

1 A bill to be entitled
2 An act relating to title insurance; creating part I of ch.
3 637, F.S.; providing for administration of title insurance
4 and general provisions; providing a short title; providing
5 legislative findings, purposes, and intent; providing
6 definitions; preempting to the state the regulation of
7 title insurance, title insurers, and title insurance
8 agencies; providing for nonapplication of certain
9 chapters; duplicating in ch. 637, F.S., certain provisions
10 of chs. 624, 625, 626, and 628, F.S., relating to
11 insurance and making such provisions applicable to title
12 insurance, title insurers, title insurance agents, and
13 title insurance agencies; creating s. 637.10335, F.S.;
14 providing for civil remedies against title insurers;
15 providing procedures, requirements, and limitations;
16 providing for award of damages, court costs, and attorney
17 fees; prohibiting punitive damages under certain
18 circumstances; providing construction prohibitions;
19 preserving certain remedies and causes of action; creating
20 s. 637.10435, F.S.; providing a Policyholders Bill of
21 Rights; specifying principles; providing a construction
22 prohibition; creating s. 637.10445, F.S.; providing
23 procedures, requirements, and limitations for documents
24 claimed as trade secrets; creating part II of ch. 637,
25 F.S.; providing for licensing and administration of title
26 insurers; duplicating in ch. 637, F.S., and making
27 applicable to title insurers certain provisions of ch.
28 624, F.S.; transferring to ch. 637, F.S., certain

29 provisions of chs. 625 and 627, F.S., relating to title
30 insurance; creating s. 637.20035, F.S.; providing for
31 structure of title insurers; transferring, renumbering,
32 and amending s. 627.7865, F.S.; specifying requirements,
33 procedures, and limitation for assessments against title
34 insurers in liquidation; creating s. 637.2091, F.S.;
35 specifying that title insurance business in exclusive;
36 creating part III of ch. 637, F.S.; providing for
37 licensure and administration of title insurance agents and
38 agencies; duplicating in ch. 637, F.S., and making
39 applicable to title insurance agents and agencies certain
40 provisions of ch. 626, F.S.; transferring to ch. 637,
41 F.S., certain provisions of ch. 626, F.S., relating to
42 title insurance agents and agencies; creating s.
43 637.30125, F.S.; providing requirements for agents in
44 charge; providing for authority, duties, and
45 responsibilities of agents in charge; transferring
46 regulation, administration, and enforcement of title
47 insurers and authority to establish title insurance
48 premium rates and forms from the Office of Insurance
49 Regulation and the Financial Services Commission to the
50 Department of Financial Services; deleting references to
51 the office and commission to conform; amending ss.
52 624.5105 and 624.5107, F.S.; including references to
53 applicable sections of ch. 637, F.S., under the community
54 contribution tax credit program and the child care tax
55 credit program; specifying rules of the Financial Services
56 Commission and the Office of Insurance Regulation as rules

57 | of the department; transferring certain powers, duties,
58 | functions, records, personnel, property, and unexpended
59 | balances of appropriations, allocations, and other funds
60 | relating to title insurance to the department; preserving
61 | the validity of certain judicial and administrative
62 | actions relating to title insurance; providing for
63 | transfer of certain orders relating to title insurance to
64 | the department; requiring the Division of Statutory
65 | Revision to assist substantive legislative committees in
66 | developing conforming legislation; creating s. 689.263,
67 | F.S.; prohibiting title insurance agents or title
68 | insurance agencies from disbursing certain funds under
69 | certain circumstances; providing requirements for a
70 | statement of settlement costs; creating s. 717.1121, F.S.;
71 | providing construction of certain payments from escrow
72 | related to real estate transactions; amending s. 877.101,
73 | F.S.; providing an additional prohibition against
74 | transacting escrow business by unauthorized persons;
75 | revising cross-references for purposes of nonapplication
76 | to licensed title insurance agents; amending ss. 624.5015,
77 | 626.241, and 626.331, F.S.; deleting provisions relating
78 | to title insures; amending ss. 197.502, 624.501, 624.604,
79 | 624.605, 625.031, 626.207, 655.005, 701.041, and 721.05,
80 | F.S.; conforming a cross-reference; repealing s. 624.608,
81 | F.S., relating to the definition of "title insurance";
82 | repealing s. 626.841, F.S., relating to definitions of
83 | "title insurance agent" and "title insurance agency";
84 | repealing s. 626.8411, F.S., relating to application of

85 Florida Insurance Code provisions to title insurance
 86 agents or agencies; repealing s. 626.9531, F.S., relating
 87 to identification of insurers, agents, and insurance
 88 contracts; repealing s. 627.7711, F.S., relating to
 89 definitions; repealing s. 627.776, F.S., relating to
 90 applicability or inapplicability of Florida Insurance Code
 91 provisions to title insurers; providing an effective date.
 92

93 Be It Enacted by the Legislature of the State of Florida:
 94

95 Section 1. Part I of chapter 637, Florida Statutes,
 96 consisting of sections 637.1001, 637.1002, 637.1004, 637.10045,
 97 637.1005, 637.1006, 637.1007, 637.1008, 637.1009, 637.1011,
 98 637.1012, 637.1013, 637.1014, 637.1015, 637.1016, 637.1017,
 99 637.1018, 637.1019, 637.1021, 637.1022, 637.1023, 637.1024,
 100 637.1025, 637.1026, 637.1027, 637.1028, 637.1029, 637.1031,
 101 637.1032, 637.1033, 637.10335, 637.1034, 637.1035, 637.1036,
 102 637.1037, 637.1038, 637.1039, 637.1041, 637.1042, 637.1043,
 103 637.10435, 637.1044, 637.10445, 637.1045, 637.1046, 637.1047,
 104 637.1048, and 637.1049, is created and entitled "ADMINISTRATION
 105 AND GENERAL PROVISIONS."

106 Section 2. Sections 637.1001, 637.1002, 637.1004,
 107 637.10045, 637.1005, 637.1006, 637.1007, 637.1008, 637.1009,
 108 637.1011, 637.1012, 637.1013, 637.1014, 637.1015, 637.1016,
 109 637.1017, 637.1018, 637.1019, 637.1021, 637.1022, 637.1023,
 110 637.1024, 637.1025, 637.1026, 637.1027, 637.1029, 637.1031,
 111 637.1032, 637.1033, 637.10335, 637.1034, 637.1035, 637.1036,
 112 637.1037, 637.1038, 637.1039, 637.1041, 637.1042, 637.1043,

CS/HB 853

2010

113 637.10435, 637.1044, 637.10445, 637.1045, 637.1046, 637.1047,
114 637.1048, and 637.1049, are created to read:

115 637.1001 Short title.—This chapter may be cited as the
116 "Florida Title Insurance Act."

117 637.1002 Legislative findings; purpose; intent.—

118 (1) The Legislature finds that a stable and efficient
119 title insurance delivery system is necessary to promote the
120 economic wellbeing of the citizens of this state. Title
121 insurance is essential to ensure homeowners and landowners of
122 the safety of real property transfers in the state. Lienholders
123 and investors require the security afforded their business
124 interests accorded by a financially stable and regulated title
125 insurance industry. A viable title insurance delivery system
126 requires comprehensive state oversight, including regulation of
127 title insurers, agents, and agencies. Accordingly, it is the
128 intent of the Legislature to establish unitary regulation of the
129 title insurance industry by a type two transfer from the
130 Financial Services Commission and the Office of Insurance
131 Regulation to the Department of Financial Services, as set forth
132 in this chapter. The department shall have comprehensive
133 authority to regulate title insurer, title agent, and title
134 agency solvency, education, licensing, and discipline and to
135 establish title insurance premium rates and forms.

136 (2) The Legislature finds that title insurance is a unique
137 form of insurance unlike any casualty-based insurance.
138 Accordingly, a separate and distinct chapter of the Florida
139 Statutes is deemed appropriate.

140 (3) The Legislature recognizes that the title insurance

141 industry is founded upon a unique structure that requires title
 142 agents and agencies to determine the insurability of titles,
 143 thereby placing the title insurance agent at the cornerstone of
 144 the delivery system. As such, the solvency and viability of
 145 title insurance agents is essential. Therefore, the Legislature
 146 deems it to be in the public interest to establish title
 147 insurance rates that are adequate and to also establish
 148 parameters for rebating portions of the title insurance premium.

149 (4) The Legislature finds that the unique issues relating
 150 to title insurance premium rebates and negotiating the cost of
 151 related closing services require clarification for the
 152 protection of insurer solvency and consumer safety. The
 153 Legislature finds that any portion of premium paid by a title
 154 insurer to its agents is made for purposes of joint underwriting
 155 and the creation of each individual insurance contract and not
 156 for purposes of providing direct services to the consumer. The
 157 Legislature further finds that negotiating or rebating closing
 158 services fees should not be restricted, but that discounting
 159 premiums jeopardizes the solvency of insurers and the
 160 maintenance of an efficient delivery system for title insurance
 161 and impairs the protection of the consumer.

162 637.1004 Definitions.—For purposes of this chapter, the
 163 term:

164 (1) "Appointment" means the authority given by an insurer
 165 to a licensee to transact insurance on behalf of an insurer.

166 (2) "Attorney" as used in this part means an individual
 167 duly admitted to and a member in good standing of The Florida
 168 Bar.

169 (3) "Agent in charge" of a title insurance agency means an
170 attorney or a licensed and appointed title insurance agent who
171 is responsible for escrow and policy issuance services of a
172 title insurance agency location.

173 (4) "Authorized" means provided authority pursuant to
174 valid a certificate of authority issued by the department to
175 transact insurance in this state.

176 (5) "Closing services" means services performed by a
177 licensed title insurer, title insurance agent or agency, or
178 attorney agent in the agent's or agency's capacity as such,
179 including, but not limited to, preparing documents necessary to
180 close the transaction, conducting the closing, or handling the
181 disbursing of funds related to the closing transaction in which
182 a title insurance commitment or policy is to be issued.

183 (6) "Commercially domiciled insurer" means every foreign
184 or alien insurer that is authorized to do business in this state
185 and that, during its 3 preceding fiscal years taken together, or
186 during any lesser period of time if it has been licensed to
187 transact its business in this state only for the lesser period
188 of time, has written an average of 25 percent or more direct
189 premiums in this state than it has written in its state of
190 domicile during the same period, and the direct premiums written
191 constitute more than 55 percent of its total direct premiums
192 written everywhere in the United States during its 3 preceding
193 fiscal years taken together, or during any lesser period of time
194 if it has been authorized to transact its business in this state
195 only for the lesser period of time, as reported in its most
196 recent applicable annual or quarterly statements, shall be

197 deemed a "commercially domiciled insurer" within this state.

198 (7) "Consent" means authorized written agreement to
 199 supervision by the insurer.

200 (8) "Department" means the Department of Financial
 201 Services. The term does not mean the Financial Services
 202 Commission or any office of the Financial Services Commission.

203 (9) "Domestic," "foreign," and "alien" mean:

204 (a) A "domestic" insurer is one formed under the laws of
 205 this state.

206 (b) A "foreign" insurer is one formed under the laws of
 207 any state, district, territory, or commonwealth of the United
 208 States other than this state.

209 (c) An "alien" insurer is an insurer other than a domestic
 210 or foreign insurer.

211 (10) "Domicile," except as provided in s. 631.011, means:

212 (a) As to Canadian insurers, Canada and the province under
 213 the laws of which the insurer was formed.

214 (b) As to other alien insurers authorized to transact
 215 insurance in one or more states, the state designated by the
 216 insurer in writing filed with the department at the time of
 217 admission to this state or within 6 months after the effective
 218 date of this chapter, whichever date is the later, and may be
 219 any of the following states:

220 1. That in which the insurer was first authorized to
 221 transact insurance if the insurer is still so authorized.

222 2. That in which is located the insurer's principal place
 223 of business in the United States.

224 3. That in which is held the larger deposit of trusteed

225 assets of the insurer for the protection of its policyholders
 226 and creditors in the United States.

227 If the insurer makes no such designation, its domicile shall be
 228 deemed to be that state in which is located its principal place
 229 of business in the United States.

230 (c) As to alien insurers not authorized to transact
 231 insurance in one or more states, the country under the laws of
 232 which the insurer was formed.

233 (d) As to all other insurers, the state under the laws of
 234 which the insurer was formed.

235 (11) "Exceeded its powers" means the following conditions:

236 (a) The insurer has refused to permit examination by the
 237 department of its books, papers, accounts, records, or business
 238 practices;

239 (b) An insurer organized in this state has unlawfully
 240 removed from this state books, papers, accounts, or records
 241 necessary for an examination of the insurer by the department;

242 (c) The insurer has failed to promptly comply with the
 243 applicable financial reporting statutes and department requests
 244 relating thereto;

245 (d) The insurer has neglected or refused to observe an
 246 order of the department to correct a deficiency in its capital
 247 or surplus; or

248 (e) The insurer has unlawfully or in violation of a
 249 department order:

250 1. Totally reinsured its entire outstanding business; or

251 2. Merged or consolidated substantially its entire

252 property or business with another insurer.

253 (12) "License" means a document issued by the department
 254 authorizing a person to transact insurance.

255 (13) (a) "Managing general agent" means any person managing
 256 all or part of the insurance business of an insurer, including
 257 the management of a separate division, department, or
 258 underwriting office, and acting as an agent for that insurer,
 259 whether known as a managing general agent, manager, or other
 260 similar term, who, with or without authority, separately or
 261 together with affiliates, produces, directly or indirectly, or
 262 underwrites an amount of gross direct written premium equal to
 263 or more than 5 percent of the policyholder surplus as reported
 264 in the last annual statement of the insurer in any single
 265 quarter or year and also does one or more of the following:

- 266 1. Adjusts or pays claims.
- 267 2. Negotiates reinsurance on behalf of the insurer.
- 268 (b) The following persons shall not be considered managing
 269 general agents:
 - 270 1. An employee of the insurer.
 - 271 2. A United States manager of the United States branch of
 272 an alien insurer.
 - 273 3. An underwriting manager managing all the insurance
 274 operations of the insurer pursuant to a contract who is
 275 under the common control of the insurer subject to regulation
 276 and whose compensation is not based on the volume of premiums
 277 written.
 - 278 4. The attorney in fact authorized by and acting for the
 279 subscribers of a reciprocal insurer under powers of attorney.

280 (14) "Person" means an individual, insurer, company,

281 association, organization, Lloyds, society, reciprocal insurer
282 or interinsurance exchange, partnership, syndicate, business
283 trust, corporation, agent, general agent, broker, service
284 representative, adjuster, and every legal entity.

285 (15) "Premium" means the charge, as specified by rule of
286 the department, that is made by a title insurer for a title
287 insurance policy, including the charge for performance of
288 primary title services by a title insurer or title insurance
289 agent or agency, and incurring the risks incident to such
290 policy, under the several classifications of title insurance
291 contracts and forms, and upon which charge a premium tax is paid
292 under s. 624.509. As used in this part or in any other law, with
293 respect to title insurance, the word "premium" does not include
294 a commission.

295 (16) "Primary title services" means determining
296 insurability in accordance with sound underwriting practices
297 based upon evaluation of a reasonable title search or a search
298 of the records of a Uniform Commercial Code filing office and
299 such other information as may be necessary, determination and
300 clearance of underwriting objections and requirements to
301 eliminate risk, preparation and issuance of a title insurance
302 commitment setting forth the requirements to insure, and
303 preparation and issuance of the policy. Such services do not
304 include closing services or title searches, for which a separate
305 charge or separate charges may be made.

306 (17) When used in context signifying a jurisdiction other
307 than the State of Florida, "state" means any state, district,
308 territory, or commonwealth of the United States.

309 (18) "Title insurance" means:

310 (a) Insurance of owners of real property or others having
311 an interest in real property or a contractual interest derived
312 from real property, or liens or encumbrances on real property,
313 against loss by encumbrance, or defective titles, or invalidity,
314 or adverse claim to title; or

315 (b) Insurance of owners and secured parties of the
316 attachment, perfection, and priority of security interests in
317 personal property under the Uniform Commercial Code.

318 (19) "Title insurance agent" means a person appointed in
319 writing by a title insurer to issue and countersign commitments
320 or policies of title insurance on the title insurer's behalf.

321 (20) "Title insurance agency" means an insurance agency as
322 defined in s. 626.015 under which a title insurance agent or
323 other employee determines insurability in accordance with
324 underwriting rules and standards prescribed by the title insurer
325 represented by the title insurance agency and issues and
326 countersigns commitments, endorsements, or policies of title
327 insurance on behalf of the appointing title insurer. The term
328 does not include a title insurer.

329 (21) "Title insurer" means any domestic company organized
330 and authorized to do business under the provisions of this
331 chapter, for the purpose of issuing title insurance, or any
332 insurer organized under the laws of another state, the District
333 of Columbia, or a foreign country and holding a certificate of
334 authority to transact business in this state, for the purpose of
335 issuing title insurance.

336 (22) "Title search" means the compiling of title

337 information from official or public records.

338 (23) "Transact" means, with respect to insurance and in
 339 addition to other applicable provisions of this chapter:

340 (a) Solicitation or inducement.

341 (b) Preliminary negotiations.

342 (c) Effectuation of a contract of insurance.

343 (d) Transaction of matters subsequent to effectuation of a
 344 contract of insurance and arising out of it.

345 (24) "Unsound condition" means that the department has
 346 determined that one or more of the following conditions exist
 347 with respect to an insurer:

348 (a) The insurer's required surplus, capital, or capital
 349 stock is impaired to an extent prohibited by law;

350 (b) The insurer continues to write new business when it
 351 has not maintained the required surplus or capital stock;

352 (c) The insurer attempts to dissolve or liquidate without
 353 first having made provisions, satisfactory to the department,
 354 for liabilities arising from insurance policies issued by the
 355 insurer; or

356 (d) The insurer meets one or more of the grounds in s.
 357 631.051 for the appointment of the department as receiver.

358 637.10045 Preemption to state.—The regulation of title
 359 insurance, title insurers, and title insurance agencies is
 360 preempted to the state.

361 637.1005 General applicability of other chapters.—

362 (1) The provisions of chapters 624, 626, and 627 do not
 363 apply to title insurers or their agents unless specifically
 364 incorporated by reference and made applicable to this chapter by

365 a provision of this chapter.

366 (2) The provisions of chapters 625, 628, and 631 apply to
 367 title insurance and for purposes of applying such provisions to
 368 title insurance, the term "office" shall be interpreted to mean
 369 department and the term "Director of the Division of Insurance
 370 Regulation" shall be interpreted to mean the Chief Financial
 371 Officer.

372 637.1006 General powers; duties.-

373 (1) The powers and duties of the Chief Financial Officer
 374 and the department specified in this chapter apply with respect
 375 to title insurers, title insurance agents, and title insurance
 376 agencies.

377 (2) The department shall enforce the provisions of this
 378 chapter and shall execute the duties imposed upon the department
 379 by this chapter, as provided by law.

380 (3) The department shall have the powers and authority
 381 expressly conferred upon it by, or reasonably implied from, the
 382 provisions of this chapter.

383 (4) The department may conduct such investigations of
 384 insurance matters, in addition to investigations expressly
 385 authorized, as it may deem proper to determine whether any
 386 person has violated any provision of this chapter within its
 387 respective regulatory jurisdiction or to secure information
 388 useful in the lawful administration of any such provision. The
 389 cost of such investigations shall be borne by the state.

390 (5) The department may collect, propose, publish, and
 391 disseminate information relating to the subject matter of any
 392 duties imposed upon it by law.

393 (6) The department shall have such additional powers and
394 duties as may be provided by other laws of this state.

395 (7) The department may employ actuaries who shall be at-
396 will employees and who shall serve at the pleasure of the Chief
397 Financial Officer, in the case of department employees.
398 Actuaries employed pursuant to this subsection shall be members
399 of the Society of Actuaries or the Casualty Actuarial Society
400 and shall be exempt from the Career Service System established
401 under chapter 110. The salaries of the actuaries employed
402 pursuant to this paragraph shall be set in accordance with s.
403 216.251(2)(a)5. and shall be set at levels which are
404 commensurate with salary levels paid to actuaries by the
405 insurance industry.

406 (8) The department shall, within existing resources,
407 develop and implement an outreach program for the purpose of
408 encouraging the entry of additional insurers into the Florida
409 market.

410 (9) Upon receiving service of legal process issued in any
411 civil action or proceeding in this state against any regulated
412 person required to appoint the Chief Financial Officer as its
413 attorney to receive service of all legal process, the Chief
414 Financial Officer, as attorney, may, in lieu of sending the
415 process by registered or certified mail, send the process by any
416 other verifiable means to the person last designated by the
417 regulated person to receive the process.

418 (10) This section does not limit the authority of the
419 department and the Division of Insurance Fraud, as specified in
420 s. 637.1046.

421 (11) The department may enforce violations of the Real
422 Estate Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.
423 637.1007 Rules.-

424 (1) The department may adopt rules pursuant to ss.
425 120.536(1) and 120.54 to implement provisions of this chapter
426 and interpret the specific powers and duties provided in this
427 chapter, which rules may:

428 (a) Define the license and appointment requirements for
429 title insurance agents and agencies.

430 (b) Establish penalty guidelines for enforcing the
431 requirements of this chapter.

432 (c) Describe the fiduciary responsibilities of title
433 insurance agents and agencies, including, but not limited to,
434 duties related to escrow accounts.

435 (d) Identify the responsibilities, duties, and
436 designations of the agent in charge of the title insurance
437 agency or the attorney in charge of an attorney-owned title
438 insurance agency.

439 (e) Enable the collection of information from agents and
440 agencies relating to title insurance business.

441 (f) Set reasonable requirements for the timely recording
442 of documents and the delivery of final title policies.

443 (g) Establish rules for the protection, calculation, and
444 timely remittance of premiums that are owed to title insurers.

445 (h) Prohibit the markup of the cost of any third-party
446 services without adding value.

447 (2) In addition to any other penalty provided, willful
448 violation of any such rule shall subject the violator to such

449 suspension or revocation of certificate of authority or license
 450 as may be applicable under this chapter as for violation of the
 451 provision as to which such rule relates.

452 637.1008 General penalty.—

453 (1) Each willful violation of this chapter or rule of the
 454 department as to which a greater penalty is not provided by
 455 another provision of this chapter or rule of the department or
 456 by other applicable laws of this state is a misdemeanor of the
 457 second degree and is, in addition to any prescribed applicable
 458 denial, suspension, or revocation of certificate of authority,
 459 license, or permit, punishable as provided in s. 775.082 or s.
 460 775.083. Each instance of such violation shall be considered a
 461 separate offense.

462 (2) Each willful violation of an emergency rule or order
 463 of the department by a person who is not licensed, authorized,
 464 or eligible to engage in business in accordance with this
 465 chapter is a felony of the third degree, punishable as provided
 466 in s. 775.082, s. 775.083, or s. 775.084. Each instance of such
 467 violation is a separate offense. This subsection does not apply
 468 to licensees or affiliated parties of licensees.

469 637.1009 Enforcement; cease and desist orders; removal of
 470 certain persons; fines.—

471 (1) DEFINITIONS.—For the purposes of this section, the
 472 term:

473 (a) "Affiliated party" means any person who directs or
 474 participates in the conduct of the affairs of a licensee and who
 475 is:

- 476 1. A director, officer, employee, trustee, committee

477 member, or controlling stockholder of a licensee or a subsidiary
478 or service corporation of the licensee, other than a controlling
479 stockholder which is a holding company, or an agent of a
480 licensee or a subsidiary or service corporation of the licensee;

481 2. A person who has filed or is required to file a
482 statement or any other information required to be filed under s.
483 628.461 or s. 628.4615;

484 3. A stockholder, other than a stockholder that is a
485 holding company of the licensee, who participates in the conduct
486 of the affairs of the licensee; or

487 4. An independent contractor who:

488 a. Renders a written opinion required by the laws of this
489 state under her or his professional credentials on behalf of the
490 licensee, which opinion is reasonably relied on by the
491 department in the performance of its duties; or

492 b. Affirmatively and knowingly conceals facts, through a
493 written misrepresentation to the department, with knowledge that
494 such misrepresentation:

495 (I) Constitutes a violation of this chapter or a lawful
496 rule or order of the department; and

497 (II) Directly and materially endangers the ability of the
498 licensee to meet its obligations to policyholders.

499
500 For the purposes of this subparagraph, any representation of
501 fact made by an independent contractor on behalf of a licensee,
502 affirmatively communicated as a representation of the licensee
503 to the independent contractor, shall not be considered a
504 misrepresentation by the independent contractor.

505 (b) "Licensee" means a person issued a license or
 506 certificate of authority or approval under this chapter or a
 507 person registered under a provision of this chapter.

508 (2) ENFORCEMENT GENERALLY.—

509 (a) The powers granted by this section to the department
 510 apply only with respect to licensees of the department and their
 511 affiliated parties and to unlicensed persons subject to
 512 regulatory jurisdiction of the department.

513 (b) The department may institute such suits or other legal
 514 proceedings as may be required to enforce any provision of this
 515 chapter within the department's regulatory jurisdiction. If it
 516 appears that any person has violated any provision of this
 517 chapter for which criminal prosecution is provided, the
 518 department shall provide the appropriate state attorney or other
 519 prosecuting agency having jurisdiction with respect to such
 520 prosecution with the relevant information in its possession.

521 (3) CEASE AND DESIST ORDERS.—

522 (a) The department may issue and serve a complaint stating
 523 charges upon any licensee or upon any affiliated party, whenever
 524 the department has reasonable cause to believe that the person
 525 or individual named therein is engaging in or has engaged in
 526 conduct that is:

527 1. An act that demonstrates a lack of fitness or
 528 trustworthiness to engage in the business of insurance, is
 529 hazardous to the insurance buying public, or constitutes
 530 business operations that are a detriment to policyholders,
 531 stockholders, investors, creditors, or the public;

532 2. A violation of any provision of this chapter;

533 3. A violation of any rule of the department;

534 4. A violation of any order of the department; or

535 5. A breach of any written agreement with the department.

536 (b) The complaint shall contain a statement of facts and
537 notice of opportunity for a hearing pursuant to ss. 120.569 and
538 120.57.

539 (c) If no hearing is requested within the time allowed by
540 ss. 120.569 and 120.57, or if a hearing is held and the
541 department finds that any of the charges are proven, the
542 department may enter an order directing the licensee or the
543 affiliated party named in the complaint to cease and desist from
544 engaging in the conduct complained of and take corrective action
545 to remedy the effects of past improper conduct and assure future
546 compliance.

547 (d) If the licensee or affiliated party named in the order
548 fails to respond to the complaint within the time allotted by
549 ss. 120.569 and 120.57, the failure constitutes a default and
550 justifies the entry of a cease and desist order.

551 (e) A contested or default cease and desist order is
552 effective when reduced to writing and served upon the licensee
553 or affiliated party named therein. An uncontested cease and
554 desist order is effective as agreed.

555 (f) Whenever the department finds that conduct described
556 in paragraph (a) is likely to cause insolvency, substantial
557 dissipation or misvaluation of assets or earnings of the
558 licensee, substantial inability to pay claims on a timely basis,
559 or substantial prejudice to prospective or existing insureds,
560 policyholders, subscribers, or the public, it may issue an

561 emergency cease and desist order requiring the licensee or any
 562 affiliated party to immediately cease and desist from engaging
 563 in the conduct complained of and to take corrective and remedial
 564 action. The emergency order is effective immediately upon
 565 service of a copy of the order upon the licensee or affiliated
 566 party named therein and remains effective for 90 days. If the
 567 department begins nonemergency cease and desist proceedings
 568 under this subsection, the emergency order remains effective
 569 until the conclusion of the proceedings under ss. 120.569 and
 570 120.57.

571 (4) REMOVAL OF AFFILIATED PARTIES.—

572 (a) The department may issue and serve a complaint stating
 573 charges upon any affiliated party and upon the licensee
 574 involved, whenever the department has reason to believe that an
 575 affiliated party is engaging in or has engaged in conduct that
 576 constitutes:

577 1. An act that demonstrates a lack of fitness or
 578 trustworthiness to engage in the business of insurance through
 579 engaging in illegal activity or mismanagement of business
 580 activities;

581 2. A willful violation of any law relating to the business
 582 of insurance; however, if the violation constitutes a
 583 misdemeanor, no complaint shall be served as provided in this
 584 section until the affiliated party is notified in writing of the
 585 matter of the violation and has been afforded a reasonable
 586 period of time, as set forth in the notice, to correct the
 587 violation and has failed to do so;

588 3. A violation of any other law involving fraud or moral

589 turpitude that constitutes a felony;
 590 4. A willful violation of any rule of the department;
 591 5. A willful violation of any order of the department;
 592 6. A material misrepresentation of fact, made knowingly
 593 and willfully or made with reckless disregard for the truth of
 594 the matter; or
 595 7. An act of commission or omission or a practice which is
 596 a breach of trust or a breach of fiduciary duty.
 597 (b) The complaint shall contain a statement of facts and
 598 notice of opportunity for a hearing pursuant to ss. 120.569 and
 599 120.57.
 600 (c) If no hearing is requested within the time allotted by
 601 ss. 120.569 and 120.57, or if a hearing is held and the
 602 department finds that any of the charges in the complaint are
 603 proven true and that:
 604 1. The licensee has suffered or will likely suffer loss or
 605 other damage;
 606 2. The interests of the policyholders, creditors, or
 607 public are, or could be, seriously prejudiced by reason of the
 608 violation or act or breach of fiduciary duty;
 609 3. The affiliated party has received financial gain by
 610 reason of the violation, act, or breach of fiduciary duty; or
 611 4. The violation, act, or breach of fiduciary duty is one
 612 involving personal dishonesty on the part of the affiliated
 613 party or the conduct jeopardizes or could reasonably be
 614 anticipated to jeopardize the financial soundness of the
 615 licensee,
 616

617 The department may enter an order removing the affiliated party
618 or restricting or prohibiting participation by the person in the
619 affairs of that particular licensee or of any other licensee.

620 (d) If the affiliated party fails to respond to the
621 complaint within the time allotted by ss. 120.569 and 120.57,
622 the failure constitutes a default and justifies the entry of an
623 order of removal, suspension, or restriction.

624 (e) A contested or default order of removal, restriction,
625 or prohibition is effective when reduced to writing and served
626 on the licensee and the affiliated party. An uncontested order
627 of removal, restriction, or prohibition is effective as agreed.

628 (f)1. The chief executive officer, or the person holding
629 the equivalent office, of a licensee shall promptly notify the
630 department that issued the license if she or he has actual
631 knowledge that any affiliated party is charged with a felony in
632 a state or federal court.

633 2. Whenever any affiliated party is charged with a felony
634 in a state or federal court or with the equivalent of a felony
635 in the courts of any foreign country with which the United
636 States maintains diplomatic relations, and the charge alleges
637 violation of any law involving fraud, theft, or moral turpitude,
638 the department may enter an emergency order suspending the
639 affiliated party or restricting or prohibiting participation by
640 the affiliated party in the affairs of the particular licensee
641 or of any other licensee upon service of the order upon the
642 licensee and the affiliated party charged. The order shall
643 contain notice of opportunity for a hearing pursuant to ss.
644 120.569 and 120.57, where the affiliated party may request a

645 postsuspension hearing to show that continued service to or
646 participation in the affairs of the licensee does not pose a
647 threat to the interests of the licensee's policyholders or
648 creditors and does not threaten to impair public confidence in
649 the licensee. In accordance with applicable rules, the
650 department shall notify the affiliated party whether the order
651 suspending or prohibiting the person from participation in the
652 affairs of a licensee will be rescinded or otherwise modified.
653 The emergency order remains in effect, unless otherwise modified
654 by the department, until the criminal charge is disposed of. The
655 acquittal of the person charged, or the final, unappealed
656 dismissal of all charges against the person, dissolves the
657 emergency order, but does not prohibit the department from
658 instituting proceedings under paragraph (a). If the person
659 charged is convicted or pleads guilty or nolo contendere,
660 whether or not an adjudication of guilt is entered by the court,
661 the emergency order shall become final.

662 (g) Any affiliated party removed from office pursuant to
663 this section is not eligible for reelection or appointment to
664 the position or to any other official position in any licensee
665 in this state except upon the written consent of the department.
666 Any affiliated party who is removed, restricted, or prohibited
667 from participation in the affairs of a licensee pursuant to this
668 section may petition the department for modification or
669 termination of the removal, restriction, or prohibition.

670 (h) Resignation or termination of an affiliated party does
671 not affect the department's jurisdiction to proceed under this
672 subsection.

673 (5) ADMINISTRATIVE FINES; ENFORCEMENT.—
 674 (a) The department, in a proceeding initiated pursuant to
 675 chapter 120, may impose an administrative fine against any
 676 person found in the proceeding to have violated any provision of
 677 this chapter, a cease and desist order of the department, or any
 678 written agreement with the department. A proceeding may not be
 679 initiated and a fine may not accrue until after the person has
 680 been notified in writing of the nature of the violation and has
 681 been afforded a reasonable period of time, as set forth in the
 682 notice, to correct the violation and has failed to do so.
 683 (b) A fine imposed under this subsection may not exceed
 684 the amounts specified in s. 637.2021, per violation.
 685 (c) In addition to the imposition of an administrative
 686 fine under this subsection, the department may also suspend or
 687 revoke the license or certificate of authority of the licensee
 688 fined under this subsection.
 689 (d) Any administrative fine levied by the department under
 690 this subsection may be enforced by the department by appropriate
 691 proceedings in the circuit court of the county in which the
 692 person resides or in which the principal office of a licensee is
 693 located, or, in the case of a foreign insurer or person not
 694 residing in this state, in Leon County. In any administrative or
 695 judicial proceeding arising under this section, a party may
 696 elect to correct the violation asserted by the department, and,
 697 upon doing so, any fine shall cease to accrue; however, the
 698 election to correct the violation does not render any
 699 administrative or judicial proceeding moot. All fines collected
 700 under this section shall be paid to the Title Insurance

701 Regulatory Trust Fund.

702 (e) In imposing any administrative penalty or remedy
 703 provided for under this section, the department shall take into
 704 account the appropriateness of the penalty with respect to the
 705 size of the financial resources and the good faith of the person
 706 charged, the gravity of the violation, the history of previous
 707 violations, and other matters as justice may require.

708 (f) The imposition of an administrative fine under this
 709 subsection may be in addition to any other penalty or
 710 administrative fine authorized under this chapter.

711 (6) ADMINISTRATIVE PROCEDURES.—All administrative
 712 proceedings under subsections (3), (4), and (5) shall be
 713 conducted in accordance with chapter 120. Any service required
 714 or authorized to be made by the department under this chapter
 715 shall be made by certified mail, return receipt requested,
 716 delivered to the addressee only; by personal delivery; or in
 717 accordance with chapter 48. The service provided for herein
 718 shall be effective from the date of delivery.

719 (7) CRIMINAL ENFORCEMENT.—It is unlawful for any
 720 affiliated party who is removed or prohibited from participation
 721 in the affairs of a licensee pursuant to this section, or for
 722 any licensee whose rights or privileges under such license have
 723 been suspended or revoked pursuant to this chapter, to knowingly
 724 act as an affiliated party as defined in this section or to
 725 knowingly transact insurance until expressly authorized to do so
 726 by the department. Such authorization by the department may not
 727 be provided unless the affiliated party or the licensee has made
 728 restitution, if applicable, to all parties damaged by the

729 actions of the affiliated party or the licensee which served as
 730 the basis for the removal or prohibition of the affiliated party
 731 or the suspension or revocation of the rights and privileges of
 732 the licensee. Any person who violates the provisions of this
 733 subsection commits a felony of the third degree, punishable as
 734 provided in s. 775.082, s. 775.083 or s. 775.084.

735 637.1011 Immunity from civil liability for providing
 736 department with information about condition of insurer.—A
 737 person, other than a person filing a required report or other
 738 required information, who provides the department with
 739 information about the financial condition of an insurer is
 740 immune from civil liability arising out of the provision of the
 741 information unless the person acted with knowledge that the
 742 information was false or with reckless disregard for the truth
 743 or falsity of the information.

744 637.1012 Records; reproductions; destruction.—

745 (1) Except as provided in this section, the department
 746 shall each preserve in permanent form records of its
 747 proceedings, hearings, investigations, and examinations and
 748 shall file such records in its department.

749 (2) The department may photograph, microphotograph, or
 750 reproduce on film, or maintain in an electronic recordkeeping
 751 system, all financial records, financial statements of domestic
 752 insurers, reports of business transacted in this state by
 753 foreign insurers and alien insurers, reports of examination of
 754 domestic insurers, and such other records and documents on file
 755 in the department as the department may in its discretion
 756 select.

757 (3) To facilitate the efficient use of floor space and
 758 filing equipment in its offices, the department may destroy the
 759 following records and documents pursuant to chapter 257:

760 (a) General closed correspondence files over 3 years old.

761 (b) Title insurance and similar license files, over 2
 762 years old; except that the department shall preserve by
 763 reproduction or otherwise a copy of the original records upon
 764 the basis of which each such licensee qualified for her or his
 765 initial license, except a competency examination, and of any
 766 disciplinary proceeding affecting the licensee.

767 (c) All title insurance agent and similar license files
 768 and records, including original license qualification records
 769 and records of disciplinary proceedings 5 years after a licensee
 770 has ceased to be qualified for a license.

771 (d) Insurer certificate of authority files over 2 years
 772 old, except that the department shall preserve by reproduction
 773 or otherwise a copy of the initial certificate of authority of
 774 each insurer.

775 (e) All documents and records which have been photographed
 776 or otherwise reproduced as provided in subsection (2), if such
 777 reproductions have been filed and an audit of the department has
 778 been completed for the period embracing the dates of such
 779 documents and records.

780 (f) All other records, documents, and files not expressly
 781 provided for in paragraphs (a)-(e).

782 637.1013 Reproductions and certified copies of records as
 783 evidence.—

784 (1) Photographs or microphotographs in the form of film or

785 prints, or other reproductions from an electronic recordkeeping
 786 system, of documents and records made under s. 637.1012(2), or
 787 made under former s. 624.311(3) before October 1, 1982, shall
 788 have the same force and effect as the originals thereof and
 789 shall be treated as originals for the purpose of their
 790 admissibility in evidence. Duly certified or authenticated
 791 reproductions of such photographs, microphotographs, or other
 792 reproductions from an electronic recordkeeping system shall be
 793 as admissible in evidence as the originals.

794 (2) Upon the request of any person and payment of the
 795 applicable fee, the department shall give a certified copy of
 796 any record in its department which is then subject to public
 797 inspection.

798 (3) Copies of original records or documents in its
 799 department certified by the department shall be received in
 800 evidence in all courts as if they were originals.

801 637.1014 Publications.—

802 (1) As early as reasonably possible, the department shall
 803 annually have printed and made available a statistical report
 804 which must include all of the following information on either a
 805 calendar year or fiscal year basis:

806 (a) The total amount of premiums written and earned for
 807 title insurance.

808 (b) The total amount of losses paid and losses incurred
 809 for title insurance.

810 (c) The ratio of premiums written to losses paid by title
 811 insurance.

812 (d) The ratio of premiums earned to losses incurred by

813 title insurance.

814 (e) The market share of the 10 largest insurers or insurer
815 groups of title insurance and of each insurer or insurer group
816 that has a market share of at least 1 percent of a line of
817 insurance in this state.

818 (f) The profitability of title insurance.

819 (g) An analysis of the impact of the insurance industry on
820 the economy of the state.

821 (h) A complaint ratio by line of insurance for the
822 insurers referred to in paragraph (e), based upon information
823 provided to the department by the department. The department
824 shall determine the most appropriate ratio or ratios for
825 quantifying complaints.

826 (i) A summary of the findings of market examinations
827 performed by the department under s. 637.1018 during the
828 preceding year.

829 (j) Such other information as the department deems
830 relevant.

831 (2) The department may prepare and have printed and
832 published in pamphlet or book form, as needed, questions and
833 answers for the use of persons applying for an examination for
834 licensing as title insurance agents.

835 (3) The department shall sell the publications mentioned
836 in subsections (1) and (2) to purchasers at a price fixed by the
837 department at not less than the cost of printing and binding
838 such publications, plus packaging and postage costs for mailing;
839 except that the department may deliver copies of such
840 publications free of cost to state agencies and officers;

841 insurance supervisory authorities of other states and
842 jurisdictions; institutions of higher learning located in
843 Florida; the Library of Congress; insurance officers of Naval,
844 Military, and Air Force bases located in this state; and to
845 persons serving as advisers to the department in preparation of
846 the publications.

847 (4) The department may contract with outside vendors, in
848 accordance with chapter 287, to compile data in an electronic
849 data processing format that is compatible with the systems of
850 the department.

851 637.1015 Sale of publications; deposit of proceeds.—The
852 department shall deposit all moneys received from the sale of
853 publications under s. 637.1014 in the Title Insurance Regulatory
854 Trust Fund for the purpose of paying costs for the preparation,
855 printing, and delivery of the publications required in s.
856 637.1014(2), packaging and mailing costs, and banking,
857 accounting, and incidental expenses connected with the sale and
858 delivery of such publications. All moneys deposited into and all
859 funds transferred to the Title Insurance Regulatory Trust Fund
860 are appropriated for such uses and purposes.

861 637.1016 Department; annual report.—

862 (1) As early as reasonably possible, the department shall
863 annually prepare a report to the Speaker and Minority Leader of
864 the House of Representatives, the President and Minority Leader
865 of the Senate, the chairs of the legislative committees with
866 jurisdiction over matters of insurance, and the Governor
867 showing, with respect to the preceding calendar year:

868 (a) Names of the authorized insurers transacting insurance

869 in this state, with abstracts of their financial statements
870 including assets, liabilities, and net worth.

871 (b) Names of insurers whose business was closed during the
872 year, the cause thereof, and amounts of assets and liabilities
873 as ascertainable.

874 (c) Names of insurers against which delinquency or similar
875 proceedings were instituted, and a concise statement of the
876 circumstances and results of each such proceeding.

877 (d) The receipts and estimated expenses of the department
878 for the year.

879 (e) Such other pertinent information and matters as the
880 department deems to be in the public interest.

