutes, is amended to read:

22 1012.59 Certification fees.--

23 (2) The proceeds from the collection of certification
24 fees, fines, penalties, and costs levied pursuant to this
25 chapter shall be remitted by the Department of Education to
26 the Chief Financial Officer ~~Treasurer~~ for deposit into a
27 separate fund to be known as the "Educational Certification
28 and Service Trust Fund" and disbursed for the payment of
29 expenses incurred by the Educational Practices Commission and
30 in the printing of forms and bulletins and the issuing of
31 certificates, upon vouchers approved by the department.

ENROLLED

2003 Legislature

CS for CS for SB 1712, 1st Engrossed

1 Section 1976. Subsection (9) of section 1012.79,
2 Florida Statutes, is amended to read:

3 1012.79 Education Practices Commission;
4 organization.--

5 (9) The commission shall make such expenditures as may
6 be necessary in exercising its authority and powers and
7 carrying out its duties and responsibilities, including
8 expenditures for personal services, general counsel or access
9 to counsel, and rent at the seat of government and elsewhere;
10 for books of reference, periodicals, furniture, equipment, and
11 supplies; and for printing and binding. The expenditures of
12 the commission shall be subject to the powers and duties of
13 the Department of Financial Services ~~Banking and Finance~~ as
14 provided in s. 17.03.

15 Section 1977. Subsection (3) of section 1013.79,
16 Florida Statutes, is amended to read:

17 1013.79 University Facility Enhancement Challenge
18 Grant Program.--

19 (3) There is established the Alec P. Courtelis Capital
20 Facilities Matching Trust Fund for the purpose of providing
21 matching funds from private contributions for the development
22 of high priority instructional and research-related capital
23 facilities, including common areas connecting such facilities,
24 within a university. The Legislature shall appropriate funds
25 to be transferred to the trust fund. The Public Education
26 Capital Outlay and Debt Service Trust Fund, Capital
27 Improvement Trust Fund, Division of Sponsored Research Trust
28 Fund, and Contracts and Grants Trust Fund shall not be used as
29 the source of the state match for private contributions. All
30 appropriated funds deposited into the trust fund shall be
31 invested pursuant to the provisions of s. 17.161 ~~s. 18.125~~.

1 Interest income accruing to that portion of the trust fund
2 shall increase the total funds available for the challenge
3 grant program. Interest income accruing from the private
4 donations shall be returned to the participating foundation
5 upon completion of the project. The State Board of Education
6 shall administer the trust fund and all related construction
7 activities.

8 Section 1978. Sections 17.06, 18.03, 18.09, 18.22,
9 20.12, 20.13, 440.135, 624.305, 624.4071, 624.463, 627.0623,
10 627.3516, 627.7825, 655.019, 657.067, 657.25, 657.251,
11 657.252, 657.253, 657.254, 657.256, 657.257, 657.258, 657.259,
12 657.260, 657.261, 657.262, 657.263, 657.264, 657.265, 657.266,
13 657.267, 657.268, and 657.269, Florida Statutes, are repealed.

14 Section 1979. In the event of a conflict between this
15 act and any other legislation enacted during the 2003 Regular
16 Session, the provisions of this act shall prevail.

17 Section 1980. This act and chapter 2002-404, Laws of
18 Florida, shall not affect the validity of any administrative
19 or judicial action involving the Department of Banking and
20 Finance or the Department of Insurance occurring prior to, or
21 pending on, January 7, 2003, and the Department of Financial
22 Services or the Financial Services Commission, or the
23 respective office, as appropriate, shall be substituted as a
24 party in interest on any such pending action.

25 Section 1981. Any certificate of authority, license,
26 form, rate, or other filing or action that was approved or
27 authorized by the Department of Insurance or the Department of
28 Banking and Finance, or that was otherwise lawfully in use
29 prior to January 7, 2003, may continue to be used or be
30 effective as originally authorized or permitted, until the
31 Chief Financial Officer, the Department of Financial Services,

1 the Financial Service Commission, or either of the respective
2 offices, otherwise prescribes.

3 Section 1982. This act shall take effect upon becoming
4 a law.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31