881 (f) Annually after each regular session of the
882 Legislature, a compilation of the laws of this state relating to
883 insurance. Any such publication may be printed, revised, or
884 reprinted upon the basis of the original low bid.

885 (g) An analysis and summary report of the state of the
886 insurance industry in this state evaluated as of the end of the
887 most recent calendar year.

888 (2) The department shall maintain the following
889 information and make such information available upon request:

890 (a) Calendar year profitability, including investment
891 income from loss reserves (Florida and countrywide).

892 (b) Aggregate Florida loss reserves.

893 (c) Premiums written (Florida and countrywide).

894 (d) Premiums earned (Florida and countrywide).

895 (e) Incurred losses (Florida and countrywide).

896 (f) Paid losses (Florida and countrywide).

897 (g) Allocated Florida loss adjustment expenses.

898 (h) Variation of premiums charged by the industry as
 899 compared to rates promulgated by the Insurance Services Office
 900 (Florida and countrywide).

901 (i) An analysis of policy size limits (Florida and
 902 countrywide).

903 (j) Trends; emerging trends as exemplified by the
 904 percentage change in frequency and severity of both paid and
 905 incurred claims, and pure premium (Florida and countrywide).

906 (3) The department may contract with outside vendors, in
 907 accordance with chapter 287, to compile data in an electronic
 908 data processing format that is compatible with the systems of
 909 the department.

910 637.1017 Examination of insurers.—

911 (1) (a) The department shall examine the affairs,
 912 transactions, accounts, records, and assets of each authorized
 913 insurer as to its transactions affecting the insurer as often as
 914 it deems advisable, except as provided in this section. The
 915 examination may include examination of the affairs,
 916 transactions, accounts, and records relating directly or
 917 indirectly to the insurer and of the assets of the insurer's
 918 managing general agents and controlling or controlled person, as
 919 defined in s. 625.012. The examination shall be pursuant to a
 920 written order of the department. Such order shall expire upon
 921 receipt by the department of the written report of the
 922 examination.

923 (b) The department shall examine each insurer according to
 924 accounting procedures designed to fulfill the requirements of

925 generally accepted insurance accounting principles and practices
 926 and good internal control and in keeping with generally accepted
 927 accounting forms, accounts, records, methods, and practices
 928 relating to insurers. To facilitate uniformity in examinations,
 929 the department may adopt, by rule, the Market Conduct Examiners
 930 Handbook and the Financial Condition Examiners Handbook of the
 931 National Association of Insurance Commissioners, 2002, and may
 932 adopt subsequent amendments thereto, if the examination
 933 methodology remains substantially consistent.

934 (2) (a) Except as provided in paragraph (f), the department
 935 may examine each insurer as often as may be warranted for the
 936 protection of the policyholders and in the public interest, and
 937 shall examine each domestic insurer not less frequently than
 938 once every 5 years. The examination shall cover the preceding 5
 939 fiscal years of the insurer and shall be commenced within 12
 940 months after the end of the most recent fiscal year being
 941 covered by the examination. The examination may cover any period
 942 of the insurer's operations since the last previous examination.
 943 The examination may include examination of events subsequent to
 944 the end of the most recent fiscal year and the events of any
 945 prior period that affect the present financial condition of the
 946 insurer.

947 (b) The department shall examine each insurer applying for
 948 an initial certificate of authority to transact insurance in
 949 this state before granting the initial certificate.

950 (c) In lieu of making its own examination, the department
 951 may accept a full report of the last recent examination of a
 952 foreign insurer, certified to by the insurance supervisory

953 official of another state.

954 (d) The examination by the department of an alien insurer
955 shall be limited to the alien insurer's insurance transactions
956 and affairs in the United States, except as otherwise required
957 by the department.

958 (e) The department shall adopt rules providing that an
959 examination under this section may be conducted by independent
960 certified public accountants, actuaries, investment specialists,
961 information technology specialists, and reinsurance specialists
962 meeting criteria specified by rule. The rules shall provide:

963 1. That the rates charged to the insurer being examined
964 are consistent with rates charged by other firms in a similar
965 profession and are comparable with the rates charged for
966 comparable examinations.

967 2. That the firm selected by the department to perform the
968 examination has no conflicts of interest that might affect its
969 ability to independently perform its responsibilities on the
970 examination.

971 3. That the insurer being examined must make payment for
972 the examination pursuant to s. 637.1023(1) in accordance with
973 the rates and terms established by the department and the firm
974 performing the examination.

975 (f) An examination under this section must be conducted at
976 least once every year with respect to a domestic insurer that
977 has continuously held a certificate of authority for less than 3
978 years. The examination must cover the preceding fiscal year or
979 the period since the last examination of the insurer. The
980 department may limit the scope of the examination.

637.1018 Market conduct examinations.-

(1) As often as it deems necessary, the department shall examine each licensed rating organization, each advisory organization, each group, association, carrier, as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance, and each authorized insurer transacting in this state any class of insurance to which the provisions of this chapter are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of this chapter.

(2) In lieu of any such examination, the department may accept the report of a similar examination made by the insurance supervisory official of another state.

(3) The examination may be conducted by an independent professional examiner under contract to the department, in which case payment shall be made directly to the contracted examiner by the insurer examined in accordance with the rates and terms agreed to by the department and the examiner.

(4) The reasonable cost of the examination shall be paid by the person examined, and such person shall be subject, as though an insurer, to the provisions of s. 637.1023.

(5) Such examinations shall also be subject to the applicable provisions of chapter 440 and ss. 637.1021, 637.1022, 637.1024, and 637.1025.

637.1019 Investigation of title insurance agents and others.-If the department has reason to believe that any title insurance agent has violated or is violating any provision of this chapter, or upon the written complaint signed by any

1009 interested person indicating that any such violation may exist:

1010 (1) The department shall conduct such investigation as it
 1011 deems necessary of the accounts, records, documents, and
 1012 transactions pertaining to or affecting the insurance affairs of
 1013 any title insurance agent, title insurance agency, or other
 1014 person subject to its jurisdiction.

1015 (2) The department shall conduct such investigation as it
 1016 deems necessary of the accounts, records, documents, and
 1017 transactions pertaining to or affecting the insurance affairs of
 1018 any:

1019 (a) Person subject to its jurisdiction.

1020 (b) Person having a contract or power of attorney under
 1021 which she or he enjoys in fact the exclusive or dominant right
 1022 to manage or control an insurer.

1023 (c) Person engaged in or proposing to be engaged in the
 1024 promotion or formation of:

1025 1. A domestic insurer;

1026 2. An insurance holding corporation; or

1027 3. A corporation to finance a domestic insurer or in the
 1028 production of the domestic insurer's business.

1029 (3) In the investigation by the department of the alleged
 1030 misconduct, the licensee shall, whenever required by the
 1031 department, cause his or her books and records to be open for
 1032 inspection for the purpose of such inquiries.

1033 (4) A complaint against any licensee may be informally
 1034 alleged and need not be in any language necessary to charge a
 1035 crime on an indictment or information.

1036 (5) The expense for any hearings or investigations under

1037 this section, as well as the fees and mileage of witnesses, may
 1038 be paid out of the appropriate fund.

1039 (6) If the department, after investigation, has reason to
 1040 believe that a licensee may have been found guilty of or pleaded
 1041 guilty or nolo contendere to a felony or a crime related to the
 1042 business of insurance in this or any other state or jurisdiction,
 1043 the department or office may require the licensee to file with
 1044 the department or office a complete set of his or her
 1045 fingerprints, which shall be accompanied by the fingerprint
 1046 processing fee set forth in s. 637.2031. The fingerprints shall
 1047 be taken by an authorized law enforcement agency or other
 1048 department-approved entity.

1049 637.1021 Conduct of examination or investigation; access
 1050 to records; correction of accounts; appraisals.-

1051 (1) The examination or investigation may be conducted by
 1052 the accredited examiners or investigators of the department at
 1053 the offices wherever located of the person being examined or
 1054 investigated and at such other places as may be required for
 1055 determination of matters under examination or investigation. In
 1056 the case of alien insurers, the examination may be so conducted
 1057 in the insurer's offices and places in the United States, except
 1058 as otherwise required by the department.

1059 (2) Every person being examined or investigated, and its
 1060 officers, attorneys, employees, agents, and representatives,
 1061 shall make freely available to the department or its examiners
 1062 or investigators the accounts, records, documents, files,
 1063 information, assets, and matters in their possession or control
 1064 relating to the subject of the examination or investigation. An

1065 agent who provides other products or services or maintains
 1066 customer information not related to insurance must maintain
 1067 records relating to insurance products and transactions
 1068 separately if necessary to give the department access to such
 1069 records. If records relating to the insurance transactions are
 1070 maintained by an agent on premises owned or operated by a third
 1071 party, the agent and the third party must provide access to the
 1072 records by the department.

1073 (3) If the department finds any accounts or records to be
 1074 inadequate, or inadequately kept or posted, it may employ
 1075 experts to reconstruct, rewrite, post, or balance them at the
 1076 expense of the person being examined if such person has failed
 1077 to maintain, complete, or correct such records or accounting
 1078 after the department has given her or him notice and a
 1079 reasonable opportunity to do so.

1080 (4) If the department deems it necessary to value any
 1081 asset involved in such an examination of an insurer, it may make
 1082 written request of the insurer to designate one or more
 1083 competent appraisers acceptable to the department, who shall
 1084 promptly make an appraisal of the asset and furnish a copy
 1085 thereof to the department. If the insurer fails to designate
 1086 such an appraiser or appraisers within 20 days after the request
 1087 of the department, the department may designate the appraiser or
 1088 appraisers. The reasonable expense of any such appraisal shall
 1089 be a part of the expense of examination, to be borne by the
 1090 insurer.

1091 (5) Neither the department nor any examiner shall remove
 1092 any record, account, document, file, or other property of the

1093 person being examined from the offices of such person except
 1094 with the written consent of such person given in advance of such
 1095 removal or pursuant to an order of court duly obtained.

1096 (6) Any individual who willfully obstructs the department
 1097 or the examiner in the examinations or investigations authorized
 1098 by this part is guilty of a misdemeanor and upon conviction
 1099 shall be punished as provided in s. 624.15.

1100 (7) The department or its examiners or investigators may
 1101 electronically scan accounts, records, documents, files, and
 1102 information, relating to the subject of the examination or
 1103 investigation, in the possession or control of the person being
 1104 examined or investigated.

1105 637.1022 Examination and investigation reports.—

1106 (1) The department or its examiner shall make a full and
 1107 true written report of each examination. The examination report
 1108 shall contain only information obtained from examination of the
 1109 records, accounts, files, and documents of or relative to the
 1110 insurer examined or from testimony of individuals under oath,
 1111 together with relevant conclusions and recommendations of the
 1112 examiner based thereon. The department shall furnish a copy of
 1113 the examination report to the insurer examined not less than 30
 1114 days prior to filing the examination report in its office. If
 1115 such insurer so requests in writing within such 30-day period,
 1116 the department shall grant a hearing with respect to the
 1117 examination report and shall not so file the examination report
 1118 until after the hearing and after such modifications have been
 1119 made therein as the department deems proper.

1120 (2) The examination report when so filed shall be

1121 admissible in evidence in any action or proceeding brought by
1122 the department against the person examined, or against its
1123 officers, employees, or agents. In all other proceedings, the
1124 admissibility of the examination report is governed by the
1125 evidence code. The department or its examiners may at any time
1126 testify and offer other proper evidence as to information
1127 secured or matters discovered during the course of an
1128 examination, whether or not a written report of the examination
1129 has been either made, furnished, or filed with the department.

1130 (3) After the examination report has been filed pursuant
1131 to subsection (1), the department may publish the results of any
1132 such examination in one or more newspapers published in this
1133 state whenever it deems it to be in the public interest.

1134 (4) After the examination report of an insurer has been
1135 filed pursuant to subsection (1), an affidavit shall be filed
1136 with the department, not more than 30 days after the report has
1137 been filed, on a form furnished by the department and signed by
1138 the officer of the company in charge of the insurer's business
1139 in this state, stating that she or he has read the report and
1140 that the recommendations made in the report will be considered
1141 within a reasonable time.

1142 637.1023 Examination expenses.—

1143 (1) Each insurer so examined shall pay to the department
1144 the expenses of the examination at the rates adopted by the
1145 department. Such expenses shall include actual travel expenses,
1146 reasonable living expense allowance, compensation of the
1147 examiner or other person making the examination, and necessary
1148 attendant administrative costs of the department directly

1149 related to the examination. Such travel expense and living
1150 expense allowance shall be limited to those expenses necessarily
1151 incurred on account of the examination and shall be paid by the
1152 examined insurer together with compensation upon presentation by
1153 the department to such insurer of a detailed account of such
1154 charges and expenses after a detailed statement has been filed
1155 by the examiner and approved by the department.

1156 (2) All moneys collected from insurers for examinations
1157 shall be deposited into the Title Insurance Regulatory Trust
1158 Fund, and the department may make deposits from time to time
1159 into such fund from moneys appropriated for the operation of the
1160 department.

1161 (3) Notwithstanding the provisions of s. 112.061, the
1162 department may pay to the examiner or person making the
1163 examination out of such trust fund the actual travel expenses,
1164 reasonable living expense allowance, and compensation in
1165 accordance with the statement filed with the department by the
1166 examiner or other person, as provided in subsection (1) upon
1167 approval by the department.

1168 (4) When not examining an insurer, the travel expenses,
1169 per diem, and compensation for the examiners and other persons
1170 employed to make examinations, if approved, shall be paid out of
1171 moneys budgeted for such purpose as regular employees,
1172 reimbursements for such travel expenses and per diem to be at
1173 rates no more than as provided in s. 112.061.

1174 (5) The department may pay to regular insurance examiners,
1175 not residents of Leon County, Florida, per diem for periods not
1176 exceeding 30 days for each such examiner while at the Department

1177 of Financial Services in Tallahassee, Florida, for the purpose
 1178 of auditing insurers' annual statements. Such expenses shall be
 1179 paid out of moneys budgeted for such purpose, as for regular
 1180 employees at rates provided in s. 112.061.

1181 (6) The provisions of this section shall apply to rate
 1182 analysts and rate examiners in the discharge of their duties
 1183 under s. 637.1018.

1184 637.1024 Witnesses and evidence.—

1185 (1) As to any examination, investigation, or hearing being
 1186 conducted under this chapter, a person designated by the
 1187 department:

1188 (a) May administer oaths, examine and cross-examine
 1189 witnesses, receive oral and documentary evidence.

1190 (b) May subpoena witnesses, compel their attendance and
 1191 testimony, and require by subpoena the production of books,
 1192 papers, records, files, correspondence, documents, or other
 1193 evidence which is relevant to the inquiry.

1194 (2) If any person refuses to comply with any such subpoena
 1195 or to testify as to any matter concerning which she or he may be
 1196 lawfully interrogated, the Circuit Court of Leon County or of
 1197 the county wherein such examination, investigation, or hearing
 1198 is being conducted, or of the county wherein such person
 1199 resides, may, on the application of the department, issue an
 1200 order requiring such person to comply with the subpoena and to
 1201 testify.

1202 (3) Subpoenas shall be served, and proof of such service
 1203 made, in the same manner as if issued by a circuit court.

1204 Witness fees, cost, and reasonable travel expenses, if claimed,

1205 shall be allowed the same as for testimony in a circuit court.
 1206 637.1025 Testimony compelled; immunity from prosecution.-
 1207 (1) If any natural person asks to be excused from
 1208 attending or testifying or from producing any books, papers,
 1209 records, contracts, documents, or other evidence in connection
 1210 with any examination, hearing, or investigation being conducted
 1211 by the department or its examiner, on the ground that the
 1212 testimony or evidence required of her or him may tend to
 1213 incriminate the person or subject her or him to a penalty or
 1214 forfeiture, and shall notwithstanding be directed to give such
 1215 testimony or produce such evidence, the person must, if so
 1216 directed by the department and the Department of Legal Affairs,
 1217 nonetheless comply with such direction; but she or he shall not
 1218 thereafter be prosecuted or subjected to any penalty or
 1219 forfeiture for or on account of any transaction, matter, or
 1220 thing concerning which she or he may have so testified or
 1221 produced evidence; and no testimony so given or evidence
 1222 produced shall be received against the person upon any criminal
 1223 action, investigation, or proceeding. However, no such person so
 1224 testifying shall be exempt from prosecution or punishment for
 1225 any perjury committed by her or him in such testimony, and the
 1226 testimony or evidence so given or produced shall be admissible
 1227 against her or him upon any criminal action, investigation, or
 1228 proceeding concerning such perjury. No license or permit
 1229 conferred or to be conferred to such person shall be refused,
 1230 suspended, or revoked based upon the use of such testimony.
 1231 (2) Any such individual may execute, acknowledge, and file
 1232 with the department, as appropriate, a statement expressly

1233 waiving such immunity or privilege in respect to any
 1234 transaction, matter, or thing specified in such statement; and
 1235 thereupon the testimony of such individual or such evidence in
 1236 relation to such transaction, matter, or thing may be received
 1237 or produced before any judge or justice, court, tribunal, grand
 1238 jury, or otherwise; and, if so received or produced, such
 1239 individual shall not be entitled to any immunity or privileges
 1240 on account of any testimony she or he may so give or evidence so
 1241 produced.

1242 637.1026 Hearings.—The department may hold hearings for
 1243 any purpose within the scope of this chapter deemed to be
 1244 necessary.

1245 637.1027 Authority of Department of Law Enforcement to
 1246 accept fingerprints of, and exchange criminal history records
 1247 with respect to, certain persons.—

1248 (1) The Department of Law Enforcement may accept
 1249 fingerprints of organizers, incorporators, subscribers,
 1250 officers, stockholders, directors, or any other persons
 1251 involved, directly or indirectly, in the organization,
 1252 operation, or management of:

1253 (a) Any insurer or proposed insurer transacting or
 1254 proposing to transact insurance in this state.

1255 (b) Any other entity which is examined or investigated or
 1256 which is eligible to be examined or investigated under the
 1257 provisions of this chapter.

1258 (2) The Department of Law Enforcement may accept
 1259 fingerprints of individuals who apply for a license as a title
 1260 insurance agent, service representative, or managing general

1261 agent or the fingerprints of the majority owner, sole
 1262 proprietor, partners, officers, and directors of a corporation
 1263 or other legal entity that applies for licensure with the
 1264 department under the provisions of this chapter.

1265 (3) The Department of Law Enforcement may, to the extent
 1266 provided for by federal law, exchange state, multistate, and
 1267 federal criminal history records with the department for the
 1268 purpose of the issuance, denial, suspension, or revocation of a
 1269 certificate of authority, certification, or license to operate
 1270 in this state.

1271 (4) The Department of Law Enforcement may accept
 1272 fingerprints of any other person required by statute or rule to
 1273 submit fingerprints to the department or any applicant or
 1274 licensee regulated by the department who is required to
 1275 demonstrate that he or she has not been convicted of or pled
 1276 guilty or nolo contendere to a felony or a misdemeanor.

1277 (5) The Department of Law Enforcement shall, upon receipt
 1278 of fingerprints from the department, submit the fingerprints to
 1279 the Federal Bureau of Investigation to check federal criminal
 1280 history records.

1281 (6) Statewide criminal records obtained through the
 1282 Department of Law Enforcement, federal criminal records obtained
 1283 through the Federal Bureau of Investigation, and local criminal
 1284 records obtained through local law enforcement agencies shall be
 1285 used by the department for the purpose of issuance, denial,
 1286 suspension, or revocation of certificates of authority,
 1287 certifications, or licenses issued to operate in this state.

1288 637.1029 Declaration of purpose.—The purpose of ss.

1289 637.1029-637.1049 is to regulate trade practices relating to the
 1290 business of title insurance in accordance with the intent of
 1291 Congress as expressed in the Act of Congress of March 9, 1945
 1292 (Pub. L. No. 15, 79th Congress), by defining, or providing for
 1293 the determination of, all such practices in this state which
 1294 constitute unfair methods of competition or unfair or deceptive
 1295 acts or practices and by prohibiting the trade practices so
 1296 defined or determined.

1297 637.1031 Definitions.—When used in ss. 637.1029-637.1049,
 1298 the term "insurance policy" or "insurance contract" means a
 1299 written contract of, or a written agreement for or effecting,
 1300 insurance, or the certificate thereof, by whatever name called,
 1301 and includes all clauses, riders, endorsements, and papers which
 1302 are a part thereof.

1303 637.1032 Unfair methods of competition and unfair or
 1304 deceptive acts or practices prohibited; penalties.—

1305 (1) A person may not engage in this state in any trade
 1306 practice which is defined in ss. 637.1029-637.1049 as, or
 1307 determined pursuant to s. 637.1029 or s. 637.1035 to be, an
 1308 unfair method of competition or an unfair or deceptive act or
 1309 practice involving the business of insurance.

1310 (2) Any person who violates any provision of ss. 637.1029-
 1311 637.1049 shall be subject to a fine in an amount not greater
 1312 than \$2,500 for each nonwillful violation and not greater than
 1313 \$20,000 for each willful violation. Fines under this subsection
 1314 may not exceed an aggregate amount of \$10,000 for all nonwillful
 1315 violations arising out of the same action or an aggregate amount
 1316 of \$100,000 for all willful violations arising out of the same

1317 action. The fines authorized by this subsection may be imposed
1318 in addition to any other applicable penalty.

1319 637.1033 Unfair methods of competition and unfair or
1320 deceptive acts or practices defined.—The following are defined
1321 as unfair methods of competition and unfair or deceptive acts or
1322 practices:

1323 (1) Misrepresentations and false advertising of insurance
1324 policies.—Knowingly making, issuing, circulating, or causing to
1325 be made, issued, or circulated, any estimate, illustration,
1326 circular, statement, sales presentation, omission, or comparison
1327 which:

1328 (a) Misrepresents the benefits, advantages, conditions, or
1329 terms of any insurance policy.

1330 (b) Uses any name or title of any insurance policy or
1331 class of insurance policies misrepresenting the true nature
1332 thereof.

1333 (c) Is a misrepresentation for the purpose of inducing, or
1334 tending to induce, the lapse, forfeiture, exchange, conversion,
1335 or surrender of any insurance policy.

1336 (2) False information and advertising generally.—Knowingly
1337 making, publishing, disseminating, circulating, or placing
1338 before the public, or causing, directly or indirectly, to be
1339 made, published, disseminated, circulated, or placed before the
1340 public:

1341 (a) In a newspaper, magazine, or other publication,

1342 (b) In the form of a notice, circular, pamphlet, letter,
1343 or poster,

1344 (c) Over any radio or television station, or

1345 (d) In any other way,
 1346
 1347 an advertisement, announcement, or statement containing any
 1348 assertion, representation, or statement with respect to the
 1349 business of insurance, which is untrue, deceptive, or
 1350 misleading.
 1351 (3) Defamation.—Knowingly making, publishing,
 1352 disseminating, or circulating, directly or indirectly, or
 1353 aiding, abetting, or encouraging the making, publishing,
 1354 disseminating, or circulating of, any oral or written statement,
 1355 or any pamphlet, circular, article, or literature, which is
 1356 false or maliciously critical of, or derogatory to, any person
 1357 and which is calculated to injure such person.
 1358 (4) Boycott, coercion, and intimidation.—Entering into any
 1359 agreement to commit, or by any concerted action committing, any
 1360 act of boycott, coercion, or intimidation resulting in, or
 1361 tending to result in, unreasonable restraint of, or monopoly in,
 1362 the business of insurance.
 1363 (5) False statements and entries.—
 1364 (a) Knowingly:
 1365 1. Filing with any supervisory or other public official,
 1366 2. Making, publishing, disseminating, circulating,
 1367 3. Delivering to any person,
 1368 4. Placing before the public,
 1369 5. Causing, directly or indirectly, to be made, published,
 1370 disseminated, circulated, delivered to any person, or placed
 1371 before the public,
 1372

1373 any false material statement.

1374 (b) Knowingly making any false entry of a material fact in
 1375 any book, report, or statement of any person, or knowingly
 1376 omitting to make a true entry of any material fact pertaining to
 1377 the business of such person in any book, report, or statement of
 1378 such person.

1379 (6) Unlawful rebates.-

1380 (a) Except as otherwise expressly provided by law, or in
 1381 an applicable filing with the department, knowingly:

1382 1. Permitting, or offering to make, or making, any
 1383 contract or agreement as to such contract other than as plainly
 1384 expressed in the insurance contract issued thereon; or

1385 2. Paying, allowing, or giving, or offering to pay, allow,
 1386 or give, directly or indirectly, as inducement to such insurance
 1387 contract, any unlawful rebate of premiums payable on the
 1388 contract, any special favor or advantage in the dividends or
 1389 other benefits thereon, or any valuable consideration or
 1390 inducement whatever not specified in the contract.

1391 (b)1. A title insurer, or any member, employee, attorney,
 1392 agent, or agency thereof, may not pay, allow, or give, or offer
 1393 to pay, allow, or give, directly or indirectly, as inducement to
 1394 title insurance, or after such insurance has been effected, any
 1395 rebate or abatement of the premium or any other charge or fee,
 1396 or provide any special favor or advantage, or any monetary
 1397 consideration or inducement whatever.

1398 2. Nothing in this paragraph shall be construed as
 1399 prohibiting the payment of fees to attorneys at law duly
 1400 licensed to practice law in the courts of this state, for

1401 professional services, or as prohibiting the payment of earned
 1402 portions of the premium to duly appointed agents or agencies who
 1403 actually perform services for the title insurer. Nothing in this
 1404 paragraph shall be construed as prohibiting a rebate or
 1405 abatement of an attorney's fee charged for professional services
 1406 or any other closing charge or fee to the person responsible for
 1407 paying the closing charge or fee.

1408 3. An insured named in a policy, or any other person
 1409 directly or indirectly connected with the transaction involving
 1410 the issuance of such policy, including, but not limited to, any
 1411 mortgage broker, real estate licensee, builder, or attorney, any
 1412 employee, agent, agency, or representative thereof, or any other
 1413 person whatsoever, may not knowingly receive or accept, directly
 1414 or indirectly, any rebate or abatement of any portion of the
 1415 title insurance premium or of any other charge or fee or any
 1416 monetary consideration or inducement whatsoever, except as set
 1417 forth in subparagraph 2. In no event shall any portion of the
 1418 attorney's fee, any closing charge or fee, or any other monetary
 1419 consideration or inducement be paid directly or indirectly for
 1420 the referral of title insurance business.

1421 (7) Unfair claim settlement practices.—

1422 (a) Attempting to settle claims on the basis of any
 1423 material document which was altered without notice to, or
 1424 knowledge or consent of, the insured;

1425 (b) A material misrepresentation made to an insured or any
 1426 other person having an interest in the proceeds payable under
 1427 such contract or policy, for the purpose and with the intent of
 1428 effecting settlement of such claims, loss, or damage under such

1429 contract or policy on less favorable terms than those provided
 1430 in, and contemplated by, such contract or policy; or
 1431 (c) Committing or performing with such frequency as to
 1432 indicate a general business practice any of the following:
 1433 1. Failing to adopt and implement standards for the proper
 1434 investigation of claims;
 1435 2. Misrepresenting pertinent facts or insurance policy
 1436 provisions relating to coverages at issue;
 1437 3. Failing to acknowledge and act promptly upon
 1438 communications with respect to claims;
 1439 4. Denying claims without conducting reasonable
 1440 investigations based upon available information;
 1441 5. Failing to affirm or deny full or partial coverage of
 1442 claims, and, as to partial coverage, the dollar amount or extent
 1443 of coverage, or failing to provide a written statement that the
 1444 claim is being investigated, upon the written request of the
 1445 insured within 30 days after proof-of-loss statements have been
 1446 completed;
 1447 6. Failing to promptly provide a reasonable explanation in
 1448 writing to the insured of the basis in the insurance policy, in
 1449 relation to the facts or applicable law, for denial of a claim
 1450 or for the offer of a compromise settlement;
 1451 7. Failing to promptly notify the insured of any
 1452 additional information necessary for the processing of a claim;
 1453 or
 1454 8. Failing to clearly explain the nature of the requested
 1455 information and the reasons why such information is necessary.
 1456 (8) Failure to maintain complaint-handling procedures.—

1457 Failure of any person to maintain a complete record of all the
1458 complaints received since the date of the last examination. For
1459 purposes of this subsection, the term "complaint" means any
1460 written communication primarily expressing a grievance.

1461 (9) Misrepresentation in insurance applications.—Knowingly
1462 making a false or fraudulent written or oral statement or
1463 representation on, or relative to, an application or negotiation
1464 for an insurance policy for the purpose of obtaining a fee,
1465 commission, money, or other benefit from any insurer, agent,
1466 broker, or individual.

1467 (10) Advertising gifts permitted.—No provision of
1468 subsection (6) or subsection (7) shall be deemed to prohibit a
1469 licensed insurer or its agent from giving to insureds,
1470 prospective insureds, and others, for the purpose of
1471 advertising, any article of merchandise having a value of not
1472 more than \$25.

1473 (11) Illegal dealings in premiums; excess or reduced
1474 charges for insurance.—

1475 (a) Knowingly collecting any sum as a premium or charge
1476 for insurance, which is not then provided, or is not in due
1477 course to be provided, subject to acceptance of the risk by the
1478 insurer, by an insurance policy issued by an insurer as
1479 permitted by this chapter.

1480 (b) Knowingly collecting as a premium or charge for
1481 insurance any sum in excess of or less than the premium or
1482 charge applicable to such insurance, in accordance with the
1483 applicable classifications and rates as filed with and approved
1484 by the department, and as specified in the policy; or, in cases

1485 when classifications, premiums, or rates are not required by
 1486 this chapter to be so filed and approved, premiums and charges
 1487 collected from a resident of this state in excess of or less
 1488 than those specified in the policy and as fixed by the insurer.

1489 (12) Interlocking ownership and management.—

1490 (a) Any domestic insurer may retain, invest in, or acquire
 1491 the whole or any part of the capital stock of any other insurer
 1492 or insurers, or have a common management with any other insurer
 1493 or insurers, unless such retention, investment, acquisition, or
 1494 common management is inconsistent with any other provision of
 1495 this chapter, or unless by reason thereof the business of such
 1496 insurers with the public is conducted in a manner which
 1497 substantially lessens competition generally in the insurance
 1498 business.

1499 (b) Any person otherwise qualified may be a director of
 1500 two or more domestic insurers which are competitors, unless the
 1501 effect thereof is substantially to lessen competition between
 1502 insurers generally or materially tend to create a monopoly.

1503 (c) Any limitation contained in this subsection does not
 1504 apply to any person who is a director of two or more insurers
 1505 under common control or management.

1506 (13) Soliciting or accepting new or renewal insurance
 1507 risks by insolvent or impaired insurer prohibited; penalty.—

1508 (a) Whether or not delinquency proceedings as to the
 1509 insurer have been or are to be initiated, but while such
 1510 insolvency or impairment exists, a director or officer of an
 1511 insurer, except with the written permission of the department,
 1512 may not authorize or permit the insurer to solicit or accept new

1513 or renewal insurance risks in this state after such director or
 1514 officer knew, or reasonably should have known, that the insurer
 1515 was insolvent or impaired. The term "impaired" includes
 1516 impairment of capital or surplus, as defined in s. 631.011(12)
 1517 and (13).

1518 (b) Any such director or officer, upon conviction of a
 1519 violation of this subsection, is guilty of a felony of the third
 1520 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1521 775.084.

1522 (14) Refusal to insure.—In addition to other provisions of
 1523 this chapter, the refusal to insure, or continue to insure, any
 1524 individual or risk solely because of:

1525 (a) Race, color, creed, marital status, sex, or national
 1526 origin;

1527 (b) The residence, age, or lawful occupation of the
 1528 individual or the location of the risk, unless there is a
 1529 reasonable relationship between the residence, age, or lawful
 1530 occupation of the individual or the location of the risk and the
 1531 coverage issued or to be issued; or

1532 (c) The insured's or applicant's failure to agree to place
 1533 collateral business with any insurer.

1534 (15) Sliding.—Sliding is the act or practice of:

1535 (a) Representing to the applicant that a specific
 1536 ancillary coverage or product is required by law in conjunction
 1537 with the purchase of insurance when such coverage or product is
 1538 not required;

1539 (b) Representing to the applicant that a specific
 1540 ancillary coverage or product is included in the policy applied

1541 for without an additional charge when such charge is required;
 1542 or

1543 (c) Charging an applicant for a specific ancillary
 1544 coverage or product, in addition to the cost of the insurance
 1545 coverage applied for, without the informed consent of the
 1546 applicant.

1547 637.10335 Civil remedies against title insurers.-

1548 (1) (a) Any person may bring a civil action against a title
 1549 insurer when such person is damaged:

1550 1. By a violation by the insurer of s. 637.1033(7), (11),
 1551 or (14); or

1552 2. By the commission of any of the following acts by the
 1553 insurer:

1554 a. Not attempting in good faith to settle claims when,
 1555 under all the circumstances, it could and should have done so
 1556 had it acted fairly and honestly toward its insured and with
 1557 due regard for her or his interests;

1558 b. Making claims payments to insureds or beneficiaries not
 1559 accompanied by a statement setting forth the coverage under
 1560 which payments are being made; or

1561 c. Except as to liability coverages, failing to promptly
 1562 settle claims, when the obligation to settle a claim has become
 1563 reasonably clear, under one portion of the insurance policy
 1564 coverage in order to influence settlements under other portions
 1565 of the insurance policy coverage.

1566 (b) Notwithstanding paragraph (a), a person pursuing a
 1567 remedy under this section need not prove that such act was
 1568 committed or performed with such frequency as to indicate a

1569 general business practice.

1570 (2) Any party may bring a civil action against an
 1571 unauthorized insurer if such party is damaged by a violation of
 1572 s. 637.1033 by the unauthorized insurer.

1573 (3) (a) As a condition precedent to bringing an action
 1574 under this section, the department and the authorized insurer
 1575 must have been given 60 days' written notice of the violation.
 1576 If the department returns a notice for lack of specificity, the
 1577 60-day time period shall not begin until a proper notice is
 1578 filed.

1579 (b) The notice shall be on a form provided by the
 1580 department and shall state with specificity the following
 1581 information, and such other information as the department may
 1582 require:

1583 1. The statutory provision, including the specific
 1584 language of the statute, which the authorized insurer allegedly
 1585 violated.

1586 2. The facts and circumstances giving rise to the
 1587 violation.

1588 3. The name of any individual involved in the violation.

1589 4. A reference to specific policy language that is
 1590 relevant to the violation, if any. If the person bringing the
 1591 civil action is a third-party claimant, she or he shall not be
 1592 required to reference the specific policy language if the
 1593 authorized insurer has not provided a copy of the policy to the
 1594 third-party claimant pursuant to written request.

1595 5. A statement that the notice is given in order to
 1596 perfect the right to pursue the civil remedy authorized by this

1597 section.

1598 (c) Within 20 days after receipt of the notice, the
 1599 department may return any notice that does not provide the
 1600 specific information required by this section, and the
 1601 department shall indicate the specific deficiencies contained in
 1602 the notice. A determination by the department to return a
 1603 notice for lack of specificity shall be exempt from the
 1604 requirements of chapter 120.

1605 (d) An action may not lie if, within 60 days after filing
 1606 notice, the damages are paid or the circumstances giving rise to
 1607 the violation are corrected.

1608 (e) The authorized insurer that is the recipient of a
 1609 notice filed pursuant to this section shall report to the
 1610 department on the disposition of the alleged violation.

1611 (f) The applicable statute of limitations for an action
 1612 under this section shall be tolled for a period of 65 days by
 1613 the mailing of the notice required by this subsection or the
 1614 mailing of a subsequent notice required by this subsection.

1615 (4) Upon adverse adjudication at trial or upon appeal,
 1616 the authorized insurer shall be liable for damages, together
 1617 with court costs and reasonable attorney's fees incurred by the
 1618 plaintiff.

1619 (5) (a) Punitive damages may not be awarded under this
 1620 section unless the acts giving rise to the violation occur with
 1621 such frequency as to indicate a general business practice and
 1622 these acts are:

- 1623 1. Willful, wanton, and malicious; or
- 1624 2. In reckless disregard for the rights of any insured.

1625 (b) Any person who pursues a claim under this subsection
 1626 shall post in advance the costs of discovery. Such costs shall
 1627 be awarded to the authorized insurer if no punitive damages are
 1628 awarded to the plaintiff.

1629 (6) The civil remedy specified in this section does not
 1630 preempt any other remedy or cause of action provided pursuant
 1631 to any other statute or pursuant to the common law of this
 1632 state. Any person may obtain a judgment under the common-law
 1633 remedy of bad faith or the remedy provided under this section
 1634 but is not entitled to a judgment under both remedies. This
 1635 section shall not be construed to create a common-law cause of
 1636 action. The damages recoverable pursuant to this section shall
 1637 include those damages that are a reasonably foreseeable result
 1638 of a specified violation of this section by the authorized
 1639 insurer and may include an award or judgment in an amount
 1640 that exceeds the policy limits.

1641 637.1034 Favored title insurance agent or title insurer;
 1642 coercion of debtors.—

1643 (1) A person may not:

1644 (a) Require, as a condition precedent or condition
 1645 subsequent to the lending of money or extension of credit or any
 1646 renewal thereof, that the person to whom such money or credit is
 1647 extended, or whose obligation the creditor is to acquire or
 1648 finance, negotiate any policy or contract of insurance through a
 1649 particular insurer or group of insurers or agent or broker or
 1650 group of agents or brokers.

1651 (b) Reject an insurance policy solely because the policy
 1652 has been issued or underwritten by any person who is not

1653 associated with a financial institution, or with any subsidiary
1654 or affiliate thereof, when such insurance is required in
1655 connection with a loan or extension of credit; or unreasonably
1656 disapprove the insurance policy provided by a borrower for the
1657 protection of the property securing the credit or lien. For
1658 purposes of this paragraph, such disapproval shall be deemed
1659 unreasonable if it is not based solely on reasonable standards,
1660 uniformly applied, relating to the extent of coverage required
1661 by such lender or person extending credit and the financial
1662 soundness and the services of an insurer. Such standards shall
1663 not discriminate against any particular type of insurer, nor
1664 shall such standards call for the disapproval of an insurance
1665 policy because such policy contains coverage in addition to that
1666 required.

1667 (c) Require, directly or indirectly, that any borrower,
1668 mortgagor, purchaser, insurer, broker, or agent pay a separate
1669 charge in connection with the handling of any insurance policy
1670 that is required in connection with a loan or other extension of
1671 credit or the provision of another traditional banking product,
1672 or pay a separate charge to substitute the insurance policy of
1673 one insurer for that of another, unless such charge would be
1674 required if the person were providing the insurance. This
1675 paragraph does not include the interest which may be charged on
1676 premium loans or premium advances in accordance with the
1677 security instrument.

1678 (d) Use or provide to others insurance information
1679 required to be disclosed by a customer to a financial
1680 institution, or a subsidiary or affiliate thereof, in connection

1681 with the extension of credit for the purpose of soliciting the
1682 sale of insurance, unless the customer has given express written
1683 consent or has been given the opportunity to object to such use
1684 of the information. Insurance information means information
1685 concerning premiums, terms, and conditions of insurance
1686 coverage, insurance claims, and insurance history provided by
1687 the customer. The opportunity to object to the use of insurance
1688 information must be in writing and must be clearly and
1689 conspicuously made.

1690 (2) (a) Any person offering the sale of insurance at the
1691 time of and in connection with an extension of credit or the
1692 sale or lease of goods or services shall disclose in writing
1693 that the choice of an insurance provider will not affect the
1694 decision regarding the extension of credit or sale or lease of
1695 goods or services, except that reasonable requirements may be
1696 imposed pursuant to subsection (1).

1697 (b) Federally insured or state-insured depository
1698 institutions and credit unions shall make clear and conspicuous
1699 disclosure in writing prior to the sale of any insurance policy
1700 that such policy is not a deposit, is not insured by the Federal
1701 Deposit Insurance Corporation or any other entity, is not
1702 guaranteed by the insured depository institution or any person
1703 soliciting the purchase of or selling the policy; that the
1704 financial institution is not obligated to provide benefits under
1705 the insurance contract; and, where appropriate, that the policy
1706 involves investment risk, including potential loss of principal.

1707 (c) All documents constituting policies of insurance shall
1708 be separate and shall not be combined with or be a part of other

1709 documents. A person may not include the expense of insurance
1710 premiums in a primary credit transaction without the express
1711 written consent of the customer.

1712 (d) A loan officer of a financial institution who is
1713 involved in the application, solicitation, or closing of a loan
1714 transaction may not solicit or sell insurance in connection with
1715 the same loan, but such loan officer may refer the loan customer
1716 to another insurance agent who is not involved in the
1717 application, solicitation, or closing of the same loan
1718 transaction. This paragraph does not apply to an agent located
1719 on premises having only a single person with lending authority,
1720 or to a broker or dealer registered under the Federal Securities
1721 Exchange Act of 1934 in connection with a margin loan secured by
1722 securities.

1723 (3) A person may not make an extension of credit or the
1724 sale of any product or service that is the equivalent to an
1725 extension of credit or lease or sale of property of any kind, or
1726 furnish any services or fix or vary the consideration for any of
1727 the foregoing, on the condition or requirement that the customer
1728 obtain insurance from that person, or a subsidiary or affiliate
1729 of that person, or a particular insurer, agent, or broker;
1730 however, this subsection does not prohibit any person from
1731 engaging in any activity that if done by a financial institution
1732 would not violate s. 106 of the Bank Holding Company Act
1733 Amendments of 1970, 12 U.S.C. s. 1972, as interpreted by the
1734 Board of Governors of the Federal Reserve System.

1735 (4) The department may investigate the affairs of any
1736 person to whom this section applies to determine whether such

1737 person has violated this section. If a violation of this section
 1738 is found to have been committed knowingly, the person in
 1739 violation shall be subject to the same procedures and penalties
 1740 as provided in ss. 637.1036, 637.1037, 637.1038 and 637.1039.

1741 637.1035 Power of department.—The department may examine
 1742 and investigate the affairs of every person involved in the
 1743 business of insurance in this state in order to determine
 1744 whether such person has been or is engaged in any unfair method
 1745 of competition or in any unfair or deceptive act or practice
 1746 prohibited by s. 637.1032, and shall each have the powers and
 1747 duties specified in ss. 637.1036–637.1039 in connection
 1748 therewith.

1749 637.1036 Defined practices; hearings, witnesses,
 1750 appearances, production of books and service of process.—

1751 (1) Whenever the department has reason to believe that any
 1752 person has engaged, or is engaging, in this state in any unfair
 1753 method of competition or any unfair or deceptive act or practice
 1754 as defined in s. 637.1033 or s. 637.1034 or is engaging in the
 1755 business of insurance without being properly licensed as
 1756 required by this chapter and that a proceeding by it in respect
 1757 thereto would be to the interest of the public, it shall conduct
 1758 or cause to have conducted a hearing in accordance with chapter
 1759 120.

1760 (2) The department, a duly empowered hearing officer, or
 1761 an administrative law judge shall, during the conduct of such
 1762 hearing, have those powers enumerated in s. 120.569; however,
 1763 the penalties for failure to comply with a subpoena or with an
 1764 order directing discovery shall be limited to a fine not to

1765 exceed \$1,000 per violation.

1766 (3) Statements of charges, notices, and orders under this
 1767 act may be served by anyone duly authorized by the department,
 1768 in the manner provided by law for service of process in civil
 1769 actions or by certifying and mailing a copy thereof to the
 1770 person affected by such statement, notice, order, or other
 1771 process at his or her or its residence or principal office or
 1772 place of business. The verified return by the person so serving
 1773 such statement, notice, order, or other process, setting forth
 1774 the manner of the service, shall be proof of the same, and the
 1775 return postcard receipt for such statement, notice, order, or
 1776 other process, certified and mailed as aforesaid, shall be proof
 1777 of service of the same.

1778 637.1037 Cease and desist and penalty orders.—After the
 1779 hearing provided in s. 637.1036, the department shall enter a
 1780 final order in accordance with s. 120.569. If it is determined
 1781 that the person charged has engaged in an unfair or deceptive
 1782 act or practice or the unlawful transaction of insurance, the
 1783 department shall also issue an order requiring the violator to
 1784 cease and desist from engaging in such method of competition,
 1785 act, or practice or the unlawful transaction of insurance.
 1786 Further, if the act or practice is a violation of s. 637.1033 or
 1787 s. 637.1034, the department may, at its discretion, order any
 1788 one or more of the following:

1789 (1) Suspension or revocation of the person's certificate
 1790 of authority, license, or eligibility for any certificate of
 1791 authority or license, if he or she knew, or reasonably should
 1792 have known, he or she was in violation of this chapter.

1793 (2) Such other relief as may be provided in this chapter.
 1794 637.1038 Appeals from the department.—Any person subject
 1795 to an order of the department under s. 637.1037 or s. 637.1039
 1796 may obtain a review of such order by filing an appeal therefrom
 1797 in accordance with the provisions and procedures for appeal from
 1798 the orders of the department in general under s. 120.68.

1799 637.1039 Penalty for violation of cease and desist
 1800 orders.—Any person who violates a cease and desist order of the
 1801 department under s. 637.1037 while such order is in effect,
 1802 after notice and hearing as provided in s. 637.1036, shall be
 1803 subject, at the discretion of the department, to any one or more
 1804 of the following:

1805 (1) A monetary penalty of not more than \$50,000 as to all
 1806 matters determined in such hearing.

1807 (2) Suspension or revocation of such person's certificate
 1808 of authority, license, or eligibility to hold such certificate
 1809 of authority or license.

1810 (3) Such other relief as may be provided in this chapter.
 1811 637.1041 Rules.—

1812 (1) The department may, in accordance with chapter 120,
 1813 adopt reasonable rules as are necessary or proper to identify
 1814 specific methods of competition or acts or practices which are
 1815 prohibited by s. 637.1033 or s. 637.1034, but the rules shall
 1816 not enlarge upon or extend the provisions of ss. 637.1033 and
 1817 637.1034.

1818 (2) The department shall, in accordance with chapter 120,
 1819 adopt rules to protect members of the United States Armed Forces
 1820 from dishonest or predatory insurance sales practices by

1821 insurers and insurance agents. The rules shall identify specific
 1822 false, misleading, deceptive, or unfair methods of competition,
 1823 acts, or practices which are prohibited by s. 637.1033 or s.
 1824 637.1034. The rules shall be based upon model rules or model
 1825 laws adopted by the National Association of Insurance
 1826 Commissioners which identify certain insurance practices
 1827 involving the solicitation or sale of insurance and annuities to
 1828 members of the United States Armed Forces which are false,
 1829 misleading, deceptive, or unfair.

1830 637.1042 Provisions of chapter additional to existing
 1831 law.—The powers vested in the department by this chapter shall
 1832 be additional to any other powers to enforce any penalties,
 1833 finances, or forfeitures authorized by law.

1834 637.1043 Civil liability.—The provisions of this chapter
 1835 are cumulative to rights under the general civil and common law,
 1836 and no action of the department, shall abrogate such rights to
 1837 damages or other relief in any court.

1838 637.10435 Policyholders Bill of Rights.—

1839 (1) The principles expressed in the following statements
 1840 shall serve as standards to be followed by the department in
 1841 exercising its powers and duties, in exercising administrative
 1842 discretion, in dispensing administrative interpretations of the
 1843 law, and in adopting rules:

1844 (a) Policyholders have the right to competitive pricing
 1845 practices and marketing methods that enable them to determine
 1846 the best value among comparable policies.

1847 (b) Policyholders have the right to obtain comprehensive
 1848 coverage.

1849 (c) Policyholders have the right to insurance advertising
 1850 and other selling approaches that provide accurate and balanced
 1851 information on the benefits and limitations of a policy.

1852 (d) Policyholders have a right to an insurance company
 1853 that is financially stable.

1854 (e) Policyholders have the right to be serviced by a
 1855 competent, honest insurance agent or broker.

1856 (f) Policyholders have the right to a readable policy.

1857 (g) Policyholders have the right to an insurance company
 1858 that provides an economic delivery of coverage and that tries to
 1859 prevent losses.

1860 (h) Policyholders have the right to a balanced and
 1861 positive regulation by the department.

1862 (2) This section shall not be construed as creating a
 1863 civil cause of action by any individual policyholder against any
 1864 individual insurer.

1865 637.1044 Privacy.—The department shall adopt rules
 1866 consistent with other provisions of this chapter to govern the
 1867 use of a consumer's nonpublic personal financial and health
 1868 information. These rules must be based on, consistent with, and
 1869 not more restrictive than the Privacy of Consumer Financial and
 1870 Health Information Regulation, adopted September 26, 2000, by
 1871 the National Association of Insurance Commissioners. In
 1872 addition, these rules must be consistent with, and not more
 1873 restrictive than, the standards contained in Title V of the
 1874 Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

1875 637.10445 Trade secret documents.—

1876 (1) If any person who is required to submit documents

1877 or other information to the department pursuant to this chapter
1878 or by rule or order of the department claims that such
1879 submission contains a trade secret, such person may file with
1880 the department a notice of trade secret as provided in this
1881 section. Failure to do so constitutes a waiver of any claim by
1882 such person that the document or information is a trade secret.

1883 (a) Each page of such document or specific portion of a
1884 document claimed to be a trade secret must be clearly marked
1885 "trade secret."

1886 (b) All material marked as a trade secret must be
1887 separated from all non-trade secret material and be submitted in
1888 a separate envelope clearly marked "trade secret."

1889 (c) In submitting a notice of trade secret to the
1890 department, the submitting party must include an affidavit
1891 certifying under oath to the truth of the following
1892 statements concerning all documents or information that are
1893 claimed to be trade secrets:

1894 1. [I consider/My company considers] this information a
1895 trade secret that has value and provides an advantage or an
1896 opportunity to obtain an advantage over those who do not know or
1897 use it.

1898 2. [I have/My company has] taken measures to prevent the
1899 disclosure of the information to anyone other than those who
1900 have been selected to have access for limited purposes, and [I
1901 intend/my company intends] to continue to take such measures.

1902 3. The information is not, and has not been, reasonably
1903 obtainable without [my/our] consent by other persons by use of
1904 legitimate means.

1905 4. The information is not publicly available elsewhere.
 1906 (d) Any data submitted by a title insurance agent or title
 1907 insurer pursuant to s. 637.1014 is presumed to be a trade
 1908 secret under this section whether or not so designated.
 1909 (2) If the department receives a public records request for
 1910 a document or information that is marked and certified as a trade
 1911 secret, the department shall promptly notify the person that
 1912 certified the document as a trade secret. The notice shall
 1913 inform such person that he or she or his or her company has 30
 1914 days after receipt of such notice to file an action in circuit
 1915 court seeking a determination whether the document in question
 1916 contains trade secrets and an order barring public disclosure of
 1917 the document. If that person or company files an action within
 1918 30 days after receipt of notice of the public records request,
 1919 the department may not release the documents pending the outcome
 1920 of the legal action. The failure to file an action within 30
 1921 days constitutes a waiver of any claim of confidentiality,
 1922 and the department shall release the document as requested.
 1923 (3) The department may disclose a trade secret, together
 1924 with the claim that it is a trade secret, to an officer or
 1925 employee of another governmental agency whose use of the trade
 1926 secret is within the scope of his or her employment.
 1927 637.1045 Financial institutions conducting title insurance
 1928 transactions.—A financial institution, as defined in s.
 1929 655.005(1)(g), (h), or (p), may conduct title insurance
 1930 transactions only through Florida-licensed title insurance
 1931 agents representing Florida-authorized title insurers.
 1932 637.1046 Investigation by department or Division of

1933 Insurance Fraud; compliance; immunity; confidential information;
 1934 reports to division; division investigator's power of arrest.-

1935 (1) For the purposes of this section, a person commits a
 1936 "fraudulent insurance act" if the person knowingly and with
 1937 intent to defraud presents, causes to be presented, or prepares
 1938 with knowledge or belief that it will be presented, to or by a
 1939 title insurer or any title insurance agent, any written
 1940 statement as part of, or in support of, an application for the
 1941 issuance of, or the rating of, any insurance policy, or a claim
 1942 for payment or other benefit pursuant to any insurance policy,
 1943 which the person knows to contain materially false information
 1944 concerning any fact material thereto or if the person conceals,
 1945 for the purpose of misleading another, information concerning
 1946 any fact material thereto.

1947 (2) If, by its own inquiries or as a result of complaints,
 1948 the department or its Division of Insurance Fraud has reason to
 1949 believe that a person has engaged in, or is engaging in, a
 1950 fraudulent insurance act, an act or practice that violates s.
 1951 637.1033 or s. 817.234, or an act or practice punishable under
 1952 s. 637.1008, it may administer oaths and affirmations, request
 1953 the attendance of witnesses or proffering of matter, and collect
 1954 evidence. The department shall not compel the attendance of any
 1955 person or matter in any such investigation except pursuant to
 1956 subsection (4).

1957 (3) If matter that the department or its division seeks to
 1958 obtain by request is located outside the state, the person so
 1959 requested may make it available to the division or its
 1960 representative to examine the matter at the place where it is

1961 located. The division may designate representatives, including
 1962 officials of the state in which the matter is located, to
 1963 inspect the matter on its behalf, and it may respond to similar
 1964 requests from officials of other states.

1965 (4) (a) The department or the division may request that an
 1966 individual who refuses to comply with any such request be
 1967 ordered by the circuit court to provide the testimony or matter.
 1968 The court shall not order such compliance unless the department
 1969 or the division has demonstrated to the satisfaction of the
 1970 court that the testimony of the witness or the matter under
 1971 request has a direct bearing on the department of a fraudulent
 1972 insurance act, on a violation of s. 637.1033 or s. 817.234, or
 1973 on an act or practice punishable under s. 637.1008 or is
 1974 pertinent and necessary to further such investigation.

1975 (b) Except in a prosecution for perjury, an individual who
 1976 complies with a court order to provide testimony or matter after
 1977 asserting a privilege against self-incrimination to which the
 1978 individual is entitled by law may not be subjected to a criminal
 1979 proceeding or to a civil penalty with respect to the act
 1980 concerning which the individual is required to testify or
 1981 produce relevant matter.

1982 (c) In the absence of fraud or bad faith, a person is not
 1983 subject to civil liability for libel, slander, or any other
 1984 relevant tort by virtue of filing reports, without malice, or
 1985 furnishing other information, without malice, required by this
 1986 section or required by the department or division under the
 1987 authority granted in this section, and no civil cause of action
 1988 of any nature shall arise against such person:

1989 1. For any information relating to suspected fraudulent
 1990 insurance acts or persons suspected of engaging in such acts
 1991 furnished to or received from law enforcement officials, their
 1992 agents, or employees;

1993 2. For any information relating to suspected fraudulent
 1994 insurance acts or persons suspected of engaging in such acts
 1995 furnished to or received from other persons subject to the
 1996 provisions of this chapter;

1997 3. For any such information furnished in reports to the
 1998 department, the division, the National Insurance Crime Bureau,
 1999 the National Association of Insurance Commissioners, or any
 2000 local, state, or federal enforcement officials or their agents
 2001 or employees; or

2002 4. For other actions taken in cooperation with any of the
 2003 agencies or individuals specified in this paragraph in the
 2004 lawful investigation of suspected fraudulent insurance acts.

2005 (d) In addition to the immunity granted in paragraph (c),
 2006 persons identified as designated employees or service providers
 2007 to insurers whose responsibilities include the investigation and
 2008 disposition of claims relating to suspected fraudulent insurance
 2009 acts may share information relating to persons suspected of
 2010 committing fraudulent insurance acts with other designated
 2011 employees employed by the same or other insurers or third-party
 2012 service providers designated by insurers whose responsibilities
 2013 include the investigation and disposition of claims relating to
 2014 fraudulent insurance acts, provided the department has been
 2015 given written notice of the names and job titles of such
 2016 designated employees and service providers prior to such

2017 designated employees and service providers sharing information.
 2018 Unless the designated employees or service providers of the
 2019 insurer act in bad faith or in reckless disregard for the rights
 2020 of any insured, the insurer or its designated employees and
 2021 service providers are not civilly liable for libel, slander, or
 2022 any other relevant tort, and a civil action does not arise
 2023 against the insurer or its designated employees and service
 2024 providers:

2025 1. For any information related to suspected fraudulent
 2026 insurance acts provided to an insurer; or

2027 2. For any information relating to suspected fraudulent
 2028 insurance acts provided to the National Insurance Crime Bureau
 2029 or the National Association of Insurance Commissioners.

2030
 2031 However, the qualified immunity against civil liability
 2032 conferred on any insurer or its designated employees and service
 2033 providers shall be forfeited with respect to the exchange or
 2034 publication of any defamatory information with third persons not
 2035 expressly authorized by this paragraph to share in such
 2036 information.

2037 (e) The Chief Financial Officer and any employee or agent
 2038 of the department, when acting without malice and in the absence
 2039 of fraud or bad faith, is not subject to civil liability for
 2040 libel, slander, or any other relevant tort, and no civil cause
 2041 of action of any nature exists against such person by virtue of
 2042 the execution of official activities or duties of the department
 2043 under this section or by virtue of the publication of any report
 2044 or bulletin related to the official activities or duties of the

2045 department under this section.

2046 (f) This section does not abrogate or modify in any way
 2047 any common-law or statutory privilege or immunity heretofore
 2048 enjoyed by any person.

2049 (5) Any person, other than an insurer, agent, or other
 2050 person licensed under this chapter, or an employee thereof,
 2051 having knowledge or who believes that a fraudulent insurance act
 2052 or any other act or practice which, upon conviction, constitutes
 2053 a felony or a misdemeanor under this chapter, or under s.
 2054 817.234, is being or has been committed may send to the Division
 2055 of Insurance Fraud a report or information pertinent to such
 2056 knowledge or belief and such additional information relative
 2057 thereto as the department may request. Any professional
 2058 practitioner licensed or regulated by the Department of Business
 2059 and Professional Regulation, except as otherwise provided by
 2060 law, any medical review committee as defined in s. 766.101, any
 2061 title insurer, title insurance agent, or other person licensed
 2062 under this chapter, or an employee thereof, having knowledge or
 2063 who believes that a fraudulent insurance act or any other act or
 2064 practice which, upon conviction, constitutes a felony or a
 2065 misdemeanor under this chapter, or under s. 817.234, is being or
 2066 has been committed shall send to the Division of Insurance Fraud
 2067 a report or information pertinent to such knowledge or belief
 2068 and such additional information relative thereto as the
 2069 department may require. The Division of Insurance Fraud shall
 2070 review such information or reports and select such information
 2071 or reports as, in its judgment, may require further
 2072 investigation. It shall then cause an independent examination of

2073 the facts surrounding such information or report to be made to
 2074 determine the extent, if any, to which a fraudulent insurance
 2075 act or any other act or practice which, upon conviction,
 2076 constitutes a felony or a misdemeanor under this chapter, or
 2077 under s. 817.234, is being committed. The Division of Insurance
 2078 Fraud shall report any alleged violations of law which its
 2079 investigations disclose to the appropriate licensing agency and
 2080 state attorney or other prosecuting agency having jurisdiction
 2081 with respect to any such violation, as provided in s. 637.302.
 2082 If prosecution by the state attorney or other prosecuting agency
 2083 having jurisdiction with respect to such violation is not begun
 2084 within 60 days of the division's report, the state attorney or
 2085 other prosecuting agency having jurisdiction with respect to
 2086 such violation shall inform the division of the reasons for the
 2087 lack of prosecution.

2088 (6) Division investigators may make arrests for criminal
 2089 violations established as a result of investigations. Such
 2090 investigators shall also be considered state law enforcement
 2091 officers for all purposes and may execute arrest warrants and
 2092 search warrants; serve subpoenas issued for the examination,
 2093 investigation, and trial of all offenses; and arrest upon
 2094 probable cause without warrant any person found in the act of
 2095 violating any of the provisions of applicable laws.

2096 Investigators empowered to make arrests under this section shall
 2097 be empowered to bear arms in the performance of their duties. In
 2098 such a situation, the investigator must be certified in
 2099 compliance with the provisions of s. 943.1395 or must meet the
 2100 temporary employment or appointment exemption requirements of s.

CS/HB 853

2010

2101 943.131 until certified.

2102 (7) It is unlawful for any person to resist an arrest
 2103 authorized by this section or in any manner to interfere, either
 2104 by abetting or assisting such resistance or otherwise
 2105 interfering, with division investigators in the duties imposed
 2106 upon them by law or department rule.

2107 637.1047 Insurer anti-fraud investigative units; reporting
 2108 requirements; penalties for noncompliance.-

2109 (1) (a) Every insurer admitted to do business in this state
 2110 who in the previous calendar year, at any time during that year,
 2111 had \$10 million or more in direct premiums written shall:

2112 1. Establish and maintain a unit or division within the
 2113 company to investigate possible fraudulent claims by insureds;
 2114 or

2115 2. Contract with others to investigate possible fraudulent
 2116 claims by insureds.

2117 (b) An insurer subject to this subsection shall file with
 2118 the Division of Insurance Fraud of the department on or before
 2119 July 1, 1996, a detailed description of the unit or division
 2120 established pursuant to subparagraph (a)1. or a copy of the
 2121 contract specified by subparagraph (a)2.

2122 (2) Every insurer admitted to do business in this state,
 2123 which in the previous calendar year had less than \$10 million in
 2124 direct premiums written, must adopt an anti-fraud plan and file
 2125 it with the Division of Insurance Fraud of the department on or
 2126 before July 1, 1996. An insurer may, in lieu of adopting and
 2127 filing an anti-fraud plan, comply with the provisions of
 2128 subsection (1).

2129 (3) Each insurers anti-fraud plans shall include:
 2130 (a) A description of the insurer's procedures for
 2131 detecting and investigating possible fraudulent insurance acts.
 2132 (b) A description of the insurer's procedures for the
 2133 mandatory reporting of possible fraudulent insurance acts to the
 2134 Division of Insurance Fraud of the department.
 2135 (c) A description of the insurer's plan for anti-fraud
 2136 education and training of its claims adjusters or other
 2137 personnel.
 2138 (d) A written description or chart outlining the
 2139 organizational arrangement of the insurer's anti-fraud personnel
 2140 who are responsible for the investigation and reporting of
 2141 possible fraudulent insurance acts.
 2142 (4) Any insurer who obtains a certificate of authority
 2143 after July 1, 1995, shall have 18 months in which to comply with
 2144 the requirements of this section.
 2145 (5) For purposes of this section, the term "unit or
 2146 division" includes the assignment of fraud investigation to
 2147 employees whose principal responsibilities are the investigation
 2148 and disposition of claims. If an insurer creates a distinct unit
 2149 or division, hires additional employees, or contracts with
 2150 another entity to fulfill the requirements of this section, the
 2151 additional cost incurred must be included as an administrative
 2152 expense for ratemaking purposes.
 2153 (6) If an insurer fails to timely submit a final
 2154 acceptable anti-fraud plan or anti-fraud investigative unit
 2155 description, fails to implement the provisions of a plan or an
 2156 anti-fraud investigative unit description, or otherwise refuses

2157 to comply with the provisions of this section, the department,
 2158 may:

2159 (a) Impose an administrative fine of not more than \$2,000
 2160 per day for such failure by an insurer to submit an acceptable
 2161 anti-fraud plan or anti-fraud investigative unit description,
 2162 until the department deems the insurer to be in compliance;

2163 (b) Impose an administrative fine for failure by an
 2164 insurer to implement or follow the provisions of an anti-fraud
 2165 plan or anti-fraud investigative unit description; or

2166 (c) Impose the provisions of both paragraphs (a) and (b).

2167 (7) The department may adopt rules to administer this
 2168 section.

2169 637.1048 Anti-Fraud Reward Program; reporting of title
 2170 insurance fraud.—

2171 (1) The Anti-Fraud Reward Program is hereby established
 2172 within the department, to be funded from the Title Insurance
 2173 Regulatory Trust Fund.

2174 (2) The department may pay rewards of up to \$25,000 to
 2175 persons providing information leading to the arrest and
 2176 conviction of persons committing crimes investigated by the
 2177 Division of Insurance Fraud arising from violations of s.
 2178 440.105, s. 637.1008, s. 637.1033, s. 637.1046, or s. 817.234.

2179 (3) Only a single reward amount may be paid by the
 2180 department for claims arising out of the same transaction or
 2181 occurrence, regardless of the number of persons arrested and
 2182 convicted and the number of persons submitting claims for the
 2183 reward. The reward may be disbursed among more than one person
 2184 in amounts determined by the department.

2185 (4) The department shall adopt rules which set forth the
 2186 application and approval process, including the criteria against
 2187 which claims shall be evaluated, the basis for determining
 2188 specific reward amounts, and the manner in which rewards shall
 2189 be disbursed. Applications for rewards authorized by this
 2190 section must be made pursuant to rules established by the
 2191 department.

2192 (5) Determinations by the department to grant or deny a
 2193 reward under this section shall not be considered agency action
 2194 subject to review under s. 120.569 or s. 120.57.

2195 637.1049 Disposition of revenues; criminal or forfeiture
 2196 proceedings.-

2197 (1) The Division of Insurance Fraud of the Department of
 2198 Financial Services may deposit revenues received as a result of
 2199 criminal proceedings or forfeiture proceedings, other than
 2200 revenues deposited into the Department of Financial Services's
 2201 Federal Law Enforcement Trust Fund under s. 17.43, into the
 2202 Title Insurance Regulatory Trust Fund. Moneys deposited pursuant
 2203 to this section shall be separately accounted for and shall be
 2204 used solely for the division to carry out its duties and
 2205 responsibilities.

2206 (2) Moneys deposited into the Title Insurance Regulatory
 2207 Trust Fund pursuant to this section shall be appropriated by the
 2208 Legislature, pursuant to the provisions of chapter 216, for the
 2209 sole purpose of enabling the division to carry out its duties
 2210 and responsibilities.

2211 (3) Notwithstanding the provisions of s. 216.301 and
 2212 pursuant to s. 216.351, any balance of moneys deposited into the

2213 Title Insurance Regulatory Trust Fund pursuant to this section
 2214 remaining at the end of any fiscal year shall remain in the
 2215 trust fund at the end of that year and shall be available for
 2216 carrying out the duties and responsibilities of the division.

2217 Section 3. Part II of chapter 637, Florida Statutes,
 2218 consisting of sections 637.2001, 637.2002, 637.2003, 637.20035,
 2219 637.2004, 637.2005, 637.2006, 637.2007, 637.20073, 637.20075,
 2220 637.2008, 637.2009, 637.2011, 637.2012, 637.2013, 637.2014,
 2221 637.2015, 637.2016, 637.2017, 637.2018, 637.2019, 637.2021,
 2222 637.2022, 637.2023, 637.2024, 637.2025, 637.2026, 637.2027,
 2223 637.2028, 637.2029, 637.2031, 637.2032, 637.2033, 637.2034,
 2224 637.2035, 637.2036, 637.2037, 637.2038, 637.2039, 637.2041,
 2225 637.2042, 637.2043, 637.2046, 637.2047, 637.2048, 637.20485,
 2226 637.2049, 637.20495, 637.2051, 637.2052, 637.2053, 637.2054,
 2227 637.2055, 637.2056, 637.2057, 637.2058, 637.2059, 637.2061,
 2228 637.2063, 637.2064, 637.2065, 637.2066, 637.2067, 637.2068,
 2229 637.2069, 637.2071, 637.2072, 637.2073, 637.2074, 637.2075,
 2230 637.2076, 637.2077, 637.2078, 637.2079, 637.2081, 637.2082,
 2231 637.2083, 637.2084, 637.2085, 637.2086, 637.2087, 637.2088,
 2232 637.2089, and 637.2091, is created and entitled "ADMINISTRATION
 2233 OF TITLE INSURERS."

2234 Section 4. Sections 637.2001, 637.2002, 637.2003,
 2235 637.20035, 637.2004, 637.2005, 637.2006, and 637.2007, Florida
 2236 Statutes, are created to read:

2237 637.2001 Certificate of authority required.—

2238 (1) A person may not act as a title insurer, and a title
 2239 insurer or its agents, attorneys, or representatives may not
 2240 directly or indirectly transact title insurance, in this state

2241 except as authorized by a subsisting certificate of authority
 2242 issued to the title insurer by the department, except as to such
 2243 transactions as are expressly otherwise provided for in this
 2244 chapter.

2245 (2) A title insurer may not, from offices or by personnel
 2246 or facilities located in this state, solicit title insurance
 2247 applications or otherwise transact title insurance in another
 2248 state or country unless it holds a subsisting certificate of
 2249 authority issued to it by the department authorizing it to
 2250 transact the same kind or kinds of title insurance in this
 2251 state.

2252 (3) This state hereby preempts the field of regulating
 2253 title insurers and their agents and representatives; and a
 2254 county, city, municipality, district, school district, or
 2255 political subdivision may not require of any title insurer,
 2256 title insurance agent, or representative regulated under this
 2257 chapter any authorization, permit, or registration of any kind
 2258 for conducting transactions lawful under the authority granted
 2259 by the state under this chapter.

2260 (4) (a) Any person who acts as a title insurer, transacts
 2261 title insurance, or otherwise engages in title insurance
 2262 activities in this state without a certificate of authority in
 2263 violation of this section commits a felony of the third degree,
 2264 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2265 (b) However, any person acting as a title insurer without
 2266 a valid certificate of authority who violates this section
 2267 commits insurance fraud, punishable as provided in this
 2268 paragraph. If the amount of any insurance premium collected with

2269 respect to any violation of this section:

2270 1. Is less than \$20,000, the offender commits a felony of
 2271 the third degree, punishable as provided in s. 775.082, s.
 2272 775.083, or s. 775.084, and the offender shall be sentenced to a
 2273 minimum term of imprisonment of 1 year.

2274 2. Is \$20,000 or more, but less than \$100,000, the
 2275 offender commits a felony of the second degree, punishable as
 2276 provided in s. 775.082, s. 775.083, or s. 775.084, and the
 2277 offender shall be sentenced to a minimum term of imprisonment of
 2278 18 months.

2279 3. Is \$100,000 or more, the offender commits a felony of
 2280 the first degree, punishable as provided in s. 775.082, s.
 2281 775.083, or s. 775.084, and the offender shall be sentenced to a
 2282 minimum term of imprisonment of 2 years.

2283 637.2002 Exceptions, certificate of authority required.—A
 2284 certificate of authority shall not be required of a title
 2285 insurer with respect to:

2286 (1) Investigation, settlement, or litigation of claims
 2287 under its policies lawfully written in this state, or
 2288 liquidation of assets and liabilities of the insurer (other than
 2289 collection of new premiums), all as resulting from its former
 2290 authorized operations in this state.

2291 (2) Transactions involving a policy, subsequent to
 2292 issuance thereof, covering only subjects of insurance not
 2293 resident, located, or expressly to be performed in this state at
 2294 the time of issuance, and lawfully solicited, written, or
 2295 delivered outside this state.

2296 (3) Reinsurance, when transacted as authorized under s.

2297 637.2049.

2298 (4) Investment by a foreign insurer of its funds in real
 2299 estate in this state or in securities secured thereby, if the
 2300 foreign insurer complies with the laws of this state relating
 2301 generally to foreign business corporations.

2302 637.2003 General eligibility of title insurers for
 2303 certificate of authority.—To qualify for and hold authority to
 2304 transact title insurance in this state, a title insurer must be
 2305 otherwise in compliance with this chapter and with its charter
 2306 powers and must be an incorporated stock insurer, an
 2307 incorporated mutual insurer, or a reciprocal insurer, of the
 2308 same general type as may be formed as a domestic insurer under
 2309 this chapter; except that:

2310 (1) A title insurer may not be authorized to transact
 2311 title insurance in this state which does not maintain reserves
 2312 as required by part I of chapter 625 applicable to the kind or
 2313 kinds of insurance transacted by such insurer, wherever
 2314 transacted in the United States, or which transacts insurance in
 2315 the United States on the assessment premium plan, stipulated
 2316 premium plan, cooperative plan, or any similar plan.

2317 (2) A foreign or alien title insurer or exchange may not
 2318 be authorized to transact title insurance in this state unless
 2319 it is otherwise qualified therefor under this chapter and has
 2320 operated satisfactorily for at least 3 years in its state or
 2321 country of domicile; however, the department may waive the 3-
 2322 year requirement if the foreign or alien insurer or exchange:

2323 (a) Has operated successfully and has capital and surplus
 2324 of \$5 million;

2325 (b) Is the wholly owned subsidiary of an insurer which is
 2326 an authorized insurer in this state; or

2327 (c) Is the successor in interest through merger or
 2328 consolidation of an authorized insurer.

2329 (3) (a) The department shall not grant or continue
 2330 authority to transact title insurance in this state as to any
 2331 title insurer the management, officers, or directors of which
 2332 are found by it to be incompetent or untrustworthy; or so
 2333 lacking in insurance company managerial experience as to make
 2334 the proposed operation hazardous to the insurance-buying public;
 2335 or so lacking in insurance experience, ability, and standing as
 2336 to jeopardize the reasonable promise of successful operation; or
 2337 which it has good reason to believe are affiliated directly or
 2338 indirectly through ownership, control, reinsurance transactions,
 2339 or other insurance or business relations, with any person or
 2340 persons whose business operations are or have been marked, to
 2341 the detriment of policyholders or stockholders or investors or
 2342 creditors or of the public, by manipulation of assets, accounts,
 2343 or reinsurance or by bad faith.

2344 (b) The department shall not grant or continue authority
 2345 to transact title insurance in this state as to any title
 2346 insurer if any person, including any subscriber, stockholder, or
 2347 incorporator, who exercises or has the ability to exercise
 2348 effective control of the insurer, or who influences or has the
 2349 ability to influence the transaction of the business of the
 2350 insurer, does not possess the financial standing and business
 2351 experience for the successful operation of the insurer.

2352 (c) The department may deny, suspend, or revoke the

2353 authority to transact title insurance in this state of any title
 2354 insurer if any person, including any subscriber, stockholder, or
 2355 incorporator, who exercises or has the ability to exercise
 2356 effective control of the insurer, or who influences or has the
 2357 ability to influence the transaction of the business of the
 2358 insurer, has been found guilty of, or has pleaded guilty or nolo
 2359 contendere to, any felony or crime punishable by imprisonment of
 2360 1 year or more under the law of the United States or any state
 2361 thereof or under the law of any other country which involves
 2362 moral turpitude, without regard to whether a judgment of
 2363 conviction has been entered by the court having jurisdiction in
 2364 such case. However, in the case of an insurer operating under a
 2365 subsisting certificate of authority, the insurer shall remove
 2366 any such person immediately upon discovery of the conditions set
 2367 forth in this paragraph when applicable to such person or upon
 2368 the order of the department, and the failure to so act by said
 2369 insurer shall be grounds for revocation or suspension of the
 2370 insurer's certificate of authority.

2371 (d) The department may deny, suspend, or revoke the
 2372 authority of a title insurer to transact title insurance in this
 2373 state if any person, including any subscriber, stockholder, or
 2374 incorporator, who exercises or has the ability to exercise
 2375 effective control of the insurer, or who influences or has the
 2376 ability to influence the transaction of the business of the
 2377 insurer, which person the department has good reason to believe
 2378 is now or was in the past affiliated directly or indirectly,
 2379 through ownership interest of 10 percent or more, control, or
 2380 reinsurance transactions, with any business, corporation, or

2381 other entity that has been found guilty of or has pleaded guilty
 2382 or nolo contendere to any felony or crime punishable by
 2383 imprisonment for 1 year or more under the laws of the United
 2384 States, any state, or any other country, regardless of
 2385 adjudication. However, in the case of an insurer operating under
 2386 a subsisting certificate of authority, the insurer shall
 2387 immediately remove such person or immediately notify the
 2388 department of such person upon discovery of the conditions set
 2389 forth in this paragraph, either when applicable to such person
 2390 or upon order of the department; the failure to remove such
 2391 person, provide such notice, or comply with such order
 2392 constitutes grounds for suspension or revocation of the
 2393 insurer's certificate of authority.

2394 (4) (a) An authorized title insurer may not act as a
 2395 fronting company for any unauthorized insurer which is not an
 2396 approved reinsurer.

2397 (b) A "fronting company" is an authorized insurer which by
 2398 reinsurance or otherwise generally transfers more than 50
 2399 percent to one unauthorized insurer which does not meet the
 2400 requirements of s. 637.604(3) (a), (b), or (c), or more than 75
 2401 percent to two or more unauthorized insurers which do not meet
 2402 the requirements of s. 637.604(3) (a), (b), or (c), of the entire
 2403 risk of loss on all of the insurance written by it in this
 2404 state, or on one or more lines of insurance, on all of the
 2405 business produced through one or more agents or agencies, or on
 2406 all of the business from a designated geographical territory,
 2407 without obtaining the prior approval of the department.

2408 (c) The department may, in its discretion, approve a

CS/HB 853

2010

2409 transfer of risk in excess of the limits in paragraph (b) upon
2410 presentation of evidence, satisfactory to the department, that
2411 the transfer would be in the best interests of the financial
2412 condition of the insurer and in the best interests of the
2413 policyholders.

2414 (5) A title insurer may not be authorized to transact
2415 title insurance in this state which, during the 3 years
2416 immediately preceding its application for a certificate of
2417 authority, has violated any of the insurance laws of this state
2418 and after being informed of such violation has failed to correct
2419 the same; except that, if all other requirements are met, the
2420 department may nevertheless issue a certificate of authority to
2421 such an insurer upon the filing by the insurer of a sworn
2422 statement of all such insurance so written in violation of law,
2423 and upon payment to the department of a sum of money as
2424 additional filing fee equivalent to all premium taxes and other
2425 state taxes and fees as would have been payable by the insurer
2426 if such insurance had been lawfully written by an authorized
2427 insurer under the laws of this state. This fee, when collected,
2428 shall be deposited to the credit of the Title Insurance
2429 Regulatory Trust Fund.

2430 (6) Nothing in this chapter shall be deemed to prohibit
2431 the granting and continuance of a certificate of authority to a
2432 domestic title insurer organized as a business trust, if the
2433 declaration of trust of such insurer was filed in the department
2434 of the Secretary of State prior to January 1, 1959, and if the
2435 insurer otherwise meets the applicable requirements of this
2436 chapter. Such an insurer may hereinafter in this chapter be

2437 referred to as a "business trust insurer."

2438 (7) For the purpose of satisfying the requirements of ss.
 2439 637.2004 and 637.2007, the investment portfolio of an insurer
 2440 applying for an initial certificate of authority to do business
 2441 in this state shall value its bonds and stocks in accordance
 2442 with the provisions of the latest edition of the publication
 2443 "Purposes and Procedures Manual of the NAIC Securities Valuation
 2444 Office" by the National Association of Insurance Commissioners,
 2445 July 1, 2002, and subsequent amendments thereto, if the
 2446 valuation methodology remains substantially unchanged.

2447 637.20035 Structure of title insurers.—Except as to
 2448 domestic business trust title insurers as referred to in s.
 2449 637.2003(6) authorized prior to October 1, 2010, a title insurer
 2450 shall be a stock insurer.

2451 637.2004 Capital funds required; new insurers.—

2452 (1) To receive authority to transact title insurance, an
 2453 insurer applying for its original certificate of authority in
 2454 this state after the effective date of this section shall
 2455 possess surplus as to policyholders not less than the greater of
 2456 \$2.5 million or 10 percent of the insurer's total liabilities;
 2457 however, no insurer shall be required under this subsection to
 2458 have surplus as to policyholders greater than \$100 million.

2459 (2) The requirements of this section shall be based upon
 2460 all the kinds of insurance actually transacted or to be
 2461 transacted by the insurer in any and all areas in which it
 2462 operates, whether or not only a portion of such kinds are to be
 2463 transacted in this state.

2464 (3) As to surplus as to policyholders required for

2465 qualification to transact one or more kinds of insurance,
 2466 domestic mutual insurers are governed by chapter 628, and
 2467 domestic reciprocal insurers are governed by chapter 629.

2468 (4) For the purposes of this section, liabilities shall
 2469 not include liabilities required under s. 625.041(4). For
 2470 purposes of computing minimum surplus as to policyholders
 2471 pursuant to s. 625.305(1), liabilities shall include liabilities
 2472 required under s. 625.041(4).

2473 (5) The provisions of this section, as amended by this
 2474 act, shall apply only to insurers applying for a certificate of
 2475 authority on or after the effective date of this act.

2476 637.2005 Restrictions on insurers that are wholly owned
 2477 subsidiaries of insurers to do business in state.—Effective
 2478 December 31, 2010, and notwithstanding any other provision of
 2479 law:

2480 (1) A new certificate of authority for the transaction of
 2481 title insurance may not be issued to any insurer domiciled in
 2482 this state that is a wholly owned subsidiary of an insurer
 2483 authorized to do business in any other state.

2484 (2) The rate filings of any insurer domiciled in this
 2485 state that is a wholly owned subsidiary of an insurer authorized
 2486 to do business in any other state shall include information
 2487 relating to the profits of the parent company of the insurer
 2488 domiciled in this state.

2489 637.2006 Officers and directors of insolvent insurers.—Any
 2490 person who was an officer or director of an insurer doing
 2491 business in this state and who served in that capacity within
 2492 the 2-year period prior to the date the insurer became

2493 insolvent, for any insolvency that occurs on or after July 1,
 2494 2002, may not thereafter serve as an officer or director of an
 2495 insurer authorized in this state unless the officer or director
 2496 demonstrates that his or her personal actions or omissions were
 2497 not a significant contributing cause to the insolvency.

2498 637.2007 Surplus as to policyholders required; new and
 2499 existing insurers.-

2500 (1) To maintain a certificate of authority to transact
 2501 title insurance, an insurer in this state shall at all times
 2502 maintain surplus as to policyholders not less than the greater
 2503 of \$1.5 million or 10 percent of the insurer's total
 2504 liabilities.

2505 (2) For purposes of this section, liabilities shall not
 2506 include liabilities required under s. 625.041(4). For purposes
 2507 of computing minimum surplus as to policyholders pursuant to s.
 2508 625.305(1), liabilities shall include liabilities required under
 2509 s. 625.041(4).

2510 (3) An insurer may not be required under this section to
 2511 have surplus as to policyholders greater than \$100 million.

2512 Section 5. Section 625.330, Florida Statutes, is
 2513 transferred, renumbered as section 627.20073, Florida Statutes,
 2514 and amended to read:

2515 637.20073 ~~625.330~~ Special investments by title insurer.-

2516 (1) In addition to other investments eligible under this
 2517 part, a title insurer may invest and have invested an amount not
 2518 exceeding the greater of \$300,000 or 50 percent of that part of
 2519 its surplus as to policyholders which exceeds the minimum
 2520 surplus required by s. 637.2007 ~~624.408~~ in its abstract plant

2521 and equipment, in loans secured by mortgages on abstract plants
 2522 and equipment, and, with the consent of the office, in stocks of
 2523 abstract companies. If the insurer transacts kinds of insurance
 2524 in addition to title insurance, for the purposes of this section
 2525 its paid-in capital stock shall be prorated between title
 2526 insurance and such other insurances upon the basis of the
 2527 reserves maintained by the insurer for the various kinds of
 2528 insurance; but the capital so assigned to title insurance may
 2529 not shall in any ~~no~~ event be less than \$100,000.

2530 (2) Subsection (1) does not apply to a business trust
 2531 insurer. Such an insurer may invest and have invested not
 2532 exceeding the greater of \$300,000 or 50 percent of its net trust
 2533 fund in excess of the reserve provided for under s. 637.20075
 2534 ~~625.111~~ in abstract plants, stock in abstract companies, or
 2535 corporations controlled by the business trust and created for
 2536 developing and servicing abstract plants.

2537 (3) Investments authorized by this section shall not be
 2538 credited against the insurer's required unearned premium or
 2539 guaranty fund reserve provided for under s. 637.20075 ~~625.111~~.

2540 Section 6. Section 625.111, Florida Statutes, is
 2541 transferred, renumbered as section 637.20075, Florida Statutes,
 2542 and amended to read:

2543 637.20075 ~~625.111~~ Title insurance reserve.—

2544 (1) In addition to an adequate reserve as to outstanding
 2545 losses relating to known claims, as required under s. 625.041, a
 2546 title insurer shall establish, segregate, and maintain a
 2547 guaranty fund or unearned premium reserve as provided in this
 2548 section. The sums required under this section to be reserved for

2549 unearned premiums on title guarantees and policies at all times
 2550 and for all purposes shall be considered and constitute unearned
 2551 portions of the original premiums and shall be charged as a
 2552 reserve liability of such insurer in determining its financial
 2553 condition. While such sums are so reserved, they shall be
 2554 withdrawn from the use of the insurer for its general purposes,
 2555 impressed with a trust in favor of the holders of title
 2556 guarantees and policies, and held available for reinsurance of
 2557 the title guarantees and policies in the event of the insolvency
 2558 of the insurer. Nothing contained in this section precludes
 2559 ~~shall preclude~~ such insurer from investing such reserve in
 2560 investments authorized by law for such an insurer and the income
 2561 from such invested reserve shall be included in the general
 2562 income of the insurer to be used by such insurer for any lawful
 2563 purpose.

2564 (2)~~(1)~~ For unearned premium reserves established on or
 2565 after July 1, 1999, such unearned premium reserve shall consist
 2566 of not less than an amount equal to the sum of:

2567 (a) A reserve with respect to unearned premiums for
 2568 policies written or title liability assumed in reinsurance
 2569 before July 1, 1999, equal to the reserve established on June
 2570 30, 1999, for those unearned premiums with such reserve being
 2571 subsequently released as provided in subsection (3)~~(2)~~. For
 2572 domestic title insurers subject to this section, such amounts
 2573 shall be calculated in accordance with provisions of law of this
 2574 state in effect at the time the associated premiums were written
 2575 or assumed and as amended prior to July 1, 1999.

2576 (b) A total amount equal to 30 cents for each \$1,000 of

2577 net retained liability for policies written or title liability
2578 assumed in reinsurance on or after July 1, 1999, with such
2579 reserve being subsequently released as provided in subsection
2580 (3)~~(2)~~. For the purpose of calculating this reserve, the total
2581 of the net retained liability for all simultaneous issue
2582 policies covering a single risk shall be equal to the liability
2583 for the policy with the highest limit covering that single risk,
2584 net of any liability ceded in reinsurance.

2585 (c) An additional amount, if deemed necessary by a
2586 qualified actuary, which shall be subsequently released as
2587 provided in subsection (3)~~(2)~~. Using financial results as of
2588 December 31 of each year, all domestic title insurers shall
2589 obtain a Statement of Actuarial Opinion from a qualified actuary
2590 regarding the insurer's loss and loss adjustment expense
2591 reserves, including reserves for known claims, adverse
2592 development on known claims, incurred but not reported claims,
2593 and unallocated loss adjustment expenses. The actuarial opinion
2594 shall conform to the annual statement instructions for title
2595 insurers adopted by the National Association of Insurance
2596 Commissioners and shall include the actuary's professional
2597 opinion of the insurer's reserves as of the date of the annual
2598 statement. If the amount of the reserve stated in the opinion
2599 and displayed in Schedule P of the annual statement for that
2600 reporting date is greater than the sum of the known claim
2601 reserve and unearned premium reserve as calculated under this
2602 section, as of the same reporting date and including any
2603 previous actuarial provisions added at earlier dates, the
2604 insurer shall add to the insurer's unearned premium reserve an

2605 actuarial amount equal to the reserve shown in the actuarial
 2606 opinion, minus the known claim reserve and the unearned premium
 2607 reserve, as of the current reporting date and calculated in
 2608 accordance with this section, but in no event calculated as of
 2609 any date prior to December 31, 1999. The comparison shall be
 2610 made using that line on Schedule P displaying the Total Net Loss
 2611 and Loss Adjustment Expense which is comprised of the Known
 2612 Claim Reserve, and any associated Adverse Development Reserve,
 2613 the reserve for Incurred But Not Reported Losses, and
 2614 Unallocated Loss Adjustment Expenses.

2615 (3)~~(2)~~(a) With respect to the reserve established in
 2616 accordance with paragraph (2)~~(1)~~(a), the domestic title insurer
 2617 shall release the reserve over a period of 20 subsequent years
 2618 as provided in this paragraph. The insurer shall release 30
 2619 percent of the initial aggregate sum during 1999, with one
 2620 quarter of that amount being released on March 31, June 30,
 2621 September 30, and December 31, 1999, with the March 31 and June
 2622 30 releases to be retroactive and reflected on the September 30
 2623 financial statements. Thereafter, the insurer shall release, on
 2624 the same quarterly basis as specified for reserves released
 2625 during 1999, a percentage of the initial aggregate sum as
 2626 follows: 15 percent during calendar year 2000, 10 percent during
 2627 each of calendar years 2001 and 2002, 5 percent during each of
 2628 calendar years 2003 and 2004, 3 percent during each of calendar
 2629 years 2005 and 2006, 2 percent during each of calendar years
 2630 2007-2013, and 1 percent during each of calendar years 2014-
 2631 2018.

2632 (b) With respect to reserves established in accordance

CS/HB 853

2010

2633 with paragraph (2)~~(1)~~(b), the unearned premium for policies
2634 written or title liability assumed during a particular calendar
2635 year shall be earned, and released from reserve, over a period
2636 of 20 subsequent years as provided in this paragraph. The
2637 insurer shall release 30 percent of the initial sum during the
2638 year next succeeding the year the premium was written or
2639 assumed, with one quarter of that amount being released on March
2640 31, June 30, September 30, and December 31 of such year.
2641 Thereafter, the insurer shall release, on the same quarterly
2642 basis as specified for reserves released during the year first
2643 succeeding the year the premium was written or assumed, a
2644 percentage of the initial sum as follows: 15 percent during the
2645 next succeeding year, 10 percent during each of the next
2646 succeeding 2 years, 5 percent during each of the next succeeding
2647 2 years, 3 percent during each of the next succeeding 2 years, 2
2648 percent during each of the next succeeding 7 years, and 1
2649 percent during each of the next succeeding 5 years.

2650 (c) With respect to reserves established in accordance
2651 with paragraph (2)~~(1)~~(c), any additional amount established in
2652 any calendar year shall be released in the years subsequent to
2653 its establishment as provided in paragraph (b), with the timing
2654 and percentage of releases being in all respects identical to
2655 those of unearned premium reserves that are calculated as
2656 provided in paragraph (b) and established with regard to
2657 premiums written or liability assumed in reinsurance in the same
2658 year as the year in which any additional amount was originally
2659 established.

2660 (4)~~(3)~~ At any reporting date, the amount of the required

2661 releases of existing unearned premium reserves under subsection
 2662 (3)~~(2)~~ shall be calculated and deducted from the total unearned
 2663 premium reserve before any additional amount is established for
 2664 the current calendar year in accordance with the provisions of
 2665 paragraph (2)~~(1)~~(c).

2666 (5)~~(4)~~ As used in this section:

2667 (a) "Net retained liability" means the total liability
 2668 retained by a title insurer for a single risk, after taking into
 2669 account the deduction for ceded liability, if any.

2670 (b) "Qualified actuary" means a person who is, as detailed
 2671 in the National Association of Insurance Commissioners' Annual
 2672 Statement Instructions:

2673 1. A member in good standing of the Casualty Actuarial
 2674 Society;

2675 2. A member in good standing of the American Academy of
 2676 Actuaries who has been approved as qualified for signing
 2677 casualty loss reserve opinions by the Casualty Practice Council
 2678 of the American Academy of Actuaries; or

2679 3. A person who otherwise has competency in loss reserve
 2680 evaluation as demonstrated to the satisfaction of the insurance
 2681 regulatory official of the domiciliary state. In such case, at
 2682 least 90 days prior to the filing of its annual statement, the
 2683 insurer must request approval that the person be deemed
 2684 qualified and that request must be approved or denied. The
 2685 request must include the National Association of Insurance
 2686 Commissioners' Biographical Form and a list of all loss reserve
 2687 opinions issued in the last 3 years by this person.

2688 (c) "Single risk" means the insured amount of any title

2689 insurance policy, except that where two or more title insurance
 2690 policies are issued simultaneously covering different estates in
 2691 the same real property, "single risk" means the sum of the
 2692 insured amounts of all such title insurance policies. Any title
 2693 insurance policy insuring a mortgage interest, a claim payment
 2694 under which reduces the insured amount of a fee or leasehold
 2695 title insurance policy, shall be excluded in computing the
 2696 amount of a single risk to the extent that the insured amount of
 2697 the mortgage title insurance policy does not exceed the insured
 2698 amount of the fee or leasehold title insurance policy.

2699 Section 7. Sections 637.2008, 637.2009, 637.2011,
 2700 637.2012, 637.2013, 637.2014, 637.2015, 637.2016, 637.2017,
 2701 637.2018, 637.2019, 637.2021, 637.2022, 637.2023, 637.2024,
 2702 637.2025, 637.2026, 637.2027, 637.2028, 637.2029, 637.2031,
 2703 637.2032, 637.2033, 637.2034, 637.2035, 637.2036, 637.2037,
 2704 637.2038, 637.2039, 637.2041, 637.2042, 637.2043, 637.2046,
 2705 637.2047, and 637.2048, Florida Statutes, are created to read:

2706 637.2008 Premiums written; restrictions.—

2707 (1) Whenever a title insurer's ratio of actual or
 2708 projected annual written premiums as adjusted in accordance with
 2709 subsection (4) to current or projected surplus as to
 2710 policyholders as adjusted in accordance with subsection (6)
 2711 exceeds 10 to 1 for gross written premiums or exceeds 4 to 1 for
 2712 net written premiums, the department shall suspend the insurer's
 2713 certificate of authority or establish by order maximum gross or
 2714 net annual premiums to be written by the insurer consistent with
 2715 maintaining the ratios specified herein unless the insurer
 2716 demonstrates to the department's satisfaction that exceeding the

2717 ratios of this section does not endanger the financial condition
 2718 of the insurer or endanger the interests of the insurer's
 2719 policyholders.

2720 (2) Projected annual net or gross premiums shall be based
 2721 on the actual writings to date for the title insurer's current
 2722 calendar year or the insurer's writings for the previous
 2723 calendar year or both. Ratios shall be computed on an annualized
 2724 basis.

2725 (3) For the purposes of this section, gross premiums
 2726 written means direct premiums written and reinsurance assumed.

2727 (4) For the purposes of this section, for each calendar
 2728 year premiums shall be calculated as the product of the actual
 2729 or projected premiums and 1.00.

2730 637.2009 Deposit requirement; domestic title insurers and
 2731 foreign title insurers.-

2732 (1) As to domestic title insurers, the department shall
 2733 not issue or permit to exist a certificate of authority unless
 2734 such insurer has deposited and maintains deposited in trust for
 2735 the protection of the insurer's policyholders or its
 2736 policyholders and creditors with the department securities
 2737 eligible for such deposit under s. 625.52, having at all times a
 2738 value of not less than \$100,000.

2739 (2) As to foreign title insurers, the department, upon
 2740 issuing or permitting to exist a certificate of authority, may
 2741 require for good cause a deposit and maintenance of the deposit
 2742 in trust for the protection of the insured's policyholders or
 2743 its policyholders and creditors with the department securities
 2744 eligible for such deposit under s. 625.52, having at all times a

2745 value of not less than \$100,000 A foreign insurer with surplus
 2746 as to policyholders of more than \$10 million according to its
 2747 latest annual statement shall not be required to make a deposit
 2748 under this subsection.

2749 (3) Whenever the department determines that the financial
 2750 condition of a title insurer has deteriorated or that the
 2751 policyholders' best interests are not being preserved by the
 2752 activities of an insurer, the department may require such
 2753 insurer to deposit and maintain deposited in trust with the
 2754 department for the protection of the insurer's policyholders or
 2755 its policyholders and creditors, for such time as the department
 2756 deems necessary, securities eligible for such deposit under s.
 2757 625.52, having a market value of not less than the amount which
 2758 the department determines is necessary, which amount shall be
 2759 not less than \$100,000, or more than 25 percent of the insurer's
 2760 obligations in this state, as determined from the latest annual
 2761 financial statement of the insured. The deposit required under
 2762 this subsection shall not exceed \$2 million and is in addition
 2763 to any other deposits required of an insurer pursuant to
 2764 subsections (1) and (2) or any other provisions of this chapter.

2765 (4) All such deposits in this state are subject to the
 2766 applicable provisions of part III of chapter 625.

2767 637.2011 Deposit of alien insurers.-

2768 (1) An alien title insurer may not transact insurance in
 2769 this state unless it has and maintains within the United States
 2770 as trust deposits with public officials having supervision over
 2771 insurers, or with trustees, public depositories, or trust
 2772 institutions approved by the department, assets available for

2773 discharge of its United States insurance obligations, which
 2774 assets shall be in amount not less than the outstanding reserves
 2775 and other liabilities of the insurer arising out of its
 2776 insurance transactions in the United States together with the
 2777 amount of surplus as to policyholders required by s. 637.2007 of
 2778 a domestic stock insurer transacting like kinds of insurance.

2779 (2) Any such deposit made in this state shall be held for
 2780 the protection of the insurer's policyholders or policyholders
 2781 and creditors in the United States and shall be subject to the
 2782 applicable provisions of part III of chapter 625 and chapter
 2783 630.

2784 637.2012 Application for certificate of authority.-

2785 (1) To apply for a certificate of authority, a title
 2786 insurer shall file its application therefor with the department,
 2787 upon a form adopted by the department and furnished by the
 2788 department, showing its name; location of its home office and,
 2789 if an alien insurer, its principal office in the United States;
 2790 kinds of insurance to be transacted; state or country of
 2791 domicile; and such additional information as the department
 2792 reasonably requires, together with the following documents:

2793 (a) One copy of its corporate charter, articles of
 2794 incorporation, existing and proposed nonfacultative reinsurance
 2795 contracts, declaration of trust, or other charter documents,
 2796 with all amendments thereto, certified by the public official
 2797 with whom the originals are on file in the state or country of
 2798 domicile.

2799 (b) If a mutual insurer, a copy of its bylaws, as amended,
 2800 certified by its secretary or other officer having custody

2801 thereof.

2802 (c) If a foreign or alien reciprocal insurer, a copy of
 2803 the power of attorney of its attorney in fact and of its
 2804 subscribers' agreement, if any, certified by the attorney in
 2805 fact; and, if a domestic reciprocal insurer, the declaration
 2806 provided for in s. 629.081.

2807 (d) A copy of its financial statement as of December 31
 2808 next preceding, containing information generally included in
 2809 insurer financial statements prepared in accordance with
 2810 generally accepted insurance accounting principles and practices
 2811 and in a form generally utilized by insurers for financial
 2812 statements, sworn to by at least two executive officers of the
 2813 insurer, or certified by the public official having supervision
 2814 of insurance in the insurer's state of domicile or of entry into
 2815 the United States. To facilitate uniformity in financial
 2816 statements, the department may by rule adopt the form for
 2817 financial statements approved by the National Association of
 2818 Insurance Commissioners in 2002, and may adopt subsequent
 2819 amendments thereto if the form remains substantially consistent.

2820 (e) Supplemental quarterly financial statements for each
 2821 calendar quarter since the beginning of the year of its
 2822 application for the certificate of authority, sworn to by at
 2823 least two of its executive officers. To facilitate uniformity in
 2824 financial statements, the department may by rule adopt the form
 2825 for quarterly financial statements approved by the National
 2826 Association of Insurance Commissioners in 2002, and may adopt
 2827 subsequent amendments thereto if the form remains substantially
 2828 consistent.

2829 (f) If a foreign or alien insurer, a copy of the report of
 2830 the most recent examination of the insurer certified by the
 2831 public official having supervision of insurance in its state of
 2832 domicile or of entry into the United States. The end of the most
 2833 recent year covered by the examination must be within the 3-year
 2834 period preceding the date of application. In lieu of the
 2835 certified examination report, the department may accept an
 2836 audited certified public accountant's report prepared on a basis
 2837 consistent with the insurance laws of the insurer's state of
 2838 domicile, certified by the public official having supervision of
 2839 insurance in its state of domicile or of entry into the United
 2840 States.

2841 (g) If a foreign or alien insurer, a certificate of
 2842 compliance from the public official having supervision of
 2843 insurance in its state or country of domicile showing that it is
 2844 duly organized and authorized to transact insurance therein and
 2845 the kinds of insurance it is so authorized to transact.

2846 (h) If a foreign or alien insurer, a certificate of the
 2847 public official having custody of any deposit maintained by the
 2848 insurer in another state in lieu of a deposit or part thereof
 2849 required in this state under s. 637.2009 or s. 637.2011, showing
 2850 the amount of such deposit and the assets or securities of which
 2851 comprised.

2852 (i) If an alien insurer, a copy of the appointment and
 2853 authority of its United States manager, certified by its officer
 2854 having custody of its records.

2855 (2) The application shall be accompanied by the applicable
 2856 fees and license tax as specified in s. 637.2031.

2857 637.2013 Redomestication.—The department shall adopt rules
 2858 establishing procedures and forms for a foreign title insurer to
 2859 apply for a certificate of authority as a domestic title
 2860 insurer.

2861 637.2014 Issuance or refusal of authority.—The fee for
 2862 filing application for a certificate of authority shall not be
 2863 subject to refund. The department shall issue to the applicant
 2864 title insurer a proper certificate of authority if it finds that
 2865 the insurer has met the requirements of this chapter, exclusive
 2866 of the requirements relative to the filing and approval of an
 2867 insurer's policy forms, riders, endorsements, applications, and
 2868 rates. If it does not so find, the department shall issue its
 2869 order refusing the certificate. The certificate, if issued,
 2870 shall specify the kind or kinds and line or lines of insurance
 2871 the insurer is authorized to transact in this state. The
 2872 issuance of a certificate of authority does not signify that an
 2873 insurer has met the requirements of this chapter relative to the
 2874 filing and approval of an insurer's policy forms, riders,
 2875 endorsements, applications, and rates which may be required
 2876 prior to an insurer actually writing any premiums.

2877 637.2015 Ownership of certificate of authority; return.—
 2878 Although issued to the insurer, the certificate of authority is
 2879 at all times the property of this state. Upon any expiration,
 2880 suspension, or termination thereof, the insurer shall promptly
 2881 deliver the certificate of authority to the department.

2882 637.2016 Continuance, expiration, reinstatement, and
 2883 amendment of certificate of authority.—

2884 (1) A certificate of authority issued under this chapter

2885 shall continue in force as long as the insurer is entitled
 2886 thereto under this chapter and until suspended, revoked, or
 2887 terminated at the request of the insurer; subject, however, to
 2888 continuance of the certificate by the insurer each year by:

2889 (a) Payment prior to June 1 of the annual license tax
 2890 provided for in s. 637.2031(3);

2891 (b) Due filing by the insurer of its annual statement for
 2892 the calendar year preceding as required under s. 637.2024; and

2893 (c) Payment by the insurer of applicable taxes with
 2894 respect to the preceding calendar year as required under this
 2895 chapter.

2896 (2) If not so continued by the insurer, its certificate of
 2897 authority shall expire at midnight on the May 31 next following
 2898 such failure of the insurer so to continue it in force. The
 2899 department shall promptly notify the insurer of the occurrence
 2900 of any failure resulting in impending expiration of its
 2901 certificate of authority.

2902 (3) The department may, in its discretion, reinstate a
 2903 certificate of authority which the insurer has inadvertently
 2904 permitted to expire, after the insurer has fully cured all its
 2905 failures which resulted in the expiration, and upon payment by
 2906 the insurer of the fee for reinstatement, in the amount provided
 2907 in s. 637.2031(1)(b). Otherwise, the insurer shall be granted
 2908 another certificate of authority only after filing application
 2909 therefor and meeting all other requirements as for an original
 2910 certificate of authority in this state.

2911 (4) The department may amend a certificate of authority at
 2912 any time to accord with changes in the insurer's charter or

2913 insuring powers.
 2914 637.2017 Suspension, revocation of certificate of
 2915 authority for violations and special grounds.—
 2916 (1) The department shall suspend or revoke a title
 2917 insurer's certificate of authority if it finds that the insurer:
 2918 (a) Is in unsound financial condition.
 2919 (b) Is using such methods and practices in the conduct of
 2920 its business as to render its further transaction of insurance
 2921 in this state hazardous or injurious to its policyholders or to
 2922 the public.
 2923 (c) Has failed to pay any final judgment rendered against
 2924 it in this state within 60 days after the judgment became final.
 2925 (d) No longer meets the requirements for the authority
 2926 originally granted.
 2927 (2) The department may, in its discretion, suspend or
 2928 revoke the certificate of authority of an insurer if it finds
 2929 that the insurer:
 2930 (a) Has violated any lawful order or rule of the
 2931 department or any provision of this chapter.
 2932 (b) Has refused to be examined or to produce its accounts,
 2933 records, and files for examination, or if any of its officers
 2934 have refused to give information with respect to its affairs or
 2935 to perform any other legal obligation as to such examination,
 2936 when required by the department.
 2937 (c) Has for any line, class, or combination thereof, with
 2938 such frequency as to indicate its general business practice in
 2939 this state, without just cause refused to pay proper claims
 2940 arising under its policies, whether any such claim is in favor

2941 of an insured or is in favor of a third person with respect to
 2942 the liability of an insured to such third person, or without
 2943 just cause compels such insureds or claimants to accept less
 2944 than the amount due them or to employ attorneys or to bring suit
 2945 against the insurer or such an insured to secure full payment or
 2946 settlement of such claims.

2947 (d) Is affiliated with and under the same general
 2948 management or interlocking directorate or ownership as another
 2949 insurer which transacts direct insurance in this state without
 2950 having a certificate of authority therefor, except as permitted
 2951 as to surplus lines insurers under part VIII of chapter 626.

2952 (e) Has been convicted of, or entered a plea of guilty or
 2953 nolo contendere to, a felony relating to the transaction of
 2954 insurance, in this state or in any other state, without regard
 2955 to whether adjudication was withheld.

2956 (f) Has a ratio of net premiums written to surplus as to
 2957 policyholders that exceeds 4 to 1, and the department has reason
 2958 to believe that the financial condition of the insurer endangers
 2959 the interests of the policyholders. The ratio of net premiums
 2960 written to surplus as to policyholders shall be on an annualized
 2961 actual or projected basis. The ratio shall be based on the
 2962 insurer's current calendar year activities and experience to
 2963 date or the insurer's previous calendar year activities and
 2964 experience, or both, and shall be calculated to represent a 12-
 2965 month period. However, the provisions of this paragraph do not
 2966 apply to any insurance or insurer exempted from s. 637.2008.

2967 (g) Is under suspension or revocation in another state.

2968 (3) The insolvency or impairment of an insurer constitutes

2969 an immediate serious danger to the public health, safety, or
 2970 welfare; and the department may, at its discretion, without
 2971 prior notice and the opportunity for hearing immediately suspend
 2972 the certificate of authority of an insurer upon a determination
 2973 that:

2974 (a) The insurer is impaired or insolvent; or

2975 (b) Receivership, conservatorship, rehabilitation, or
 2976 other delinquency proceedings have been initiated against the
 2977 insurer by the public insurance supervisory official of any
 2978 state.

2979 637.2018 Order, notice of suspension or revocation of
 2980 certificate of authority; effect; publication.-

2981 (1) Suspension or revocation of a title insurer's
 2982 certificate of authority shall be by the order of the
 2983 department. The department shall promptly also give notice of
 2984 such suspension or revocation to the insurer's agents in this
 2985 state of record. The insurer shall not solicit or write any new
 2986 coverages in this state during the period of any such suspension
 2987 and may renew coverages only upon a finding by the department
 2988 that the insurer is capable of servicing the renewal coverage.
 2989 The insurer shall not solicit or write any new or renewal
 2990 coverages after any such revocation.

2991 (2) In its discretion, the department may cause notice of
 2992 any such suspension or revocation to be published in one or more
 2993 newspapers of general circulation published in this state.

2994 637.2019 Duration of suspension; insurer's obligations
 2995 during suspension period; reinstatement.-

2996 (1) Suspension of a title insurer's certificate of

2997 authority shall be for:

2998 (a) A fixed period of time not to exceed 2 years; or

2999 (b) Until the occurrence of a specific event necessary for
 3000 remedying the reasons for suspension.

3001
 3002 Such suspension may be modified, rescinded, or reversed.

3003 (2) During the period of suspension, the insurer shall
 3004 file with the department all documents and information and pay
 3005 all license fees and taxes as required under this chapter as if
 3006 the certificate had continued in full force.

3007 (3) If the suspension of the certificate of authority is
 3008 for a fixed period of time and the certificate of authority has
 3009 not been otherwise terminated, upon expiration of the suspension
 3010 period the insurer's certificate of authority shall be
 3011 reinstated unless the department finds that the insurer is not
 3012 in compliance with the requirements of this chapter. The
 3013 department shall promptly notify the insurer of such
 3014 reinstatement, and the insurer shall not consider its
 3015 certificate of authority reinstated until so notified by the
 3016 department. If not reinstated, the certificate of authority
 3017 shall be deemed to have expired as of the end of the suspension
 3018 period or upon failure of the insurer to continue the
 3019 certificate during the suspension period in accordance with
 3020 subsection (2), whichever event first occurs.

3021 (4) If the suspension of the certificate of authority was
 3022 until the occurrence of a specific event or events and the
 3023 certificate of authority has not been otherwise terminated, upon
 3024 the presentation of evidence satisfactory to the department that

3025 the specific event or events have occurred, the insurer's
 3026 certificate of authority shall be reinstated unless the
 3027 department finds that the insurer is otherwise not in compliance
 3028 with the requirements of this chapter. The department shall
 3029 promptly notify the insurer of such reinstatement, and the
 3030 insurer shall not consider its certificate of authority
 3031 reinstated until so notified by the department. If satisfactory
 3032 evidence as to the occurrence of the specific event or events
 3033 has not been presented to the department within 2 years of the
 3034 date of such suspension, the certificate of authority shall be
 3035 deemed to have expired as of 2 years from the date of suspension
 3036 or upon failure of the insurer to continue the certificate
 3037 during the suspension period in accordance with subsection (2),
 3038 whichever first occurs.

3039 (5) Upon reinstatement of the insurer's certificate of
 3040 authority, the authority of its agents in this state to
 3041 represent the insurer shall likewise reinstate. The department
 3042 shall promptly notify the insurer of such reinstatement.

3043 637.2021 Administrative fine in lieu of suspension or
 3044 revocation.—

3045 (1) If the department finds that one or more grounds exist
 3046 for the discretionary revocation or suspension of a certificate
 3047 of authority issued under this chapter, the department may, in
 3048 lieu of such revocation or suspension, impose a fine upon the
 3049 title insurer.

3050 (2) With respect to any nonwillful violation, such fine
 3051 shall not exceed \$2,500 per violation. In no event shall such
 3052 fine exceed an aggregate amount of \$10,000 for all nonwillful

CS/HB 853

2010

3053 violations arising out of the same action. When an insurer
3054 discovers a nonwillful violation, the insurer shall correct the
3055 violation and, if restitution is due, make restitution to all
3056 affected persons. Such restitution shall include interest at 12
3057 percent per year from either the date of the violation or the
3058 date of inception of the affected person's policy, at the
3059 insurer's option. The restitution may be a credit against future
3060 premiums due provided that the interest shall accumulate until
3061 the premiums are due. If the amount of restitution due to any
3062 person is \$50 or more and the insurer wishes to credit it
3063 against future premiums, it shall notify such person that she or
3064 he may receive a check instead of a credit. If the credit is on
3065 a policy which is not renewed, the insurer shall pay the
3066 restitution to the person to whom it is due.

3067 (3) With respect to any knowing and willful violation of a
3068 lawful order or rule of the department or a provision of this
3069 chapter, the department may impose a fine upon the insurer in an
3070 amount not to exceed \$20,000 for each such violation. In no
3071 event shall such fine exceed an aggregate amount of \$100,000 for
3072 all knowing and willful violations arising out of the same
3073 action. In addition to such fines, such insurer shall make
3074 restitution when due in accordance with the provisions of
3075 subsection (2).

3076 (4) The failure of an insurer to make restitution when due
3077 as required under this section constitutes a willful violation
3078 of this chapter. However, if an insurer in good faith is
3079 uncertain as to whether any restitution is due or as to the
3080 amount of such restitution, it shall promptly notify the

3081 department of the circumstances; and the failure to make
 3082 restitution pending a determination thereof shall not constitute
 3083 a violation of this chapter.

3084 637.2022 Service of process; appointment of Chief
 3085 Financial Officer as process agent.—

3086 (1) Each licensed title insurer, whether domestic,
 3087 foreign, or alien, shall be deemed to have appointed the Chief
 3088 Financial Officer and her or his successors in department as its
 3089 attorney to receive service of all legal process issued against
 3090 it in any civil action or proceeding in this state; and process
 3091 so served shall be valid and binding upon the insurer.

3092 (2) Prior to its authorization to transact insurance in
 3093 this state, each insurer shall file with the department
 3094 designation of the name and address of the person to whom
 3095 process against it served upon the Chief Financial Officer is to
 3096 be forwarded. The insurer may change the designation at any time
 3097 by a new filing.

3098 (3) Service of process upon the Chief Financial Officer as
 3099 the insurer's attorney pursuant to such an appointment shall be
 3100 the sole method of service of process upon an authorized
 3101 domestic, foreign, or alien insurer in this state.

3102 637.2023 Serving process.—

3103 (1) Service of process upon the Chief Financial Officer as
 3104 process agent of the title insurer under s. 637.2022 shall be
 3105 made by serving copies in triplicate of the process upon the
 3106 Chief Financial Officer or upon her or his assistant, deputy, or
 3107 other person in charge of her or his office. Upon receiving such
 3108 service, the Chief Financial Officer shall file one copy in her

3109 or his office, return one copy with her or his admission of
 3110 service, and promptly forward one copy of the process by
 3111 registered or certified mail to the person last designated by
 3112 the insurer to receive the same, as provided under s.
 3113 637.2022(2).

3114 (2) When process is served upon the Chief Financial
 3115 Officer as an insurer's process agent, the insurer shall not be
 3116 required to answer or plead except within 20 days after the date
 3117 upon which the Chief Financial Officer mailed a copy of the
 3118 process served upon her or him as required by subsection (1).

3119 (3) Process served upon the Chief Financial Officer and
 3120 copy thereof forwarded as in this section provided shall for all
 3121 purposes constitute valid and binding service thereof upon the
 3122 insurer.

3123 637.2024 Annual statement and other information.-

3124 (1) (a) Each authorized title insurer shall file with the
 3125 department full and true statements of its financial condition,
 3126 transactions, and affairs. An annual statement covering the
 3127 preceding calendar year shall be filed on or before March 1, and
 3128 quarterly statements covering the periods ending on March 31,
 3129 June 30, and September 30 shall be filed within 45 days after
 3130 each such date. The department may, for good cause, grant an
 3131 extension of time for filing of an annual or quarterly
 3132 statement. The statements shall contain information generally
 3133 included in insurers' financial statements prepared in
 3134 accordance with generally accepted insurance accounting
 3135 principles and practices and in a form generally utilized by
 3136 insurers for financial statements, sworn to by at least two

3137 executive officers of the insurer or, if a reciprocal insurer,
3138 by the oath of the attorney in fact or its like officer if a
3139 corporation. To facilitate uniformity in financial statements
3140 and to facilitate department analysis, the department may by
3141 rule adopt the form for financial statements approved by the
3142 National Association of Insurance Commissioners in 2002, and may
3143 adopt subsequent amendments thereto if the methodology remains
3144 substantially consistent, and may by rule require each insurer
3145 to submit to the department or such organization as the
3146 department may designate all or part of the information
3147 contained in the financial statement in a computer-readable form
3148 compatible with the electronic data processing system specified
3149 by the department.

3150 (b) The department may by rule require reports or filings
3151 required under this chapter to be submitted by electronic means
3152 in a computer-readable form compatible with the electronic data
3153 processing equipment specified by the department.

3154 (2) The statement of an alien insurer shall be verified by
3155 the insurer's United States manager or other officer duly
3156 authorized. It shall be a separate statement, to be known as its
3157 general statement, of its transactions, assets, and affairs
3158 within the United States unless the department requires
3159 otherwise. If the department requires a statement as to the
3160 insurer's affairs elsewhere, the insurer shall file such
3161 statement with the department as soon as reasonably possible.

3162 (3) At the time of filing, the insurer shall pay the fee
3163 for filing its annual statement in the amount specified in s.
3164 637.2031.

3165 (4) The department may refuse to continue, or may suspend
3166 or revoke, the certificate of authority of an insurer failing to
3167 file its annual or quarterly statements and accompanying
3168 certificates when due.

3169 (5) In addition to information called for and furnished in
3170 connection with its annual or quarterly statements, an insurer
3171 shall furnish to the department as soon as reasonably possible
3172 such information as to its transactions or affairs as the
3173 department may from time to time request in writing. All such
3174 information furnished pursuant to the department's request shall
3175 be verified by the oath of two executive officers of the insurer
3176 or, if a reciprocal insurer, by the oath of the attorney in fact
3177 or its like officers if a corporation.

3178 (6) The signatures of all such persons when written on
3179 annual or quarterly statements or other reports required by this
3180 section shall be presumed to have been so written by authority
3181 of the person whose signature is affixed thereon. The affixing
3182 of any signature by anyone other than the purported signer
3183 constitutes a felony of the second degree, punishable as
3184 provided in s. 775.082, s. 775.083, or s. 775.084.

3185 (7) (a) All authorized insurers must have conducted an
3186 annual audit by an independent certified public accountant and
3187 must file an audited financial report with the department on or
3188 before June 1 for the preceding year ending December 31. The
3189 department may require an insurer to file an audited financial
3190 report earlier than June 1 upon 90 days' advance notice to the
3191 insurer. The department may immediately suspend an insurer's
3192 certificate of authority by order if an insurer's failure to

3193 file required reports, financial statements, or information
 3194 required by this subsection or rule adopted pursuant thereto
 3195 creates a significant uncertainty as to the insurer's continuing
 3196 eligibility for a certificate of authority.

3197 (b) Any authorized insurer otherwise subject to this
 3198 section having direct premiums written in this state of less
 3199 than \$1 million in any calendar year and fewer than 1,000
 3200 policyholders or certificateholders of directly written policies
 3201 nationwide at the end of such calendar year is exempt from this
 3202 section for such year unless the department makes a specific
 3203 finding that compliance is necessary in order for the department
 3204 to carry out its statutory responsibilities. However, any
 3205 insurer having assumed premiums pursuant to contracts or
 3206 treaties or reinsurance of \$1 million or more is not exempt. Any
 3207 insurer subject to an exemption must submit by March 1 following
 3208 the year to which the exemption applies an affidavit sworn to by
 3209 a responsible officer of the insurer specifying the amount of
 3210 direct premiums written in this state and number of
 3211 policyholders or certificateholders.

3212 (c) The board of directors of an insurer shall hire the
 3213 certified public accountant that prepares the audit required by
 3214 this subsection and the board shall establish an audit committee
 3215 of three or more directors of the insurer or an affiliated
 3216 company. The audit committee shall be responsible for discussing
 3217 audit findings and interacting with the certified public
 3218 accountant with regard to her or his findings. The audit
 3219 committee shall be comprised solely of members who are free from
 3220 any relationship that, in the opinion of its board of directors,

3221 would interfere with the exercise of independent judgment as a
3222 committee member. The audit committee shall report to the board
3223 any findings of adverse financial conditions or significant
3224 deficiencies in internal controls that have been noted by the
3225 accountant. The insurer may request the department to waive this
3226 requirement of the audit committee membership based upon unusual
3227 hardship to the insurer.

3228 (d) An insurer may not use the same accountant or partner
3229 of an accounting firm responsible for preparing the report
3230 required by this subsection for more than 7 consecutive years.
3231 Following this period, the insurer may not use such accountant
3232 or partner for a period of 2 years, but may use another
3233 accountant or partner of the same firm. An insurer may request
3234 the department to waive this prohibition based upon an unusual
3235 hardship to the insurer and a determination that the accountant
3236 is exercising independent judgment that is not unduly influenced
3237 by the insurer considering such factors as the number of
3238 partners, expertise of the partners or the number of insurance
3239 clients of the accounting firm; the premium volume of the
3240 insurer; and the number of jurisdictions in which the insurer
3241 transacts business.

3242 (e) The department shall adopt rules to implement this
3243 subsection, which rules must be in substantial conformity with
3244 the 1998 Model Rule Requiring Annual Audited Financial Reports
3245 adopted by the National Association of Insurance Commissioners,
3246 except where inconsistent with the requirements of this
3247 subsection. Any exception to, waiver of, or interpretation of
3248 accounting requirements of the department must be in writing and

3249 signed by an authorized representative of the department. No
 3250 insurer may raise as a defense in any action, any exception to,
 3251 waiver of, or interpretation of accounting requirements, unless
 3252 previously issued in writing by an authorized representative of
 3253 the department.

3254 637.2025 NAIC filing requirements.-

3255 (1) Each domestic, foreign, and alien title insurer who is
 3256 authorized to transact title insurance in this state shall file
 3257 one extra copy of its annual statement convention blank, along
 3258 with such additional filings as prescribed by the department for
 3259 the preceding year. Such extra copy shall be for the explicit
 3260 purpose of allowing the department to forward it to the National
 3261 Association of Insurance Commissioners.

3262 (2) Coincident with the filing of the documents required
 3263 in subsection (1), each insurer shall pay to the department a
 3264 reasonable fee to cover the costs associated with the filing and
 3265 analysis of the documents by the National Association of
 3266 Insurance Commissioners and the department.

3267 (3) The provisions of this section shall not apply to any
 3268 foreign, domestic, or alien insurer which has filed such
 3269 documents directly with the National Association of Insurance
 3270 Commissioners if the National Association of Insurance
 3271 Commissioners has certified receipt of the required documents to
 3272 the department.

3273 637.2026 Change in controlling interest of foreign or
 3274 alien title insurer; report required.-In the event of a change
 3275 in the controlling capital stock or a change of 50 percent or
 3276 more of the assets of a foreign or alien title insurer, such

3277 insurer shall report such change in writing to the department
 3278 within 30 days of the effective date thereof. The report shall
 3279 contain the name and address of the new owner or owners of the
 3280 controlling stock or assets, the nature and value of the new
 3281 assets, and such other relevant information as the department
 3282 may reasonably require. For the purposes of this section, the
 3283 term "controlling capital stock" means a sufficient number of
 3284 shares of the issued and outstanding capital stock of such
 3285 insurer or person so as to give the owner thereof power to
 3286 exercise a controlling influence over the management or policies
 3287 of such insurer or person.

3288 637.2027 Withdrawal of title insurer or discontinuance of
 3289 writing insurance.-

3290 (1) Any title insurer desiring to surrender its
 3291 certificate of authority, withdraw from this state, or
 3292 discontinue the writing of title insurance in this state shall
 3293 give 90 days' notice in writing to the department setting forth
 3294 its reasons for such action. Any insurer who does not write any
 3295 premiums within a calendar year shall have title insurance
 3296 removed from its certificate of authority; however, such line of
 3297 insurance shall be restored to the insurer's certificate upon
 3298 the insurer demonstrating that it has available the expertise
 3299 necessary and meets the other requirements of this chapter to
 3300 write that line of insurance.

3301 (2) If the department determines, based upon its review of
 3302 the notice and other required information, that the plan of an
 3303 insurer withdrawing from this state makes adequate provision for
 3304 the satisfaction of the insurer's obligations and is not

CS/HB 853

2010

3305 hazardous to policyholders or the public, the department shall
3306 approve the surrender of the insurer's certificate of authority.
3307 The department shall, within 45 days from receipt of a complete
3308 notice and all required or requested additional information,
3309 approve, disapprove, or approve with conditions the plan
3310 submitted by the insurer. Failure to timely take action with
3311 respect to the notice shall be deemed an approval of the
3312 surrender of the certificate of authority.

3313 (3) Any insurer withdrawing from this state or
3314 discontinuing the writing of insurance in this state shall
3315 surrender its certificate of authority.

3316 (4) This section does not apply to insurers during the
3317 calendar year in which they first receive their certificate of
3318 authority.

3319 (5) This section does not apply to insurers who have
3320 discontinued writing in accordance with an order issued by the
3321 department.

3322 (6) Notwithstanding subsection (5), any insurer desiring
3323 to surrender its certificate of authority, withdraw from this
3324 state, or discontinue the writing of insurance in this state is
3325 expected to have availed itself of all reasonably available
3326 reinsurance. Reasonably available reinsurance shall include
3327 unrealized reinsurance, which is defined as reinsurance
3328 recoverable on known losses incurred and due under valid
3329 reinsurance contracts that have not been identified in the
3330 normal course of business and have not been reported in
3331 financial statements filed with the department. Within 90 days
3332 after surrendering its certificate of authority, withdrawing

3333 from this state, or discontinuing the writing of any one or
 3334 multiple kinds or lines of insurance in this state, the insurer
 3335 shall certify to the department that the insurer has engaged an
 3336 independent third party to search for unrealized reinsurance,
 3337 and that the insurer has made all relevant books and records
 3338 available to such third party. The compensation to such third
 3339 party may be a percentage of unrealized reinsurance identified
 3340 and collected.

3341 (7) The department may adopt rules to administer this
 3342 section.

3343 637.2028 Assets of title insurers; reporting
 3344 requirements.—

3345 (1) As used in this section, the term "material
 3346 acquisition of assets" or "material disposition of assets" means
 3347 one or more transactions occurring during any 30-day period
 3348 which are nonrecurring and not in the ordinary course of
 3349 business and involve more than 5 percent of the reporting title
 3350 insurer's total admitted assets as reported in its most recent
 3351 statutory statement filed with the insurance department of the
 3352 insurer's state of domicile.

3353 (2) Each domestic title insurer shall file a report with
 3354 the department disclosing a material acquisition of assets, a
 3355 material disposition of assets, or a material nonrenewal,
 3356 cancellation, or revision of a ceded reinsurance agreement,
 3357 unless the material acquisition or disposition of assets or the
 3358 material nonrenewal, cancellation, or revision of a ceded
 3359 reinsurance agreement has been submitted to the department for
 3360 review, approval, or informational purposes under another

3361 section of this chapter or a rule adopted thereunder. A copy of
 3362 the report and each exhibit or other attachment must be filed by
 3363 the insurer with the National Association of Insurance
 3364 Commissioners. The report required in this section is due within
 3365 15 days after the end of the calendar month in which the
 3366 transaction occurs.

3367 (3) An immaterial acquisition or disposition of assets
 3368 need not be reported under this section.

3369 (4) (a) Acquisitions of assets which are subject to this
 3370 section include each purchase, lease, exchange, merger,
 3371 consolidation, succession, or other acquisition of assets. Asset
 3372 acquisitions for the construction or development of real
 3373 property by or for the reporting insurer and the acquisition of
 3374 construction materials for this purpose are not subject to this
 3375 section.

3376 (b) Dispositions of assets which are subject to this
 3377 section include each sale, lease, exchange, merger,
 3378 consolidation, mortgage, hypothecation, assignment for the
 3379 benefit of a creditor or otherwise, abandonment, destruction, or
 3380 other disposition of assets.

3381 (5) (a) The following information must be disclosed in any
 3382 report of a material acquisition or disposition of assets:

- 3383 1. The date of the transaction.
- 3384 2. The manner of acquisition or disposition.
- 3385 3. The description of the assets involved.
- 3386 4. The nature and amount of the consideration given or
 3387 received.
- 3388 5. The purpose of, or reason for, the transaction.

3389 6. The manner by which the amount of consideration was
 3390 determined.

3391 7. The gain or loss recognized or realized as a result of
 3392 the transaction.

3393 8. The name of the person from whom the assets were
 3394 acquired or to whom they were disposed.

3395 (b) Insurers must report material acquisitions or
 3396 dispositions on a nonconsolidated basis unless the insurer is
 3397 part of a consolidated group of insurers which uses a pooling
 3398 arrangement or a 100-percent reinsurance agreement that affects
 3399 the solvency and integrity of the insurer's reserves and the
 3400 insurer has ceded substantially all of its direct and assumed
 3401 business to the pool. An insurer is deemed to have ceded
 3402 substantially all of its direct and assumed business to a pool
 3403 if the insurer has less than \$1 million in total direct and
 3404 assumed written premiums during a calendar year which are not
 3405 subject to a pooling arrangement and if the net income of the
 3406 business which is not subject to the pooling arrangement
 3407 represents less than 5 percent of the insurer's capital and
 3408 surplus.

3409 (6) (a) The following information must be disclosed in any
 3410 report of a material nonrenewal, cancellation, or revision of a
 3411 ceded reinsurance agreement:

3412 1. The effective date of the nonrenewal, cancellation, or
 3413 revision.

3414 2. The description of the transaction and the
 3415 identification of the initiator of the transaction.

3416 3. The purpose of, or reason for, the transaction.

3417 4. If applicable, the identity of each replacement
3418 reinsurer.

3419 (b) Insurers shall report the material nonrenewal,
3420 cancellation, or revision of a ceded reinsurance agreement on a
3421 nonconsolidated basis unless the insurer is part of a
3422 consolidated group of insurers which uses a pooling arrangement
3423 or a 100-percent reinsurance agreement that affects the solvency
3424 and integrity of the insurer's reserves and the insurer has
3425 ceded substantially all of its direct and assumed business to
3426 the pool. An insurer is deemed to have ceded substantially all
3427 of its direct and assumed business to a pool if the insurer has
3428 less than \$1 million in total direct and assumed written
3429 premiums during a calendar year which are not subject to a
3430 pooling arrangement and if the net income of the business not
3431 subject to the pooling arrangement represents less than 5
3432 percent of the insurer's capital and surplus.

3433 637.2029 Participation of financial institutions in
3434 reinsurance and in insurance exchanges.—Subject to applicable
3435 laws relating to financial institutions and to any other
3436 applicable provision of this chapter, any financial institution
3437 or aggregation of such institutions may own or control, directly
3438 or indirectly, any title insurer which is authorized or approved
3439 by the department, which insurer transacts only reinsurance in
3440 this state and which actively engages in reinsuring risks
3441 located in this state. Nothing in this section shall be deemed
3442 to prohibit a financial institution from engaging in any
3443 presently authorized insurance activity.

3444 637.2031 Filing, license, appointment, and miscellaneous

3445 fees.—The department shall collect in advance, and persons so
 3446 served shall pay to it in advance, fees, licenses, and
 3447 miscellaneous charges as follows:

3448 (1) Certificate of authority of title insurer.

3449 (a) Filing application for original certificate of
 3450 authority or modification thereof as a result of a merger,
 3451 acquisition, or change of controlling interest due to a sale or
 3452 exchange of stock, including all documents required to be filed
 3453 therewith, filing fee....\$1,500.00

3454 (b) Reinstatement fee....\$50.00

3455 (2) Charter documents of insurer.

3456 (a) Filing articles of incorporation or other charter
 3457 documents, other than at time of application for original
 3458 certificate of authority, filing fee....\$10.00

3459 (b) Filing amendment to articles of incorporation or
 3460 charter, other than at time of application for original
 3461 certificate of authority, filing fee....\$5.00

3462 (c) Filing bylaws, when required, or amendments thereof,
 3463 filing fee....\$5.00

3464 (3) Annual license tax of insurer, each domestic insurer,
 3465 foreign insurer, and alien insurer (except that, as to fraternal
 3466 benefit societies insuring less than 200 members in this state
 3467 and the members of which as a prerequisite to membership possess
 3468 a physical handicap or disability, such license tax shall be
 3469 \$25)....\$1,000.00

3470 (4) Statements of insurer, filing (except when filed as
 3471 part of application for original certificate of authority),
 3472 filing fees:

- 3473 (a) Annual statement....\$250.00
- 3474 (b) Quarterly statement....\$250.00
- 3475 (5) All insurance representatives, application for
- 3476 license, each filing, filing fee....\$50.00
- 3477 (6) Examination—Fee to cover actual cost of examination.
- 3478 (7) Temporary license and appointment as agent where
- 3479 expressly provided for, rate of fee for each month of the period
- 3480 for which the license and appointment is issued....\$5.00
- 3481 (8) Issuance, reissuance, reinstatement, modification
- 3482 resulting in a modified license being issued, duplicate copy of
- 3483 any insurance representative license, or an appointment being
- 3484 reinstated....\$5.00
- 3485 (9) Additional appointment continuation fees as prescribed
- 3486 in chapter 626....\$5.00
- 3487 (10) Filing application for permit to form insurer as
- 3488 referred to in chapter 628, filing fee....\$25.00
- 3489 (11) Annual license fee of rating organization, each
- 3490 domestic or foreign organization....\$25.00
- 3491 (12) Miscellaneous services:
- 3492 (a) For copies of documents or records on file with the
- 3493 department,—per page....\$.50
- 3494 (b) For each certificate of the department, under its
- 3495 seal, authenticating any document or other instrument (other
- 3496 than a license or certificate of authority)....\$5.00
- 3497 (c) For preparing lists of agents and other insurance
- 3498 representatives, and for other miscellaneous services, such
- 3499 reasonable charge as may be fixed by the department.
- 3500 (d) For processing requests for approval of continuing

CS/HB 853

2010

3501 education courses, processing fee....\$100.00
 3502 (13) Fingerprint processing—Fee to cover fingerprint
 3503 processing.
 3504 (14) Title insurance agents:
 3505 (a) Agent's original appointment or biennial renewal or
 3506 continuation thereof, each insurer:
 3507 Appointment fee....\$42.00
 3508 State tax....12.00
 3509 County tax....6.00
 3510 Total....\$60.00
 3511 (b) Agency original appointment or biennial renewal or
 3512 continuation thereof, each insurer:
 3513 Appointment fee....\$42.00
 3514 State tax....12.00
 3515 County tax....6.00
 3516 Total....\$60.00
 3517 (c) Filing for title insurance agent's license:
 3518 Application for filing, each filing, filing fee....\$10.00
 3519 (d) Additional appointment continuation fee as prescribed
 3520 by s. 637.3015....\$5.00
 3521 (e) Title insurer and title insurance agency
 3522 administrative surcharge:
 3523 1. On or before January 30 of each calendar year, each
 3524 title insurer shall pay to the department for each licensed
 3525 title insurance agency appointed by the title insurer and for
 3526 each retail office of the insurer on January 1 of that calendar
 3527 year an administrative surcharge of \$200.00.
 3528 2. On or before January 30 of each calendar year, each

3529 licensed title insurance agency shall remit to the department an
 3530 administrative surcharge of \$200.00.

3531
 3532 The administrative surcharge may be used solely to defray the
 3533 costs to the department in their examination or audit of title
 3534 insurance agencies and retail offices of title insurers and to
 3535 gather title insurance data for statistical purposes to be
 3536 furnished to and used by the department in its regulation of
 3537 title insurance.

3538 (15) Late filing of appointment renewals for agents,
 3539 adjusters, and other insurance representatives, each
 3540 appointment....\$20.00

3541 637.2032 Advance collection of fees and taxes; title
 3542 insurers not to pay without reimbursement.-

3543 (1) The department shall collect in advance from the
 3544 applicant or licensee fees and taxes as provided in s. 637.2031.

3545 (2) A title insurer shall not pay directly or indirectly
 3546 without reimbursement from a title insurance agent any
 3547 appointment fee required under this section. The failure of a
 3548 title insurance agent to make reimbursement is not a ground for
 3549 cancellation of the title insurance agent's appointment by the
 3550 title insurer.

3551 637.2033 Service of process fee.-In all instances as
 3552 provided in any section of this chapter and s. 48.151(3) in
 3553 which service of process is authorized to be made upon the Chief
 3554 Financial Officer , the plaintiff shall pay to the department a
 3555 fee of \$15 for such service of process, which fee shall be
 3556 deposited into the Title Insurance Regulatory Trust Fund.

3557 637.2034 Liability for state, county tax.—Each authorized
 3558 title insurer that uses insurance agents in this state shall be
 3559 liable for and shall pay the state and county taxes required
 3560 therefor under s. 637.2031 or s. 637.2035.

3561 637.2035 County tax; determination; additional offices;
 3562 nonresident agents.—

3563 (1) The county tax provided for under s. 637.2031 as to an
 3564 agent shall be paid by each title insurer for each agent only
 3565 for the county where the agent resides, or if such agent's place
 3566 of business is located in a county other than that of her or his
 3567 residence, then for the county wherein is located such place of
 3568 business. If an agent maintains an office or place of business
 3569 in more than one county, the tax shall be paid for her or him by
 3570 each such insurer for each county wherein the agent represents
 3571 such insurer and has a place of business. When under this
 3572 subsection an insurer is required to pay county tax for an agent
 3573 for a county or counties other than the agent's county of
 3574 residence, the insurer shall designate the county or counties
 3575 for which the taxes are paid.

3576 (2) A county tax of \$3 per year shall be paid by each
 3577 insurer for each county in this state in which an agent who
 3578 resides outside of this state represents and engages in person
 3579 in the activities of an agent for the insurer. This provision
 3580 shall not be deemed to authorize any activities by an agent
 3581 which are otherwise prohibited under this chapter.

3582 637.2036 County tax; deposit and remittance.—

3583 (1) The department shall deposit in the Agents County Tax
 3584 Trust Fund all moneys accepted as county tax under this chapter.

3585 She or he shall keep a separate account for all moneys so
 3586 collected for each county and, after deducting therefrom the
 3587 service charges provided for in s. 215.20, shall remit the
 3588 balance to the counties.

3589 (2) The payment and collection of county tax under this
 3590 chapter shall be in lieu of collection thereof by the respective
 3591 county tax collectors.

3592 (3) The Chief Financial Officer shall annually, as of
 3593 January 1 following the date of collection, and thereafter at
 3594 such other times as she or he may elect, draw her or his
 3595 warrants on the State Treasury payable to the respective
 3596 counties entitled to receive the same for the full net amount of
 3597 such taxes to each county.

3598 637.2037 Municipal tax.—Municipal corporations may require
 3599 a tax of title insurance agents not to exceed 50 percent of the
 3600 state tax specified as to such agents under this chapter, and
 3601 unless otherwise authorized by law. Such a tax may be required
 3602 only by a municipal corporation within the boundaries of which
 3603 is located the agent's business office, or if no such office is
 3604 required under this chapter, by the municipal corporation of the
 3605 agent's place of residence.

3606 637.2038 Insurer's license tax; when payable.—

3607 (1) The title insurer's license tax provided for in s.
 3608 637.2031(3) shall be paid by an insurer newly applying for a
 3609 certificate of authority to transact insurance in this state
 3610 prior to and contingent upon the issuance of its original
 3611 certificate of authority. If the certificate of authority is not
 3612 issued, the license tax payment shall be refunded to the

3613 insurer. The license tax so paid by a newly authorized insurer
 3614 shall cover the period expiring on the June 1 following the date
 3615 of its original certificate of authority.

3616 (2) Each authorized title insurer shall pay the license
 3617 tax annually on or before June 1.

3618 637.2039 Premium tax; rate and computation.—

3619 (1) In addition to the license taxes provided for in this
 3620 chapter, each title insurer shall also annually, and on or
 3621 before March 1 in each year, pay to the Department of Revenue a
 3622 tax on premiums for title insurance received during the
 3623 preceding calendar year an amount equal to 1.75 percent of the
 3624 gross amount of such receipts on account of all policies and
 3625 covering property, subjects, or risks located, resident, or to
 3626 be performed in this state, omitting premiums on reinsurance
 3627 accepted, and less return premiums or assessments, but without
 3628 deductions:

3629 (a) For reinsurance ceded to other insurers;

3630 (b) For moneys paid upon surrender of policies or
 3631 certificates for cash surrender value.

3632 (2) Payment by the insurer of the license taxes and
 3633 premium receipts taxes provided for in this chapter is a
 3634 condition precedent to doing business within this state.

3635 (3) Notwithstanding other provisions of law, the
 3636 distribution of the premium tax and any penalties or interest
 3637 collected thereunder shall be made to the General Revenue Fund
 3638 in accordance with rules adopted by the Department of Revenue
 3639 and approved by the Administration Commission.

3640 (4) The income tax imposed under chapter 220 and the

3641 emergency excise tax imposed under chapter 221 which are paid by
 3642 any insurer shall be credited against, and to the extent thereof
 3643 shall discharge, the liability for tax imposed by this section
 3644 for the annual period in which such tax payments are made. For
 3645 purposes of this subsection, payments of estimated income tax
 3646 under chapter 220 and of estimated emergency excise tax under
 3647 chapter 221 shall be deemed paid at the time the insurer
 3648 actually files its annual returns under chapter 220 or at the
 3649 time such returns are required to be filed, whichever first
 3650 occurs, and not at such earlier time as such payments of
 3651 estimated tax are actually made.

3652 (5) (a) 1. There shall be allowed a credit against the net
 3653 tax imposed by this section equal to 15 percent of the amount
 3654 paid by an insurer in salaries to employees located or based
 3655 within this state and who are covered by the provisions of
 3656 chapter 443.

3657 2. As an alternative to the credit allowed in subparagraph
 3658 1., an affiliated group of corporations which includes at least
 3659 one insurance company writing premiums in this state may elect
 3660 to take a credit against the net tax imposed by this section in
 3661 an amount that may not exceed 15 percent of the salary of the
 3662 employees of the affiliated group of corporations who perform
 3663 insurance-related activities, are located or based within this
 3664 state, and are covered by chapter 443. For purposes of this
 3665 subparagraph, the term "affiliated group of corporations" means
 3666 two or more corporations that are entirely owned directly or
 3667 indirectly by a single corporation and that constitute an
 3668 affiliated group as defined in s. 1504(a) of the Internal

3669 Revenue Code. The amount of credit allowed under this
 3670 subparagraph is limited to the combined Florida salary tax
 3671 credits allowed for all insurance companies that were members of
 3672 the affiliated group of corporations for the tax year ending
 3673 December 31, 2002, divided by the combined Florida taxable
 3674 premiums written by all insurance companies that were members of
 3675 the affiliated group of corporations for the tax year ending
 3676 December 31, 2002, multiplied by the combined Florida taxable
 3677 premiums of the affiliated group of corporations for the current
 3678 year. An affiliated group of corporations electing this
 3679 alternative calculation method must make such election on or
 3680 before August 1, 2005. The election of this alternative
 3681 calculation method is irrevocable and binding upon successors
 3682 and assigns of the affiliated group of corporations electing
 3683 this alternative. However, if a member of an affiliated group of
 3684 corporations acquires or merges with another insurance company
 3685 after the date of the irrevocable election, the acquired or
 3686 merged company is not entitled to the affiliated group election
 3687 and shall only be entitled to calculate the tax credit under
 3688 subparagraph 1.

3689
 3690 In no event shall the salary paid to an employee by an
 3691 affiliated group of corporations be claimed as a credit by more
 3692 than one insurer or be counted more than once in an insurer's
 3693 calculation of the credit as described in subparagraph 1. or
 3694 subparagraph 2. Only the portion of an employee's salary paid
 3695 for the performance of insurance-related activities may be
 3696 included in the calculation of the premium tax credit in this

3697 subsection.
 3698 (b) For purposes of this subsection:
 3699 1. The term "salaries" does not include amounts paid as
 3700 commissions.
 3701 2. The term "employees" does not include independent
 3702 contractors or any person whose duties require that the person
 3703 hold a valid license under the Florida Insurance Code, except
 3704 adjusters, managing general agents, and service representatives,
 3705 as defined in s. 626.015.
 3706 3. The term "net tax" means the tax imposed by this
 3707 section after applying the calculations and credits set forth in
 3708 subsection (4).
 3709 4. An affiliated group of corporations that created a
 3710 service company within its affiliated group on July 30, 2002,
 3711 shall allocate the salary of each service company employee
 3712 covered by contracts with affiliated group members to the
 3713 companies for which the employees perform services. The salary
 3714 allocation is based on the amount of time during the tax year
 3715 that the individual employee spends performing services or
 3716 otherwise working for each company over the total amount of time
 3717 the employee spends performing services or otherwise working for
 3718 all companies. The total amount of salary allocated to an
 3719 insurance company within the affiliated group shall be included
 3720 as that insurer's employee salaries for purposes of this
 3721 section.
 3722 a. Except as provided in subparagraph (a)2., the term
 3723 "affiliated group of corporations" means two or more
 3724 corporations that are entirely owned by a single corporation and

3725 that constitute an affiliated group of corporations as defined
3726 in s. 1504(a) of the Internal Revenue Code.

3727 b. The term "service company" means a separate corporation
3728 within the affiliated group of corporations whose employees
3729 provide services to affiliated group members and which are
3730 treated as service company employees for unemployment
3731 compensation and common law purposes. The holding company of an
3732 affiliated group may not qualify as a service company. An
3733 insurance company may not qualify as a service company.

3734 c. If an insurance company fails to substantiate, whether
3735 by means of adequate records or otherwise, its eligibility to
3736 claim the service company exception under this section, or its
3737 salary allocation under this section, no credit shall be
3738 allowed.

3739 5. A service company that is a subsidiary of a mutual
3740 insurance holding company, which mutual insurance holding
3741 company was in existence on or before January 1, 2000, shall
3742 allocate the salary of each service company employee covered by
3743 contracts with members of the mutual insurance holding company
3744 system to the companies for which the employees perform
3745 services. The salary allocation is based on the ratio of the
3746 amount of time during the tax year which the individual employee
3747 spends performing services or otherwise working for each company
3748 to the total amount of time the employee spends performing
3749 services or otherwise working for all companies. The total
3750 amount of salary allocated to an insurance company within the
3751 mutual insurance holding company system shall be included as
3752 that insurer's employee salaries for purposes of this section.

3753 However, this subparagraph does not apply for any tax year
 3754 unless funds sufficient to offset the anticipated salary credits
 3755 have been appropriated to the General Revenue Fund prior to the
 3756 due date of the final return for that year.

3757 a. The term "mutual insurance holding company system"
 3758 means two or more corporations that are subsidiaries of a mutual
 3759 insurance holding company and in compliance with part IV of
 3760 chapter 628.

3761 b. The term "service company" means a separate corporation
 3762 within the mutual insurance holding company system whose
 3763 employees provide services to other members of the mutual
 3764 insurance holding company system and are treated as service
 3765 company employees for unemployment compensation and common-law
 3766 purposes. The mutual insurance holding company may not qualify
 3767 as a service company.

3768 c. If an insurance company fails to substantiate, whether
 3769 by means of adequate records or otherwise, its eligibility to
 3770 claim the service company exception under this section, or its
 3771 salary allocation under this section, no credit shall be
 3772 allowed.

3773 (c) The department may adopt rules pursuant to ss.
 3774 120.536(1) and 120.54 to administer this subsection.

3775 (6) (a) The total of the credit granted for the taxes paid
 3776 by the insurer under chapters 220 and 221 and the credit granted
 3777 by subsection (5) shall not exceed 65 percent of the tax due
 3778 under subsection (1) after deducting therefrom the taxes paid by
 3779 the insurer under ss. 175.101 and 185.08 and any assessments
 3780 pursuant to s. 440.51.

3781 (b) To the extent that any credits granted by subsection
3782 (5) remain as a result of the limitation set forth in paragraph
3783 (a), such excess credits related to salaries and wages of
3784 employees whose place of employment is located within an
3785 enterprise zone created pursuant to chapter 290 may be
3786 transferred, in an aggregate amount not to exceed 25 percent of
3787 such excess salary credits, to any insurer that is a member of
3788 an affiliated group of corporations, as defined in sub-
3789 subparagraph (5)(b)4.a., that includes the original insurer
3790 qualifying for the credits under subsection (5). The amount of
3791 such excess credits to be transferred shall be calculated by
3792 multiplying the amount of such excess credits by a fraction, the
3793 numerator of which is the sum of the salaries qualifying for the
3794 credit allowed by subsection (5) of employees whose place of
3795 employment is located in an enterprise zone and the denominator
3796 of which is the sum of the salaries qualifying for the credit
3797 allowed by subsection (5). Any such transferred credits shall be
3798 subject to the same provisions and limitations set forth within
3799 this chapter. The provisions of this paragraph do not apply to
3800 an affiliated group of corporations that participate in a common
3801 paymaster arrangement as defined in s. 443.1216.

3802 (7) Credits and deductions against the tax imposed by this
3803 section shall be taken in the following order: deductions for
3804 assessments made pursuant to s. 440.51; credits for taxes paid
3805 under ss. 175.101 and 185.08; credits for income taxes paid
3806 under chapter 220, the emergency excise tax paid under chapter
3807 221 and the credit allowed under subsection (5), as these
3808 credits are limited by subsection (6); all other available

3809 credits and deductions.
 3810 (8) As used in this section "insurer" includes any entity
 3811 subject to the tax imposed by this section.
 3812 637.2041 Retaliatory provision, insurers.-
 3813 (1) (a) When by or pursuant to the laws of any other state
 3814 or foreign country any taxes, licenses, and other fees, in the
 3815 aggregate, and any fines, penalties, deposit requirements, or
 3816 other material obligations, prohibitions, or restrictions are or
 3817 would be imposed upon title insurers in this state or upon the
 3818 agents or representatives of such insurers, which are in excess
 3819 of such taxes, licenses, and other fees, in the aggregate, or
 3820 which are in excess of the fines, penalties, deposit
 3821 requirements, or other obligations, prohibitions, or
 3822 restrictions directly imposed upon similar insurers, or upon the
 3823 agents or representatives of such insurers, of such other state
 3824 or country under the statutes of this state, so long as such
 3825 laws of such other state or country continue in force or are so
 3826 applied, the same taxes, licenses, and other fees, in the
 3827 aggregate, or fines, penalties, deposit requirements, or other
 3828 material obligations, prohibitions, or restrictions of whatever
 3829 kind shall be imposed by the Department of Revenue upon the
 3830 insurers, or upon the agents or representatives of such
 3831 insurers, of such other state or country doing business or
 3832 seeking to do business in this state. In determining the taxes
 3833 to be imposed under this section, 80 percent and a portion of
 3834 the remaining 20 percent as provided in paragraph (b) of the
 3835 credit provided by s. 637.2039(5), as limited by s. 637.2039(6)
 3836 and further determined by s. 637.2039(7), shall not be taken

3837 into consideration.

3838 (b) As used in this subsection, the term "portion of the
3839 remaining 20 percent" shall be calculated by multiplying the
3840 remaining 20 percent by a fraction, the numerator of which is
3841 the sum of the salaries qualifying for the credit allowed by s.
3842 637.2039(5) of employees whose place of employment is located in
3843 an enterprise zone created pursuant to chapter 290 and the
3844 denominator of which is the sum of the salaries qualifying for
3845 the credit allowed by s. 637.2039(5).

3846 (2) Any tax, license, or other obligation imposed by any
3847 city, county, or other political subdivision or agency of a
3848 state, jurisdiction, or foreign country on Florida title
3849 insurers or their agents or representatives shall be deemed to
3850 be imposed by such state, jurisdiction, or foreign country
3851 within the meaning of subsection (1).

3852 (3) This section does not apply as to personal income
3853 taxes, nor as to sales or use taxes, nor as to ad valorem taxes
3854 on real or personal property, nor as to reimbursement premiums
3855 paid to the Florida Hurricane Catastrophe Fund, nor as to
3856 emergency assessments paid to the Florida Hurricane Catastrophe
3857 Fund, nor as to special purpose obligations or assessments
3858 imposed in connection with particular kinds of insurance other
3859 than property insurance, except that deductions, from premium
3860 taxes or other taxes otherwise payable, allowed on account of
3861 real estate or personal property taxes paid shall be taken into
3862 consideration by the department in determining the propriety and
3863 extent of retaliatory action under this section.

3864 (4) For the purposes of this section, a "similar insurer"

CS/HB 853

2010

3865 is an insurer with identical premiums, personnel, and property
3866 to that of the alien or foreign insurer's Florida premiums,
3867 personnel, and property. The similar insurer's premiums,
3868 personnel, and property shall be used to calculate any taxes,
3869 licenses, other fees, in the aggregate, or any fines, penalties,
3870 deposit requirements, or other material obligations,
3871 prohibitions, or restrictions that are or would be imposed under
3872 the laws of this state and under the law of the foreign or alien
3873 insurer's state of domicile.

3874 (5) The excess amount of all fees, licenses, and taxes
3875 collected by the Department of Revenue under this section over
3876 the amount of similar fees, licenses, and taxes provided for in
3877 this part, together with all fines, penalties, or other monetary
3878 obligations collected under this section exclusive of such fees,
3879 licenses, and taxes, shall be deposited by the Department of
3880 Revenue to the credit of the Title Insurance Regulatory Trust
3881 Fund; provided that such excess amount shall not exceed \$125,000
3882 for 1992, and for any subsequent year shall not exceed \$125,000
3883 adjusted annually by the lesser of 20 percent or the growth in
3884 the total of such excess amount. The remainder of such excess
3885 amount shall be deposited into the General Revenue Fund.

3886 637.2042 Administration of taxes; payments.—

3887 (1) The Department of Revenue shall administer, audit, and
3888 enforce the assessment and collection of those taxes to which
3889 this section is applicable. The department may share information
3890 with the Department of Revenue as necessary to verify premium
3891 tax or other tax liability arising under such taxes and credits
3892 which may apply thereto.

3893 (2) (a) Installments of the taxes to which this section is
 3894 applicable shall be due and payable on April 15, June 15, and
 3895 October 15 in each year, based upon the estimated gross amount
 3896 of receipts of insurance premiums or assessments received during
 3897 the immediately preceding calendar quarter. A final payment of
 3898 tax due for the year shall be made at the time the taxpayer
 3899 files her or his return for such year. On or before March 1 in
 3900 each year, an annual return shall be filed showing, by quarters,
 3901 the gross amount of receipts taxable for the preceding year and
 3902 the installment payments made during that year.

3903 (b) Any taxpayer who fails to report and timely pay any
 3904 installment of tax, who estimates any installment of tax to be
 3905 less than 90 percent of the amount finally shown to be due in
 3906 any quarter, or who fails to report and timely pay any tax due
 3907 with the final return is in violation of this section and is
 3908 subject to a penalty of 10 percent on any underpayment of taxes
 3909 or delinquent taxes due and payable for that quarter or on any
 3910 delinquent taxes due and payable with the final return. Any
 3911 taxpayer paying, for each installment required in this section,
 3912 27 percent of the amount of the net tax due as reported on her
 3913 or his return for the preceding year shall not be subject to the
 3914 penalty provided by this section for underpayment of estimated
 3915 taxes.

3916 (c) When any taxpayer fails to pay any amount due under
 3917 this section, or any portion thereof, on or before the day when
 3918 such tax or installment of tax is required by law to be paid,
 3919 there shall be added to the amount due interest at the rate of
 3920 12 percent per year from the date due until paid.

3921 (d) All penalties and interest imposed on those taxes to
3922 which this section is applicable shall be payable to and
3923 collectible by the Department of Revenue in the same manner as
3924 if they were a part of the tax imposed.

3925 (e) The Department of Revenue may settle or compromise any
3926 such interest or penalties imposed on those taxes to which this
3927 section is applicable pursuant to s. 213.21.

3928 (3) This section is applicable to taxes imposed by ss.
3929 629.5100, 637.2039, and 637.2046.

3930 637.2043 Adjustments.-

3931 (1) If a taxpayer is required to amend its corporate
3932 income tax liability under chapter 220, or the taxpayer receives
3933 a refund of its workers' compensation administrative assessment
3934 paid under chapter 440, the taxpayer shall file an amended
3935 insurance premium tax return not later than 60 days after such
3936 an occurrence.

3937 (2) If an amended insurance premium tax return is required
3938 under subsection (1), notwithstanding any other provision of s.
3939 95.091(3):

3940 (a) A notice of deficiency may be issued at any time
3941 within 3 years after the date the amended insurance premium tax
3942 return is given; or

3943 (b) If a taxpayer fails to file an amended insurance
3944 premium tax return, a notice of deficiency may be issued at any
3945 time.

3946
3947 The amount of any proposed assessment set forth in such a notice
3948 of deficiency shall be limited to the amount of any deficiency

3949 resulting under this chapter from recomputation of the
 3950 taxpayer's insurance premium tax and retaliatory tax for the
 3951 taxable year after giving effect only to the change in corporate
 3952 income tax paid and the change in the amount of the workers'
 3953 compensation administrative assessment paid. Interest in
 3954 accordance with s. 637.2042 is due on the amount of any
 3955 deficiency from the date fixed for filing the original insurance
 3956 premium tax return for the taxable year until the date of
 3957 payment of the deficiency.

3958 (3) If an amended insurance premium tax return is required
 3959 by subsection (1), a claim for refund may be filed within 2
 3960 years after the date on which the amended insurance premium tax
 3961 return was due, regardless of whether such notice was given,
 3962 notwithstanding any other provision of s. 215.26. However, the
 3963 amount recoverable pursuant to such a claim shall be limited to
 3964 the amount of any overpayment resulting under this chapter from
 3965 recomputation of the taxpayer's insurance premium tax and
 3966 retaliatory tax for the taxable year after giving effect only to
 3967 the change in corporate income tax paid and the change in the
 3968 amount of the workers' compensation administrative assessment
 3969 paid.

3970 637.2046 Tax statement; overpayments.—

3971 (1) Tax returns as to taxes mentioned in s. 637.2039 shall
 3972 be made by insurers on forms to be prescribed by the Department
 3973 of Revenue and shall be sworn to by one or more of the executive
 3974 officers or attorney, if a reciprocal insurer, of the insurer
 3975 making the returns.

3976 (2) Notwithstanding the provisions of s. 215.26(1), if any

3977 insurer makes an overpayment on account of taxes due under s.
 3978 637.2039, a refund of the overpayment of taxes shall be made out
 3979 of the General Revenue Fund. Overpayment of taxes due under s.
 3980 637.2039 shall be refunded no sooner than the first day of the
 3981 state fiscal year following the date the tax was due.

3982 (3) (a) If it appears, upon examination of an insurance
 3983 premium tax return made under this chapter, that an amount of
 3984 insurance premium tax has been paid in excess of the amount due,
 3985 the Department of Revenue may refund the amount of the
 3986 overpayment to the taxpayer by a warrant of the Chief Financial
 3987 Officer. The Department of Revenue may refund the overpayment
 3988 without regard to whether the taxpayer has filed a written claim
 3989 for a refund; however, the Department of Revenue may request
 3990 that the taxpayer file a statement affirming that the taxpayer
 3991 made the overpayment.

3992 (b) Notwithstanding paragraph (a), a refund of the
 3993 insurance premium tax may not be made, and a taxpayer is not
 3994 entitled to bring an action for a refund of the insurance
 3995 premium tax, after the period specified in s. 215.26(2) has
 3996 elapsed.

3997 (c) If a refund issued by the Department of Revenue under
 3998 this subsection is found to exceed the amount of refund legally
 3999 due to the taxpayer, the provisions of s. 637.2042 concerning
 4000 penalties and interest do not apply if the taxpayer reimburses
 4001 the department for any overpayment within 60 days after the
 4002 taxpayer is notified that the overpayment was made.

4003 637.2047 Preemption by state.—

4004 (1) This state hereby preempts the field of imposing

4005 excise, privilege, franchise, income, license, permit,
 4006 registration, and similar taxes and fees, measured by premiums,
 4007 income, or volume of transactions, upon insurers and their
 4008 agents and other representatives; and a county, city,
 4009 municipality, district, school district, or other political
 4010 subdivision or agency in this state may not impose, levy,
 4011 charge, or require the same, subject however to the provisions
 4012 of subsection (2).

4013 (2) This section shall not be construed to limit or modify
 4014 the power of any incorporated city or town to levy the taxes
 4015 authorized by ss. 175.101 and 185.08 or the power of any special
 4016 fire control district to levy the taxes authorized by s.
 4017 175.101.

4018 637.2048 Deposit of certain tax receipts; refund of
 4019 improper payments.-

4020 (1) The Department of Financial Services shall promptly
 4021 deposit in the State Treasury to the credit of the Title
 4022 Insurance Regulatory Trust Fund all "state tax" portions of
 4023 agents' licenses collected under s. 637.2031. All moneys
 4024 received by the department not in accordance with the provisions
 4025 of this chapter or not in the exact amount as specified by the
 4026 applicable provisions of this chapter shall be returned to the
 4027 remitter. The records of the department shall show the date and
 4028 reason for such return.

4029 (2) The Department of Revenue shall promptly deposit into
 4030 the Department of Revenue Premium Tax Clearing Trust Fund all
 4031 premium taxes collected according to s. 637.2039. Such taxes
 4032 shall be distributed on an estimated basis within 15 days after

4033 receipt by the Department of Revenue. Such distribution shall be
 4034 adjusted pursuant to an audit by the Department of Revenue.

4035 Section 8. Section 627.778, Florida Statutes, is
 4036 transferred, renumbered as section 637.20485, Florida Statutes,
 4037 and subsection (2) of that section is amended to read:

4038 637.20485 ~~627.778~~ Limit of risk.—

4039 (2) Surplus as to policyholders shall be determined from
 4040 the last annual statement of the insurer filed under s. 637.2024
 4041 ~~624.424~~.

4042 Section 9. Sections 637.2049, 637.20495, 637.2051,
 4043 637.2053, 637.2054, 637.2055, 637.2056, and 637.2057, Florida
 4044 Statutes, are created to read:

4045 637.2049 Reinsurance.—

4046 (1) The purpose of this section is to protect the
 4047 interests of insureds, claimants, ceding insurers, assuming
 4048 insurers, and the public. It is the intent of the Legislature to
 4049 ensure adequate regulation of insurers and reinsurers and
 4050 adequate protection for those to whom they owe obligations. In
 4051 furtherance of that state interest, the Legislature requires
 4052 that upon the insolvency of a non-United States insurer or
 4053 reinsurer which provides security to fund its United States
 4054 obligations in accordance with this section, such security shall
 4055 be maintained in the United States and claims shall be filed
 4056 with and valued by the state insurance regulator with regulatory
 4057 oversight, and the assets shall be distributed in accordance
 4058 with the insurance laws of the state in which the trust is
 4059 domiciled that are applicable to the liquidation of domestic
 4060 United States insurance companies. The Legislature declares that

4061 the matters contained in this section are fundamental to the
 4062 business of insurance in accordance with 15 U.S.C. ss. 1011-
 4063 1012.

4064 (2) Credit for reinsurance must be allowed a ceding
 4065 insurer as either an asset or a deduction from liability on
 4066 account of reinsurance ceded only when the reinsurer meets the
 4067 requirements of paragraph (3) (a), paragraph (3) (b), or paragraph
 4068 (3) (c). Credit must be allowed under paragraph (3) (a) or
 4069 paragraph (3) (b) only for cessions of those kinds or lines of
 4070 business that the assuming insurer is licensed, authorized, or
 4071 otherwise permitted to write or assume in its state of domicile
 4072 or, in the case of a United States branch of an alien assuming
 4073 insurer, in the state through which it is entered and licensed
 4074 or authorized to transact insurance or reinsurance.

4075 (3) (a) Credit must be allowed when the reinsurance is
 4076 ceded to an assuming insurer that is authorized to transact
 4077 insurance or reinsurance in this state.

4078 (b)1. Credit must be allowed when the reinsurance is ceded
 4079 to an assuming insurer that is accredited as a reinsurer in this
 4080 state. An accredited reinsurer is one that:

4081 a. Files with the department evidence of its submission to
 4082 this state's jurisdiction.

4083 b. Submits to this state's authority to examine its books
 4084 and records.

4085 c. Is licensed or authorized to transact insurance or
 4086 reinsurance in at least one state or, in the case of a United
 4087 States branch of an alien assuming insurer, is entered through,
 4088 licensed, or authorized to transact insurance or reinsurance in

4089 at least one state.

4090 d. Files annually with the department a copy of its annual
 4091 statement filed with the insurance department of its state of
 4092 domicile any quarterly statements if required by its state of
 4093 domicile or such quarterly statements if specifically requested
 4094 by the department, and a copy of its most recent audited
 4095 financial statement.

4096 (I) Maintains a surplus as regards policyholders in an
 4097 amount not less than \$20 million and whose accreditation has not
 4098 been denied by the department within 90 days after its
 4099 submission; or

4100 (II) Maintains a surplus as regards policyholders in an
 4101 amount not less than \$20 million and whose accreditation has
 4102 been approved by the department.

4103 2. The department may deny or revoke an assuming insurer's
 4104 accreditation if the assuming insurer does not submit the
 4105 required documentation pursuant to subparagraph 1., if the
 4106 assuming insurer fails to meet all of the standards required of
 4107 an accredited reinsurer, or if the assuming insurer's
 4108 accreditation would be hazardous to the policyholders of this
 4109 state. In determining whether to deny or revoke accreditation,
 4110 the department may consider the qualifications of the assuming
 4111 insurer with respect to all the following subjects:

4112 a. Its financial stability.

4113 b. The lawfulness and quality of its investments.

4114 c. The competency, character, and integrity of its
 4115 management.

4116 d. The competency, character, and integrity of persons who

4117 own or have a controlling interest in the assuming insurer.

4118 e. Whether claims under its contracts are promptly and
 4119 fairly adjusted and are promptly and fairly paid in accordance
 4120 with the law and the terms of the contracts.

4121 3. Credit must not be allowed a ceding insurer if the
 4122 assuming insurer's accreditation has been revoked by the
 4123 department after notice and the opportunity for a hearing.

4124 4. The actual costs and expenses incurred by the
 4125 department to review a reinsurer's request for accreditation and
 4126 subsequent reviews must be charged to and collected from the
 4127 requesting reinsurer. If the reinsurer fails to pay the actual
 4128 costs and expenses promptly when due, the department may refuse
 4129 to accredit the reinsurer or may revoke the reinsurer's
 4130 accreditation.

4131 (c)1. Credit must be allowed when the reinsurance is ceded
 4132 to an assuming insurer that maintains a trust fund in a
 4133 qualified United States financial institution, as defined in
 4134 paragraph (5) (b), for the payment of the valid claims of its
 4135 United States ceding insurers and their assigns and successors
 4136 in interest. To enable the department to determine the
 4137 sufficiency of the trust fund, the assuming insurer shall report
 4138 annually to the department information substantially the same as
 4139 that required to be reported on the NAIC Annual Statement form
 4140 by authorized insurers. The assuming insurer shall submit to
 4141 examination of its books and records by the department and bear
 4142 the expense of examination.

4143 2.a. Credit for reinsurance must not be granted under this
 4144 subsection unless the form of the trust and any amendments to

4145 the trust have been approved by:

4146 (I) The insurance regulator of the state in which the
 4147 trust is domiciled; or

4148 (II) The insurance regulator of another state who,
 4149 pursuant to the terms of the trust instrument, has accepted
 4150 principal regulatory oversight of the trust.

4151 b. The form of the trust and any trust amendments must be
 4152 filed with the insurance regulator of every state in which the
 4153 ceding insurer beneficiaries of the trust are domiciled. The
 4154 trust instrument must provide that contested claims are valid
 4155 and enforceable upon the final order of any court of competent
 4156 jurisdiction in the United States. The trust must vest legal
 4157 title to its assets in its trustees for the benefit of the
 4158 assuming insurer's United States ceding insurers and their
 4159 assigns and successors in interest. The trust and the assuming
 4160 insurer are subject to examination as determined by the
 4161 insurance regulator.

4162 c. The trust remains in effect for as long as the assuming
 4163 insurer has outstanding obligations due under the reinsurance
 4164 agreements subject to the trust. No later than February 28 of
 4165 each year, the trustee of the trust shall report to the
 4166 insurance regulator in writing the balance of the trust and list
 4167 the trust's investments at the preceding year end, and shall
 4168 certify that the trust will not expire prior to the following
 4169 December 31.

4170 3. The following requirements apply to the following
 4171 categories of assuming insurer:

4172 a. The trust fund for a single assuming insurer consists

4173 of funds in trust in an amount not less than the assuming
 4174 insurer's liabilities attributable to reinsurance ceded by
 4175 United States ceding insurers, and, in addition, the assuming
 4176 insurer shall maintain a trusteed surplus of not less than \$20
 4177 million. Not less than 50 percent of the funds in the trust
 4178 covering the assuming insurer's liabilities attributable to
 4179 reinsurance ceded by United States ceding insurers and trusteed
 4180 surplus shall consist of assets of a quality substantially
 4181 similar to that required in part II of chapter 625. Clean,
 4182 irrevocable, unconditional, and evergreen letters of credit,
 4183 issued or confirmed by a qualified United States financial
 4184 institution, as defined in paragraph (5) (a), effective no later
 4185 than December 31 of the year for which the filing is made and in
 4186 the possession of the trust on or before the filing date of its
 4187 annual statement, may be used to fund the remainder of the trust
 4188 and trusteed surplus.

4189 b. (I) In the case of a group including incorporated and
 4190 individual unincorporated underwriters:

4191 (A) For reinsurance ceded under reinsurance agreements
 4192 with an inception, amendment, or renewal date on or after August
 4193 1, 1995, the trust consists of a trusteed account in an amount
 4194 not less than the group's several liabilities attributable to
 4195 business ceded by United States domiciled ceding insurers to any
 4196 member of the group.

4197 (B) For reinsurance ceded under reinsurance agreements
 4198 with an inception date on or before July 31, 1995, and not
 4199 amended or renewed after that date, notwithstanding the other
 4200 provisions of this section, the trust consists of a trusteed

4201 account in an amount not less than the group's several insurance
4202 and reinsurance liabilities attributable to business written in
4203 the United States.

4204 (C) In addition to these trusts, the group shall maintain
4205 in trust a trusted surplus of which \$100 million must be held
4206 jointly for the benefit of the United States domiciled ceding
4207 insurers of any member of the group for all years of account.

4208 (II) The incorporated members of the group must not be
4209 engaged in any business other than underwriting of a member of
4210 the group, and are subject to the same level of regulation and
4211 solvency control by the group's domiciliary regulator as the
4212 unincorporated members.

4213 (III) Within 90 days after its financial statements are
4214 due to be filed with the group's domiciliary regulator, the
4215 group shall provide to the insurance regulator an annual
4216 certification by the group's domiciliary regulator of the
4217 solvency of each underwriter member or, if a certification is
4218 unavailable, financial statements, prepared by independent
4219 public accountants, of each underwriter member of the group.

4220 (d) Credit must be allowed when the reinsurance is ceded
4221 to an assuming insurer not meeting the requirements of paragraph
4222 (a), paragraph (b), or paragraph (c), but only as to the
4223 insurance of risks located in jurisdictions in which the
4224 reinsurance is required to be purchased by a particular entity
4225 by applicable law or regulation of that jurisdiction.

4226 (e) If the reinsurance is ceded to an assuming insurer not
4227 meeting the requirements of paragraph (a), paragraph (b),
4228 paragraph (c), or paragraph (d), the department may allow

4229 credit, but only if the assuming insurer holds surplus in excess
 4230 of \$100 million and has a secure financial strength rating from
 4231 at least two nationally recognized statistical rating
 4232 organizations deemed acceptable by the department. In
 4233 determining whether credit should be allowed, the department
 4234 shall consider the following:

4235 1. The domiciliary regulatory jurisdiction of the assuming
 4236 insurer.

4237 2. The structure and authority of the domiciliary
 4238 regulator with regard to solvency regulation requirements and
 4239 the financial surveillance of the reinsurer.

4240 3. The substance of financial and operating standards for
 4241 reinsurers in the domiciliary jurisdiction.

4242 4. The form and substance of financial reports required to
 4243 be filed by the reinsurers in the domiciliary jurisdiction or
 4244 other public financial statements filed in accordance with
 4245 generally accepted accounting principles.

4246 5. The domiciliary regulator's willingness to cooperate
 4247 with United States regulators in general and the department in
 4248 particular.

4249 6. The history of performance by reinsurers in the
 4250 domiciliary jurisdiction.

4251 7. Any documented evidence of substantial problems with
 4252 the enforcement of valid United States judgments in the
 4253 domiciliary jurisdiction.

4254 8. Any other matters deemed relevant by the department.
 4255 The department shall give appropriate consideration to insurer
 4256 group ratings that may have been issued. The department may, in

4257 lieu of granting full credit under this subsection, reduce the
 4258 amount required to be held in trust under paragraph (c).

4259 (f) If the assuming insurer is not authorized or
 4260 accredited to transact insurance or reinsurance in this state
 4261 pursuant to paragraph (a) or paragraph (b), the credit permitted
 4262 by paragraph (c) or paragraph (d) must not be allowed unless the
 4263 assuming insurer agrees in the reinsurance agreements:

4264 1.a. That in the event of the failure of the assuming
 4265 insurer to perform its obligations under the terms of the
 4266 reinsurance agreement, the assuming insurer, at the request of
 4267 the ceding insurer, shall submit to the jurisdiction of any
 4268 court of competent jurisdiction in any state of the United
 4269 States, will comply with all requirements necessary to give the
 4270 court jurisdiction, and will abide by the final decision of the
 4271 court or of any appellate court in the event of an appeal.

4272 b. To designate the Chief Financial Officer, pursuant to
 4273 s. 48.151, or a designated attorney as its true and lawful
 4274 attorney upon whom may be served any lawful process in any
 4275 action, suit, or proceeding instituted by or on behalf of the
 4276 ceding company.

4277 2. This paragraph is not intended to conflict with or
 4278 override the obligation of the parties to a reinsurance
 4279 agreement to arbitrate their disputes, if this obligation is
 4280 created in the agreement.

4281 (g) If the assuming insurer does not meet the requirements
 4282 of paragraph (a) or paragraph (b), the credit permitted by
 4283 paragraph (c) or paragraph (d) is not allowed unless the
 4284 assuming insurer agrees in the trust agreements, in substance,

4285 to the following conditions:

4286 1. Notwithstanding any other provisions in the trust
 4287 instrument, if the trust fund is inadequate because it contains
 4288 an amount less than the amount required by paragraph (c), or if
 4289 the grantor of the trust has been declared insolvent or placed
 4290 into receivership, rehabilitation, liquidation, or similar
 4291 proceedings under the laws of its state or country of domicile,
 4292 the trustee shall comply with an order of the insurance
 4293 regulator with regulatory oversight over the trust or with an
 4294 order of a United States court of competent jurisdiction
 4295 directing the trustee to transfer to the insurance regulator
 4296 with regulatory oversight all of the assets of the trust fund.

4297 2. The assets must be distributed by and claims must be
 4298 filed with and valued by the insurance regulator with regulatory
 4299 oversight in accordance with the laws of the state in which the
 4300 trust is domiciled which are applicable to the liquidation of
 4301 domestic insurance companies.

4302 3. If the insurance regulator with regulatory oversight
 4303 determines that the assets of the trust fund or any part thereof
 4304 are not necessary to satisfy the claims of the United States
 4305 ceding insurers of the grantor of the trust, the assets or part
 4306 thereof must be returned by the insurance regulator with
 4307 regulatory oversight to the trustee for distribution in
 4308 accordance with the trust agreement.

4309 4. The grantor shall waive any right otherwise available
 4310 to it under United States law which is inconsistent with this
 4311 provision.

4312 (4) An asset allowed or a deduction from liability taken

4313 for the reinsurance ceded by an insurer to an assuming insurer
 4314 not meeting the requirements of subsections (2) and (3) is
 4315 allowed in an amount not exceeding the liabilities carried by
 4316 the ceding insurer. The deduction must be in the amount of funds
 4317 held by or on behalf of the ceding insurer, including funds held
 4318 in trust for the ceding insurer, under a reinsurance contract
 4319 with the assuming insurer as security for the payment of
 4320 obligations thereunder, if the security is held in the United
 4321 States subject to withdrawal solely by, and under the exclusive
 4322 control of, the ceding insurer, or, in the case of a trust, held
 4323 in a qualified United States financial institution, as defined
 4324 in paragraph (5) (b). This security may be in the form of:
 4325 (a) Cash in United States dollars;
 4326 (b) Securities listed by the Securities Valuation Office
 4327 of the National Association of Insurance Commissioners and
 4328 qualifying as admitted assets pursuant to part II of chapter
 4329 625;
 4330 (c) Clean, irrevocable, unconditional letters of credit,
 4331 issued or confirmed by a qualified United States financial
 4332 institution, as defined in paragraph (5) (a), effective no later
 4333 than December 31 of the year for which the filing is made, and
 4334 in the possession of, or in trust for, the ceding company on or
 4335 before the filing date of its annual statement; or
 4336 (d) Any other form of security acceptable to the
 4337 department.
 4338 (5) (a) For purposes of paragraph (4) (c) regarding letters
 4339 of credit, a "qualified United States financial institution"
 4340 means an institution that:

4341 1. Is organized or, in the case of a United States
 4342 department of a foreign banking organization, is licensed under
 4343 the laws of the United States or any state thereof;

4344 2. Is regulated, supervised, and examined by United States
 4345 or state authorities having regulatory authority over banks and
 4346 trust companies; and

4347 3. Has been determined by either the department or the
 4348 Securities Valuation Office of the National Association of
 4349 Insurance Commissioners to meet such standards of financial
 4350 condition and standing as are considered necessary and
 4351 appropriate to regulate the quality of financial institutions
 4352 whose letters of credit will be acceptable to the department.

4353 (b) For purposes of those provisions of this law which
 4354 specify institutions that are eligible to act as a fiduciary of
 4355 a trust, a "qualified United States financial institution" means
 4356 an institution that is a member of the Federal Reserve System or
 4357 that has been determined by the department to meet the following
 4358 criteria:

4359 1. Is organized or, in the case of a United States branch
 4360 or agency department of a foreign banking organization, is
 4361 licensed under the laws of the United States or any state
 4362 thereof and has been granted authority to operate with fiduciary
 4363 powers; and

4364 2. Is regulated, supervised, and examined by federal or
 4365 state authorities having regulatory authority over banks and
 4366 trust companies.

4367 (6) After notice and an opportunity for a hearing, the
 4368 department may disallow any credit that it finds would be

4369 contrary to the proper interests of the policyholders or
 4370 stockholders of a ceding domestic insurer.

4371 (7) Credit must be allowed to any ceding insurer for
 4372 reinsurance otherwise complying with this section only when the
 4373 reinsurance is payable by the assuming insurer on the basis of
 4374 the liability of the ceding insurer under the contract or
 4375 contracts reinsured without diminution because of the insolvency
 4376 of the ceding insurer. Such credit must be allowed to the ceding
 4377 insurer for reinsurance otherwise complying with this section
 4378 only when the reinsurance agreement provides that payments by
 4379 the assuming insurer will be made directly to the ceding insurer
 4380 or its receiver, except when:

4381 (a) The reinsurance contract specifically provides payment
 4382 to the named insured, assignee, or named beneficiary of the
 4383 policy issued by the ceding insurer in the event of the
 4384 insolvency of the ceding insurer; or

4385 (b) The assuming insurer, with the consent of the named
 4386 insured, has assumed the policy obligations of the ceding
 4387 insurer as direct obligations of the assuming insurer in
 4388 substitution for the obligations of the ceding insurer to the
 4389 named insured.

4390 (8) No person, other than the ceding insurer, has any
 4391 rights against the reinsurer which are not specifically set
 4392 forth in the contract of reinsurance or in a specific written,
 4393 signed agreement between the reinsurer and the person.

4394 (9) An authorized insurer may not knowingly accept as
 4395 assuming reinsurer any risk covering subject of insurance which
 4396 is resident, located, or to be performed in this state and which

4397 is written directly by any insurer not then authorized to
 4398 transact such insurance in this state, other than as to surplus
 4399 lines insurance lawfully written under part VIII of chapter 626.

4400 (10) (a) Any domestic or commercially domiciled insurer
 4401 ceding directly written risks of loss under this section shall,
 4402 within 30 days after receipt of a cover note or similar
 4403 confirmation of coverage, or, without exception, no later than 6
 4404 months after the effective date of the reinsurance treaty, file
 4405 with the department one copy of a summary statement containing
 4406 the following information about each treaty:

- 4407 1. The contract period.
- 4408 2. The nature of the reinsured's business.
- 4409 3. An indication as to whether the treaty is proportional,
 4410 nonproportional, coinsurance, modified coinsurance, or
 4411 indemnity, as applicable.
- 4412 4. The ceding company's loss retention per risk.
- 4413 5. The reinsured limits.
- 4414 6. Any special contract restrictions.
- 4415 7. A schedule of reinsurers assuming the risks of loss.
- 4416 8. An indication as to whether payments to the assuming
 4417 insurer are based on written premiums or earned premiums.
- 4418 9. Identification of any intermediary or broker used in
 4419 obtaining the reinsurance and the department paid to such
 4420 intermediary or broker if known.

4421 10. Ceding commissions and allowances.

4422 (b) The summary statement must be signed and attested to
 4423 by either the chief executive officer or the chief financial
 4424 officer of the reporting insurer. In addition to the summary

4425 statement, the department may require the filing of any
4426 supporting information relating to the ceding of such risks as
4427 it deems necessary. If the summary statement prepared by the
4428 ceding insurer discloses that the net effect of a reinsurance
4429 treaty or treaties, or series of treaties with one or more
4430 affiliated reinsurers entered into for the purpose of avoiding
4431 the following threshold amount, at any time results in an
4432 increase of more than 25 percent to the insurer's surplus as to
4433 policyholders, then the insurer shall certify in writing to the
4434 department that the relevant reinsurance treaty or treaties
4435 comply with the accounting requirements contained in any rule
4436 adopted by the department under subsection (13). If such
4437 certificate is filed after the summary statement of such
4438 reinsurance treaty or treaties, the insurer shall refile the
4439 summary statement with the certificate. In any event, the
4440 certificate must state that a copy of the certificate was sent
4441 to the reinsurer under the reinsurance treaty.

4442 (c) This subsection applies to cessions of directly
4443 written risk or loss. This subsection does not apply to
4444 contracts of facultative reinsurance or to any ceding insurer
4445 with surplus as to policyholders that exceeds \$100 million as of
4446 the immediately preceding December 31. Additionally, any ceding
4447 insurer otherwise subject to this section with less than
4448 \$500,000 in direct premiums written in this state during the
4449 preceding calendar year or with less than 1,000 policyholders at
4450 the end of the preceding calendar year is exempt from the
4451 requirements of this subsection. However, any ceding insurer
4452 otherwise subject to this section with more than \$250,000 in

4453 direct premiums written in this state during the preceding
4454 calendar quarter is not exempt from the requirements of this
4455 subsection.

4456 (d) An authorized insurer not otherwise exempt from the
4457 provisions of this subsection shall provide the information
4458 required by this subsection with underlying and supporting
4459 documentation upon written request of the department.

4460 (e) The department may, upon a showing of good cause,
4461 waive the requirements of this subsection.

4462 (11) If the department finds that a reinsurance agreement
4463 creates a substantial risk of insolvency to either insurer
4464 entering into the reinsurance agreement, the department may by
4465 order require a cancellation of the reinsurance agreement.

4466 (12) No credit shall be allowed for reinsurance with
4467 regard to which the reinsurance agreement does not create a
4468 meaningful transfer of risk of loss to the reinsurer.

4469 (13) The department may adopt rules implementing the
4470 provisions of this section. Rules are authorized to protect the
4471 interests of insureds, claimants, ceding insurers, assuming
4472 insurers, and the public. These rules shall be in substantial
4473 compliance with:

4474 (a) The National Association of Insurance Commissioners
4475 model regulations relating to credit for reinsurance.

4476 (b) The National Association of Insurance Commissioners
4477 Accounting Practices and Procedures Manual as of March 2002 and
4478 subsequent amendments thereto if the methodology remains
4479 substantially consistent.

4480

4481 The department may further adopt rules to provide for transition
 4482 from existing requirements for the approval of reinsurers to the
 4483 accreditation of reinsurers pursuant to this section.

4484 637.20495 Insurer defined.—As used in ss. 637.2051,
 4485 637.2053, 637.2054, and 637.2055, the term "insurer" means and
 4486 includes every person as defined in s. 637.1004(14) and title
 4487 insurer as defined in s. 637.1004(21) as limited to any domestic
 4488 or commercially domiciled insurer who is doing business as an
 4489 insurer or who has transacted insurance in this state and
 4490 against whom claims arising from that transaction may exist now
 4491 or in the future.

4492 637.2051 Notice to comply with written requirements of
 4493 department; noncompliance.—

4494 (1) If the department determines that the conditions set
 4495 forth in subsection (2) exist, the department shall issue an
 4496 order placing the title insurer in administrative supervision,
 4497 setting forth the reasons giving rise to the determination, and
 4498 specifying that the department is applying and effectuating the
 4499 provisions of this chapter. An order issued by the department
 4500 pursuant to this subsection entitles the insurer to request a
 4501 proceeding under ss. 120.569 and 120.57, and such a request
 4502 shall stay the action pending such proceeding.

4503 (2) A title insurer shall be subject to administrative
 4504 supervision by the department if upon examination or at any
 4505 other time the department determines that:

4506 (a) The insurer is in unsound condition;

4507 (b) The insurer's methods or practices render the
 4508 continuance of its business hazardous to the public or to its

4509 insureds; or

4510 (c) The insurer has exceeded its powers granted under its
4511 certificate of authority and applicable law.

4512 (3) Within 15 days after receipt of notice of the
4513 department's determination to proceed under this chapter, an
4514 insurer shall submit to the department a plan to correct the
4515 conditions set forth in the notice. For good cause shown, the
4516 department may extend the 15-day time period for submission of
4517 the plan. If the department and the insurer agree on a
4518 corrective plan, a written agreement shall be entered into to
4519 carry out the plan.

4520 (4) If a title insurer fails to timely submit a plan, the
4521 department may specify the requirements of a plan to address the
4522 conditions giving rise to imposition of administrative
4523 supervision under this chapter. In addition, failure of the
4524 insurer to timely submit a plan is a violation of the provisions
4525 of this chapter punishable in accordance with s. 637.2017.

4526 (5) The plan shall address, but shall not be limited to,
4527 each of the activities of the insurer's business which are set
4528 forth in s. 637.2053.

4529 (6) Any insurer subject to administrative supervision is
4530 expected to avail itself of all reasonably available
4531 reinsurance. Reasonably available reinsurance shall include
4532 unrealized reinsurance, which is defined as reinsurance
4533 recoverable on known losses incurred and due under valid
4534 reinsurance contracts that have not been identified in the
4535 normal course of business and have not been reported in
4536 financial statements filed with the department. Within 90 days

4537 after being placed under administrative supervision, the insurer
4538 shall certify to the Chief Financial Officer that the insurer
4539 has engaged an independent third party to search for unrealized
4540 reinsurance, and that the insurer has made all relevant books
4541 and records available to the third party. The compensation to
4542 the third party may be a percentage of unrealized reinsurance
4543 identified and collected.

4544 (7) If the department and the insurer are unable to agree
4545 on the provisions of the plan, the department may require the
4546 insurer to take such corrective action as may be reasonably
4547 necessary to remove the causes and conditions giving rise to the
4548 need for administrative supervision.

4549 (8) The insurer shall have 60 days, or a longer period of
4550 time as designated by the department but not to exceed 120 days,
4551 after the date of the written agreement or the receipt of the
4552 department's plan within which to comply with the requirements
4553 of the department. At the conclusion of the initial period of
4554 supervision, the department may extend the supervision in
4555 increments of 60 days or longer, not to exceed 120 days, if
4556 conditions justifying supervision exist. Each extension of
4557 supervision shall provide the insurer with a point of entry
4558 pursuant to chapter 120.

4559 (9) The initiation or pendency of administrative
4560 proceedings arising from actions taken under this section shall
4561 not preclude the department from initiating judicial proceedings
4562 to place an insurer in conservation, rehabilitation, or
4563 liquidation or initiating other delinquency proceedings however
4564 designated under the laws of this state.

4565 (10) If it is determined that the conditions giving rise
 4566 to administrative supervision have been remedied so that the
 4567 continuance of its business is no longer hazardous to the public
 4568 or to its insureds, the department shall release the insurer
 4569 from supervision.

4570 (11) The department may adopt rules to define standards of
 4571 hazardous financial condition and corrective action
 4572 substantially similar to that indicated in the National
 4573 Association of Insurance Commissioners' 1997 "Model Regulation
 4574 to Define Standards and Commissioner's Authority for Companies
 4575 Deemed to be in Hazardous Financial Condition," which are
 4576 necessary to implement the provisions of this part.

4577 637.2053 Prohibited acts during period of supervision.—The
 4578 department may provide that the title insurer may not conduct
 4579 the following activities during the period of supervision,
 4580 without prior approval by the department:

4581 (1) Dispose of, convey, or encumber any of its assets or
 4582 its business in force;

4583 (2) Withdraw any of its bank accounts;

4584 (3) Lend any of its funds;

4585 (4) Invest any of its funds;

4586 (5) Transfer any of its property;

4587 (6) Incur any debt, obligation, or liability;

4588 (7) Merge or consolidate with another company;

4589 (8) Enter into any new reinsurance contract or treaty;

4590 (9) Terminate, surrender, forfeit, convert, or lapse any
 4591 insurance policy, certificate, or contract of insurance, except
 4592 for nonpayment of premiums due;

4593 (10) Release, pay, or refund premium deposits, accrued
 4594 cash or loan values, unearned premiums, or other reserves on any
 4595 insurance policy or certificate; or

4596 (11) Make any material change in management.

4597 637.2054 Review.—During the period of supervision, the
 4598 title insurer may contest an action taken or proposed to be
 4599 taken by the supervisor, specifying the manner wherein the
 4600 action complained of would not result in improving the condition
 4601 of the insurer. Such request shall not stay the action specified
 4602 pending reconsideration of the action by the department. Denial
 4603 of the insurer's request upon reconsideration entitles the
 4604 insurer to request a proceeding under ss. 120.569 and 120.57.

4605 637.2055 Administrative election of proceedings.—If the
 4606 department determines to act under authority of this chapter,
 4607 the sequence of its acts and proceedings shall be as set forth
 4608 herein. However, it is a purpose and substance of this chapter
 4609 to allow the department administrative discretion in the event
 4610 of insurer delinquencies and, in furtherance of that purpose,
 4611 the department may, in respect to insurer delinquencies or
 4612 suspected delinquencies, proceed and administer under the
 4613 provisions of this chapter or any other applicable law, or under
 4614 the provisions of this chapter in conjunction with other
 4615 applicable law, and it is so provided. Nothing contained in this
 4616 part or in any other provision of law shall preclude the
 4617 department from initiating judicial proceedings to place an
 4618 insurer in conservation, rehabilitation, or liquidation
 4619 proceedings or other delinquency proceedings however designated
 4620 under the laws of this state, regardless of whether the

4621 department has previously initiated administrative supervision
 4622 proceedings under this part against the insurer. The entry of an
 4623 order of seizure, rehabilitation, or liquidation pursuant to
 4624 chapter 631 shall terminate all proceedings pending pursuant to
 4625 this part.

4626 637.2056 Other laws; conflicts; meetings between the
 4627 department and the supervisor.—During the period of
 4628 administrative supervision, the department may meet with a
 4629 supervisor appointed under this chapter and with the attorney or
 4630 other representative of the supervisor and such meetings are
 4631 exempt from the provisions of s. 286.011.

4632 637.2057 Administrative supervision; expenses.—

4633 (1) During the period of supervision the department by
 4634 contract or otherwise may appoint a deputy supervisor to
 4635 supervise the title insurer.

4636 (2) Each insurer which is subject to administrative
 4637 supervision by the department shall pay to the department the
 4638 expenses of its administrative supervision at the rates adopted
 4639 by the department. Expenses shall include actual travel
 4640 expenses, a reasonable living expense allowance, compensation of
 4641 the deputy supervisor or other person employed or appointed by
 4642 the department for purposes of the supervision, and necessary
 4643 attendant administrative costs of the department directly
 4644 related to the supervision. The travel expense and living
 4645 expense allowance shall be limited to those expenses necessarily
 4646 incurred on account of the administrative supervision and shall
 4647 be paid by the insurer together with compensation upon
 4648 presentation by the department to the insurer of a detailed

4649 account of the charges and expenses after a detailed statement
 4650 has been filed by the deputy supervisor or other person employed
 4651 or appointed by the department and approved by the department.

4652 (3) All moneys collected from insurers for the expenses of
 4653 administrative supervision shall be deposited into the Title
 4654 Insurance Regulatory Trust Fund, and the department is
 4655 authorized to make deposits from time to time into this fund
 4656 from moneys appropriated for the operation of the department.

4657 (4) Notwithstanding the provisions of s. 112.061, the
 4658 department is authorized to pay to the deputy supervisor or
 4659 person employed or appointed by the department for purposes of
 4660 the supervision out of such trust fund the actual travel
 4661 expenses, reasonable living expense allowance, and compensation
 4662 in accordance with the statement filed with the department by
 4663 the deputy supervisor or other person, as provided in subsection
 4664 (2), upon approval by the department.

4665 (5) The department may in whole or in part defer payment
 4666 of expenses due from the insurer pursuant to this section upon a
 4667 showing that payment would adversely impact on the financial
 4668 condition of the insurer and jeopardize its rehabilitation. The
 4669 payment shall be made by the insurer when the condition is
 4670 removed and the payment would no longer jeopardize the insurer's
 4671 financial condition.

4672 Section 10. Section 627.777, Florida Statutes, is
 4673 transferred, renumbered as section 637.2058, Florida Statutes,
 4674 and amended to read:

4675 637.2058 ~~627.777~~ Approval of forms.—

4676 (1) A title insurer may not issue or agree to issue any

4677 form of title insurance commitment, title insurance policy,
4678 other contract of title insurance, or related form until it is
4679 filed with and approved by the department office. The department
4680 office may not disapprove a title guarantee or policy form on
4681 the ground that it has on it a blank form for an attorney's
4682 opinion on the title.

4683 (2) If a form filed for approval is a form recommended by
4684 the American Land Title Association at the time of the filing,
4685 the department shall approve or disapprove the form within 180
4686 days. If a form filed for approval is a form not recommended by
4687 the American Land Title Association at the time of the filing,
4688 the department shall approve or disapprove the form within 1
4689 year.

4690 (3) At the time of the approval of any form, the
4691 department shall determine if a rate in effect at that time
4692 applies or if the coverages require adoption of a rule pursuant
4693 to s. 637.2064.

4694 (4) The department may revoke approval of any form upon
4695 180 days' notice.

4696 (5) An insurer may not achieve any competitive advantage
4697 over any other insurer or agent as to forms.

4698 Section 11. Section 627.7773, Florida Statutes, is
4699 transferred, renumbered as section 637.2059, Florida Statutes,
4700 and amended to read:

4701 637.2059 ~~627.7773~~ Accounting and auditing of forms by
4702 title insurers.—

4703 (1) Each title insurer authorized to do business in this
4704 state shall, at least once during each calendar year, require of

4705 each of its title insurance agents or agencies accountings of
 4706 all outstanding forms in the agent's or agency's possession ~~of~~
 4707 ~~the types that are specified in s. 627.777.~~

4708 (2) If the department ~~office~~ has reason to believe that an
 4709 audit of outstanding forms should be required of any title
 4710 insurer as to a title insurance agent or agency, the department
 4711 ~~office~~ may require the title insurer to make a special audit of
 4712 the forms. The title insurer shall complete the audit not later
 4713 than 60 days after the request is received from the department
 4714 ~~office~~, and shall report the results of the special audit to the
 4715 department ~~office~~ no later than 90 days after the request is
 4716 received.

4717 Section 12. Section 627.7776, Florida Statutes, is
 4718 transferred, renumbered as section 637.2061, Florida Statutes,
 4719 and subsection (1) of that section is amended to read:

4720 637.2061 ~~627.7776~~ Furnishing of supplies; civil
 4721 liability.—

4722 (1) A title insurer may not furnish to any person any
 4723 blank forms, applications, stationery, or other supplies to be
 4724 used in soliciting, negotiating, or effecting contracts of title
 4725 insurance on its behalf until that person has received from the
 4726 insurer a contract to act as a title insurance agent or agency
 4727 and has been licensed by the department, if required by s.
 4728 637.3006 ~~626.8417~~.

4729 Section 13. Section 627.780, Florida Statutes, is
 4730 transferred, renumbered as section 637.2063, Florida Statutes,
 4731 and subsection (1) of that section is amended to read:

4732 637.2063 ~~627.780~~ Illegal dealings in premium.—

CS/HB 853

2010

4733 (1) A person may not knowingly quote, charge, accept,
 4734 collect, or receive a premium for title insurance other than the
 4735 premium adopted by the department ~~commission~~, except as provided
 4736 in s. 637.1033(7)(b). ~~626.9541(1)(h)3.b.~~

4737 Section 14. Section 627.782, Florida Statutes, is
 4738 transferred, renumbered as section 637.2064, Florida Statutes,
 4739 and amended to read:

4740 637.2064 ~~627.782~~ Adoption of rates.—

4741 (1) Subject to the rating provisions of this chapter ~~code~~,
 4742 the department ~~commission~~ must adopt a rule specifying the
 4743 premium to be charged in this state by title insurers for the
 4744 respective types of title insurance contracts and, for policies
 4745 issued through agents or agencies, the percentage of such
 4746 premium required to be retained by the title insurer which shall
 4747 not be less than 30 percent. However, in a transaction subject
 4748 to the Real Estate Settlement Procedures Act of 1974, 12 U.S.C.
 4749 ss. 2601 et seq., as amended, no portion of the premium
 4750 attributable to providing a primary title service shall be paid
 4751 to or retained by any person who does not actually perform or is
 4752 not liable for the performance of such service.

4753 (2) In adopting premium rates, the department ~~commission~~
 4754 must give due consideration to the following:

4755 (a) The title insurers' loss experience and prospective
 4756 loss experience under closing protection letters and policy
 4757 liabilities.

4758 (b) A reasonable margin for underwriting profit and
 4759 contingencies, including contingent liability under s. 637.2075
 4760 ~~627.7865~~, sufficient to allow title insurers, agents, and

4761 agencies to earn a rate of return on their capital that will
 4762 attract and retain adequate capital investment in the title
 4763 insurance business and maintain an efficient title insurance
 4764 delivery system.

4765 (c) Past expenses and prospective expenses for
 4766 administration and handling of risks.

4767 (d) Liability for defalcation.

4768 (e) Other relevant factors.

4769 (3) Rates may be grouped by classification or schedule and
 4770 may differ as to class of risk assumed.

4771 (4) Rates may not be excessive, inadequate, or unfairly
 4772 discriminatory.

4773 (5) The premium applies to each \$100 of insurance issued
 4774 to an insured.

4775 (6) The premium rates apply throughout this state.

4776 (7) The department ~~commission~~ shall, in accordance with
 4777 the standards provided in subsection (2), review the premium as
 4778 needed, but not less frequently than once every 3 years, and
 4779 shall, based upon the review required by this subsection, revise
 4780 the premium if the results of the review so warrant.

4781 (8) The department ~~commission~~ may, by rule, require
 4782 licensees under this part to annually submit statistical
 4783 information, including loss and expense data, as the department
 4784 determines to be necessary to analyze premium rates, retention
 4785 rates, and the condition of the title insurance industry.

4786 Section 15. Section 627.783, Florida Statutes, is
 4787 transferred, renumbered as section 637.2065, Florida Statutes,
 4788 and amended to read:

4789 637.2065 ~~627.783~~ Rate deviation.—

4790 (1) A title insurer may petition the department ~~office~~ for
 4791 an order authorizing a specific deviation from the adopted
 4792 premium. The petition shall be in writing and sworn to and shall
 4793 set forth allegations of fact upon which the petitioner will
 4794 rely, including the petitioner's reasons for requesting the
 4795 deviation. Any authorized title insurer, agent, or agency may
 4796 join in the petition for like authority to deviate or may file a
 4797 separate petition praying for like authority or opposing the
 4798 deviation. The department ~~office~~ shall rule on all such
 4799 petitions simultaneously.

4800 (2) If, in the judgment of the department ~~office~~, the
 4801 requested deviation is not justified, the department ~~office~~ may
 4802 enter an order denying the petition. An order granting a
 4803 petition constitutes an amendment to the adopted premium as to
 4804 the petitioners named in the order, and is subject to s.
 4805 637.2064 ~~627.782~~.

4806 Section 16. Section 627.7831, Florida Statutes, is
 4807 transferred and renumbered as section 637.2066, Florida
 4808 Statutes.

4809 Section 17. Section 627.784, Florida Statutes, is
 4810 transferred and renumbered as section 637.2067, Florida
 4811 Statutes.

4812 Section 18. Section 627.7841, Florida Statutes, is
 4813 transferred and renumbered as section 637.2068, Florida
 4814 Statutes.

4815 Section 19. Section 627.7842, Florida Statutes, is
 4816 transferred and renumbered as section 637.2069, Florida

4817 Statutes.

4818 Section 20. Section 627.7843, Florida Statutes, is
 4819 transferred and renumbered as section 637.2071, Florida
 4820 Statutes.

4821 Section 21. Section 627.7845, Florida Statutes, is
 4822 transferred, renumbered as section 637.2072, Florida Statutes,
 4823 and amended to read:

4824 637.2072 ~~627.7845~~ Determination of insurability required;
 4825 preservation of evidence of title search and examination.—

4826 (1) A title insurer may not issue a title insurance
 4827 commitment, endorsement, or title insurance policy until the
 4828 title insurer has caused to be made a determination of
 4829 insurability based upon the evaluation of a reasonable title
 4830 search or a search of the records of a Uniform Commercial Code
 4831 filing department ~~office~~, as applicable, has examined such other
 4832 information as may be necessary, and has caused to be made a
 4833 determination of insurability of title or the existence,
 4834 attachments, perfection, and priority of a Uniform Commercial
 4835 Code security interest, including endorsement coverages, in
 4836 accordance with sound underwriting practices.

4837 (2) The title insurer shall cause the evidence of the
 4838 determination of insurability and the reasonable title search or
 4839 search of the records of a Uniform Commercial Code filing
 4840 department ~~office~~ to be preserved and retained in its files or
 4841 in the files of its title insurance agent or agency for a period
 4842 of not less than 7 years after the title insurance commitment,
 4843 title insurance policy, or guarantee of title was issued. The
 4844 title insurer or agent or agency must produce the evidence

4845 required to be maintained by this subsection at its departments
 4846 ~~offices~~ upon the demand of the department ~~office~~. Instead of
 4847 retaining the original evidence, the title insurer or the title
 4848 insurance agent or agency may, in the regular course of
 4849 business, establish a system under which all or part of the
 4850 evidence is recorded, copied, or reproduced by any photographic,
 4851 photostatic, microfilm, microcard, miniature photographic, or
 4852 other process which accurately reproduces or forms a durable
 4853 medium for reproducing the original.

4854 (3) The title insurer or its agent or agency must maintain
 4855 a record of the actual premium charged for issuance of the
 4856 policy and any endorsements in its files for a period of not
 4857 less than 7 years. The title insurer, agent, or agency must
 4858 produce the record at its department ~~office~~ upon demand of the
 4859 department ~~office~~.

4860 (4) This section does not apply to an insurer assuming no
 4861 primary liability in a contract of reinsurance or to an insurer
 4862 acting as a coinsurer if any other coinsuring insurer has
 4863 complied with this section.

4864 Section 22. Section 627.785, Florida Statutes, is
 4865 transferred and renumbered as section 637.2073, Florida
 4866 Statutes.

4867 Section 23. Section 627.786, Florida Statutes, is
 4868 transferred, renumbered as section 637.2074, Florida Statutes,
 4869 and subsection (3) of that section is amended to read:

4870 637.2074 ~~627.786~~ Transaction of title insurance and any
 4871 other kind of insurance prohibited.—

4872 (3) Subsection (1) does not preclude a title insurer from

4873 providing instruments to any prospective insured, in the form
4874 and content approved by the department ~~office~~, under which the
4875 title insurer assumes liability for loss due to the fraud of,
4876 dishonesty of, misappropriation of funds by, or failure to
4877 comply with written closing instructions by, its contract
4878 agents, agencies, or approved attorneys in connection with a
4879 real property transaction for which the title insurer is to
4880 issue a title insurance policy.

4881 Section 24. Section 627.7865, Florida Statutes, is
4882 transferred, renumbered as section 637.2075, Florida Statutes,
4883 and amended to read:

4884 637.2075 ~~627.7865~~ Title insurer assessments.—

4885 (1) As a condition of doing business in this state, each
4886 title insurer shall be liable for an assessment to pay all
4887 unpaid title insurance claims and expenses of administering and
4888 settling such claims on real property in this state for any
4889 title insurer that is ordered into liquidation under chapter 631
4890 ~~which is liquidated with unpaid outstanding claims. The office~~
4891 ~~shall assess all title insurers on a pro rata basis determined~~
4892 ~~by their writings in this state for amounts necessary to pay the~~
4893 ~~claims. A title insurer is not required to pay an amount in~~
4894 ~~excess of one-tenth of its surplus as to policyholders.~~

4895 (2) The receiver or any title insurer may apply to the
4896 court for an order of liquidation if it appears that
4897 rehabilitation is not viable.

4898 (3) The following provisions apply upon issuance of a
4899 court order directing liquidation of an insurer:

4900 (a) The policies issued by the title insurer in

4901 liquidation shall remain in force.

4902 (b) The department shall order an assessment upon a
 4903 judicially approved request by the receiver on an annual basis
 4904 in an amount that the receiver deems sufficient, together with
 4905 other assets of the estate, including available reinsurance, for
 4906 the payment of known claims, loss adjustment expenses, and the
 4907 cost of administration of the liquidation expenses.

4908 (c) Each title insurer doing business in this state shall
 4909 be assessed pro rata based upon the total title insurance
 4910 premiums written in this state, excluding premiums on
 4911 reinsurance, as reported to the department for the most recent
 4912 calendar year.

4913 (d) Assessments shall be paid to the receiver within 45
 4914 days after notice of the assessment or pursuant to an approved
 4915 quarterly installment plan. Any insurer that elects to pay an
 4916 assessment on an installment plan shall also pay a financing
 4917 charge to be determined by the receiver.

4918 (e) The department shall order an emergency assessment
 4919 upon a judicially approved request by the receiver. The total of
 4920 any emergency assessment, when added to any annual assessment in
 4921 a single calendar year, may not exceed the limitation in
 4922 paragraph (f).

4923 (f) A title insurer may not be required to pay an
 4924 assessment or multiple assessments in any 1 year that exceeds 4
 4925 percent of its surplus to policyholders as of the end of the
 4926 previous calendar year or more than 10 percent of its surplus to
 4927 policyholders during a 60-month period. The 10-percent
 4928 limitation shall be calculated as the sum of the percentages of

4929 surplus to policyholders assessed over such 60-month period. The
 4930 department may exempt or limit the assessment of a title insurer
 4931 if such assessment would result in a reduction to surplus as to
 4932 policyholders below the minimum required to maintain the
 4933 insurer's certificate of authority in this state.

4934 (g) Once ordered by the department, assessments and
 4935 emergency assessments shall be considered assets of the estate
 4936 and subject to the provisions of s. 631.154.

4937 (4) The receiver shall enter into one or more contracts
 4938 with a title insurer licensed in this state for the purposes of
 4939 servicing as the point of contact for policyholders of the
 4940 insolvent insurer and the administration and settlement of
 4941 claims. The receiver shall make available information regarding
 4942 unpaid claims on a quarterly basis. The department shall appoint
 4943 an oversight committee consisting of representatives from the
 4944 assessed title insurers to review material claims settlements
 4945 prior to payment and such other actions as the department shall
 4946 deem appropriate.

4947 (5) Unless ordered into liquidation, the title insurer in
 4948 rehabilitation may not be released from rehabilitation until all
 4949 assessments have been repaid.

4950 Section 25. Section 627.791, Florida Statutes, is
 4951 transferred, renumbered as section 637.2076, Florida Statutes,
 4952 and amended to read:

4953 637.2076 ~~627.791~~ Penalties against title insurers for
 4954 violations by persons or entities not licensed.—A title insurer
 4955 is subject to the penalties in ss. 637.2017(2) and 637.2021
 4956 ~~624.418(2)~~ and ~~624.4211~~ for any violation of a lawful order or

4957 rule of the department ~~office or commission~~, or for any
 4958 violation of this chapter ~~code~~, committed by:

4959 (1) A person, firm, association, corporation, cooperative,
 4960 joint-stock company, or other legal entity not licensed under
 4961 this part when issuing and countersigning commitments or
 4962 policies of title insurance on behalf of the title insurer.

4963 (2) An attorney when issuing and countersigning
 4964 commitments or policies of title insurance on behalf of the
 4965 title insurer.

4966 Section 26. Section 627.792, Florida Statutes, is
 4967 transferred, renumbered as section 637.2077, Florida Statutes,
 4968 and amended to read:

4969 637.2077 ~~627.792~~ Liability of title insurers for
 4970 defalcation by title insurance agents or agencies.—A title
 4971 insurer is liable for the defalcation, conversion, or
 4972 misappropriation by a licensed title insurance agent or agency
 4973 of funds held in trust by the agent or agency pursuant to s.
 4974 637.3029 ~~626.8473~~. If the agent or agency is an agent or agency
 4975 for two or more title insurers, any liability shall be borne by
 4976 the title insurer upon which a title insurance commitment or
 4977 policy was issued prior to the illegal act. If no commitment or
 4978 policy was issued, each title insurer represented by the agent
 4979 or agency at the time of the illegal act shares in the liability
 4980 in the same proportion that the premium remitted to it by the
 4981 agent or agency during the 1-year period before the illegal act
 4982 bears to the total premium remitted to all title insurers by the
 4983 agent or agency during the same time period.

4984 Section 27. Section 627.793, Florida Statutes, is

4985 transferred, renumbered as section 637.2078, Florida Statutes,
 4986 and amended to read:

4987 637.2078 ~~627.793~~ Rulemaking authority.—The department
 4988 ~~commission~~ may adopt rules implementing the provisions of this
 4989 chapter ~~part~~.

4990 Section 28. Section 627.796, Florida Statutes, is
 4991 transferred and renumbered as section 637.2079, Florida
 4992 Statutes.

4993 Section 29. Section 627.797, Florida Statutes, is
 4994 transferred, renumbered as section 637.2081, Florida Statutes,
 4995 and subsection (1) of that section is amended to read:

4996 637.2081 ~~627.797~~ Exempt title insurance agent list.—

4997 (1) Every insurer shall file with the department a list
 4998 containing the name and address of each appointed agent who is
 4999 exempt from licensure under s. 637.3006(4) ~~626.8417(4)~~ and who
 5000 issues or countersigns binders, commitments, title insurance
 5001 policies, or guarantees of title.

5002 Section 30. Section 627.798, Florida Statutes, is
 5003 transferred, renumbered as section 637.2082, Florida Statutes,
 5004 and amended to read:

5005 637.2082 ~~627.798~~ Rulemaking authority.—The department
 5006 ~~commission~~ shall ~~by rule~~ adopt a form to be used to provide
 5007 notice to a purchaser-mortgagor that the purchaser-mortgagor is
 5008 not protected by the title policy of the mortgagee.

5009 Section 31. Sections 637.2083, 637.2084, 637.2085,
 5010 637.2086, 637.2087, 637.2088, 637.2089, and 637.2091, Florida
 5011 Statutes, are created to read:

5012 637.2083 Assets not allowed.—In addition to assets

5013 impliedly excluded by the provisions of s. 625.012, the
 5014 following expressly shall not be allowed as assets in any
 5015 determination of the financial condition of a title insurer:

5016 (1) Trade names, patents, agreements not to compete, and
 5017 other like intangible assets.

5018 (2) Advances (other than policy loans) to officers and
 5019 directors, whether secured or not, and advances to employees,
 5020 agents, and other persons on personal security only.

5021 (3) Stock of such insurer, owned by it, or any material
 5022 equity therein or loans secured thereby, or any material
 5023 proportionate interest in such stock acquired or held through
 5024 the ownership by such insurer of an interest in another firm,
 5025 corporation, or business unit.

5026 (4) Furniture, fixtures, furnishings, safes, vehicles,
 5027 libraries, stationery, literature, and supplies, other than data
 5028 processing and accounting systems authorized under s.
 5029 625.012(11), except in the case of title insurers such materials
 5030 and plants as the insurer is expressly authorized to invest in
 5031 under s. 637.20073 and except, in the case of any insurer, such
 5032 personal property as the insurer is permitted to hold pursuant
 5033 to part II of this chapter, or which is acquired through
 5034 foreclosure of chattel mortgages acquired pursuant to s.
 5035 625.329, or which is reasonably necessary for the maintenance
 5036 and operation of real estate lawfully acquired and held by the
 5037 insurer other than real estate used by it for home office,
 5038 branch office, and similar purposes.

5039 (5) The amount, if any, by which the aggregate book value
 5040 of investments as carried in the ledger assets of the insurer

5041 exceeds the aggregate value thereof as determined under this
 5042 code.

5043 (6) Bonds, notes, or other evidences of indebtedness which
 5044 are secured by mortgages or deeds of trust which are in default.

5045 (7) Prepaid and deferred expenses.

5046 637.2084 Power to contract; purchase of title insurance by
 5047 or for minor.—

5048 (1) Any person of competent legal capacity may contract
 5049 for title insurance.

5050 (2) Any minor of the age of 15 years or more, as
 5051 determined by the nearest birthday, may, notwithstanding his or
 5052 her minority, contract for title insurance on his or her own
 5053 property.

5054 (3) If any minor mentioned in subsection (2) is possessed
 5055 of an estate that is being administered by a guardian or
 5056 curator, such contract shall not be binding upon such estate as
 5057 to payment of premiums, except as and when consented to by the
 5058 guardian or curator and approved by the probate court of the
 5059 county in which the administration of the estate is pending; and
 5060 such consent and approval shall be required as to each premium
 5061 payment.

5062 637.2085 Charter, bylaw provisions.—A title insurance
 5063 policy may not contain any provision purporting to make any
 5064 portion of the charter, bylaws, or other constituent document of
 5065 the title insurer a part of the contract unless such portion is
 5066 set forth in full in the policy. Any policy provision in
 5067 violation of this section is invalid.

5068 637.2086 Execution of policies.—

5069 (1) Every title insurance policy shall be executed in the
 5070 name of and on behalf of the insurer by its officer, attorney in
 5071 fact, employee, or representative duly authorized by the title
 5072 insurer.

5073 (2) A facsimile signature of any such executing individual
 5074 may be used in lieu of an original signature.

5075 (3) A title insurance contract that is otherwise valid may
 5076 not be rendered invalid by reason of the apparent execution
 5077 thereof on behalf of the title insurer by the imprinted
 5078 facsimile signature of an individual not authorized so to
 5079 execute as of the date of the policy.

5080 637.2087 Construction of policies.—

5081 (1) Every title insurance contract shall be construed
 5082 according to the entirety of its terms and conditions as set
 5083 forth in the policy and as amplified, extended, or modified by
 5084 any application therefor or any rider or endorsement thereto.

5085 (2) If a title insurer or licensee advertises title
 5086 insurance policy in a language other than English, the
 5087 advertisements shall not be construed to modify or change the
 5088 insurance policy written in English. The advertisement must
 5089 disclose that the policy written in English controls in the
 5090 event of a dispute and that statements contained in the
 5091 advertisement do not necessarily, as a result of possible
 5092 linguistic differences, reflect the contents of the policy
 5093 written in English. Nothing in this subsection shall affect the
 5094 provisions of s. 637.1033 relating to misrepresentations and
 5095 false advertising of insurance policies.

5096 637.2088 Payment of judgment by title insurer; penalty for

5097 failure.-

5098 (1) Every judgment or decree for the recovery of money
 5099 entered in any of the courts of this state against any
 5100 authorized title insurer shall be fully satisfied within 60 days
 5101 after the entry thereof or, in the case of an appeal from such
 5102 judgment or decree, within 60 days after the affirmance of the
 5103 same by the appellate court.

5104 (2) If the judgment or decree is not satisfied as required
 5105 under subsection (1), and proof of such failure to satisfy is
 5106 made by filing with the department a certified transcript of the
 5107 docket of the judgment or decree together with a certificate by
 5108 the clerk of the court wherein the judgment or decree was
 5109 entered that the judgment or decree remains unsatisfied, in
 5110 whole or in part, after the time aforesaid, the department shall
 5111 forthwith revoke the title insurer's certificate of authority.
 5112 The department shall not issue to such insurer any new
 5113 certificate of authority until the judgment or decree is wholly
 5114 paid and satisfied and proof thereof filed with the department
 5115 under the official certificate of the clerk of the court wherein
 5116 the judgment was recovered, showing that the same is satisfied
 5117 of record, and until the expenses and fees incurred in the case
 5118 are also paid by the insurer.

5119 637.2089 Attorney's fee.-

5120 (1) Upon the rendition of a judgment or decree by any of
 5121 the courts of this state against a title insurer and in favor of
 5122 any named or omnibus insured or the named beneficiary under a
 5123 policy or contract executed by the title insurer, the trial
 5124 court or, in the event of an appeal in which the insured or

5125 beneficiary prevails, the appellate court shall adjudge or
 5126 decree against the title insurer and in favor of the insured or
 5127 beneficiary a reasonable sum as fees or compensation for the
 5128 insured's or beneficiary's attorney prosecuting the suit in
 5129 which the recovery is had.

5130 (2) When so awarded, compensation or fees of the attorney
 5131 shall be included in the judgment or decree rendered in the
 5132 case.

5133 637.2091 Title insurance business exclusive.—

5134 (1) A domestic title insurer may not engage directly or
 5135 indirectly in any business other than the title insurance
 5136 business and business activities reasonably and necessarily
 5137 incidental to such title insurance business.

5138 (2) Notwithstanding subsection (1), a title insurer may
 5139 engage in business as an escrow agent.

5140 (3) A business trust whose declaration of trust was filed
 5141 with the Secretary of State prior to January 1, 1959, and which,
 5142 at the time of the adoption of the Florida Insurance Code, held
 5143 a certificate of authority as a title insurer may qualify as an
 5144 insurer for lawyers' professional liability insurance by
 5145 complying with the applicable provisions of the code.

5146 Section 32. Part III of chapter 637, Florida Statutes,
 5147 consisting of sections 637.3001, 637.3002, 637.3003, 637.30041,
 5148 637.30042, 637.30043, 637.30044, 637.30045, 637.30046,
 5149 637.30047, 637.30048, 637.30049, 637.3005, 637.3006, 637.3007,
 5150 637.3008, 637.3009, 637.30093, 637.30094, 637.30095, 637.30096,
 5151 637.30097, 637.3011, 637.3012, 637.30125, 637.3013, 637.30133,
 5152 637.30135, 637.3014, 637.30142, 637.30143, 637.30144, 637.30145,

5153 637.30146, 637.30147, 637.3015, 637.3016, 637.3017, 637.3018,
 5154 637.3019, 637.3021, 637.3022, 637.3023, 637.3024, 637.3025,
 5155 637.3026, 637.3027, 637.3028, 637.3029, and 637.30295, is
 5156 created and entitled "TITLE INSURANCE AGENT AND AGENCY LICENSING
 5157 AND ADMINISTRATION."

5158 Section 33. Section 626.8412, Florida Statutes, is
 5159 transferred, renumbered as section 637.3001, Florida Statutes,
 5160 and amended to read:

5161 637.3001 ~~626.8412~~ License and appointments required.—

5162 (1) Except as otherwise provided in this part:

5163 (a) Title insurance business may be conducted ~~sole~~ only by
 5164 a title insurer or a licensed title insurance agent employed by
 5165 a licensed and appointed title insurance agency ~~or employed by a~~
 5166 ~~title insurer.~~

5167 (b) A title insurance agent may not provide ~~sell~~ a title
 5168 insurance policy for ~~issued by~~ an insurer for which the agent
 5169 and agency does not hold a current appointment.

5170 (2) Except as otherwise provided in this part, a person,
 5171 other than a title insurance agency or an employee of a title
 5172 insurance agency, may not perform any of the functions of a
 5173 title insurance agency without a title insurance agency license.

5174 (3) Each title insurance agency shall annually remit the
 5175 administrative surcharge required in s. 637.2031(14) (e) prior to
 5176 January 30 of each year.

5177 (a) Noncompliance with the payment of the fees as required
 5178 in s. 637.2031(14) (e) shall result in the immediate suspension
 5179 of the title insurance agency's appointments to represent an
 5180 insurer.

5181 (b) Absent other cause for suspension, the appointments of
 5182 a title insurance agency may be reinstated upon receipt of the
 5183 amount due for the administrative surcharge plus any penalties
 5184 imposed.

5185 (c) A penalty may be imposed to reinstate the appointments
 5186 of an agency.

5187 Section 34. Section 626.8413, Florida Statutes, is
 5188 transferred, renumbered as section 637.3002, Florida Statutes,
 5189 and amended to read:

5190 637.3002 ~~626.8413~~ Title insurance agents; certain names
 5191 prohibited. ~~After October 1, 1985,~~ A title insurance agent ~~as~~
 5192 ~~defined in s. 626.841~~ shall not adopt a name which contains the
 5193 words "title insurance," "title guaranty," or "title guarantee,"
 5194 unless such words are followed by the word "agent" or "agency"
 5195 in the same size and type as the words preceding them. This
 5196 section does not apply to a title insurer acting as an agent for
 5197 another title insurer.

5198 Section 35. Sections 637.3003, 637.30041, 637.30042,
 5199 637.30043, 637.30044, 637.30045, 637.30046, 637.30047,
 5200 637.30048, and 637.30049, Florida Statutes, are created to read:

5201 637.3003 Firm, corporate, and business names; officers;
 5202 associates; notice of changes.-

5203 (1) Any licensed title agent doing business under a firm
 5204 or corporate name or under any business name other than his or
 5205 her own individual name shall, within 30 days after the initial
 5206 transaction of insurance under such business name, file with the
 5207 department, on forms adopted and furnished by the department, a
 5208 written statement of the firm, corporate, or business name being

5209 used, the address of any office or offices or places of business
 5210 making use of such name, and the name and social security number
 5211 of each officer and director of the corporation and of each
 5212 individual associated in such firm or corporation as to the
 5213 insurance transactions of such firm or corporation or in the
 5214 use of such business name.

5215 (2) In the event of any change of such name, a change of
 5216 any of the officers or directors, a change of any of such
 5217 addresses, or a change in the personnel associated with such
 5218 firm or corporation, written notice of such change shall be
 5219 filed with the department within 30 days by or on behalf of
 5220 those licensees terminating any such firm, corporation, or
 5221 business name or continuing to operate under such name.

5222 (3) Within 30 days after a change, any licensed title
 5223 insurance agency shall notify the department of any change in
 5224 the information contained in the application filed pursuant to s.
 5225 637.3007.

5226 637.30041 Insurance agency names; disapproval.—The
 5227 department may disapprove the use of any true or fictitious
 5228 name, other than the bona fide natural name of an individual, by
 5229 any title insurance agency on any of the following grounds:

5230 (1) The name interferes with or is too similar to a
 5231 name already filed and in use by another title insurance agency
 5232 or title insurer.

5233 (2) The use of the name may mislead the public in any
 5234 respect.

5235 (3) The name states or implies that the title insurance
 5236 agency is an insurer, motor club, hospital service plan, state

5237 or federal agency, charitable organization, or entity that
 5238 primarily provides advice and counsel rather than sells or
 5239 solicits title insurance, or is entitled to engage in title
 5240 insurance activities not permitted under licenses held or
 5241 applied for. This subsection does not prohibit the use of the
 5242 word "state" or "states" in the name of the agency. The use of
 5243 the word "state" or "states" in the name of an agency does not
 5244 imply that the agency is a state agency.

5245 637.30042 Examination requirement; exemptions.—The
 5246 department may not issue any license as a title insurance agent
 5247 to any individual who has not qualified for, taken, and
 5248 passed to the satisfaction of the department a written
 5249 examination of the scope prescribed in s. 637.30044.

5250 637.30043 Eligibility; application for examination.—

5251 (1) A person may not be permitted to take an
 5252 examination for license until his or her application for
 5253 examination or application for the license has been approved
 5254 and the required fees have been received by the department
 5255 or a person designated by the department to administer the
 5256 examination.

5257 (2) A person required to take an examination for a license
 5258 may be permitted to take an examination prior to submitting an
 5259 application for licensure pursuant to s. 637.3006 by submitting
 5260 an application for examination through the department's
 5261 Internet website. In the application, the applicant shall set
 5262 forth:

5263 (a) His or her full name, age, social security number,
 5264 residence address, business address, and mailing address.

5265 (b) The type of license that the applicant intends to
 5266 apply for.

5267 (c) The name of any required pre-licensing course he or
 5268 she has completed or is in the process of completing.

5269 (d) The method by which the applicant intends to qualify
 5270 for the type of license if other than by completing a pre-
 5271 licensing course.

5272 (e) The applicant's gender.

5273 (f) The applicant's native language.

5274 (g) The highest level of education achieved by the
 5275 applicant.

5276 (h) The applicant's race or ethnicity. However, the
 5277 application must contain a statement that an applicant is not
 5278 required to disclose his or her race or ethnicity, gender, or
 5279 native language, that he or she will not be penalized for not
 5280 making such disclosure, and that the department will use this
 5281 information exclusively for research and statistical purposes
 5282 and to improve the quality and fairness of the examinations.

5283 (3) Each application shall be accompanied by payment of
 5284 the applicable examination fee.

5285 637.30044 Scope of examination.-

5286 (1) Each examination for a license as a title insurance
 5287 agent, shall be of such scope as is deemed by the department to
 5288 be reasonably necessary to test the applicant's ability and
 5289 competence and knowledge of title insurance and real property
 5290 transactions of the duties and responsibilities of such a
 5291 licensee, and of the pertinent provisions of the laws of this
 5292 state.

5293 (2) Examinations must cover title insurance, abstracting,
 5294 title searches, examination of title, closing procedures, and
 5295 escrow handling.

5296 (3) This section applies to any person who submits an
 5297 application for license and to any person who submits an
 5298 application for examination prior to filing an application
 5299 for license.

5300 637.30045 Time and place of examination; notice.—

5301 (1) The department or a person designated by the
 5302 department shall mail written notice of the time and place of
 5303 the examination to each applicant for examination and each
 5304 applicant for license required to take an examination who is
 5305 eligible to take the examination as of the examination date. The
 5306 notice shall be mailed, postage prepaid, and addressed to the
 5307 applicant at his or her address shown on the application for
 5308 license or at such other address as requested by the applicant
 5309 in writing filed with the department prior to the mailing of the
 5310 notice. Notice shall be deemed given when mailed.

5311 (2) The examination shall be held in an adequate and
 5312 designated examination center in this state.

5313 (3) The department shall make an examination available to
 5314 the applicant, to be taken as soon as reasonably possible after
 5315 the applicant is eligible to take the examination. Any
 5316 examination required under this part shall be available in this
 5317 state at a designated examination center.

5318 637.30046 Conduct of examination.—

5319 (1) The applicant for license or the applicant for
 5320 examination shall appear in person and personally take the

5321 examination for license at the time and place specified by
 5322 the department or by a person designated by the department.

5323 (2) The examination shall be conducted by an employee of
 5324 the department or a person designated by the department for that
 5325 purpose.

5326 (3) The questions propounded shall be as prepared by the
 5327 department, or by a person designated by the department for that
 5328 purpose, consistent with the applicable provisions of this code.

5329 (4) All examinations shall be given and graded in a
 5330 fair and impartial manner and without unfair discrimination in
 5331 favor of or against any particular applicant.

5332 637.30047 Printing of examinations or related materials to
 5333 preserve examination security.—A contract let for the
 5334 development, administration, or grading of examinations or
 5335 related materials by the department pursuant to the agent,
 5336 customer representative, or adjuster licensing and examination
 5337 provisions of this code may include the printing or furnishing
 5338 of such examinations or related materials in order to preserve
 5339 security. Any such contract shall be let as a contract for a
 5340 contractual service pursuant to s. 287.057.

5341 637.30048 Examination fee; determination, refund.—

5342 (1) Prior to being permitted to take an examination, each
 5343 applicant who is subject to examination shall pay an examination
 5344 fee to the department or a person designated by the department.
 5345 A separate and additional examination fee shall be payable for
 5346 each separate class of license applied for, notwithstanding that
 5347 all such examinations are taken on the same date and at the same
 5348 place.

5349 (2) The fee for examination is not refundable.

5350 637.30049 Reexamination.—

5351 (1) Any applicant for license or applicant for examination
 5352 who has taken an examination and failed to make a passing grade,
 5353 or failed to appear for the examination or to take or complete
 5354 the examination at the time and place specified in the
 5355 notice of the department, may take additional examinations
 5356 after filing with the department an application for
 5357 reexamination together with applicable fees. The failure of an
 5358 applicant to pass an examination or the failure to appear for
 5359 the examination or to take or complete the examination does not
 5360 preclude the applicant from taking subsequent examinations.

5361 (2) The department may require any individual whose
 5362 license as an agent has expired or has been suspended to pass
 5363 an examination prior to reinstating or relicensing the
 5364 individual as to any class of license. The examination fee
 5365 shall be paid as to each examination.

5366 Section 36. Section 626.8414, Florida Statutes, is
 5367 transferred and renumbered as section 637.3005, Florida
 5368 Statutes.

5369 Section 37. Section 626.8417, Florida Statutes, is
 5370 transferred, renumbered as section 637.3006, Florida Statutes,
 5371 and amended to read:

5372 637.3006 ~~626.8417~~ Title insurance agent licensure;
 5373 exemptions.—

5374 (1) A person may not act as or hold himself or herself out
 5375 to be a title insurance agent ~~as defined in s. 626.841~~ until a
 5376 valid title insurance agent's license has been issued to that

5377 person by the department.

5378 (2) An application for license as a title insurance agent
 5379 shall be filed with the department on ~~printed~~ forms furnished by
 5380 the department.

5381 (3) The department shall not grant or issue a license as
 5382 title agent to any individual found by it to be untrustworthy or
 5383 incompetent, who does not meet the qualifications for
 5384 examination specified in s. 637.3005 ~~626.8414~~, or who does not
 5385 meet the following qualifications:

5386 (a) Within the 4 years immediately preceding the date of
 5387 the application for license, the applicant must have completed a
 5388 40-hour classroom course in title insurance, 3 hours of which
 5389 shall be on the subject matter of ethics, as approved by the
 5390 department, or must have had at least 12 months of experience in
 5391 responsible title insurance duties, while working in the title
 5392 insurance business as a substantially full-time, bona fide
 5393 employee of a title agency, title agent, title insurer, or
 5394 attorney who conducts real estate closing transactions and
 5395 issues title insurance policies but who is exempt from licensure
 5396 pursuant to paragraph (4) (a). If an applicant's qualifications
 5397 are based upon the periods of employment at responsible title
 5398 insurance duties, the applicant must submit, with the
 5399 application for license on a form prescribed by the department,
 5400 the affidavit of the applicant and of the employer setting forth
 5401 the period of such employment, that the employment was
 5402 substantially full time, and giving a brief abstract of the
 5403 nature of the duties performed by the applicant.

5404 (b) The applicant must have passed an ~~any~~ examination for

5405 licensure ~~required under s. 626.221.~~

5406 (4) (a) Title insurers or attorneys duly admitted to
 5407 practice law in this state and in good standing with The Florida
 5408 Bar, or law firms employing such attorneys, are exempt from the
 5409 provisions of this chapter with regard to title insurance
 5410 licensing and appointment requirements.

5411 (b) An insurer may designate a corporate officer of the
 5412 insurer to occasionally issue and countersign binders,
 5413 commitments, title insurance policies, or guarantees of title. A
 5414 designated officer is exempt from the provisions of this chapter
 5415 with regard to title insurance licensing and appointment
 5416 requirements while the officer is acting within the scope of the
 5417 designation.

5418 (c) If an attorney or attorneys own a corporation or other
 5419 legal entity which is doing business as a title insurance agency
 5420 other than an entity engaged in the active practice of law, the
 5421 agency must be licensed and appointed as a title insurance
 5422 agency with an agent in charge or an attorney designated for the
 5423 agency agent.

5424 Section 38. Section 626.8418, Florida Statutes, is
 5425 transferred, renumbered as section 637.3007, Florida Statutes,
 5426 and subsection (1) of that section is amended to read:

5427 637.3007 ~~626.8418~~ Application for title insurance agency
 5428 license.—Prior to doing business in this state as a title
 5429 insurance agency, a title insurance agency must meet all of the
 5430 following requirements:

5431 (1) The applicant must file with the department an
 5432 application for a license as a title insurance agency, on

5433 printed forms furnished by the department, that includes all of
 5434 the following:

5435 (a) The name of each majority owner, partner, officer, and
 5436 director of the agency.

5437 (b) The residence address of each person required to be
 5438 listed under paragraph (a).

5439 (c) The name of the agency and its principal business
 5440 address.

5441 (d) The location of each title insurance agency ~~office~~ and
 5442 the name under which each title insurance agency ~~office~~ conducts
 5443 or will conduct business.

5444 (e) The name of each title insurance agent to be in full-
 5445 time charge of a title insurance ~~an~~ agency ~~office~~ and
 5446 specification of which title insurance agency ~~office~~.

5447 (f) Such additional information as the department requires
 5448 by rule to ascertain the trustworthiness and competence of
 5449 persons required to be listed on the application and to
 5450 ascertain that such persons meet the requirements of this
 5451 chapter code.

5452 Section 39. Section 626.8419, Florida Statutes, is
 5453 transferred and renumbered as section 637.3008, Florida
 5454 Statutes.

5455 Section 40. Section 626.842, Florida Statutes, is
 5456 transferred and renumbered as section 637.3009, Florida
 5457 Statutes.

5458 Section 41. Sections 637.30093, 637.30094, 637.30095,
 5459 637.30096, and 637.30097, Florida Statutes, are created to read:
 5460 637.30093 Continuing education required; application;

5461 exceptions; requirements; penalties.-

5462 (1) The purpose of this section is to establish
 5463 requirements and standards for continuing education courses for
 5464 persons licensed to solicit or sell title insurance in this
 5465 state.

5466 (2) (a) Each person subject to the provisions of this
 5467 section must complete a minimum of 10 hours of continuing
 5468 education courses every 2 years in title insurance courses
 5469 approved by this state. Each person subject to the provisions
 5470 of this section must complete, as part of his or her required
 5471 number of continuing education hours, 2 hours of continuing
 5472 education, approved by the department, every 2 years on the
 5473 subject matter of ethics, rules, or state and federal regulatory
 5474 compliance matters relating to title insurance and closing
 5475 services.

5476 (b) Any person who holds a license as a title agent must
 5477 complete 10 hours of continuing education courses every 2 years.

5478 (c) Except as provided in paragraph (d), compliance with
 5479 continuing education requirements is a condition precedent to
 5480 the issuance, continuation, reinstatement, or renewal of any
 5481 appointment subject to this chapter.

5482 (d) A person teaching any approved course of instruction
 5483 or lecturing at any approved seminar and attending the entire
 5484 course or seminar shall qualify for the same number of classroom
 5485 hours as would be granted to a person taking and successfully
 5486 completing such course, seminar, or program. Credit shall be
 5487 limited to the number of hours actually taught unless a person
 5488 attends the entire course or seminar. Any person who is an

5489 official of or employed by any governmental entity in this
 5490 state and serves as a professor, instructor, or in any other
 5491 position or office the duties and responsibilities of which are
 5492 determined by the department to require monitoring and review of
 5493 insurance laws or insurance regulations and practices shall be
 5494 exempt from this section.

5495 (e) Excess classroom hours accumulated during any
 5496 compliance period may be carried forward to the next compliance
 5497 period.

5498 (f) For good cause shown, the department may grant an
 5499 extension of time during which the requirements imposed by this
 5500 section may be completed, but such extension of time may not
 5501 exceed 1 year.

5502 (3) The following courses may be completed in order to
 5503 meet the continuing education course requirements:

5504 (a) In the case of title agents, completion of the
 5505 Certified Land Closer (CLC) professional designation program
 5506 and receipt of the designation: 24 hours.

5507 (b) In the case of title agents, completion of the
 5508 Certified Land Searcher (CLS) professional designation program
 5509 and receipt of the designation: 24 hours.

5510 (c) Any insurance-related course which is approved by the
 5511 department and taught by an accredited college or university per
 5512 credit hour granted: 12 hours.

5513 (d) Any course, including courses relating to agency
 5514 management or errors and omissions, developed or sponsored by
 5515 any authorized insurer or recognized agents' association or
 5516 insurance trade association or any independent study

5517 program of instruction, subject to approval by the department,
5518 qualifies for the equivalency of the number of classroom hours
5519 assigned to such course by the department. However, unless
5520 otherwise provided in this section, continuing education
5521 course hours may not be credited toward meeting the
5522 requirements of this section unless the course is provided
5523 by classroom instruction or results in a monitored examination.

5524 (e) A monitored examination is not required for:

5525 1. An independent study program of instruction presented
5526 through interactive, online technology that the department
5527 determines has sufficient internal testing to validate the
5528 student's full comprehension of the materials presented; or

5529 2. An independent study program of instruction presented on
5530 paper or in printed material that imposes a final closed book
5531 examination that meets the requirements of the department's rule
5532 for self-study courses. The examination may be taken without a
5533 proctor provided the student presents to the provider a sworn
5534 affidavit certifying that the student did not consult any
5535 written materials or receive outside assistance of any kind or
5536 from any person, directly or indirectly, while taking the
5537 examination. If the student is an employee of an agency or
5538 corporate entity, the student's supervisor or a manager or
5539 owner of the agency or corporate entity must also sign the sworn
5540 affidavit. If the student is self-employed, a sole proprietor,
5541 or a partner, or if the examination is administered online, the
5542 sworn affidavit must also be signed by a disinterested third
5543 party. The sworn affidavit must be received by the approved
5544 provider prior to reporting continuing education credits to

5545 the department.

5546 (f) Each person or entity sponsoring a course for
 5547 continuing education credit shall furnish, within 30 days
 5548 after completion of the course, in a form satisfactory to the
 5549 department or its designee, a written and certified roster
 5550 showing the name and license number of all persons
 5551 successfully completing such course and requesting credit,
 5552 accompanied by the required fee.

5553 (4) The department shall refuse to renew the appointment
 5554 of any agent who has not had his or her continuing education
 5555 requirements certified unless the agent has been granted an
 5556 extension by the department. The department may not issue a new
 5557 appointment of the same or similar type, with any insurer, to an
 5558 agent who was denied a renewal appointment for failure to
 5559 complete continuing education as required until the agent
 5560 completes his or her continuing education requirement.

5561 (5) An 11-member continuing education advisory board is
 5562 created, to be appointed by the Chief Financial Officer.
 5563 Appointments shall be for terms of 4 years. The purpose of the
 5564 board is to advise the department in determining standards by
 5565 which courses may be evaluated and categorized as basic,
 5566 intermediate, or advanced. The board shall submit to the
 5567 department recommendations of changes needed in such criteria
 5568 not less frequently than every 2 years. The department shall
 5569 require all approved course providers to submit courses for
 5570 approval to the department using the criteria. All materials,
 5571 brochures, and advertisements related to the approved courses
 5572 must specify the level assigned to the course.

5573 (6) The department may contract services relative to the
 5574 administration of the continuing education program to a private
 5575 entity. The contract shall be procured as a contract for a
 5576 contractual service pursuant to s. 287.057.

5577 637.30094 Regulation of continuing education for
 5578 licensees, course providers, instructors, school officials, and
 5579 monitor groups.—

5580 (1) Continuing education course providers, instructors,
 5581 school officials, and monitor groups must be approved by the
 5582 department before offering continuing education courses pursuant
 5583 to s. 637.30093.

5584 (2) The department shall adopt rules establishing
 5585 standards for the approval, regulation, and operation of the
 5586 continuing education programs and for the discipline of
 5587 licensees, course providers, instructors, school officials, and
 5588 monitor groups. The standards must be designed to ensure that
 5589 such course providers, instructors, school officials, and
 5590 monitor groups have the knowledge, competence, and integrity to
 5591 fulfill the educational objectives of s. 637.30093.

5592 (3) The department shall adopt rules establishing a
 5593 process by which compliance with the continuing education
 5594 requirements of s. 637.30093 can be determined, the
 5595 establishment of a continuing education compliance period for
 5596 licensees, and forms necessary to implement such a process.

5597 637.30095 Regulation of course providers, instructors,
 5598 school officials, and monitor groups involved in prelicensure
 5599 education for insurance agents and other licensees.—

5600 (1) Any course provider, instructor, school official, or

5601 monitor group must be approved by and registered with the
 5602 department before offering prelicensure education courses for
 5603 insurance agents and other licensees.

5604 (2) The department shall adopt rules establishing standards
 5605 for the approval, registration, discipline, or removal from
 5606 registration of course providers, instructors, school officials,
 5607 and monitor groups. The standards must be designed to ensure
 5608 that such persons have the knowledge, competence, and integrity
 5609 to fulfill the educational objectives of the prelicensure
 5610 requirements of this chapter and chapter 648 and to ensure that
 5611 insurance agents and licensees are competent to engage in the
 5612 activities authorized under the license.

5613 (3) The department shall adopt rules to establish a
 5614 process for determining compliance with the prelicensure
 5615 requirements of this chapter and chapter 648. The department
 5616 shall adopt rules prescribing the forms necessary to administer
 5617 the prelicensure requirements.

5618 637.30096 Examination results; denial, issuance of
 5619 license.—

5620 (1) Within 30 days after the applicant has completed any
 5621 examination required under s. 637.30042, the department or its
 5622 designee shall provide a score report and, if the applicant has
 5623 received a passing grade, the department shall within such
 5624 period notify the applicant and issue and transmit the license
 5625 to which such examination related. If the applicant did not make
 5626 a passing grade on the examination for a particular license, the
 5627 department or its designee shall within such period provide
 5628 notice to the applicant to that effect and of the denial of the

5629 license. For an applicant who has completed the examination and
 5630 received a passing grade prior to submitting the license
 5631 application, the department shall promptly issue the license
 5632 applied for as soon as the department approves the application.

5633 (2) A passing grade on an examination is valid for a
 5634 period of 1 year. The department may not issue a license to an
 5635 applicant based upon an examination taken more than 1 year prior
 5636 to the date an application for a license is filed.

5637 637.30097 Form and contents of licenses in general.—Each
 5638 license issued by the department shall be in such form as the
 5639 department may designate and must contain the licensee's name,
 5640 the licensee's personal identification number, the date of
 5641 issuance, and any other information the department deems
 5642 necessary to fully identify the licensee and the authority being
 5643 granted. The department may by rule require photographs of
 5644 applicants as a part of the licensing process.

5645 Section 42. Section 626.84201, Florida Statutes, is
 5646 transferred, renumbered as section 637.3011, Florida Statutes,
 5647 and amended to read:

5648 637.3011 ~~626.84201~~ Nonresident title insurance agents.—
 5649 Notwithstanding s. 637.3005(2) ~~626.8414(2)~~, the department, upon
 5650 application and payment of the fees specified in s. 637.2031
 5651 ~~624.501~~, may issue a license as a nonresident title insurance
 5652 agent to an individual not a resident of this state in the same
 5653 manner applicable to the licensure of nonresident general lines
 5654 agents under the provisions of s. 626.741, provided the
 5655 individual passes the examination for licensure required under
 5656 s. 637.30042 ~~626.221~~. Nonresident title insurance agents

CS/HB 853

2010

5657 licensed pursuant to this section must complete the continuing
 5658 education requirements of s. 637.30093 ~~626.2815~~ in the same
 5659 manner as resident title insurance agents. Sections 626.742 and
 5660 626.743 apply to nonresident title insurance agents.

5661 Section 43. Section 626.8421, Florida Statutes, is
 5662 transferred, renumbered as section 637.3012, Florida Statutes,
 5663 and amended to read:

5664 637.3012 ~~626.8421~~ Number of appointments permitted or
 5665 required.—A title agent shall be required to have a separate
 5666 appointment as to each insurer by which he or she is appointed
 5667 as agent. ~~As a part of each appointment there shall be a~~
 5668 ~~certified statement or affidavit of an appropriate officer or~~
 5669 ~~official of the appointing insurer stating that to the best of~~
 5670 ~~the insurer's knowledge and belief the applicant, or its~~
 5671 ~~principals in the case of a corporation or other legal entity,~~
 5672 ~~has met the requirements of s. 626.8417.~~

5673 Section 44. Section 637.30125, Florida Statutes, is
 5674 created to read:

5675 637.30125 Agent in charge.—

5676 (1) Each location of a title insurance agency or insurer
 5677 at which disbursement of escrow funds or policy issuance
 5678 services are performed shall have a separate agent in charge.
 5679 The failure to designate an agent in charge on a form
 5680 prescribed by the department, within 10 working days after an
 5681 agency's inception or a change of the agent in charge, is a
 5682 violation of this chapter, punishable as provided in s.
 5683 637.3018.

5684 (2) The agent in charge shall accept and be responsible

5685 for the operation and management of a title agency location.

5686 (3) The agent in charge shall perform his or her duties as
 5687 set forth in subsection (2) at the location for which he or she
 5688 is an attorney or agent in charge.

5689 (4) The department may suspend or revoke the license of
 5690 the agency if a title insurance agency employs, contracts with,
 5691 or uses the services of a person who has had a license denied or
 5692 whose license is currently suspended or revoked. However, a
 5693 person who has been denied a license for failure to pass a
 5694 required examination may be employed to perform clerical or
 5695 administrative functions for which licensure is not required.

5696 (5) An agency shall designate an attorney licensed by The
 5697 Florida Bar or an agent licensed by the department as agent in
 5698 charge for each location of the agency. In the case of multiple
 5699 locations, the agency shall designate a separate agent in charge
 5700 for each location.

5701 (6) The department may adopt rules pursuant to ss.
 5702 120.536(1) and 120.54 to implement this section and interpret
 5703 the duties and responsibilities of the agent in charge or the
 5704 attorney in charge of a licensed title insurance agency.

5705 Section 45. Section 626.8423, Florida Statutes, is
 5706 transferred and renumbered as section 637.3013, Florida
 5707 Statutes.

5708 Section 46. Section 637.30133, Florida Statutes, is
 5709 created to read:

5710 637.30133 Consumer protections.—To transact title
 5711 insurance, title insurance agents shall comply with consumer
 5712 protection laws, including the following, as applicable:

5713 (1) Continuing education requirements for resident and
 5714 nonresident agents, as required in s. 637.30093.

5715 (2) Fingerprinting requirements for resident and
 5716 nonresident agents, as required under s. 626.171 or s.
 5717 637.30135.

5718 (3) Fingerprinting following a department investigation
 5719 under s. 637.1019.

5720 (4) The submission of credit and character reports, as
 5721 required by s. 626.171 or s. 626.521.

5722 (5) Qualifications for licensure as an agent in s.
 5723 626.731, s. 626.741, s. 626.785, s. 626.831, s. 626.835, or s.
 5724 6378.2077.

5725 (6) Examination requirements in s. 626.741, s. 626.835,
 5726 637.2077, or s. 637.30042.

5727 (7) Required licensure or registration of insurance
 5728 agencies under s. 626.112.

5729 (8) Requirements for licensure of resident and
 5730 nonresident agents in s. 626.112, s. 626.321, s. 626.731, s.
 5731 626.741, s. 626.785, s. 626.831, s. 626.835, s. 626.927, or s.
 5732 637.2077.

5733 (9) Any other licensing requirement, restriction, or
 5734 prohibition designated a consumer protection by the Chief
 5735 Financial Officer, but not inconsistent with the requirements of
 5736 Subtitle C of the Gramm-Leach-Bliley Act, 15 U.S.C.A. ss. 6751
 5737 et seq.

5738 Section 47. Section 637.30135, Florida Statutes, is
 5739 created to read:

5740 637.30135 Fingerprinting requirements.—If there is a

CS/HB 853

2010

5741 change in ownership or control of any entity licensed under this
5742 chapter, or if a new partner, officer, or director is employed
5743 or appointed, a set of fingerprints of the new owner, partner,
5744 officer, or director must be filed with the department or office
5745 within 30 days after the change. The acquisition of 10 percent
5746 or more of the voting securities of a licensed entity is
5747 considered a change of ownership or control. The fingerprints
5748 must be taken by a law enforcement agency or other
5749 department-approved entity and be accompanied by the
5750 fingerprint processing fee in s. 637.2031.

5751 Section 48. Section 626.8427, Florida Statutes, is
5752 transferred and renumbered as section 637.3014, Florida
5753 Statutes.

5754 Section 49. Sections 637.30142, 637.30143, 637.30144,
5755 637.30145, 637.30146, and 637.30147, Florida Statutes, are
5756 created to read:

5757 637.30142 Payment of fees, taxes for appointment period
5758 without appointment.—

5759 (1) All initial appointments shall be submitted to the
5760 department on a monthly basis no later than 45 days after the
5761 date of appointment and shall become effective on the date
5762 requested on the appointment form.

5763 (2) Upon application and qualification for an initial or
5764 renewal appointment and such investigation as the department may
5765 make, if it appears to the department that an individual who was
5766 formerly licensed or is currently licensed but not properly
5767 appointed to represent an insurer or employer and who has
5768 been actively engaged or is currently actively engaged as such

5769 an appointee, but without being appointed as required, the
 5770 department, if it finds that such failure to be appointed was an
 5771 inadvertent error on the part of the insurer or employer so
 5772 represented, may issue or authorize the issuance of the
 5773 appointment as applied for but subject to the condition that,
 5774 before the appointment is issued, all fees and taxes which
 5775 would have been due had the applicant been so appointed during
 5776 such current and prior periods, with applicable fees pursuant to
 5777 s. 637.2031 for such current and prior periods of appointment,
 5778 shall be paid to the department.

5779 (3) (a) Failure to notify the department within the
 5780 required time period shall result in the appointing entity being
 5781 assessed a delinquent fee of \$250 per appointee. Delinquent fees
 5782 shall be paid by the appointing entity and may not be charged to
 5783 the appointee.

5784 (b) Failure to timely renew an appointment by an
 5785 appointing entity prior to the expiration date of the
 5786 appointment shall result in the appointing entity being assessed
 5787 late filing, continuation, and reinstatement fees as prescribed
 5788 in s. 637.2031. Such fees shall be paid by the appointing entity
 5789 and may not be charged back to the appointee.

5790 637.30143 License or appointment; transferability.—A
 5791 license or appointment issued under this part is valid only as
 5792 to the person named and is not transferable to any other
 5793 person. A licensee or appointee may not allow any other
 5794 person to transact insurance by using the license or
 5795 appointment issued to such licensee or appointee.

5796 637.30144 Termination of appointment.—

CS/HB 853

2010

5797 (1) Subject to an appointee's contract rights, an
5798 appointing entity may terminate its appointment of any appointee
5799 at any time. Except when termination is upon a ground which
5800 would subject the appointee to suspension or revocation of his
5801 or her license and appointment under s. 637.3017 or s. 637.3018,
5802 and except as provided by contract between the appointing entity
5803 and the appointee, the appointing entity shall give to the
5804 appointee at least 60 days' advance written notice of its
5805 intention to terminate such appointment by delivery of such
5806 notice to the appointee in person or by mailing the notice,
5807 postage prepaid, addressed to the appointee at his or her last
5808 address of record with the appointing entity. Notice so mailed
5809 shall be deemed to have been given when deposited in a United
5810 States Postal Service mail depository.

5811 (2) Within 30 days after terminating the appointment
5812 of an appointee, other than as to an appointment terminated by
5813 the appointing entity's failure to continue or renew the
5814 appointment, the appointing entity shall file with the
5815 department a written notice of the termination, together with
5816 a statement that the appointing entity has given the
5817 appointee notice of the termination as provided in subsection
5818 (1) and shall file with the department the reasons and facts
5819 involved in such termination as required under s. 637.30145.

5820 (3) Upon termination of the appointment of an appointee by
5821 failure to renew or continue the appointment, the appointing
5822 entity shall:

5823 (a) File with the department the information required
5824 under s. 637.30145.

5825 (b) Subject to the exceptions provided under subsection
 5826 (1), continue the outstanding contracts transacted by an agent
 5827 until the expiration date or anniversary date when the policy is
 5828 a continuous policy with no expiration date. This paragraph
 5829 shall not be construed to prohibit the cancellation of such
 5830 contracts when not otherwise prohibited by law.

5831 (4) An appointee may terminate the appointment at any
 5832 time by giving written or electronic notice of such termination
 5833 to the appointing entity, department, or person designated by the
 5834 department to administer the appointment process. The department
 5835 shall immediately terminate the appointment and notify the
 5836 appointing entity of such termination. Such termination shall be
 5837 subject to the appointee's contract rights, if any.

5838 (5) Upon receiving a notice of termination, the department
 5839 or person designated by the department to administer the
 5840 appointment process shall terminate the appointment.

5841 637.30145 Reasons for termination.—

5842 (1) Any insurer terminating the appointment of an agent or
 5843 managing general agent, whether such termination is by direct
 5844 action of the appointing insurer, agent, or employer or by
 5845 failure to renew or continue the appointment, shall file with
 5846 the department or office a statement of the reasons, if any, for
 5847 such termination and the facts relative to such termination. In
 5848 the case of a termination of the appointment of an agent, such
 5849 information may be filed by the insurer or by the general agent
 5850 of the insurer.

5851 (2) In the case of terminations by failure to renew or
 5852 continue the appointment, the information required under

5853 subsection (1) shall be filed with the department or office
 5854 within 30 days after the date notice of intention not to renew
 5855 or continue was filed with the department or office as required
 5856 by this chapter. In all other cases, the information required
 5857 under subsection (1) shall be filed with the department or
 5858 office within 10 days after notice of the termination was filed
 5859 with the department or office.

5860 637.30146 Delinquent agencies; notice of trusteeship.—If
 5861 any agent or agency becomes delinquent for 90 days in payment of
 5862 accounts owing to the insurer or insurers represented by the
 5863 agent or agency and a trusteeship or similar arrangement for the
 5864 administration of the affairs of the agent or agency is
 5865 instituted, the insurer or insurers involved in such trusteeship
 5866 or arrangement shall immediately give written notice of such
 5867 trusteeship or arrangement to the department. The notice shall
 5868 state the name and address of each such agent, the circumstances
 5869 and estimated amount of delinquency, and such other information
 5870 as the insurer deems pertinent or as the department may
 5871 reasonably require.

5872 637.30147 Procedure for refusal, suspension, or revocation
 5873 of license.—If any licensee is convicted of a violation of
 5874 this code or a felony, the licenses and appointments of such
 5875 person shall be immediately revoked by the department. The
 5876 licensee may subsequently request a hearing pursuant to ss.
 5877 120.569 and 120.57, and the department shall expedite any such
 5878 requested hearing. The sole issue at such hearing shall be
 5879 whether the revocation should be rescinded because such person
 5880 was not in fact convicted of a violation of this code or a

5881 felony.

5882 Section 50. Section 626.843, Florida Statutes, is
 5883 transferred, renumbered as section 637.3015, Florida Statutes,
 5884 and amended to read:

5885 637.3015 ~~626.843~~ Renewal, continuation, reinstatement,
 5886 termination of title insurance agent's appointment.-

5887 (1) The appointment of a title insurance agent shall
 5888 continue in force until suspended, revoked, or otherwise
 5889 terminated, but subject to a renewed request filed by the
 5890 insurer every 24 months after the original issue date of the
 5891 appointment, accompanied by payment of the renewal appointment
 5892 fee and taxes as prescribed in s. 637.2031 ~~624.501~~.

5893 (2) (a) Renewal of an appointment that is received by the
 5894 department or person designated by the department to administer
 5895 the appointment process prior to the expiration of an
 5896 appointment in the licensee's birth month or license issue date,
 5897 whichever applies, may be renewed by the department without
 5898 penalty and shall be effective as of the first day of the month
 5899 succeeding the month in which the appointment would have
 5900 expired.

5901 (b) Renewal of an appointment that is received by the
 5902 department or person designated by the department to administer
 5903 the appointment process after the renewal date may be accepted
 5904 and effectuated by the department in its discretion if the
 5905 appointment, late filing, continuation, and reinstatement fee
 5906 accompanies the renewal request pursuant to s. 637.2031. Late
 5907 filing fees shall be paid by the appointing entity and may not
 5908 be charged to the appointee ~~Title insurance agent appointments~~

5909 ~~shall be renewed pursuant to s. 626.381 for insurance~~
 5910 ~~representatives in general.~~

5911 (3) The appointment issued shall remain in effect for so
 5912 long as the appointment represented thereby continues in force
 5913 as provided in this section.

5914 Section 51. Section 626.8433, Florida Statutes, is
 5915 transferred and renumbered as section 637.3016, Florida
 5916 Statutes.

5917 Section 52. Section 626.8437, Florida Statutes, is
 5918 transferred, renumbered as section 637.3017, Florida Statutes,
 5919 and amended to read:

5920 637.3017 ~~626.8437~~ Grounds for denial, suspension,
 5921 revocation, or refusal to renew license or appointment.—

5922 (1) The department shall deny, suspend, revoke, or refuse
 5923 to renew or continue the license or appointment of any title
 5924 insurance agent or agency, and it shall suspend or revoke the
 5925 eligibility to hold a license or appointment of such person, if
 5926 it finds that as to the applicant, licensee, appointee, or any
 5927 principal thereof, any one or more of the following grounds
 5928 exist:

5929 (a) ~~(1)~~ Lack of one or more of the qualifications for the
 5930 license or appointment as specified in ss. 637.3006, 637.3007,
 5931 and 637.3008 ~~626.8417, 626.8418, and 626.8419.~~

5932 (b) ~~(2)~~ Material misstatement, misrepresentation, or fraud
 5933 in obtaining, or attempting to obtain, the license or
 5934 appointment.

5935 (c) ~~(3)~~ Willful misrepresentation of any title insurance
 5936 policy, guarantee of title, binder, or commitment, or willful

5937 | deception with regard to any such policy, guarantee, binder, or
 5938 | commitment, done either in person or by any form of
 5939 | dissemination of information or advertising.

5940 | (d)~~(4)~~ Demonstrated lack of fitness or trustworthiness to
 5941 | represent a title insurer in the issuance of its commitments,
 5942 | binders, policies of title insurance, or guarantees of title.

5943 | (e)~~(5)~~ Demonstrated lack of reasonably adequate knowledge
 5944 | and technical competence to engage in the transactions
 5945 | authorized by the license or appointment.

5946 | (f)~~(6)~~ Fraudulent or dishonest practices in the conduct of
 5947 | business under the license or appointment.

5948 | (g)~~(7)~~ Misappropriation, conversion, or unlawful
 5949 | withholding of moneys belonging to title insurers or insureds or
 5950 | others and received in conduct of business under the license or
 5951 | appointment.

5952 | (h)~~(8)~~ Unlawful rebating, or attempting to unlawfully
 5953 | rebate, or unlawfully dividing, or offering to unlawfully
 5954 | divide, title insurance premiums, fees, or charges with another,
 5955 | as prohibited by s. 637.1033(7)(b). ~~626.9541(1)(h)3.~~

5956 | (i)~~(9)~~ Willful failure to comply with, or willful
 5957 | violation of, any proper order or rule of the department or
 5958 | willful violation of any provision of this act.

5959 | (j)~~(10)~~ The licensee if an individual, or the partners if
 5960 | a partnership, or owner if a sole proprietorship, or the
 5961 | officers if a corporation, having been found guilty of or having
 5962 | pleaded guilty or nolo contendere to a felony or a crime
 5963 | punishable by imprisonment of 1 year or more under the law of
 5964 | the United States or of any state or under the law of any other

5965 country which involves moral turpitude, without regard to
 5966 whether a judgment of conviction has been entered by the court
 5967 having jurisdiction of such cases.

5968 (k) Failure to timely submit data as required by the
 5969 department.

5970 (2) Upon receipt of an information or indictment, the
 5971 department shall immediately temporarily suspend any license or
 5972 appointment issued under this chapter when the licensee has been
 5973 convicted of an insurance or financial-related felony or a crime
 5974 involving moral turpitude or a crime punishable by imprisonment
 5975 of 1 year or more under the law of any state, territory, or
 5976 country. Such suspension shall continue if the licensee has been
 5977 found guilty of, or has pleaded guilty or no contest to, the
 5978 crime, whether or not a judgment or conviction has been entered,
 5979 during a pending appeal. A person may not affect any additional
 5980 insurance after suspension of his or her license or appointment.
 5981 However, he or she may service the policies effected prior to
 5982 such suspension.

5983 Section 53. Section 626.844, Florida Statutes, is
 5984 transferred, renumbered as section 637.3018, Florida Statutes,
 5985 and amended to read:

5986 637.3018 ~~626.844~~ Grounds for discretionary refusal,
 5987 suspension, or revocation of license or appointment.—The
 5988 department may, in its discretion, deny, suspend, revoke, or
 5989 refuse to renew or continue the license or appointment of any
 5990 title insurance agent or agency, and it may suspend or revoke
 5991 the eligibility to hold a license or appointment of any such
 5992 title insurance agent or agency if it finds that as to the

5993 applicant or licensee or appointee, or any principal thereof,
 5994 any one or more of the following grounds exist under
 5995 circumstances for which such denial, suspension, revocation, or
 5996 refusal is not mandatory under s. 637.3017 ~~626.8437~~:

5997 (1) Any cause for which issuance of the license or
 5998 appointment could have been refused had it then existed and been
 5999 known to the department.

6000 (2) Violation of any provision of this act in the course
 6001 of dealing under the license or appointment.

6002 (3) Violation of any lawful order or rule of the
 6003 department.

6004 (4) Failure or refusal upon demand to pay over to any
 6005 title insurer that the appointee represents or has represented
 6006 any money coming into the hands of such appointee and belonging
 6007 to the title insurer.

6008 (5) Engaging in unfair methods of competition or in unfair
 6009 or deceptive acts or practices in the conduct of business, as
 6010 prohibited under ~~part IX~~ of this chapter, or having otherwise
 6011 shown himself or herself to be a source of injury or loss to the
 6012 public or to be detrimental to the public interest.

6013 (6) The licensee if an individual, or the partners if a
 6014 partnership, or owner if a sole proprietorship, or the officers
 6015 if a corporation, having been found guilty of or having pleaded
 6016 guilty or nolo contendere to a felony or a crime punishable by
 6017 imprisonment of 1 year or more under the law of the United
 6018 States or of any state or under the law of any other country,
 6019 without regard to whether a judgment of conviction has been
 6020 entered by the court having jurisdiction of such cases.

6021 (7) Failure or refusal upon demand by any title insurer
 6022 that the appointee represents or has represented to pay any
 6023 money coming into the hands of such appointee and belonging to
 6024 the title insurer.

6025 (8) Failure to maintain the insurer's portion of the
 6026 premium in escrow.

6027 (9) Fraud, misrepresentation, or deceit in any title
 6028 insurance transaction.

6029 (10) Failure to comply with s. 637.3029.

6030 (11) Failure to account or deliver to any person any
 6031 property that has come into the agency's hands and that is not
 6032 the agency's property or that the agency is not in law or equity
 6033 entitled to retain, under the circumstances and at the time that
 6034 has been agreed upon or is required by law or, in the absence of
 6035 a fixed time, upon demand of the person entitled to such
 6036 accounting and delivery absent a good faith dispute, lack of
 6037 mutual instructions, or doubt about entitlement thereto.

6038 (12) Failure to disburse escrow funds in accordance with
 6039 agreements signed by the seller and the buyer absent a good
 6040 faith dispute or lack of mutual instructions from the buyer and
 6041 seller about entitlement thereto.

6042 (13) Acting as or holding himself or herself out to be a
 6043 title insurance agent or title insurance agency without a
 6044 current, active license issued by the Department of Financial
 6045 Services.

6046 (14) Providing a closing protection letter, title
 6047 insurance commitment, or title insurance policy for an insurer
 6048 that the licensee is not actively appointed to represent.

6049 (15) Failure to maintain, preserve, and keep available for
 6050 examination all books, accounts, or other documents required by
 6051 ss. 637.30044-637.3015 and s. 637.3029 and the rules of the
 6052 department.

6053 (16) Failure to allow an investigation or examination of
 6054 books and records by the department.

6055 (17) Adding any amount to the charges of other providers
 6056 of service in a real estate transaction without adding value to
 6057 the services provided.

6058 (18) Failure to timely deliver the deed, mortgage, and
 6059 other documents related to a closing transaction to the
 6060 appropriate recording authority.

6061 (19) Failure to timely deliver the escrow funds to the
 6062 appropriate entity or to the state if the owner is unable to be
 6063 located pursuant to chapter 717.

6064 Section 54. Section 626.8443, Florida Statutes, is
 6065 transferred, renumbered as section 637.3019, Florida Statutes,
 6066 and subsection (4) of that section is amended to read:

6067 637.3019 ~~626.8443~~ Duration of suspension or revocation.—

6068 (4) During the period of suspension or after revocation of
 6069 the license and appointment, the former licensee shall not
 6070 engage in or attempt to profess to engage in any transaction or
 6071 business for which a license or appointment is required under
 6072 this chapter ~~code~~ or directly or indirectly own, control, or be
 6073 employed in any manner by any title insurance agent or title
 6074 insurance agency ~~or adjuster or adjusting firm.~~

6075 Section 55. Section 626.8447, Florida Statutes, is
 6076 transferred and renumbered as section 637.3021, Florida

6077 Statutes.

6078 Section 56. Section 626.845, Florida Statutes, is
 6079 transferred and renumbered as section 637.3022, Florida
 6080 Statutes.

6081 Section 57. Section 626.8453, Florida Statutes, is
 6082 transferred, renumbered as section 637.3023, Florida Statutes,
 6083 and amended to read:

6084 637.3023 ~~626.8453~~ Penalty for violation.—A person who
 6085 knowingly makes a false or otherwise fraudulent application for
 6086 a license or appointment under this act, or who knowingly
 6087 violates any provision of s. 637.2032 ~~624.5015~~, ss. 637.3006-
 6088 637.3029 ~~626.8417-626.847~~, or s. 637.2076 ~~627.791~~, in addition
 6089 to any applicable denial, suspension, revocation, or refusal to
 6090 renew or continue any license or appointment, commits a
 6091 misdemeanor of the second degree, punishable as provided in s.
 6092 775.082 or s. 775.083. Each instance of violation shall be
 6093 considered a separate offense.

6094 Section 58. Section 626.8457, Florida Statutes, is
 6095 transferred and renumbered as section 637.3024, Florida
 6096 Statutes.

6097 Section 59. Section 626.846, Florida Statutes, is
 6098 transferred, renumbered as section 637.3025, Florida Statutes,
 6099 and subsection (1) of that section is amended to read:

6100 637.3025 ~~626.846~~ Probation.—

6101 (1) If the department finds that one or more grounds exist
 6102 for the suspension of, revocation of, or refusal to renew or
 6103 continue any license or appointment issued under this act, the
 6104 department may, except when an administrative fine is not

6105 permissible under s. 637.3024 ~~626.8457~~ or when such suspension,
 6106 revocation, or refusal is mandatory, in lieu of such suspension,
 6107 revocation, or refusal, or in connection with any administrative
 6108 monetary penalty imposed under s. 637.3024 ~~626.8457~~, place the
 6109 offending licensee or appointee on probation for a period not to
 6110 exceed 2 years, as specified by the department in its order.

6111 Section 60. Section 626.8463, Florida Statutes, is
 6112 transferred, renumbered as section 637.3026, Florida Statutes,
 6113 and subsection (1) of that section is amended to read:

6114 637.3026 ~~626.8463~~ Witnesses and evidence.—

6115 (1) As to the subject of any examination, investigation,
 6116 or hearing being conducted by him or her under s. 637.2032, s.
 6117 637.2076, or ~~624.5015~~, ss. 637.3006-637.3029 ~~626.8417-626.847~~,
 6118 ~~or s. 627.791~~, an examiner appointed by the department ~~or office~~
 6119 may administer oaths, examine and cross-examine witnesses, and
 6120 receive oral and documentary evidence and shall have the power
 6121 to subpoena witnesses, compel their attendance and testimony,
 6122 and require by subpoena the production of books, papers,
 6123 records, files, correspondence, documents, or other evidence
 6124 which the examiner deems relevant to the inquiry.

6125 Section 61. Section 626.8467, Florida Statutes, is
 6126 transferred, renumbered as section 637.3027, Florida Statutes,
 6127 and amended to read:

6128 637.3027 ~~626.8467~~ Testimony compelled; immunity from
 6129 prosecution.—

6130 (1) If a person asks to be excused from attending or
 6131 testifying or from producing any books, papers, records,
 6132 contracts, documents, or other evidence in connection with any

CS/HB 853

2010

6133 examination, hearing, or investigation being conducted under s.
 6134 637.2032, s. 637.2076, or 624.5015, ss. 637.3006-637.3029
 6135 ~~626.8417-626.847, or s. 627.791~~ by the department ~~or office~~ or
 6136 its examiner on the ground that the testimony or evidence
 6137 required of the person may tend to incriminate him or her or
 6138 subject him or her to a penalty or forfeiture and
 6139 notwithstanding is directed to give such testimony or produce
 6140 such evidence, the person must, if so directed by the Department
 6141 of Financial Services and the Department of Legal Affairs ~~or by~~
 6142 ~~the office and the Department of Legal Affairs,~~ nonetheless
 6143 comply with such direction, but he or she shall not thereafter
 6144 be prosecuted or subjected to any penalty or forfeiture for or
 6145 on account of any transaction, matter, or thing concerning which
 6146 he or she may have so testified or produced evidence, and no
 6147 testimony so given or evidence produced shall be received
 6148 against the person upon any criminal action, investigation, or
 6149 proceeding. However, a person so testifying shall not be exempt
 6150 from prosecution or punishment for any perjury committed by him
 6151 or her in such testimony, and the testimony or evidence so given
 6152 or produced shall be admissible against him or her upon any
 6153 criminal action, investigation, or proceeding concerning such
 6154 perjury; and such person shall not be exempt from the refusal,
 6155 suspension, or revocation of any license or appointment,
 6156 permission, or authority conferred or to be conferred pursuant
 6157 to s. 637.2032, s. 637.2076, or 624.5015, ss. 637.3006-637.3029
 6158 ~~626.8417-626.847, or s. 627.791.~~

6159 (2) Any such person may execute, acknowledge, and file
 6160 with the department ~~of Financial Services or the office,~~ as

6161 ~~appropriate,~~ a statement expressly waiving such immunity or
 6162 privilege with respect to any transaction, matter, or thing
 6163 specified in the statement, and thereupon the testimony of such
 6164 person or such evidence in relation to such transaction, matter,
 6165 or thing may be received or produced before any judge or
 6166 justice, court, tribunal, or grand jury or otherwise and, if so
 6167 received or produced, such person shall not be entitled to any
 6168 immunity or privilege on account of any testimony he or she may
 6169 so give or evidence so produced.

6170 Section 62. Section 626.847, Florida Statutes, is
 6171 transferred, renumbered as section 637.3028, Florida Statutes,
 6172 and amended to read:

6173 637.3028 ~~626.847~~ Penalty for refusal to testify.—A person
 6174 who refuses or fails, without lawful cause, to testify relative
 6175 to the affairs of any title insurer or other person when
 6176 subpoenaed under s. 637.3026 ~~626.8463~~ and requested by the
 6177 department ~~or office~~ to so testify is guilty of a misdemeanor of
 6178 the second degree and, upon conviction, is punishable as
 6179 provided in s. 775.082 or s. 775.083.

6180 Section 63. Section 626.8473, Florida Statutes, is
 6181 transferred, renumbered as section 637.3029, Florida Statutes,
 6182 and subsections (1), (3), and (6) of that section are amended to
 6183 read:

6184 637.3029 ~~626.8473~~ Escrow; trust fund.—

6185 (1) A title insurance agent may engage in business as an
 6186 escrow agent as to funds received from others to be subsequently
 6187 disbursed by the title insurance agent in connection with real
 6188 estate closing transactions involving the issuance of title

6189 insurance binders, commitments, policies of title insurance, or
 6190 guarantees of title, provided that a licensed and appointed
 6191 title insurance agent complies with the requirements of s.
 6192 637.3006 ~~626.8417~~, including such requirements added after the
 6193 initial licensure of the agent.

6194 (3) All funds received by a title insurance agent to be
 6195 held in trust shall be immediately placed and retained in a
 6196 financial institution that is located within this state and is a
 6197 member of the Federal Deposit Insurance Corporation or the
 6198 National Credit Union Share Insurance Fund. ~~These funds shall be~~
 6199 ~~invested in an escrow account in accordance with the investment~~
 6200 ~~requirements and standards established for deposits and~~
 6201 ~~investments of state funds in s. 17.57, where the funds shall be~~
 6202 ~~kept until disbursement thereof is properly authorized.~~

6203 (6) In the event that the department adopts ~~promulgates~~
 6204 rules necessary to implement the requirements of this section
 6205 pursuant to s. 637.1007 ~~624.308~~, the department shall consider
 6206 reasonable standards necessary for the protection of funds held
 6207 in trust, including, but not limited to, standards for
 6208 accounting of funds, standards for receipt and disbursement of
 6209 funds, and protection for the person or persons to whom the
 6210 funds are to be disbursed.

6211 Section 64. Section 637.30295, Florida Statutes, is
 6212 created to read:

6213 637.30295 Collection of title insurance information.—Each
 6214 title insurance agency licensed to do business in this state and
 6215 each insurer doing direct, retail, or affiliated business in
 6216 this state shall maintain and submit information, including

6217 revenue, loss, and expense data, as the department determines to
 6218 be necessary to assist in the analysis of title insurance premium
 6219 rates, title search costs, and the condition of the title
 6220 insurance industry in this state. This information must be
 6221 transmitted to the department no later than March 31 of each
 6222 year following the reporting year. The department shall adopt
 6223 rules to assist in the collection and analysis of the data from
 6224 the title insurance industry.

6225 Section 65. Paragraphs (a), (e), and (f) of subsection (1)
 6226 of section 624.5105, Florida Statutes, are amended to read:

6227 624.5105 Community contribution tax credit; authorization;
 6228 limitations; eligibility and application requirements;
 6229 administration; definitions; expiration.—

6230 (1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.—

6231 (a) There shall be allowed a credit of 50 percent of a
 6232 community contribution against any tax due for a calendar year
 6233 under s. 624.509, ~~or~~ s. 624.510, or s. 637.2039.

6234 (e) If the credit granted pursuant to this section is not
 6235 fully used in any one year because of insufficient tax liability
 6236 on the part of the insurer, the unused amount may be carried
 6237 forward for a period not to exceed 5 years. The carryover credit
 6238 may be used in a subsequent year when the tax imposed by s.
 6239 624.509, ~~or~~ s. 624.510, or 637.2039 for such year exceeds the
 6240 credit under this section for such year.

6241 (f) An insurer that claims a credit against premium-tax
 6242 liability earned by making a community contribution under this
 6243 section need not pay any additional retaliatory tax levied under
 6244 s. 624.5091 or s. 637.2041 as a result of claiming such a

6245 credit. Section 624.5091 or s. 637.2041 does not limit such a
 6246 credit in any manner.

6247 Section 66. Subsection (1) of section 624.5107, Florida
 6248 Statutes, is amended to read:

6249 624.5107 Child care tax credits.—

6250 (1) If the credit granted under this section is not fully
 6251 used in any one year because of insufficient tax liability on
 6252 the part of the insurer, the unused amount may be carried
 6253 forward for a period not to exceed 5 years. The carryover credit
 6254 may be used in a subsequent year when the tax imposed by s.
 6255 624.509, ~~or~~ s. 624.510, or s. 637.2039 for that year exceeds the
 6256 credit for which the insurer is eligible in that year under this
 6257 section.

6258 Section 67. Transfers; rules; powers; regulatory
 6259 authority; orders.—

6260 (1) Effective October 1, 2010, the rules of the Financial
 6261 Services Commission and the Office of Insurance Regulation with
 6262 respect to the regulation of title insurance shall become the
 6263 rules of the Department of Financial Services and shall remain
 6264 in effect until specifically amended or repealed in the manner
 6265 provided by law.

6266 (2)(a) All of the statutory powers, duties and functions,
 6267 records, personnel, property, and unexpended balances of
 6268 appropriations, allocations, or other funds for the
 6269 administration of chapter 624, Florida Statutes, related to
 6270 title insurance, shall be transferred by a type two transfer, as
 6271 defined in s. 20.06(2), Florida Statutes, from the Financial
 6272 Services Commission and the Office of Insurance Regulation to

6273 the Department of Financial Services.

6274 (b) All of the statutory powers, duties and functions,
 6275 records, personnel, property, and unexpended balances of
 6276 appropriations, allocations, or other funds for the
 6277 administration of chapter 626, Florida Statutes, related to
 6278 title insurance, shall be transferred by a type two transfer, as
 6279 defined in s. 20.06(2), Florida Statutes, from the Financial
 6280 Services Commission and the Office of Insurance Regulation to
 6281 the Department of Financial Services.

6282 (c) All of the statutory powers, duties and functions,
 6283 records, personnel, property, and unexpended balances of
 6284 appropriations, allocations, or other funds for the
 6285 administration of chapter 627, Florida Statutes, related to
 6286 title insurance, shall be transferred by a type two transfer, as
 6287 defined in s. 20.06(2), Florida Statutes, from the Financial
 6288 Services Commission and the Office of Insurance Regulation to
 6289 the Department of Financial Services.

6290 (3) (a) The transfer of regulatory authority under chapter
 6291 624, Florida Statutes, provided by this act shall not affect the
 6292 validity of any judicial or administrative action relating to
 6293 title insurance pending as of 11:59 p.m. on the day before the
 6294 effective date of this act, to which action the Financial
 6295 Services Commission or the Office of Insurance Regulation are at
 6296 that time parties, and the Department of Financial Services
 6297 shall be substituted as a party in interest in any such action.

6298 (b) The transfer of regulatory authority under chapter
 6299 626, Florida Statutes, provided by this act shall not affect the
 6300 validity of any judicial or administrative action relating to

6301 title insurance pending as of 11:59 p.m. on the day before the
 6302 effective date of this act, to which action the Financial
 6303 Services Commission or the Office of Insurance Regulation are at
 6304 that time parties, and the Department of Financial Services
 6305 shall be substituted as a party in interest in any such action.

6306 (c) The transfer of regulatory authority under chapter
 6307 627, Florida Statutes, provided by this act shall not affect the
 6308 validity of any judicial or administrative action relating to
 6309 title insurance pending as of 11:59 p.m. on the day before the
 6310 effective date of this act, to which action the Financial
 6311 Services Commission or the Office of Insurance Regulation are at
 6312 that time parties, and the Department of Financial Services
 6313 shall be substituted as a party in interest in any such action.

6314 (4) (a) All lawful orders issued by the Financial Services
 6315 Commission or the Office of Insurance Regulation implementing or
 6316 enforcing or otherwise in regard to any provision of chapter
 6317 624, Florida Statutes, relating to title insurance, issued prior
 6318 to the effective date of this act, shall remain in effect and be
 6319 enforceable after the effective date of this act, unless
 6320 thereafter modified in accordance with law.

6321 (b) All lawful orders issued by the Financial Services
 6322 Commission or the Office of Insurance Regulation, implementing
 6323 or enforcing or otherwise in regard to any provision of chapter
 6324 626, Florida Statutes, relating to title insurance, issued prior
 6325 to the effective date of this act, shall remain in effect and be
 6326 enforceable after the effective date of this act, unless
 6327 thereafter modified in accordance with law.

6328 (c) All lawful orders issued by the Financial Services

6329 Commission or the Office of Insurance Regulation, implementing
 6330 or enforcing or otherwise in regard to any provision of chapter
 6331 627, Florida Statutes, relating to title insurance, issued prior
 6332 to the effective date of this act, shall remain in effect and be
 6333 enforceable after the effective date of this act, unless
 6334 thereafter modified in accordance with law.

6335 Section 68. The Legislature recognizes that there is a
 6336 need to conform the Florida Statutes to the policy decisions
 6337 reflected in the provisions of this act. The Division of
 6338 Statutory Revision is directed to provide the relevant
 6339 substantive committees of the Senate and the House of
 6340 Representatives with assistance, upon request, to enable such
 6341 committees to prepare draft legislation to conform the Florida
 6342 Statutes to the provisions of this act.

6343 Section 69. Section 689.263, Florida Statutes, is created
 6344 to read:

6345 689.263 Sale of residential property; settlement statement
 6346 requirements.—A title insurance agent or title insurance agency
 6347 may not disburse funds pursuant to a completed purchase and sale
 6348 transaction subject to the Real Estate Settlement Procedures Act
 6349 of 1974, 12 U.S.C. ss. 2601 et seq., as amended, without
 6350 requiring a statement of settlement costs meeting the following
 6351 requirements:

6352 (1) The settlement statement must be executed by the buyer
 6353 and the seller.

6354 (2) If a title insurance premium is to be disbursed, the
 6355 title insurer and the title insurance agent or title insurance
 6356 agency, if any, must be disclosed.

6357 (3) A copy of the executed settlement statement must be
 6358 delivered to the buyer and the seller.

6359 Section 70. Section 717.1121, Florida Statutes, is created
 6360 to read:

6361 717.1121 Payments from escrow related to real estate
 6362 transactions.—All funds held as part of a real estate
 6363 transaction, including any outstanding payments for amounts to
 6364 be paid as listed on the settlement statement form by any title
 6365 insurance agency, title insurer, savings and loan association,
 6366 bank, trust company, or other financial institution, attorney
 6367 firm, real estate broker, or similar institution, are considered
 6368 unclaimed if the owner of those funds has not claimed the money
 6369 within 2 years after the closing performed under the real estate
 6370 transaction.

6371 Section 71. Subsection (1) and paragraph (d) of subsection
 6372 (2) of section 877.101, Florida Statutes, are amended to read:

6373 877.101 Escrow business by unauthorized persons; use of
 6374 name.—

6375 (1) Except as provided in subsection (2), in connection
 6376 with the purchase and sale of real property, a person may not:

6377 (a) Transact business under any name or title that
 6378 contains the word "escrow" or words of similar import; ~~or~~

6379 (b)1. Use any name, word, sign, symbol, or device in any
 6380 context or in any manner; or

6381 2. Circulate or use any letterhead, billhead, circular,
 6382 paper, or writing of any kind or otherwise advertise or
 6383 represent in any manner

6384

6385 that indicates or reasonably implies that the business being
 6386 conducted or advertised is the kind or character of business
 6387 transacted that is regulated by this state as an escrow agent;
 6388 or

6389 (c) Engage in business as an escrow agent as to funds
 6390 received from others to be subsequently disbursed in connection
 6391 with real estate closing transactions.

6392 (2) This section does not apply to:

6393 (d) A title insurance agent who is licensed pursuant to s.
 6394 637.3006 ~~626.8417~~, a title insurance agency that is licensed
 6395 pursuant to s. 637.3007 ~~626.8418~~, or a title insurer who is
 6396 authorized to transact business in this state pursuant to s.
 6397 637.2001 ~~624.401~~.

6398 Section 72. Section 624.5015, Florida Statutes, is amended
 6399 to read:

6400 624.5015 Advance collection of fees and taxes; ~~title~~
 6401 ~~insurers not to pay without reimbursement.~~

6402 ~~(1) The department or the office shall collect in advance~~
 6403 ~~from the applicant or licensee fees and taxes as provided in s.~~
 6404 ~~624.501.~~

6405 ~~(2) A title insurer shall not pay directly or indirectly~~
 6406 ~~without reimbursement from a title insurance agent any~~
 6407 ~~appointment fee required under this section. The failure of a~~
 6408 ~~title insurance agent to make reimbursement is not a ground for~~
 6409 ~~cancellation of the title insurance agent's appointment by the~~
 6410 ~~title insurer.~~

6411 Section 73. Subsections (7), (8), and (9) of section
 6412 626.241, Florida Statutes, are amended to read:

6413 626.241 Scope of examination.—

6414 ~~(7) Examinations given applicants for licensure as title~~
 6415 ~~agents must cover title insurance, abstracting, title searches,~~
 6416 ~~examination of title, closing procedures, and escrow handling.~~

6417 (7)~~(8)~~ An examination for licensure as a personal lines
 6418 agent shall consist of 100 questions and shall be limited in
 6419 scope to the kinds of business transacted under such license.

6420 (8)~~(9)~~ This section applies to any person who submits an
 6421 application for license and to any person who submits an
 6422 application for examination prior to filing an application for
 6423 license.

6424 Section 74. Subsection (5) of section 626.331, Florida
 6425 Statutes, is amended to read:

6426 626.331 Number of appointments permitted or required.—

6427 ~~(5) A title agent or title agency license must be limited~~
 6428 ~~to selling title insurance only for the appointing title insurer~~
 6429 ~~or insurers.~~

6430 Section 75. Paragraph (a) of subsection (5) of section
 6431 197.502, Florida Statutes, is amended to read:

6432 197.502 Application for obtaining tax deed by holder of
 6433 tax sale certificate; fees.—

6434 (5) (a) The tax collector may contract with a title company
 6435 or an abstract company at a reasonable fee to provide the
 6436 minimum information required in subsection (4), consistent with
 6437 rules adopted by the department. If additional information is
 6438 required, the tax collector must make a written request to the
 6439 title or abstract company stating the additional requirements.
 6440 The tax collector may select any title or abstract company,

6441 regardless of its location, as long as the fee is reasonable,
 6442 the minimum information is submitted, and the title or abstract
 6443 company is authorized to do business in this state. The tax
 6444 collector may advertise and accept bids for the title or
 6445 abstract company if he or she considers it appropriate to do so.

6446 1. The ownership and encumbrance report must be printed or
 6447 typed on stationery or other paper showing a letterhead of the
 6448 person, firm, or company that makes the search, and the
 6449 signature of the person who makes the search or of an officer of
 6450 the firm must be attached. The tax collector is not liable for
 6451 payment to the firm unless these requirements are met.

6452 2. The tax collector may not accept or pay for any title
 6453 search or abstract if no financial responsibility is assumed for
 6454 the search. However, reasonable restrictions as to the liability
 6455 or responsibility of the title or abstract company are
 6456 acceptable. Notwithstanding s. 637.2071(3) ~~627.7843(3)~~, the tax
 6457 collector may contract for higher maximum liability limits.

6458 3. In order to establish uniform prices for ownership and
 6459 encumbrance reports within the county, the tax collector shall
 6460 ensure that the contract for ownership and encumbrance reports
 6461 include all requests for title searches or abstracts for a given
 6462 period of time.

6463 Section 76. Paragraph (d) of subsection (27) of section
 6464 624.501, Florida Statutes, is amended to read:

6465 624.501 Filing, license, appointment, and miscellaneous
 6466 fees.—The department, commission, or office, as appropriate,
 6467 shall collect in advance, and persons so served shall pay to it
 6468 in advance, fees, licenses, and miscellaneous charges as

6469 follows:

6470 (27) Title insurance agents:

6471 (d) Additional appointment continuation fee as prescribed
 6472 by s. 637.3015 ~~626.843~~ \$5.00

6473 Section 77. Section 624.604, Florida Statutes, is amended
 6474 to read:

6475 624.604 "Property insurance" defined.—"Property insurance"
 6476 is insurance on real or personal property of every kind and of
 6477 every interest therein, whether on land, water, or in the air,
 6478 against loss or damage from any and all hazard or cause, and
 6479 against loss consequential upon such loss or damage, other than
 6480 noncontractual legal liability for any such loss or damage.
 6481 Property insurance may contain a provision for accidental death
 6482 or injury as part of a multiple peril homeowner's policy. Such
 6483 insurance, which is incidental to the property insurance, is not
 6484 subject to the provisions of this code applicable to life or
 6485 health insurance. Property insurance does not include title
 6486 insurance, as defined in s. 637.1004 ~~624.608~~.

6487 Section 78. Paragraph (r) of subsection (1) of section
 6488 624.605, Florida Statutes, is amended to read:

6489 624.605 "Casualty insurance" defined.—

6490 (1) "Casualty insurance" includes:

6491 (r) Insurance for debt cancellation products.—Insurance
 6492 that a creditor may purchase against the risk of financial loss
 6493 from the use of debt cancellation products with consumer loans
 6494 or leases or retail installment contracts. Insurance for debt
 6495 cancellation products is not liability insurance but shall be
 6496 considered credit insurance only for the purposes of s.

6497 631.52(4).

6498 1. For purposes of this paragraph, the term "debt
 6499 cancellation products" means loan, lease, or retail installment
 6500 contract terms, or modifications to loan, lease, or retail
 6501 installment contracts, under which a creditor agrees to cancel
 6502 or suspend all or part of a customer's obligation to make
 6503 payments upon the occurrence of specified events and includes,
 6504 but is not limited to, debt cancellation contracts, debt
 6505 suspension agreements, and guaranteed asset protection
 6506 contracts. However, the term "debt cancellation products" does
 6507 not include title insurance as defined in s. 637.1004 ~~624.608~~.

6508 2. Debt cancellation products may be offered by financial
 6509 institutions, as defined in s. 655.005(1)(h), insured depository
 6510 institutions as defined in 12 U.S.C. s. 1813(c), and
 6511 subsidiaries of such institutions, as provided in the financial
 6512 institutions codes; by sellers as defined in s. 721.05, or by
 6513 the parents, subsidiaries, or affiliated entities of sellers, in
 6514 connection with the sale of timeshare interests; or by other
 6515 business entities as may be specifically authorized by law, and
 6516 such products shall not constitute insurance for purposes of the
 6517 Florida Insurance Code.

6518 Section 79. Subsection (4) of section 625.031, Florida
 6519 Statutes, is amended to read:

6520 625.031 Assets not allowed.—In addition to assets
 6521 impliedly excluded by the provisions of s. 625.012, the
 6522 following expressly shall not be allowed as assets in any
 6523 determination of the financial condition of an insurer:

6524 (4) Furniture, fixtures, furnishings, safes, vehicles,

6525 libraries, stationery, literature, and supplies, other than data
 6526 processing and accounting systems authorized under s.
 6527 625.012(11), except in the case of title insurers such materials
 6528 and plants as the insurer is expressly authorized to invest in
 6529 under s. 637.20073 ~~625.330~~ and except, in the case of any
 6530 insurer, such personal property as the insurer is permitted to
 6531 hold pursuant to part II of this chapter, or which is acquired
 6532 through foreclosure of chattel mortgages acquired pursuant to s.
 6533 625.329, or which is reasonably necessary for the maintenance
 6534 and operation of real estate lawfully acquired and held by the
 6535 insurer other than real estate used by it for home office,
 6536 branch office, and similar purposes.

6537 Section 80. Section 626.207, Florida Statutes, is amended
 6538 to read:

6539 626.207 Department rulemaking authority; waiting periods
 6540 for applicants; penalties against licensees.—

6541 (1) The department shall adopt rules establishing specific
 6542 waiting periods for applicants to become eligible for licensure
 6543 following denial, suspension, or revocation pursuant to s.
 6544 626.611, s. 626.621, s. 637.3017 ~~626.8437~~, s. 637.3018 ~~626.844~~,
 6545 s. 626.935, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s.
 6546 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of
 6547 the waiting periods is to provide sufficient time to demonstrate
 6548 reformation of character and rehabilitation. The waiting periods
 6549 shall vary based on the type of conduct and the length of time
 6550 since the conduct occurred and shall also be based on the
 6551 probability that the propensity to commit illegal conduct has
 6552 been overcome. The waiting periods may be adjusted based on

6553 | aggravating and mitigating factors established by rule and
 6554 | consistent with this purpose.

6555 | (2) The department shall adopt rules establishing specific
 6556 | penalties against licensees for violations of s. 626.611, s.
 6557 | 626.621, s. 637.3017 ~~626.8437~~, s. 637.3018 ~~626.844~~, s. 626.935,
 6558 | s. 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s.
 6559 | 634.423, s. 642.041, or s. 642.043. The purpose of the
 6560 | revocation or suspension is to provide a sufficient penalty to
 6561 | deter future violations of the Florida Insurance Code. The
 6562 | imposition of a revocation or the length of suspension shall be
 6563 | based on the type of conduct and the probability that the
 6564 | propensity to commit further illegal conduct has been overcome
 6565 | at the time of eligibility for relicensure. The revocation or
 6566 | the length of suspension may be adjusted based on aggravating or
 6567 | mitigating factors, established by rule and consistent with this
 6568 | purpose.

6569 | Section 81. Paragraph (t) of subsection (1) of section
 6570 | 655.005, Florida Statutes, is amended to read:

6571 | 655.005 Definitions.—

6572 | (1) As used in the financial institutions codes, unless
 6573 | the context otherwise requires, the term:

6574 | (t) "Debt cancellation products" means loan, lease, or
 6575 | retail installment contract terms, or modifications or addenda
 6576 | to loan, lease, or retail installment contracts, under which a
 6577 | creditor agrees to cancel or suspend all or part of a customer's
 6578 | obligation to make payments upon the occurrence of specified
 6579 | events and includes, but is not limited to, debt cancellation
 6580 | contracts, debt suspension agreements, and guaranteed asset

CS/HB 853

2010

6581 protection contracts offered by financial institutions, insured
 6582 depository institutions as defined in 12 U.S.C. s. 1813(c), and
 6583 subsidiaries of such institutions. However, the term "debt
 6584 cancellation products" does not include title insurance as
 6585 defined in s. 637.1004 ~~624.608~~.

6586 Section 82. Paragraph (d) of subsection (6) of section
 6587 701.041, Florida Statutes, is amended to read:

6588 701.041 Title insurer; mortgage release certificate.—

6589 (6) LIABILITY OF TITLE INSURER AND TITLE INSURANCE AGENT.—

6590 (d) Liability of a title insurer pursuant to this section
 6591 shall be considered to be a title insurance claim on real
 6592 property in this state pursuant to s. 637.2075 ~~627.7865~~.

6593 Section 83. Paragraph (d) of subsection (14) of section
 6594 721.05, Florida Statutes, is amended to read:

6595 721.05 Definitions.—As used in this chapter, the term:

6596 (14) "Escrow agent" includes only:

6597 (d) A title insurance agent that is licensed pursuant to
 6598 s. 637.3006 ~~626.8417~~, a title insurance agency that is licensed
 6599 pursuant to s. 637.3007 ~~626.8418~~, or a title insurer authorized
 6600 to transact business in this state pursuant to s. 637.2001
 6601 ~~624.401~~.

6602 Section 84. Sections 624.608, 626.841, 626.8411, 626.9531,
 6603 627.7711, and 627.776, Florida Statutes, are repealed.

6604 Section 85. This act shall take effect October 1, 2010.